

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

**TUESDAY, NOVEMBER 16, 2021
5:30 P.M.**

**WATAUGA COUNTY ADMINISTRATION BUILDING
COMMISSIONERS' BOARD ROOM**

| TIME | # | TOPIC | PRESENTER | PAGE |
|------|----|--|---|--|
| 5:30 | 1 | CALL REGULAR MEETING TO ORDER | | |
| | 2 | APPROVAL OF MINUTES: October 19, 2021, Regular Meeting October 19, 2021, Closed Session | | 1 |
| | 3 | APPROVAL OF THE NOVEMBER 16, 2021, AGENDA | | 11 |
| 5:35 | 4 | PUBLIC HEARING TO ALLOW CITIZEN COMMENT ON PROPOSED AMENDMENTS TO THE WATAUGA COUNTY PLANNING & DEVELOPMENT ORDINANCE | MR. JOE FURMAN | 13 |
| 5:40 | 5 | PUBLIC HEARING TO ALLOW CITIZEN COMMENT ON THE PROPOSED 2022 SCHEDULE OF VALUES | MR. LARRY WARREN MR. RYAN VINCENT | 167 |
| 5:45 | 6 | UPDATE ON THE NEW RIVER CONSERVANCY'S SOUTH FORK PROJECT | MS. CHELSEA BLOUNT MS. ELIZABETH UNDERWOOD | 169 |
| 5:50 | 7 | PROPOSED AMENDMENTS TO THE WATAUGA MEDICAL CENTER BYLAWS | MR. JIM DEAL MS. DEANNA MOOL | 269 |
| 5:55 | 8 | CORONAVIRUS (COVID-19) COMMUNITY UPDATE | MS. JENNIFER GREENE | 275 |
| 6:00 | 9 | REQUEST TO PURCHASE MOBILE RADIOS | MAJOR KELLY REDMON | 277 |
| 6:05 | 10 | PROPOSED REPLACEMENT OF THE COURTHOUSE HVAC CONTROLS SYSTEM | MR. ROBERT MARSH | 283 |
| 6:10 | 11 | TAX MATTERS A. Monthly Collections Report B. Refunds and Releases | MR. LARRY WARREN | 289 291 |
| 6:15 | 12 | FINANCE MATTERS A. FY 2021 Carry Forward Purchase Orders B. Proposed Inmate Catastrophic Insurance Contract | MS. MISTY WATSON | 297 301 |
| 6:20 | 13 | MISCELLANEOUS ADMINISTRATIVE MATTERS A. Proposed Acceptance of Communications Grant on Behalf of NC State Highway Patrol TSU/NCEM B. Proposed Appalachian State University Tower Lease Renewal C. Proposed Resolution Establishing the Sheriff's Salary D. January Meeting Schedule E. Boards and Commissions F. Announcements | MR. DERON GEOUQUE | 305 359 377 379 381 385 |
| 6:25 | 14 | PUBLIC COMMENT | | 386 |
| 7:25 | 15 | BREAK | | 386 |
| 7:30 | 16 | CLOSED SESSION Attorney/Client Matters – G. S. 143-318.11(a)(3) | | 386 |
| 7:45 | 17 | ADJOURN | | |

AGENDA ITEM 2:

APPROVAL OF MINUTES:

October 19, 2021, Regular Meeting

October 19, 2021, Closed Session

DRAFT**MINUTES****WATAUGA COUNTY BOARD OF COMMISSIONERS
TUESDAY, OCTOBER 19, 2021**

The Watauga County Board of Commissioners held a regular meeting, as scheduled, on Tuesday, October 19, 2021, at 5:30 P.M. in the Commissioners' Board Room located in the Watauga County Administration Building, Boone, North Carolina.

Chairman Welch called the meeting to order at 5:31 P.M. The following were present:

PRESENT: John Welch, Chairman
 Billy Kennedy, Vice-Chairman
 Carrington Peralion, Commissioner
 Larry Turnbow, Commissioner
 Anthony di Santi, County Attorney
 Deron Geouque, County Manager
 Anita J. Fogle, Clerk to the Board

Vice-Chairman Welch opened with a prayer and Commissioner Turnbow led the Pledge of Allegiance.

APPROVAL OF MINUTES

Chairman Welch called for additions and/or corrections to the October 5, 2021, regular meeting and closed session minutes.

Vice-Chairman Kennedy, seconded by Commissioner Peralion, moved to approve the October 5, 2021, regular meeting minutes as presented.

VOTE: Aye-4(Welch, Kennedy, Peralion, Turnbow)
 Nay-0
 Absent-1(Wallin)

Vice-Chairman Kennedy, seconded by Commissioner Peralion, moved to approve the October 5, 2021, closed session minutes as presented.

VOTE: Aye-4(Welch, Kennedy, Peralion, Turnbow)
 Nay-0
 Absent-1(Wallin)

[Clerk's Note: Commissioner Wallin arrived at the meeting at 5:35 P.M.]

APPROVAL OF AGENDA

Chairman Welch called for additions and/or corrections to the October 19, 2021, agenda.

County Manager Geouque requested to add a discussion of the recent ARP Contract with Blue Ridge Energy/Skybest under Miscellaneous Administrative Matters, possible action after closed session, and consideration of the removal of members from the Adult Care Community Advisory Committee under Boards and Commissions.

Vice-Chairman Kennedy, seconded by Commissioner Turnbow, moved to approve the October 19, 2021, agenda as amended.

VOTE: Aye-5
Nay-0

CORONAVIRUS (COVID-19) COMMUNITY UPDATE

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

UPDATE FROM VAYA HEALTH

Mr. Dustin Burleson, Regional Community Relations Director, provided an update on Vaya Health and the consolidation with Cardinal. The proposed composition of the Board would be two directors appointed by each Regional Community Board; four directors appointed by Consumer & Family Advisory Committee with the goal that CFAC regions would align and there would be one director from each CFAC region); one director appointed by the DHHS Secretary; up to eight at-large directors appointed by the current Vaya Board in consultation with the Cardinal Board, CCABs, and counties (this would be appointed after the Regional Boards made their appointment); and the Provider Advisory Council President would serve as non-voting director along with up to three non-voting advisory directors.

Vaya was notified they received the Tailored Plan Award on July 26, 2021. They were currently working to submit post-award documents as required by the NC DHHS. In the process of developing contracts with pharmacy and physical health providers, Vaya planned to go live as a Tailored Plan on July 1, 2022, or one-year post award. Watauga County currently has 5,566 Medicaid-eligible residents with an estimated 5,049 Medicaid members moving to Standard Plans in July. An estimated 517 members would stay with Vaya after the July Standard Plan launch.

Mr. Burleson also announced that over 700 Narcan kits were distributed by Community Relations Regional Directors.

Vaya's Community Relations continued to coordinate and facilitate Department of Social Services (DSS) meetings across the catchment area by meeting with every DSS at least quarterly with some groups preferring to meet monthly.

PLANNING AND INSPECTIONS MATTERS

A. Proposed Change Order # 4 for Middle Fork Greenway

Mr. Joe Furman, Planning and Inspections Director, presented Change Order #4 for the Middle Fork Greenway Section 4 project in the amount of \$3,789. The change order covered the removal of a pine tree and shrubs, addition of a split rail fence, bollard and 2 boulders. As with the previous Change Orders, the funds to cover the costs would come from the Blue Ridge Conservancy.

Commissioner Turnbow, seconded by Commissioner Peralion, moved to approve Change Order #4 for the Middle Fork Greenway Section 4 project in the amount of \$3,789 with the funds to come from the Blue Ridge Conservancy.

VOTE: Aye-5
Nay-0

B. Request to Include Additional Amendments to the Public Hearing for Citizen Comment on Proposed Amendments to the Watauga County Planning & Development Ordinance

Mr. Joe Furman presented additional amendments to development regulations to be added for public comment at the Public Hearing already scheduled for November 16, 2021. Mr. Furman stated that Session Law 2021-138 was recently ratified and then signed into law September 2, 2021. It contained a provision in Part XIII that "decriminalizes" local ordinances, and takes effect December 1, 2021. The law required the amendment of the Planning & Development Ordinance to remove all references to using criminal enforcement procedures. The law does not affect the County's ability to use civil penalties. As a practical matter, the County has almost exclusively used civil penalties when any penalties were necessary. Mr. Furman reviewed the proposed amendments and requested they be considered during the previously scheduled November 16, 2021, public hearing at which time other amendments to that ordinance were being considered.

Chairman Welch stated that the additional amendments would be included for citizen comment at the November 16, 2021, public hearing for amendments to the Watauga County Planning and Development Ordinance.

PROJECT ON AGING ANNUAL REPORT

Ms. Angie Boitnotte, Project on Aging Director, presented the Fiscal Year 2021 annual comprehensive evaluation of the agency's operations and policies as required by the North Carolina Division of Health Service Regulation.

Vice-Chairman Kennedy, seconded by Commissioner Turnbow, moved to accept the annual report as presented by Ms. Boitnotte.

VOTE: Aye-5
Nay-0

TAX MATTERS***A. Monthly Collections Report***

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

B. Refunds and Releases

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

TO BE TYPED IN MINUTE BOOK

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

VOTE: Aye-5
Nay-0

C. Request to Schedule Public Hearing to Allow Citizen Comments on the 2022 Schedule of Values

Mr. Larry Warren, Tax Administrator, introduced Mr. Ryan Vincent, with Vincent Valuations, who presented the 2022 Schedule of Values to be used in establishing prices for properties. A public hearing was required to allow public comment on the Schedule of Values and was requested to be scheduled for November 16, 2021. Consideration for adoption of the 2022 Schedule of Values was also requested for November 16 should there be no public comments. The Schedule of Values would be available on the County's website and a hard copy in the Tax Administrator's Office.

Commissioner Turnbow, seconded by Commissioner Wallin, moved to schedule a public hearing to allow citizen comments on the 2022 Schedule of Values for November 16, 2021, at 5:30 P.M.

VOTE: Aye-5
Nay-0

APPOINTMENT OF DANGEROUS DOG APPEAL BOARD AND APPEAL OF DANGEROUS DOG DESIGNATION

County Manager Geouque stated that Section V. Animal Management, Subsection Section 5A. Confinement and Control of Dangerous Domestic Animals of the Watauga County Animal Care and Control Ordinance addressed issues related to animals deemed "dangerous" or "potentially dangerous." Owners of animals deemed "dangerous" or "potentially dangerous" could request reconsideration of the designation to the appeals board appointed by the Board of Commissioners. The last appeal received by the Board was in 2011. Due to the limited turnaround time in responding to the appeal and the infrequent amount of appeals staff would recommend the Board serve as the Dangerous Dog Appeal Board for the Animal Care and Control Ordinance.

Vice-Chairman Kennedy, seconded by Commissioner Peralion, moved to appoint the Board of Commissioners to serve as the appeals board for the Watauga County Animal Care and Control Ordinance.

VOTE: Aye-5
Nay-0

Upon the Board being appointed as the appeals board, there was a current appeal to be heard.

Chairman Welch called upon Animal Control Officer Eric Presnell to provide his report. Mr. Presnell stated that the incident happened at approximately 8:23 P.M. on September 24, 2021, in the parking lot of Lowe's Hardware. Nothing was intentional; however, Mr. Thomas Jahns dogs "Cheese" and "Tank" did attack Ms. Dee Dee Taylor and her dog, "Lula" while Ms. Taylor had her dog properly restrained on a leash. The dogs were tested for rabies and the results were negative. "Lula" and Ms. Taylor were both injured during the attack. Mr. Jahns requested the dangerous dog designation given by the Animal Care and Control Office to his dogs be overturned. Ms. Taylor stated that she was attacked by both "Cheese" and "Tank" and required stitches for herself and "Lula" has had three surgeries due to the incident. Ms. Taylor stated that she was thankful that "Cheese" and "Tank" were not going to have to be put down but did agree with the dangerous dog designation.

Chairman Welch acknowledged Ms. Kayla Dillard's presence at the meeting and stated that they had her written statement as a witness to the incident as well as written statements from Mr. Jahns and Mr. Presnell. County Manager Geouque shared a video, taken by the Lowe's Hardware parking lot camera which showed the incident.

Mr. Jahns appealed the dangerous designation of both his dogs and requested the designation be reversed.

After reviewing the reports and hearing Mr. Presnell, Mr. Jahns, and Ms. Taylor speak, Vice-Chairman Kennedy, seconded by Commissioner Turnbow, moved to uphold the Animal Care and Control's designation as a Dangerous Dog for both of Mr. Jahns dogs, "Cheese" and "Tank."

VOTE: Aye-5
Nay-0

MISCELLANEOUS ADMINISTRATIVE MATTERS

A. Proposed Daymark Lease Renewal

A resolution for the lease renewal for Daymark Recovery Services office space has been adopted and advertised for the required ten-day period. The space to be leased was at the County's Human Service Building and included 13,775 square feet of space. Daymark agreed to lease the space at the rate of \$10 per square foot (\$137,750 per year) in monthly installments of \$11,479.17. The new lease term would be from July 1, 2021, to June 30, 2024. Included in the lease under Section 10 was an additional fee in the amount of \$67,718 per year, to be paid in monthly installments of \$5,643.17, which was to cover utilities and janitorial services.

Vice-Chairman Kennedy, seconded by Commissioner Pertalion, moved to approve the lease with Daymark Recovery Services as presented by the County Manager.

VOTE: Aye-5
Nay-0

B. Recommended Contract Award for Employee Medical, Dental, and Life Insurance

County Manager Geouque stated that renewal rates had been received for medical, dental, and life insurance benefits. The initial renewal rate received from CIGNA for medical insurance was a 22.2% increase. Further negotiations and analysis of additional claims reduced the increase to 5.04 %.

Dental and Life insurance premiums through Ameritas Dental and Symetra will remain unchanged due to the current rate lock.

Staff recommends CIGNA's Level Funding plan for the County's medical insurance with a 5.04% increase and for the County to fund \$1,000 into each eligible employee's HSA account. Staff further recommends Ameritas Dental and Symetra Financial for dental and life insurance. Adequate funds have been budgeted to cover the renewal rates.

Commissioner Turnbow, seconded by Commissioner Pertalion, moved to approve CIGNA's Level Funding plan for the County's medical insurance with a 5.04% increase and for the County to fund \$1,000 into each eligible employee's HSA account as well as approve Ameritas Dental and Symetra Financial for life insurance.

VOTE: Aye-5
Nay-0

C. Boards and Commissions

County Manager Geouque presented the following for consideration:

Watauga County Board of Adjustment

The Board of Adjustment term of Mr. Lonnie Webster was set to expire in November 2021. Mr. Webster did not wish to be reappointed. The revised North Carolina General Statute 160D no longer makes any mention of appointments representing zoned areas of counties with partial-county zoning; therefore, it was not necessary to consider where appointees live. The term will be for three years. Citizens were encouraged to apply to serve on the Board.

Watauga County Planning Board

The At-Large Planning Board term of Mr. Ric Mattar was set to expire in December 2021. Mr. Mattar was willing to be reappointed for the four-year term.

Commissioner Wallin, seconded by Commissioner Turnbow, moved to waive the second reading and reappoint Mr. Ric Mattar as an At-Large Planning Board with a term that ends December 31, 2025.

VOTE: Aye-5
Nay-0

Adult Care Home Community Advisory Committee

Pat Taylor and Karen Robertson were no longer eligible to serve on the Adult Care Home Community Advisory Committee and, therefore, Stevie John, Regional Ombudsman, had requested the two be formally removed as members of the Committee.

Commissioner Turnbow, seconded by Vice-Chairman Kennedy, moved to remove Pat Taylor and Karen Robertson as members of the Adult Care Home Community Advisory Committee.

VOTE: Aye-5
Nay-0

D. America Recovery Plan Contract

County Manager Geouque stated that discussion was needed with the County Attorney in Closed Session regarding a recent American Recovery Plan (ARP) contract and possible action could take place after Closed Session.

E. Announcements

County Manager Geouque announced the following:

- The Watauga County Parks and Recreation Department scheduled a Trunk or Treat event at the Community Recreation Center (CRC) on Sunday, October 31, 2021, from 6:00-8:00 P.M. Contact Parks and Recreation to register your trunk for the event.
- The regular meeting of the Board of Commissioners scheduled for November 2, 2021, has been cancelled. The next regular meeting will be held at 5:30 P.M. on Tuesday, November 16, 2021, in the Commissioners' Board Room.
- Two Public Hearings will be held at 5:30 P.M. on Tuesday, November 16, 2021; one to allow citizen comment on proposed amendments to the Watauga County Planning & Development Ordinance and one to allow citizen comment on the 2022 Schedule of Values.

PUBLIC COMMENT

Mr. Michael Bugge shared an open letter with the Board regarding issues and concerns associated with The Cottages of Boone rental housing development.

Chairman Welch stated that the Health Department had reached out to the State to make sure the health concerns do not happen again. Ms. Jen Greene, Director of AppHealthCare, stated that the North Carolina Department of Environmental Quality were consulting with the Attorney General's Office regarding The Cottages.

CLOSED SESSION

At 7:09 P.M., Commissioner Wallin, seconded by Commissioner Pertalion, moved to enter Closed Session to discuss Attorney/Client Matters, per G. S. 143-318.11(a)(3).

VOTE: Aye-5
Nay-0

Commissioner Pertalion, seconded by Commissioner Wallin, moved to resume the open meeting at 7:59 P.M.

VOTE: Aye-5
Nay-0

POSSIBLE ACTION AFTER CLOSED SESSION

County Attorney di Santi made the following statement:

Because of the difference in federal law regarding the funds the County is to receive from the United States pursuant to the American Recovery Plan, which the county intends to use a portion thereof to provide broadband to unserved and underserved areas of the County, and NC law regarding the County's use of the funds, it is necessary to rescind the contract which the county executed with Blue Ridge Electric Membership Corporation and Skyline/Skybest, to which both entities agree and have confirmed. An amendment to the NC law has been introduced and is pending before the NC General Assembly in hopes that it is adopted so that the County can proceed with its broadband initiative with the American Recovery Plan funds appropriated to the County.

Vice-Chairman Kennedy, seconded by Commissioner Wallin, moved to rescind the contract between Blue Ridge Energy and Skybest/Skyline and Watauga County which was approved at the August 17, 2021, Board meeting.

VOTE: Aye-5
Nay-0

ADJOURN

Commissioner Wallin, seconded by Vice-Chairman Kennedy, moved to adjourn the meeting at 8:02 P.M.

VOTE: Aye-5
Nay-0

John Welch, Vice-Chairman

ATTEST:
Anita J. Fogle, Clerk to the Board

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AGENDA ITEM 3:

APPROVAL OF THE NOVEMBER 16, 2021, AGENDA

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AGENDA ITEM 4:

PUBLIC HEARING TO ALLOW PUBLIC COMMENT ON PROPOSED AMENDMENTS TO THE WATAUGA COUNTY PLANNING & DEVELOPMENT ORDINANCE

MANAGER’S COMMENTS:

A public hearing has been scheduled to allow public comment regarding the amendment of the Watauga County Planning & Development Ordinance.

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.

On October 19, 2021 additional amendments were added for consideration that addressed decriminalizing local ordinances and takes effect December 1, 2021.

Upon completion of the public hearing the Board may adopt the changes as presented, request additional information, or schedule a special called meeting prior to the December 1, 2021 deadline.

Board action is required.

PUBLIC HEARING NOTICE

The Watauga County Board of Commissioners will hold a legislative public hearing at 5:30 PM Tuesday, November 16, 2021 to consider proposed amendments to the Planning & Development Ordinance. The purpose of the amendments is to bring the ordinance into compliance with changed federal and NC laws and rules. Specifically, the Erosion and Sedimentation Control, Flood Damage Prevention, and Watershed Protection regulations, as well as applicable definitions must be brought into compliance with model ordinances provided by the overseeing NC agencies. Optional amendments included in the Flood Damage Prevention and Watershed Protection model ordinances are also being considered upon recommendation of the Watauga County Planning Board. In addition, enforcement provisions of the entire Planning & Development Ordinance must be amended to remove criminal penalties pursuant to NC Session Law 2021-138. The hearing will be conducted in the Commissioners Board Room, County Administration Building, 814 West King Street, Boone. For further information, contact the Department of Planning and Inspections, (828) 265-8043, p&i@watgov.org.

John Welch
Chairman



WATAUGA COUNTY

126 Poplar Grove Connector, Suite 201 Boone, NC 28607

Department of
Planning & Inspections

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

Memorandum

Date: 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 in 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 offspring 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:

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 Supple 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.




WATAUGA COUNTY

126 Poplar Grove Connector, Suite 201 Boone, NC 28607

Department of
Planning & Inspections

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

Memorandum

Date: October 22, 2021
To: Board of Commissioners, County Manager
From: Joe Furman, Director 
RE: Additional required amendments to Planning & Development Ordinance

Session Law 2021-138, ratified August 25, 2021 and signed into law September 2, 2021 contains a provision in Part XIII that “decriminalizes” local ordinances, and takes effect December 1, 2021. Here the link to a UNC School of Government blog describing the law: [Legislature Decriminalizes Local Ordinances - Coates' Canons Coates' Canons \(unc.edu\)](#). The law requires the County to amend the Planning & Development Ordinance to remove all references to using criminal enforcement procedures. The law does not affect the County’s ability to use civil penalties. As a practical matter, we almost exclusively use civil penalties when any penalties are necessary. I request that these amendments be considered during the previously scheduled November 16, 2021 public hearing to consider other amendments to that ordinance. Reference is made to misdemeanors and criminal penalties on the following pages and must be removed/replaced: Table of Contents p. v, and pp. 20, 97, 98, 100, 101, 111, 113, 173, 175, 176, 177, 179, 180, 182, 183. These pages are attached and changes are indicated by strike-throughs and red ink.

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

Article IV Remedies

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

Article V Penalties

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

Section 2. Willful Resistance, Delay or Obstruction.

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

Section 3. Notice of Violation.

If the County determines that a person engaged in land-disturbing activity has failed to comply with the Act, this chapter, or rules, or orders adopted or issued pursuant to this chapter, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this chapter, and inform the person of the actions that need to be taken to comply with the Act, this chapter, or rules or orders adopted pursuant to this chapter. Any person who fails to comply within the time specified is subject to additional civil ~~and criminal~~ penalties for a continuing violation as provided in G.S. 113A-64 and this chapter.

Section 4. Investigation.

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

Section 5. Statements and Reports.

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

Article XVIII Stop Orders

Wherever land-disturbing activity is being undertaken in a manner which is in violation of this chapter, the Watauga County Department of Planning and Inspection may order the work that is in violation to be immediately stopped. The stop order shall be in writing and directed to the person responsible for the violation, and shall state the specific work to be stopped,

the specific reasons for the stoppage, and the conditions under which the work may be resumed. Appeals from a stop order shall be made as prescribed in [Article XVI](#) of this chapter. Pending the ruling on the appeal, no further work may take place in violation of a stop order. ~~Violation of a stop order constitutes a misdemeanor.~~

In addition, in accordance with N.C.G.S. 160D-404(b), the Watauga County Building Inspectors are authorized to issue stop orders for building permits where violations of this ordinance are taking place in connection with construction authorized by the building permit.

Article XIX Revocation of Grading Permits

The Watauga County Department of Planning and Inspections may revoke and require the return of any permit by giving written notice to the permit holder, stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application or plans and specifications, for refusal or failure to comply with the requirements of any applicable State or local laws or local ordinances or regulations, or for false statements or misrepresentations made in securing the permit. A permit mistakenly issued in violation of an applicable State or local law or local ordinance or regulation also may be revoked.

Article XX Building Permits

No permits for any building or structure shall be issued upon any land requiring submission of a soil erosion control plan and issuance of a grading permit until such plan is submitted and permit issued.

Article XXI Security Required

The applicant for a permit may, prior to commencing any land-disturbing activity, be required to file with Watauga County an improvement security in the form of an escrow account, surety bond, irrevocable letter of credit, or other undertaking satisfactory to the County Attorney, in an amount deemed sufficient by the Watauga County Department of Planning and Inspections, to cover all costs of protection or other improvements required to establish protective cover on the site in conformity with this chapter. Such security shall remain in force until the improvements are completed in accordance with the approved plan and said improvements are finally inspected and approved as set out in paragraph below.

Upon completion of the improvements as required by this chapter, written notice thereof shall be given by the applicant to the Department of Planning and Inspections and the Department shall cause an inspection of the

- either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the County (as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program), or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based.
- (D) Final Decision: The final decision on contested assessments shall be made by the Board of Commissioners in accordance with this ordinance.
- (E) Appeal of Final Decision. Appeal from the final decision of the Board of Commissioners shall be to the Superior Court of the county where the violation occurred. Such appeals must be made within 30 days of the final decision of the Board of Commissioners.
- (F) Collection. If payment is not received within 60 days after it is due, the County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (G) Credit of Civil Penalties. The clear proceeds of civil penalties collected by the County under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by each County for the prior fiscal year.
[In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected.]

Section 2. Criminal Penalties:

~~Any person who knowingly or willfully violates any provision of this chapter, or rule or order adopted or issued pursuant to this chapter, or who knowingly or willfully initiates or continues a land-disturbing activity for~~

~~which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in G.S. § 113A-64.~~

Article XXIII Injunctive Relief

Section 1. Violation of Local Program.

Whenever the Board of Commissioners has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the County or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the County for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.

Section 2. Abatement of Violation.

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

Article XXIV Restoration After Non-Compliance

The County may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57 (3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other ~~civil or criminal~~ penalty or injunctive relief authorized under this chapter.

Article XXV Effective Date

February 20, 2019

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

- (3) that following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (C) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of this chapter, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one hundred-eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- (D) Appeal: Any owner who has received an order to take corrective action may appeal the order to the Board of Adjustment by giving notice of appeal in writing to the Floodplain Administrator and the Clerk to the Board of Adjustment within thirty (30) days following issuance of the final binding order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- ~~(E)~~ Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the Board of Adjustment following an appeal, the owner shall be ~~guilty of a misdemeanor and shall be punished at the discretion of the court~~ **subject to civil penalties as set forth in Chapter 5 of this ordinance.**

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

the premises of a sexually oriented business for the purpose of insuring compliance with the law.

A person who operates a sexually oriented business or his agent or employee ~~commits a misdemeanor~~ **shall be subject to civil penalties** if he refuses to permit such lawful inspection of the premises at any time.

Article VII Expiration of License

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in [Article III](#). Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the license will expire.

When the County Official denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial.

Article VIII Suspension

The County Official shall suspend a license for a period not to exceed thirty (30) days if he/she determines that a licensee or an employee of a licensee has:

- (A) violated or is not in compliance with any section of this chapter;
- (B) refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

Each such determination and denial shall be documented in writing, a copy of which shall be mailed to the applicant by first class mail to address shown on the application.

Article IX Revocation

Section 1. Previous Suspension

The County Official shall revoke a license if a cause of suspension in [Article VIII](#) occurs and the license has been suspended within the preceding twelve (12) months.

Article XI Location of Sexually Oriented Businesses

Section 1. Residential Structures.

A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business within 660 feet of any residential structure.

Section 2. Non-Residential Structures.

~~A person commits a misdemeanor if the person operates or causes to be operated a~~ **No** sexually oriented business **shall be operated** within 1500 feet of:

- (A) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
- (B) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school.
- (C) A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the county which is under the control, operation, or management of the county park and recreation authorities;
- (D) A fire department
- (E) An entertainment business which is oriented primarily towards children or family entertainment; or
- (F) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State.

Section 3. Proximity to Existing Sexually Oriented Business.

~~A person commits a misdemeanor if that~~ **No** person **shall** ~~causes~~ or ~~permits~~ the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1500 feet of another sexually oriented business.

Section 4. Highway.

~~A person commits a misdemeanor if that~~ No person shall causes or permits the operation or establishment of a sexually oriented business on any road in Watauga County other than a federal aid primary system highway as designated by the federal government.

Section 5. Existing Sexually Oriented Business

~~A person commits a misdemeanor if that~~ No person shall causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

Section 6. Measurement to Property Line.

For the purpose of [Section 2](#) of this Article, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in [Section 2](#). Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

Section 7. Measurement to Structure.

For purposes of [Section 1](#) & [3](#) of this Article, the distance between a residence and a sexually oriented business or between two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each residence or business is located.

Section 8. Applicably to Other Ordinances.

Nothing herein is intended to or shall be construed to preempt, modify, or repeal any other land use regulation applicable to any property or its use in the County, but instead this Ordinance is intended to and shall be in addition thereto.

Article XII Additional Regulations For Adult Motels

Section 1. Adult Motel.

Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.

Section 2. Penalties.

A person ~~commits a misdemeanor~~ **shall be subject to civil penalties or other appropriate remedies** if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

Section 3. Word Interpretation.

For purposes of Section 2 of this Article, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

Article XIII Regulation Pertaining To Exhibition of Sexually Explicit Films, Videos or Live Entertainment

Section 1. Requirements.

A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (A) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted.

- (J) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- (K) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- (L) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (M) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.

Section 2. Maintenance.

It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

Section 3. Penalties.

A person having a duty under Section 1 or 2 above ~~commits a misdemeanor~~ shall be subject to civil penalties or other appropriate remedies if he knowingly fails to fulfill that duty.

Article XIV Additional Regulations

Section 1. For Escort Agencies.

- (A) An escort agency shall not employ any person under the age of 21 years.
- (B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 21 years.

Section 2. For Nude Model Studios.

- (A) A nude model studio shall not employ any person under the age of 21 years.
- (B) A person under the age of 21 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 21 years was in a restroom not open to public view or visible to any other person.
- (C) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in

an area of a nude model studio premises which can be viewed from the public right of way.

- (D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

Section 3. Concerning Public Nudity.

- (A) It shall be a ~~misdemeanor~~ **violation** for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.
- (B) It shall be a ~~misdemeanor~~ **violation** for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two feet from the floor.
- (C) It shall be a ~~misdemeanor~~ **violation** for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.
- (D) It shall be a ~~misdemeanor~~ **violation** for an employee, while semi-nude, to touch a customer or the clothing of a customer.

Article XVII Prohibition Against Youth in a Sexually Oriented Business

A person commits a misdemeanor if the person allows a person under the age of 21 years on the premises of a sexually oriented business.

Article XVIII Prohibition Of Sale or Consumption of Alcohol

Sale or consumption of alcohol on the premises of sexually oriented business shall be prohibited. ~~Violations shall be a misdemeanor.~~

Article XIX Exterior Portions of Sexually Oriented Businesses

Section 1. Visibility.

It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

road right-of-way. Lists of recommended plantings are available from the Planning and Inspection Department.

(B) Walls, fences, earthen berms, or other natural features may be used in combination with or in lieu of planted buffers if approved by County Official. Considerations include but are not limited to:

(1) Any existing significant vegetation within the buffer(s) may be preserved and credited towards meeting the standard for the required buffer. Existing fences, berms, and/or walls within the buffer(s) may be used to fulfill the standards set forth for the buffer providing these elements are healthy and in a condition of good repair. Chain link fencing is not acceptable in meeting the performance criteria of this ordinance.

(2) Installation of supplemental vegetation and/or site features may be required if existing vegetation and/or site features within the buffer do not meet or exceed the requirements of this ordinance.

Section 6. Maintenance

The sexually oriented business licensee shall be responsible for proper maintenance of parking and buffer areas required by this ordinance.

Section 7. Penalties.

Any violation of this Section shall be a misdemeanor. ...

Article XX Signage

~~It shall be a misdemeanor for the~~ **No** owner or operator of any sexually oriented business or any other person ~~to~~ **shall** erect, construct, or maintain any sign for the sexually oriented business other than as permitted in the sign regulations of Watauga County.

Primary signs shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner, and may contain only the name of the enterprise.

Article XXI Hours of Operation

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of eleven o'clock (11:00) P.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, or during the period from eleven o'clock (11:00) P.M. Saturday until eight o'clock (8:00) A.M. Monday.

Article XXII Exemptions

It is a defense to prosecution under [Article XIV Section 2](#) that a person appearing in a state of nudity did so in a modeling class operated:

- (A) by a proprietary school, licensed by the State of North Carolina; a college, junior college, or university supported entirely or partly by taxation;
- (B) by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (C) in a structure:
 - (1) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - (2) where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
 - (3) where no more than one nude model is on the premises at any one time.

Article XXIII Injunction

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of this chapter is subject to a suit for injunction as well as ~~prosecution for criminal violations. Pursuant to NC General Statute 14-4, each violation of any requirement of this chapter shall be a crime, which shall be punishable by a fine of \$500.00 or thirty (30) days imprisonment.~~ **civil penalties of \$100.00.** Each day any such violation continues or occurs in is a separate offense or violation.

Notwithstanding the foregoing, licensing decisions including issuance, revocation, and suspension, based upon violations of this chapter, shall be made by the County Official based upon a preponderance of the evidence.

Coates' Canons Blog: Legislature Decriminalizes Local Ordinances

By Frayda Bluestein

Article: <https://canons.sog.unc.edu/legislature-decriminalizes-local-ordinances/>

This entry was posted on October 07, 2021 and is filed under Board Member Powers & Authority, Enforcement, Legislative Decisions, Ordinances & Police Powers, Police Power Regulations

For some time, under North Carolina law, violations of city and county ordinances have been treated as misdemeanors or infractions unless the ordinance explicitly said that they were not. Starting in 2018, the General Assembly embarked on a project to decriminalize local government ordinances. Some of you may remember the call for a list of your ordinances that were criminally enforceable to be sent to two joint legislative committees. This was no small feat, as described here and here. The law at the time (GS 153A-123, counties; 160A-175, cities) held that unless the city or county provided otherwise, a violation of an ordinance was a misdemeanor or infraction as provided by G.S. 14-4. So, by default, if city or county didn't take action otherwise, ordinances were enforced criminally. The result for some units, is that the majority of ordinances were criminally enforced. This year the legislature removed the default criminal penalty, and modified local governments' authority to enforce ordinances criminally. This blog post summarizes the changes. These provisions become effective on December 1, 2021.

The changes were part of an omnibus law focusing on law enforcement and policing issues. This part is at [Part XIII] of the law.

The first part of the provision is a rewrite of the authority under GS 153A-123 and 160A- 175 regarding ordinance enforcement. These parallel sections now read:

*Except for the types of ordinances listed in subsection (b1) of this section, violation of a [county/city] ordinance may be a misdemeanor or infraction as provided by G.S. 14-4**only if the [county/city] specifies such in the ordinance.** An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4. Notwithstanding G.S. 153A-45, no ordinance specifying a criminal penalty may be enacted at the meeting in which it is first introduced.*

The law also adds a new subsection (b1) to the statutes, which lists types of ordinances that local governments are prohibited to enforce criminally. These lists are set out at the bottom this blog.

To implement these changes, cities and counties will have to review each ordinance and make any changes, specifically those that they want to continue as enforced criminally, and to comply with the prohibitions listed under (b1). These changes must be specified and modified in each ordinance, and these amendments must be done by ordinance. See this blog post for more about amending ordinances.

Finally, the legislature revised GS 14-4, by adding a new subsection (c) provision as set out below.

“§ 14-4. Violation of local ordinances misdemeanor.

(a) Except as provided in subsection (b) or (c) of this section, if any person shall violate an ordinance of a county, city, town, or metropolitan sewerage district created under Article 5 of Chapter 162A, he shall be guilty of a Class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00). No fine shall exceed fifty dollars (\$50.00) unless the ordinance expressly states that the maximum fine is greater than fifty dollars (\$50.00).

(b) If any person shall violate an ordinance of a county, city, or town regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than fifty dollars (\$50.00).

(c) A person may not be found responsible or guilty of a local ordinance violation punishable pursuant to subsection (a) of this section if, when tried for that violation, the person produces proof of compliance with the local ordinance through any of the following:

- (1) No new alleged violations of the local ordinance within 30 days from the date of the initial alleged violation.*
- (2) The person provides proof of a good-faith effort to seek assistance to address any underlying factors related to unemployment, homelessness, mental health, or substance abuse that might relate to the person's ability to comply with the local ordinance.*

Here are the Lists of ordinances that may not be enforced criminally

For Counties:

153A-12 (b1): No ordinance of the following types may impose a criminal penalty:

- (1) Any ordinance adopted under Article 18 of this Chapter, Planning and Regulation of Development or, its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings;
- (2) Any ordinance adopted pursuant to G.S. 153A-134, Regulating and licensing businesses, trades, etc.;
- (3) Any ordinance adopted pursuant to G.S. 153A-138, Registration of mobile homes, house trailers, etc.;
- (4) Any ordinance adopted pursuant to G.S.153A-140.1, Stream-clearing programs
- (5) Any ordinance adopted pursuant to G.S. 153A-143, Regulation of outdoor advertising or, its successor, G.S. 160D-912, Outdoor advertising;
- (6) Any ordinance adopted pursuant to G.S. 153A-144, Limitations on regulating solar collectors or, its successor, G.S. 160D-914, Solar collectors;
- (7) Any ordinance adopted pursuant to G.S. 153A-145, Limitations on regulating cisterns and rain barrels;
- (8) Any ordinance regulating trees.

For Cities:

GS 160A-175(b1): No ordinance of the following types may impose a criminal penalty:(

- 1) Any ordinance adopted under Article 19 of this Chapter, Planning and Regulation of Development, or its successor, Chapter 160D of the General Statutes, except for those ordinances related to unsafe buildings;
- (2) Any ordinance adopted pursuant to G.S.160A-193.1, Stream-clearing programs;
- (3) Any ordinance adopted pursuant to G.S. 160A-194, Regulating and licensing businesses, trades, etc;
- 4) Any ordinance adopted pursuant to G.S. 160A-199, Regulation of outdoor advertising or, its successor, G.S. 160D-912, Outdoor advertising;
- (5) Any ordinance adopted pursuant to G.S. 160A-201, Limitations on regulating solar collectors or, its successor, G.S. 160D-914, Solar collectors;

-
- (6) Any ordinance adopted pursuant to G.S. 160A-202, Limitations on regulating cisterns and rain barrels;
 - (7) Any ordinance adopted pursuant to G.S. 160A-304, Regulation of taxis;
 - (8) Any ordinance adopted pursuant to G.S. 160A-306, Building setback lines;
 - (9) Any ordinance adopted pursuant to G.S. 160A-307, Curb cut regulations

 - (10) Any ordinance regulating trees.

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_14/GS_14-4.html
- www.ncleg.gov/Sessions/2021/Bills/Senate/PDF/S300v8.pdf

AGENDA ITEM 5:**PUBLIC HEARING TO ALLOW CITIZEN COMMENT ON THE PROPOSED 2022 SCHEDULE OF VALUES****MANAGER'S COMMENTS:**

A public hearing has been scheduled for the 2022 Schedule of Values that will be used in establishing prices for properties. A public hearing is required to allow public comment on the Schedule of Values. The Schedule of Values have been available on the County's website and a hard copy in the Tax Administrator's Office. The Schedule of Values is 486 pages and is included in the Board's Information Packet/Closed Session link.

Board action is required to adopt the 2022 Schedule of Values as presented.

PUBLIC HEARING NOTICE

THE WATAUGA COUNTY BOARD OF COMMISSIONERS WILL HOLD A PUBLIC HEARING AT 5:30 P.M. ON TUESDAY, NOVEMBER 16, 2021, IN THE COMMISSIONERS' BOARD ROOM IN THE WATAUGA COUNTY ADMINISTRATION BUILDING LOCATED AT 814 WEST KING STREET, BOONE, NORTH CAROLINA. THE PURPOSE OF THE HEARING SHALL BE TO RECEIVE PUBLIC COMMENT ON THE PROPOSED SCHEDULE OF VALUES. INTERESTED PARTIES ARE ENCOURAGED TO ATTEND. FOR INFORMATION OR QUESTIONS, PLEASE CALL (828) 265-8000.

THE SCHEDULE OF VALUES, STANDARDS AND RULES TO BE USED IN THE 2022 APPRAISAL OF REAL PROPERTY IN WATAUGA COUNTY HAS BEEN SUBMITTED AND ARE OPEN FOR EXAMINATION IN THE OFFICE OF THE WATAUGA COUNTY TAX ADMINISTRATOR LOCATED AT 842 WEST KING STREET, ROOM 121, BOONE, NORTH CAROLINA, WITH OFFICE HOURS OF 8:00 A.M. TO 5:00 P.M., MONDAY THROUGH FRIDAY. IT CAN ALSO BE VIEWED BY CLICKING [HERE](#).

JOHN WELCH
CHAIRMAN
WATAUGA COUNTY BOARD OF COMMISSIONERS

AGENDA ITEM 6:

UPDATE ON THE NEW RIVER CONSERVANCY'S SOUTH FORK PROJECT

MANAGER'S COMMENTS:

Ms. Chelsea Blount, New River Conservancy, will update the Board on current projects. The report is for information only; therefore, no action is required.



New River Conservancy

Project Updates

1. South Fork New River Restoration Phase II
 1. Middle Fork New River Section 1B
 1. Winkler's Creek Restoration Plan
1. Peacock Parking Lot/Boone Creek Daylight

1. South Fork New River Restoration Phase II

- 1,700 linear feet
- Eroding and undermined streambanks
- Falling trees
- No vegetative buffer
- Little aquatic habitat
- Sedimentation
- No floodplain access

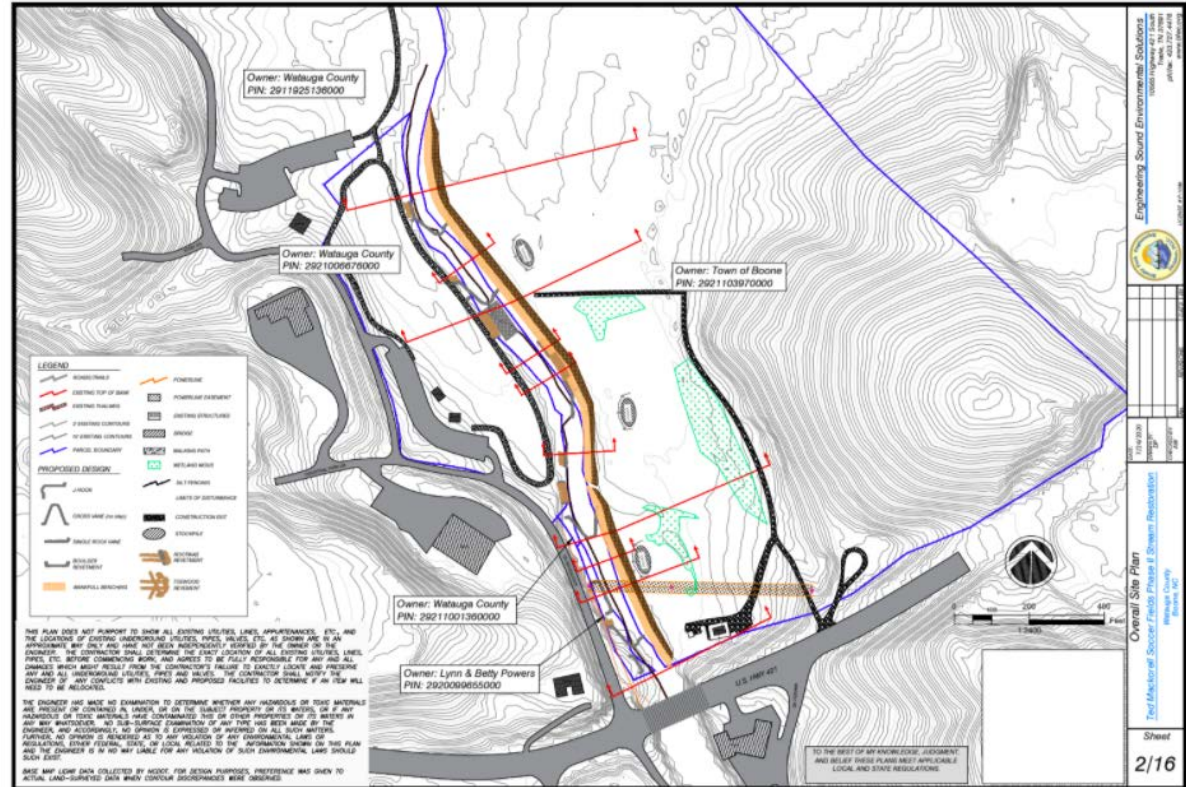




Conditions before construction

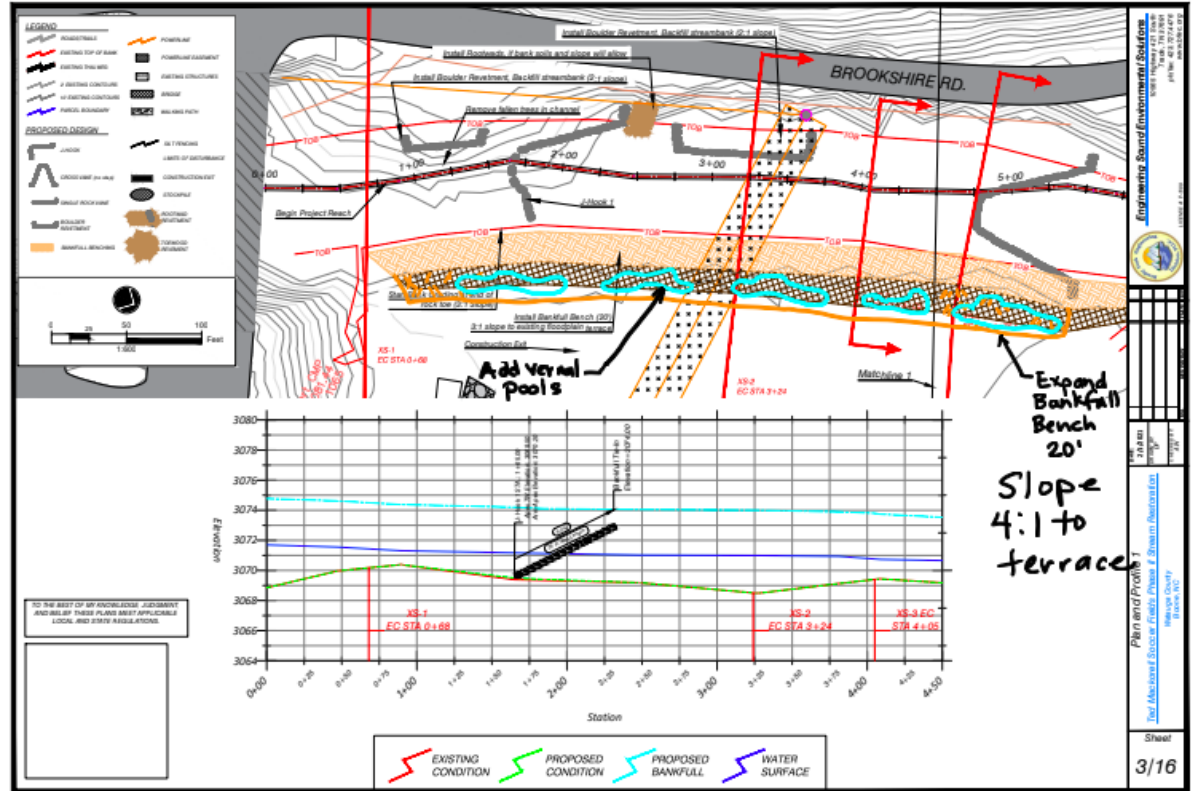


- Bank sloping & stabilization
- Benching
- Aquatic habitat improvement
- Wetland enhancement
- Buffer restoration



Project Challenges

- Omitted one private landowner
- Design change
- Expanded floodplain and added vernal pools



Current Status & Needs

111621 BCC Meeting









Brushy Fork
Environmental Consulting, Inc.
**DO NOT
MOW**
**NO
CORTEN**
www.bfec.org - 423-727-4476



Current Status & Needs

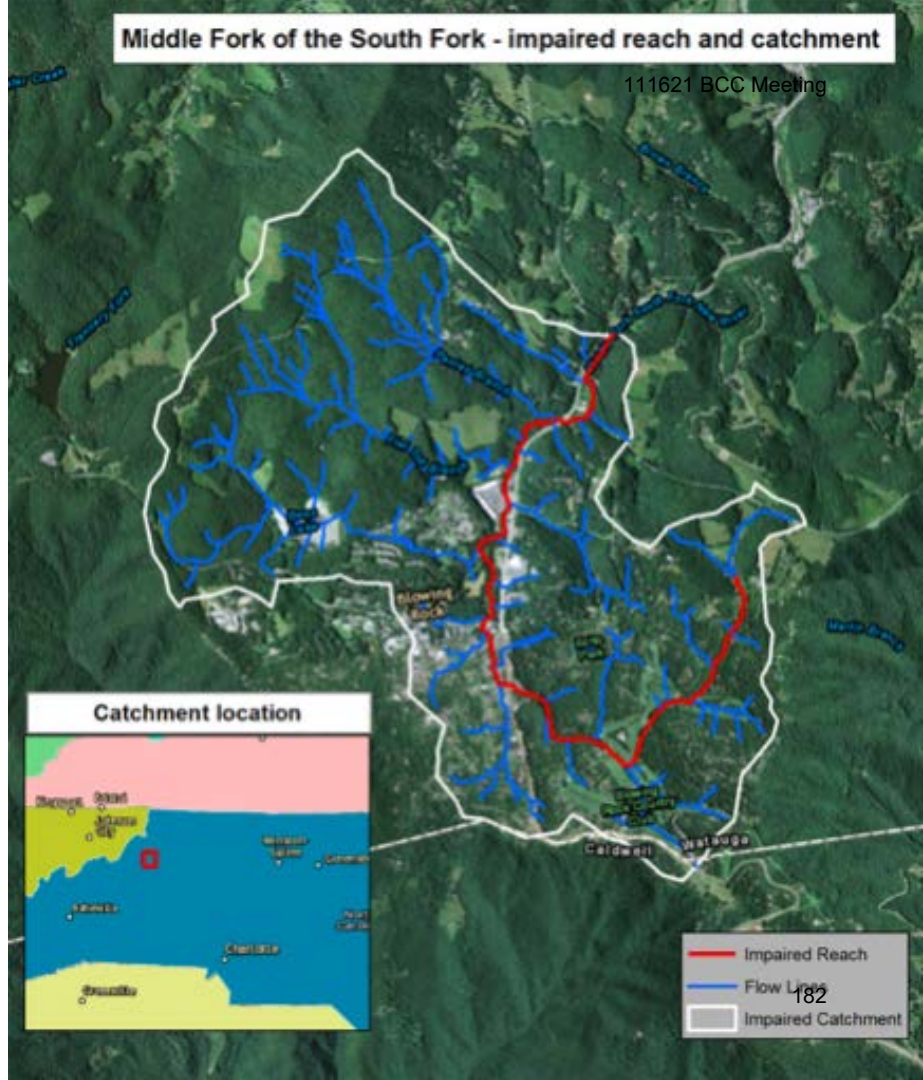
- Construction complete!
- Volunteer tree planting **Nov 20!**
 - Adding mature trees to 30-acre bottomland
 - RSVP to chelsea@newriverconservancy.org



2. Middle Fork New River Restoration

Impaired for:

- Benthos
- Fish Tissue Mercury





111621 BCO Meeting





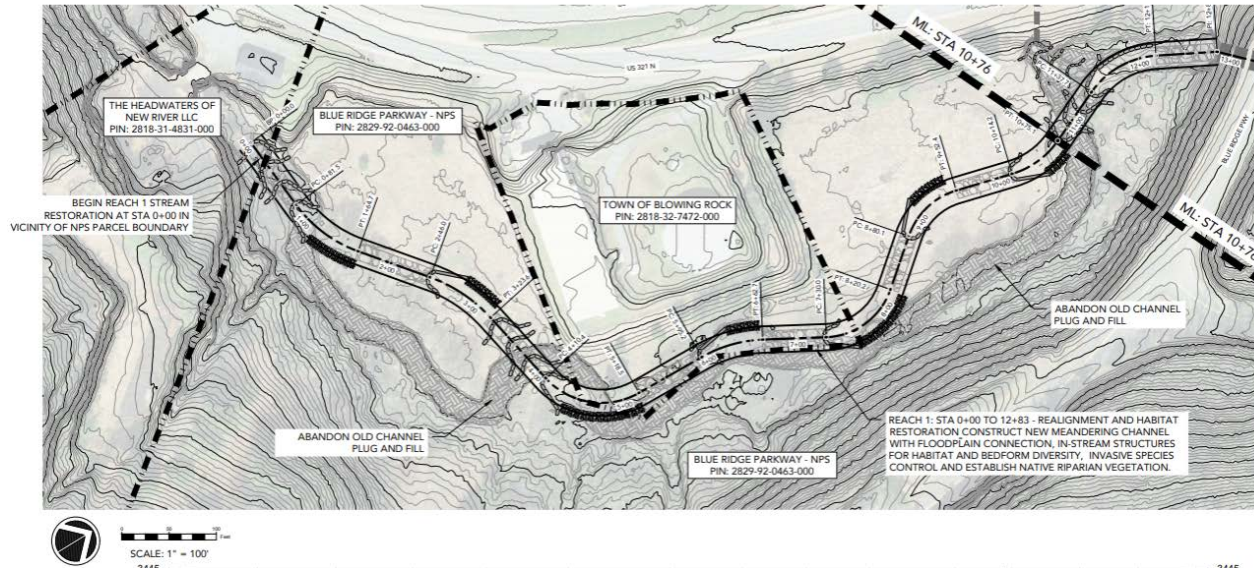
2019



2020

Current Status

- Design is complete
- Implementation is FULLY FUNDED!
- Currently working with Middle Fork Greenway, Jennings Environmental, and the National Park Service to navigate special permitting before we can move forward with implementation.



3. Winkler's Creek Restoration Plan

111621 BCC Meeting

Project Deliverables

- Watershed analysis
- Watershed delineation
- Stormwater mapping
- Field data collection (BEHI)
- Watershed modeling
- Development of conceptual designs & cost estimates
- Landowner/stakeholder identification & outreach
- Prioritization of projects
- Final plan document

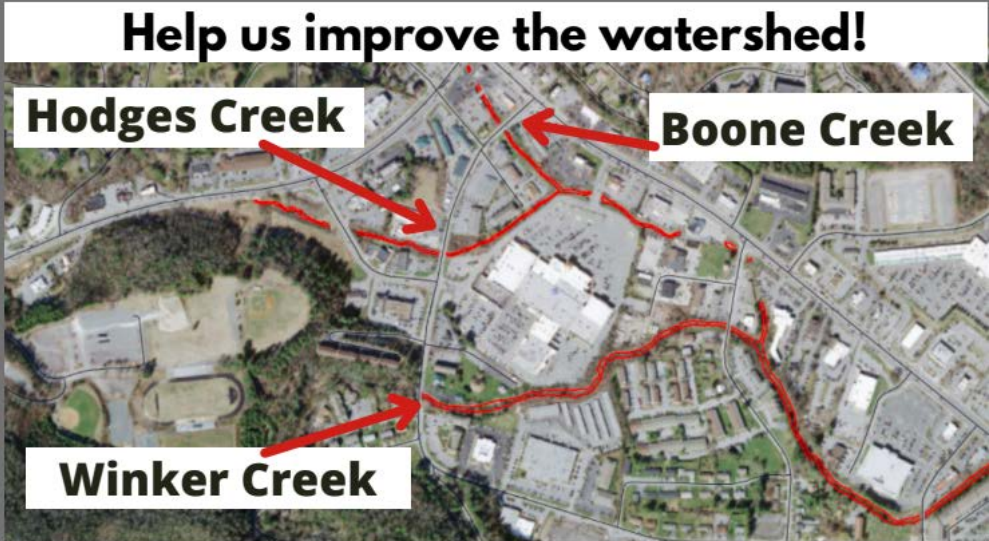
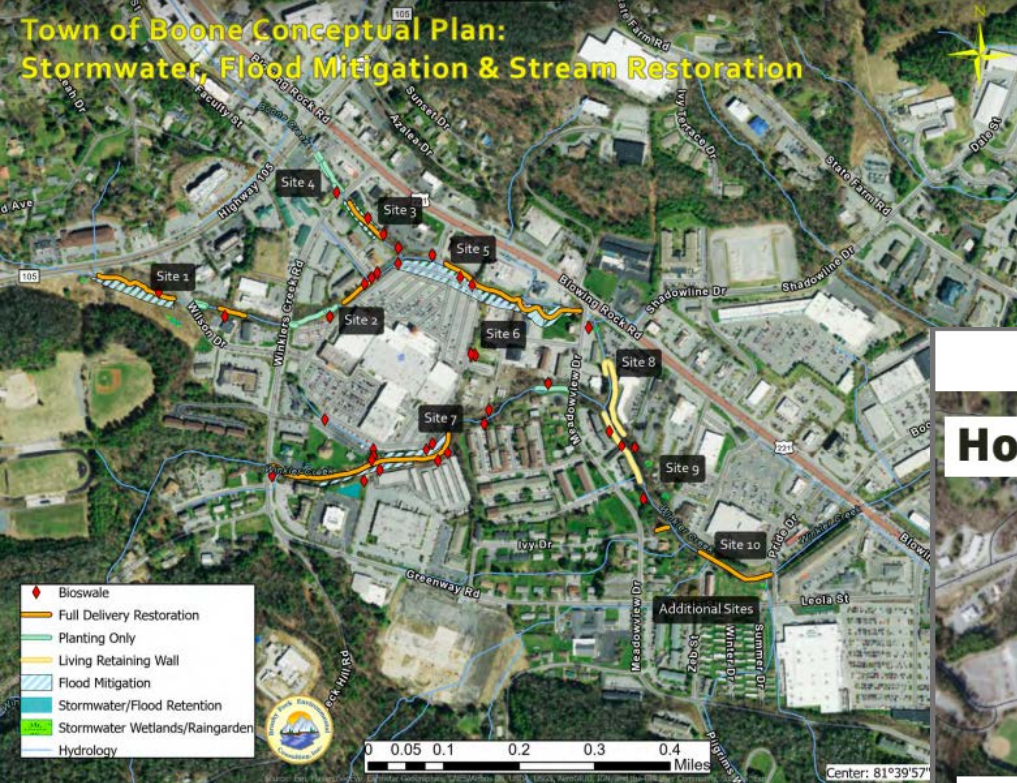
Complete!





Town of Boone Conceptual Plan: Stormwater, Flood Mitigation & Stream Restoration

111621 BCC Meeting



Help us improve the watershed!

The full plan has been provided
in your packets.



4. Peacock Parking Lot/Boone Creek Daylight

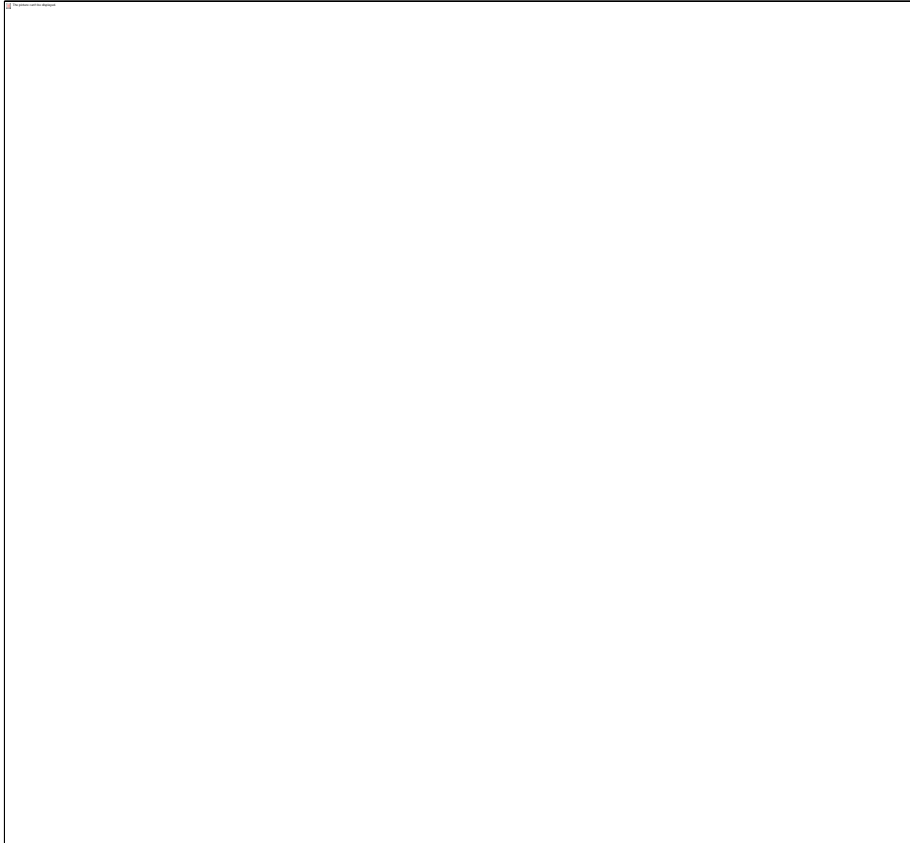
11/16/21 BCC Meeting







Current Status & Next Steps



1. Feasibility study is complete!
Full study has been provided
in your packets.
1. Next step is to apply for Phase
I funding
1. Conversations with
stakeholders are ongoing

Thank

You!



New River Conservancy

YOU can help protect the waters, woodland, and wildlife of the New River by becoming a member today!

newriverconservancy.org/member



Stormwater and Stream Enhancement Plan for Winkler, Hodges, and Boone Creeks

PROJECT PURPOSE

The purpose of the project is to improve the hydrologic conditions in and around the area of the Boone Mall by reducing sediment and pollutant loading, mitigate flooding/reduce flooding frequency, and improving stormwater management. The project scope includes approximately ± 2600 linear feet along Winkler Creek, ± 1500 linear feet along Hodges Creek, and ± 1200 linear feet along Boone (Kraut) Creek (see Town of Boone Conceptual Plan map).

PROJECT NEED

The Boone Mall and the surrounding urban area experience severe flooding during heavy precipitation events due to the impact of increased residential and commercial development, along with antiquated and failing stormwater management systems. All three streams (Winkler, Hodges, and Boone) are currently in a degrading state; with failing stream banks and increased collection of sediment and stormwater contaminants. Sediment accumulation (aggradation) raises the stream bed, resulting in an increase in flooding and a decrease in biological habitats. In addition, stormwater runoff contains pollutants which are detrimental to the environment. The streambanks have poor habitat diversity, extensive invasive plants, and are severely eroded. The floodplain is largely non-existent, forcing the streams out of their banks, and onto impervious surfaces (i.e., parking lots) with largely outdated drainage mechanisms. Surrounding commercial and residential owners continually deal with clean-up and repairs from flood waters, an expensive and ongoing maintenance. There are innovative approaches and technologies which can be applied to the area which will greatly improve function, appearance, cost, and environmental health of the surrounding landscape. Innovative, green stormwater infrastructure should be implemented in these areas to provide a mechanism for filtration and dissipation of stormwaters. The Existing landscaping is outdated and could use modernizing with a green-development approach which will improve the aesthetics of the mall while integrating stormwater best management practices (BMPs).

STREAMS/SITE LOCATION

The project site location, in and around the Boone Mall, includes: Hodges Creek flowing northwest to southeast toward the mall, Boone Creek flowing from north to southeast of the mall, and Winkler Creek flowing from northeast to southeast, south of the mall. In addition, there are multiple stormwater outfalls surrounding the mall parking lot, as well as other businesses, and other impervious surfaces along the streams.

PROJECT PARTNERS

Partners for the proposed project include New River Conservancy and Town of Boone as project leads, in addition to individual landowners. There are approximately 25 different landowners along the project reach.

DEFINITIONS

Riparian Zone - A riparian zone or riparian area is the interface between land and a river or stream. Riparian is also the proper nomenclature for one of the terrestrial biomes of the Earth. Plant habitats and communities along the river margins and banks are called riparian vegetation, characterized by hydrophilic plants.

Stormwater Runoff - Stormwater runoff is rainfall that flows over the ground surface. It is created when rain falls on roads, driveways, parking lots, rooftops and other paved surfaces that do not allow water to soak into the ground. Stormwater runoff is the number one cause of stream impairment in urban areas.

Percolate - (of a liquid) filter gradually through a porous surface or substance.

Aggrading (Sediment) - Aggradation (or alluviation) is the term used in geology for the increase in land elevation, typically in a river system, due to the deposition of sediment. Aggradation occurs in areas in which the supply of sediment is greater than the amount of material that the system can transport.

Degrading - In geology, degradation refers to the lowering of a fluvial surface, such as a stream bed or floodplain, through erosional processes.

BEHI - The Bank Erosion Hazard Index (BEHI), created by Dave Rosgen of Wildland Hydrology, Inc., assigns point values to several aspects of bank condition and provides an overall score that can be used to inventory stream bank condition over large areas, prioritize eroding banks for remedial actions, etc.

Bankfull - The Bankfull stage of is the height of water in a natural channel at its maximum height before flooding. If the water level exceeds the bankfull limit, then a flood will occur.

Channel (Floodplain, n.d.)

Floodplain - A floodplain or flood plain or flood-plain is an area of land adjacent to a river which stretches from the banks of its channel to the base of the enclosing valley walls, and which experiences flooding during periods of high discharge.

RSC - Regenerative Stormwater Conveyance (RSC) is an innovative approach to provide stormwater treatment, infiltration, and conveyance within one system. It has been used as an ecosystem restoration practice for eroded or degraded outfalls and drainage channels.

Rain Garden - A rain garden is a depressed area in the landscape that collects rain water from a roof, driveway or street and allows it to soak into the ground. Planted with grasses and flowering perennials, rain gardens can be a cost effective and beautiful way to reduce runoff from your property.

Stormwater Wetland - Constructed stormwater wetlands are wetland systems designed to maximize the removal of pollutants from stormwater runoff through settling and both uptake and filtering by vegetation.

Detention Basin - A detention basin or retarding basin is an excavated area installed on, or adjacent to, tributaries of rivers, streams, lakes, or bays to protect against flooding and, in some cases, downstream erosion by storing water for a limited period of time.

Retention Basin - A retention basin, sometimes called a wet pond, wet detention basin or stormwater management pond (SWMP), is an artificial pond with vegetation around the perimeter, and includes a permanent pool of water in its design. A retention pond looks like a regular pond but plays an important role in controlling stormwater runoff.

Bioswale - Bioswales are channels designed to concentrate and convey stormwater runoff while removing debris and pollution. Bioswales can also be beneficial in recharging groundwater. Bioswales are typically vegetated, mulched, or xeriscape. They consist of a swaled drainage course with gently sloped sides (less than 6%). Examples of bioswales include RSCs, grassed, vegetated, etc.

Benthic Macroinvertebrates - Benthic (meaning “bottom-dwelling”) macroinvertebrates are small aquatic animals and the aquatic larval stages of insects. They include dragonfly and stonefly larvae, snails, worms, and beetles. They lack a backbone, are visible without the aid of a microscope and are found in and around water bodies during some period of their lives. Benthic macroinvertebrates are often found attached to rocks, vegetation, logs and sticks or burrowed into the bottom sand and sediments. Benthic macroinvertebrates are commonly used as indicators of the biological condition of waterbodies.

Pollutant Load - Load is the amount (mass) of a pollutant that is discharged into a water body during a period of time (i.e., tons of sediment per year).

SITE SPECIFICS

Site 1

Site number 1 is located along Hodges Creek near the intersection of Hwy 105 and Wilson Drive (81°40'21"W, 36°12'10"N), see Site 1 Map attached. Currently, much of the reach is fully vegetated, with the exception of some areas on the right bank upstream below 105. The reach exhibits poor bedload transport (aggradation) and severe bank erosion. Invasive plant species at this site include multiflora

rose, Japanese knotweed, reed canary grass, oriental bittersweet, and virgin's bower. There are remnants of a previous restoration attempt evident by large boulders lining the channel toe upstream. Because the installation was done improperly, the "structure" is only exacerbating the erosion as water cuts behind the rocks into the bank. Proposed conditions would include benching to improve floodplain connection, and in-stream structures for grade control, bank stability, bedload transport, and bedform diversity/habitat. Stormwater infrastructure (rain gardens and/or stormwater retention areas) would be integrated into the existing topography which would also help to alleviate flooding pressure downstream. Invasive plant species would be removed and replaced with native plant species and livestakes. There is one section within Site 1 that will only allow for livetaking, just east of the Wilson Drive bridge. Site Constraints include several existing culverts entering the stream at this location, Highway 105, Wilson Drive, and parking lots are in the immediate surroundings, and existing utilities such as waterline or sewer crossing, and power poles. Two landowners own property along this reach: ASU Endowment Fund, Skyline Membership Corporation, and Boone Land Properties LLC.

Site 2

Site number 2 is located along Hodges Creek, northwest of the mall parking lot, and east of Winklers Creek Road (81°40'8"W, 36°12'10"N), see Site 2 Map attached. There is some forest along the banks of this reach, but the riparian areas are dominated by invasive species, and the entire grassed area behind the Button Rentals LLC apartment building is currently only planted with herbaceous grasses which do not assist with bank stability. Currently this reach is experiencing bank erosion and an influx of concentrated flow from stormwater outfalls draining the mall parking lot. Invasive plant species include Japanese knotweed and English ivy. Proposed conditions would include riparian buffer planting and livestaking behind the apartments, at Appalachian Mountain Brewery (AMB), and all open areas. Floodplain connectivity is possible along the left bank, with the exception of AMB, to alleviate stress from the right (mall) bank. While AMB does not present room for floodplain connectivity, erosion protection measures and rain gardens could be applied here, and a linear bioswale could be used behind the apartments. Site constraints consists of parking areas on both sides of the stream that prevent restoration, and existing utilities (power lines). Three landowners would be involved at this site: Button Rentals LLC, Craft Brew Alliance Inc., and Libby Boone Enterprise, LLC.

Site 3

Site number 3 is located along Boone Creek, east of the intersection of Winklers Creek Road and Boone Creek Drive (81°40'7"W, 36°12'14"N), see Site 3 Map attached. Current conditions include erosion along both banks (± 5 foot erosive banks on river left). There is an existing stormwater outfall what flows alongside Night Secrets that is littered with trash and debris. Proposed conditions would provide floodplain connectivity and benching along the right bank. The debris clogged outfall behind Night Secrets needs to be retrofitted to better handle heavy precipitation events. There is some room for native planting and livestaking. Site constraints include parking areas, utilities, and multiple commercial properties. Four landowners would be involved at this site: Katherine Amanda Pope, ACI Holding Company I LLC, Executive PTNR of NC LLC, and Century Bank LLC.

Site 4

Site number 4 is located along Boone Creek, behind Wendy's and Bojangles (81°40'10"W, 36°12'17"N), see attached Site 4 Map. The stream is highly urbanized here, flowing through bridges and culverts, with parking lots surrounding it. There is a very small buffer at the daylighted extent. Proposed conditions would include the installation of livestakes throughout the daylighted portion of the stream, native planting where there is room, and a possible stormwater feature just above Winklers Creek Road bridge. Site constraints include the surrounding parking lots, utility crossings, and commercial properties. Two landowners would be involved at this site: Wendy's and Bojangles.

Site 5

Site number 5 is located within the northern portion of the Boone Mall parking lot along Boone Creek, and includes the confluence with Hodges Creek, downstream of Site 2 (81°40'2"W, 36°12'11"N), see attached Site 5 Map. Currently, there are multiple impervious stormwater outfalls draining to the channel from the mall parking lot. Additionally, the banks are severely eroding while sediment is accumulating under the bridge. Above the bridge, there are open areas with scarce vegetation, but dense, native vegetation lines both banks between China House and the Boone Mall parking lot. Ideally, proposed conditions would include removing a portion of the existing parking area to incorporate a floodplain bench to help mitigate flooding. Rock and wood structures would be incorporated into the design for grade control, bank stabilization, and bedform diversity/habitat. Existing vegetation would be carefully removed and replanted once construction ceases. The existing concrete stormwater outfalls would be replaced with bioswales and unvegetated riparian areas would be filled in with natives, assisting with stormwater filtration. Site constraints include parking lots, and utilities (power lines), and multiple commercial properties. Three landowners would be involved at this site: Libby Boone Enterprises LLC, Century Bank LLC, and Jeff Templeton Rentals LLC.

Site 6

Site number 6 is located along Boone Creek, as a downstream continuation of Site 5, north of Boone Docks Road, and south of Blowing Rock Road (81°39'56"W, 36°12'10"N), see attached Site 6 Map. This reach originates at the northeast corner of the existing Boone Mall parking area, flowing for approximately 240 feet before entering a 108" diameter culvert. Boone creek continues within the culvert for 245 feet underneath Kwik-Stop Auto Parts, re-emerges for 75 feet, then enters a 138" culvert which flows underneath Meadowview drive. Once it exits this larger culvert it flows for approximately 30 feet before entering a 126" culvert adjacent to Boone Honda. This particular area is highly prone to flooding. Current conditions include eroding stream banks (± 6 feet high), severe over-widening of the stream, and severe aggradation due to improper culvert sizing. There are native silky dogwood present, but also invasive plants such as Japanese knotweed. Proposed conditions would include the demolition of an outdated and un-used building and of a portion of the parking area to the north of "Carpet House of Boone" to facilitate priority 1 stream restoration on the lower half of this reach on the Davidson and Lewis parcels. The existing culvert could be kept in-place and utilized as an emergency floodway. Native reforestation around the new channel on the Davidson parcel would help secure stream banks, aid in filtration, and slow flood waters. Site constraints include Blowing Rock Road on river left, culverts,

existing buildings, parking lots, and utilities and multiple commercial properties. Landowners along this reach would include James and Suzanne Lewis, Robert Scott Davidson, and Kwik-Stop Auto Parts LLC.

Site 7

Site number 7 is located at the southeast corner of the Boone Mall parking lot along Winkler Creek (81°40'2"W, 36°12'2"N), see attached Site 7 Map. The reach begins between Greenway Commons apartments and the Central Assembly of God, flowing northeast past the southeast corner of the Boone Mall to Meadowview Drive. Multiple stormwater outfalls lead to Winkler Creek along this site including 15 storm water discharges from the Boone Mall, REV5 lot, Bavarian Village, and surrounding businesses. In addition, there is a large open stormwater drain and detention pond system located in the field between Greenway Commons and REV5. Current conditions along Site 7 include frequent flooding at the church (Central Assembly of God), severe bank erosion behind REV5 gym and Greenway Commons apartments, and stormwater runoff from Bavarian Village apartments into Winkler Creek. Behind REV5 there are concrete pillars used for erosion control. The stream here has good biodiversity and bedform, with several species of fish and macroinvertebrates. The landowner of the church is interested in participating in the project.

Proposed conditions include retrofitting stormwater infrastructure on river right, rain gardens, stormwater retention ponds and/or RSCs.

All stormwater outfalls at the mall can be replaced with bioswales.

Restoration is necessary behind Greenway Commons apartments, likely in the form of deflection measures due to the small room available on river right. Revetments could be installed on river right to combat erosion, and the stream could use sloping on river left (at the church) to aid in floodplain connectivity. The existing stormwater detention system here should be analyzed for functionality.

Stormwater runoff could be addressed behind REV5 gym with the removal of outdated and failing culverts to be replaced with RSCs or a vegetated bioswale. This area would benefit from invasive plant removal (multiflora rose, Japanese knotweed, privet, Chinese wisteria) and re-forestation of native species where available. The concrete pillars behind REV5 used for erosion control need to be evaluated for stability, and the existing outfall replaced with an RSC or bioswale. There is some room downstream for restoration and spot fixing of eroded banks.

The stormwater runoff at Bavarian Village could be addressed with stormwater outfall retrofitting for RCSs as a step-pool system due to the steep slope. There is room for minimal bank sloping here as well.

Mid-channel bars and bed load transport need to be addressed throughout the entire reach.

Site constraints at Site 7 include: apartment buildings, utilities (sewer line, power lines) and limited access for construction equipment. Eight landowners would be involved: Greenway Medical Arts LLC,

North Carolina Assembly of God, Richard Walker Living Trust, Libby Boone Enterprises LLC, Templeton Properties LP, Pegasus Capital Partners LLC, Bavarian Village LLC, and Suburban Propone LP.

Site 8

Site number 8 is located south of the intersection of Blowing Rock Road and Meadowview Drive, downstream of Site 6, along Boone Creek (includes confluence with Winkler Creek) (81°39'50"W, 36°12'5"N), see attached Site 8 Map. The site originates from a 138" x 80' bridge under Meadowview Drive and flows south for approximately 30 feet before entering a 126" steel culvert. Upon exiting the culvert, Boone Creek flows south approximately 250 feet to the confluence with Winkler Creek. Current conditions at Site 8 include severe erosion on the entire exposed reach (combated with riprap boulders at Honda). Banks here are near-vertical. Proposed conditions would be a retention wall at Honda with built-in benching. A "living" retaining wall could be used here to help with filtration and further erosion by using a natural method. There is room for a linear bioswale leading to a rain garden at the corner of the property- just south of the large culvert. Site constraints include limited access due to Blowing Rock Road and Meadowview Drive, near-vertical banks, utilities crossing, and nearby parking lots. The reach would include four landowners: Phillips Group Properties LTD, Pegasus Capital PTNR LLC, PTNRP (Tamarick Apts), and Templeton Properties LLC.

Site 9

Site number 9 is located just downstream of Site 8, along Winkler Creek (81°39'48"W, 36°12'N), see attached Site 9 Map. Five 4" HDPE discharges enter Winkler Creek at this site, all originating from directly from the Lloyd Manor apartments and associated paved areas. One additional stormwater discharge, 30" HDPE, is located about 160 feet downstream of the other five, which discharges water collected from multiple culverts ± 500 feet northwest along Meadowview Drive. Current conditions consist of extensive erosion, similar to what is seen upstream at Site 8. Proposed conditions would involve the addition of stormwater wetlands on the Town of Boone property along river left if they are able to move the storage materials on-site. Behind SECU and the Police Department would include a filtration system and stormwater run-off treatment. Rock lined toe wood could be used on river right and may need a "living" retention wall, similar to the one mentioned for Site 8, that will assist with erosion and filtration. Culvert outfall here needs to be replaced with a bioswale. There is additional area for a stormwater retention pond in the green area just south of the apartments. Site constraints here include utilities throughout, limited access, and fencing on river left. There are 3 landowners along this reach: Town of Boone, Dr. Ruth Burrow, and Deck Hill Properties.

Site 10

Site number 10 is located south of the Publix parking lot, west of Pride Drive, along Winkler Creek (81°39'41"W, 36°11'55"N), see attached Site 10 Map. The site originates close to a 36" CMP near the Cedar Creek apartments and flows east towards a bridge at Pride Drive. A 4" gutter drain, 18" rusted out CMP, and a 15" HDPE all drain into Winkler Creek from the community garden. Two stormwater drains direct run-off from the Publix parking lot. There are two additional pipes just west of Pride Drive, one which carries run-off from surrounding impervious surfaces, the other carries a stream which originates from behind Wal-Mart. Approximately ±500 feet of stream could allow for full delivery restoration.

Currently conditions at Site 10 include erosion along river right near the community garden, and an unnamed tributary entering Winkler Creek depositing excessive amounts of sediment. Proposed conditions would restore the unnamed tributary, adding grade control to aid in the settling of suspended particles and slow deposition into Winkler Creek. There is room for sloping along river right, and room for rain gardens just west of Pride Drive. Site constraints along this reach are the Publix parking lot, utilities, and limited access without disturbing the community garden. Four landowners would be involved at this site: Publix, Town of Boone, Margaret K Sparks Living Trust, and Mountaineer Rental Properties LLC.

BUDGET

| Approach | Length (LF) | Area (SF) | Area (AC) | \$/Unit | Estimate Cost |
|--------------------------------------|--------------------|------------------|------------------|----------------|------------------------|
| Restoration | 2721 | | | \$ 400.00 | \$ 1,088,400.00 |
| Priority I Restoration | 904 | | | \$ 450.00 | \$ 406,800.00 |
| Livestaking | 1025 | 9225 | 0.211777 | \$ 10.00 | \$ 30,750.00 |
| SW Bioretention | | 8995 | 0.206497 | \$ 30.00 | \$ 269,850.00 |
| SW Bioswale | 2500 | 15000 | | \$ 30.00 | \$ 450,000.00 |
| SW Retrofitting | | 6247 | 0.143411 | \$ 20.00 | \$ 124,940.00 |
| SW Raingarden | | 13626 | 0.31281 | \$ 30.00 | \$ 408,780.00 |
| Living Retaining Wall | 1900 | 28500 | 0.65427 | \$ 20.00 | \$ 570,000.00 |
| TOTAL COST | | | | | \$ 2,779,520.00 |
| TOTAL PROJECT ESTIMATE (+20%) | | | | | \$ 3,335,424.00 |

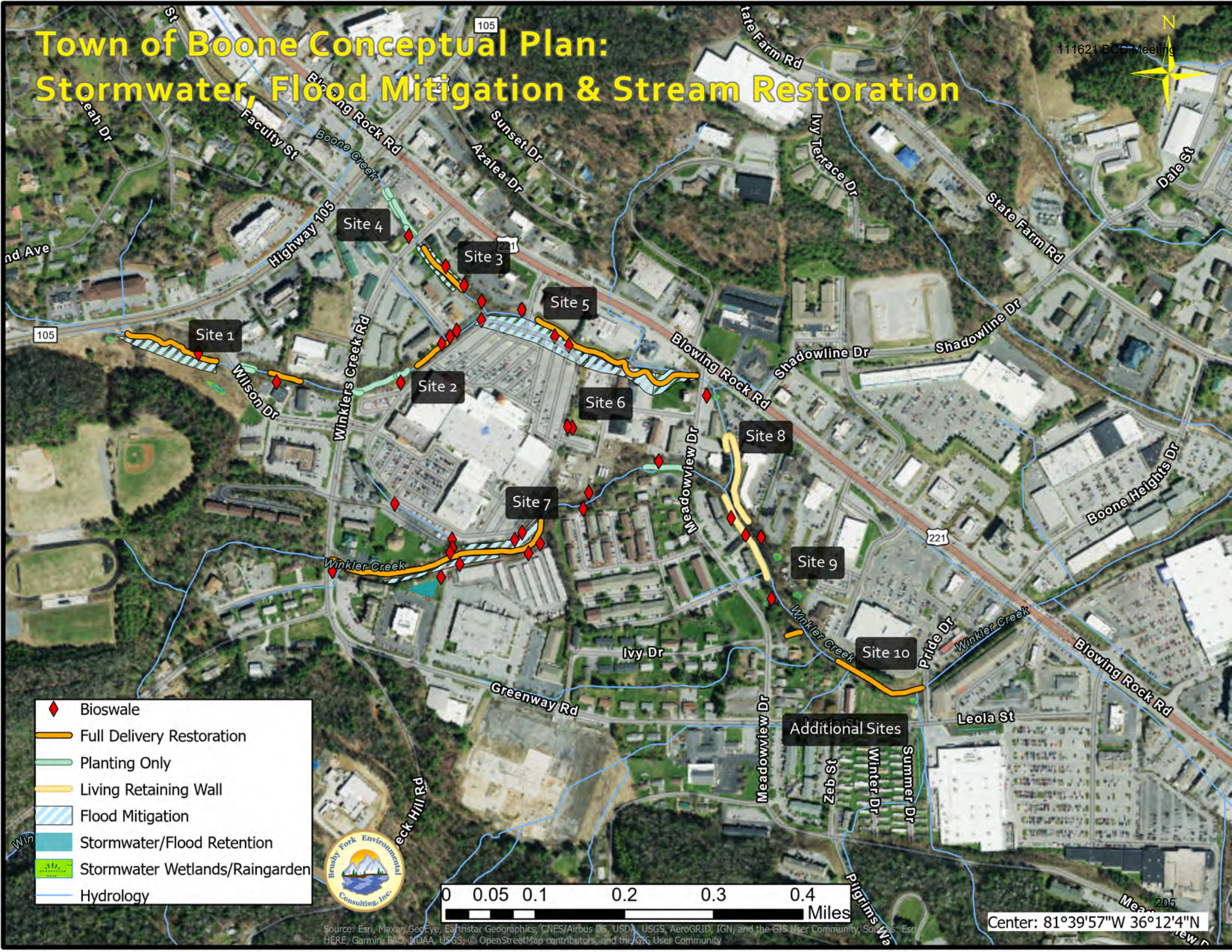
CONCLUSION

This area of interest would benefit immensely from restoration, flood mitigation, and the replacement of outdated stormwater structures with innovative green stormwater infrastructure. If nothing is done to alleviate the erosion or to treat the stormwater conditions in these streams will only continue to worsen, and flooding will be a continued economical concern. Implementing these measures will not only benefit the area aesthetically, functionally, and economically, but will most importantly provide significant biological functional lift for Winkler, Hodges, and Boone Creek.

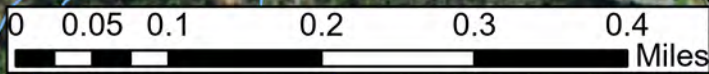
Attachment A
Plan Maps

Town of Boone Conceptual Plan: Stormwater, Flood Mitigation & Stream Restoration

111621 BCC Meeting



- Bioswale
- Full Delivery Restoration
- Planting Only
- Living Retaining Wall
- Flood Mitigation
- Stormwater/Flood Retention
- Stormwater Wetlands/Raingarden
- Hydrology



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Swis: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

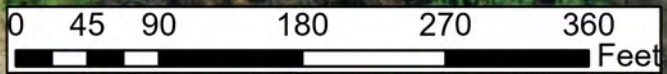
Center: 81°39'57"W 36°12'4"N

Site 1

11/16/21 BCC Meeting



-  Bioswale
-  Full Delivery Restoration
-  Planting Only
-  Living Retaining Wall
-  Flood Mitigation
-  Stormwater/Flood Retention
-  Stormwater Wetlands/Raingarden

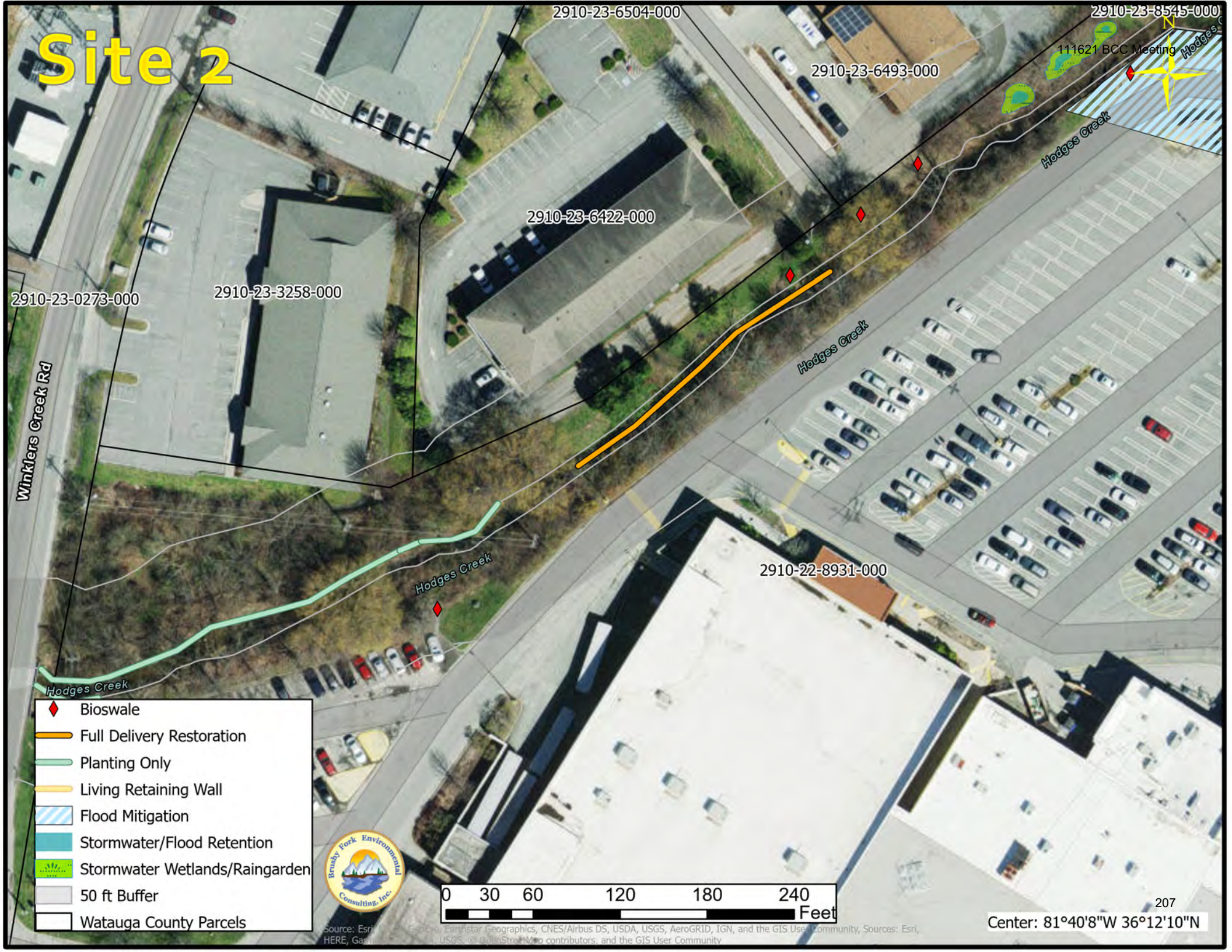


Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

Center: 81°40'21"W 36°12'10"N

206

Site 2



Source: Esri, DeLorme, Garmin, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Sources: Esri, HERE, Garmin, Swire, Source: Swire, USGS, © OpenStreetMap contributors, and the GIS User Community

2910-4034-000

Site 3



111621 BCC Meeting

Winklers Creek Rd

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2910-23-6658-000

2910-23-7697-000










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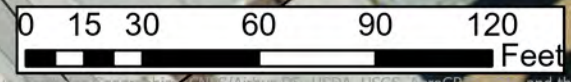
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2910-23-8545-000

Boone Creek Dr

2910-23-6493-000

-  Bioswale
-  Full Delivery Restoration
-  Planting Only
-  Living Retaining Wall
-  Flood Mitigation
-  Stormwater/Flood Retention
-  Stormwater Wetlands/Raingarden
-  50 ft Buffer
-  Watauga County Parcels



Source: Earthstar Geospatial, Esri, DigitalGlobe, GeoEye, IGN, AerGRID, Airbus DS, USDA, USGS, AeroGRID, IGN, Esri, Mapbox, OpenStreetMap contributors, Swatch, NOAA, USGS, AeroGRID, IGN, Esri, Mapbox contributors, and the GIS User Community

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208

Boone Creek

Site 4

111621 BCC Meeting



2910-24-4034-000

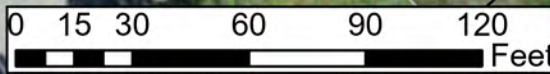
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Boone Creek

Faculty St Ext

Winklers Creek Rd

- ◆ Bioswale
- Full Delivery Restoration
- Planting Only
- Living Retaining Wall
- ▨ Flood Mitigation
- Stormwater/Flood Retention
- Stormwater Wetlands/Raingarden
- 50 ft Buffer
- ▭ Watauga County Parcels



2910-23-6658-000

209

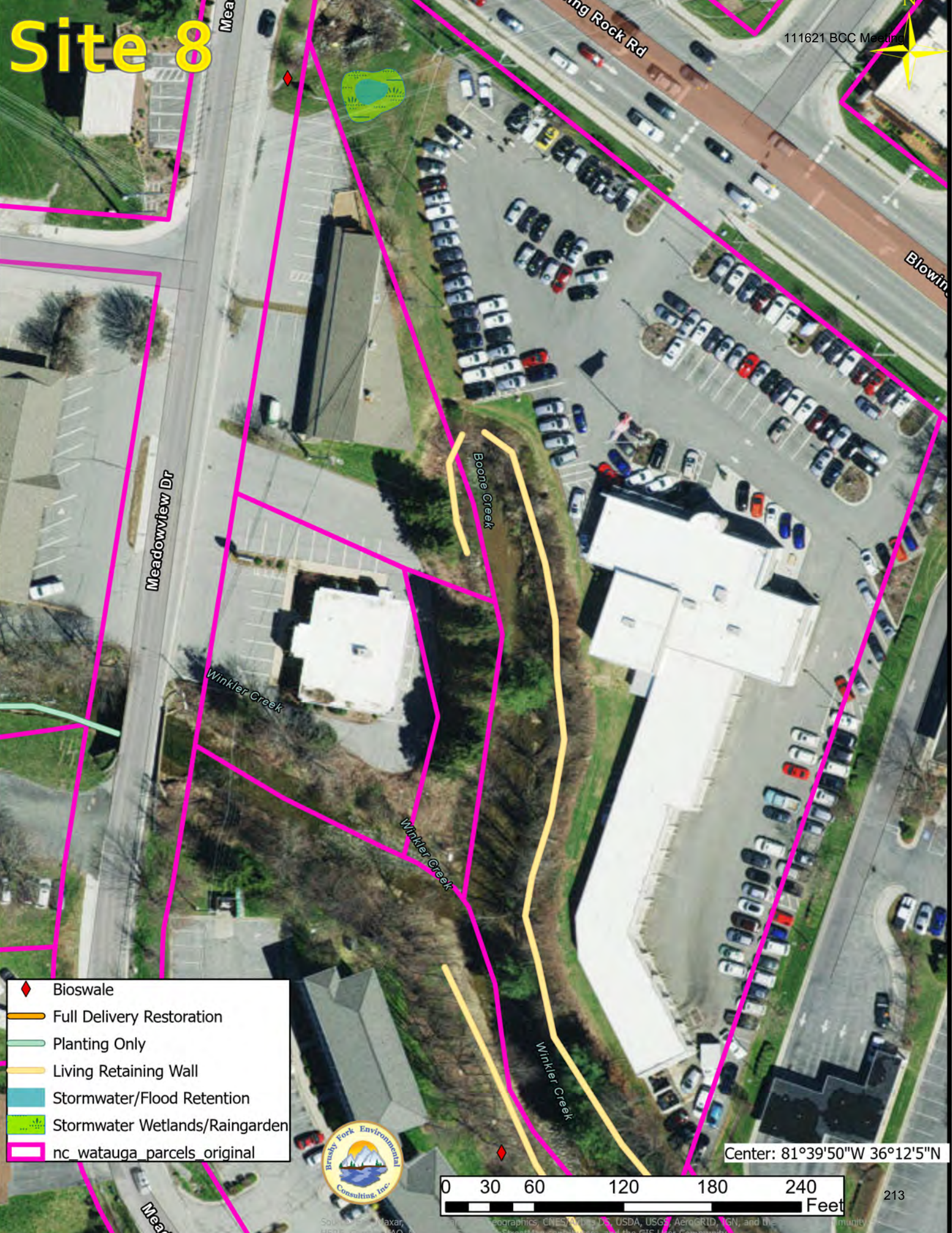
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2910-23-5654-000

Sources: Mapbox, Google, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

Site 8

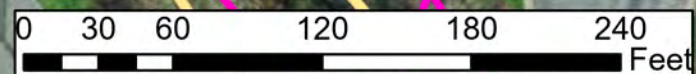
111621 BCC Meeting



- Bioswale
- Full Delivery Restoration
- Planting Only
- Living Retaining Wall
- Stormwater/Flood Retention
- Stormwater Wetlands/Raingarden
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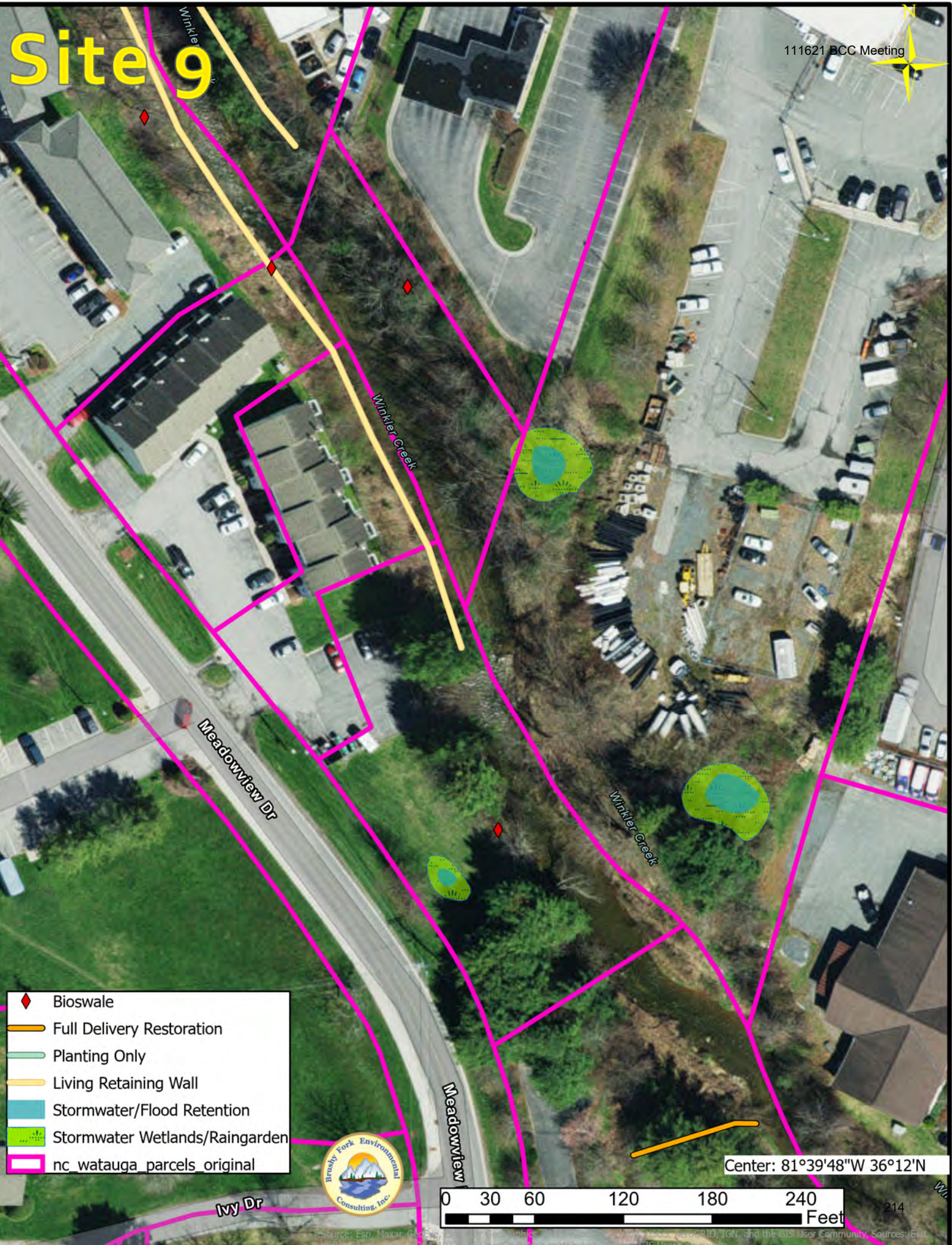
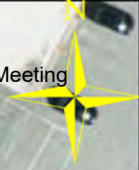


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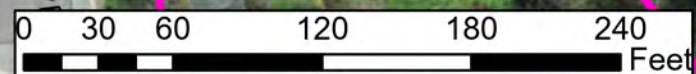


Site 9

111621 BCC Meeting



- Bioswale
- Full Delivery Restoration
- Planting Only
- Living Retaining Wall
- Stormwater/Flood Retention
- Stormwater Wetlands/Raingarden
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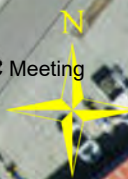


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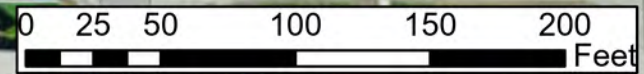
Source: Esri, Maxar, GeoEye, AeroGRID, IGN, and the GIS User Community. Sources: Esri, DeLorme, NAVTEQ, Swisstopo, U.S. Geological Survey, AeroGRID, IGN, and the GIS User Community.

Site 10

111621 BOC Meeting



-  Bioswale
-  Full Delivery Restoration
-  Planting Only
-  Living Retaining Wall
-  Flood Mitigation
-  Stormwater/Flood Retention
-  Stormwater Wetlands/Raingarden



Sumner

Center: 81°39'41"W 36°11'55"N

215

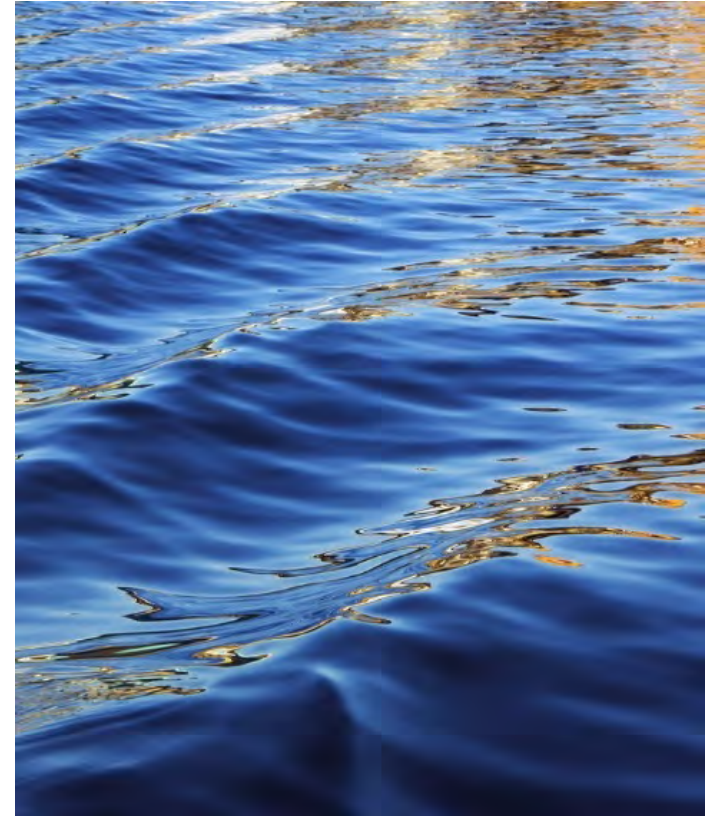
Source: Esri, Maxar, GeoEye, Earthstar, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community
Aerial imagery provided by Esri, Maxar, GeoEye, Earthstar, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community. Map data provided by Esri, DeLorme, NAVTEQ, and the GIS User Community.

Attachment B
Plan Presentation



Winkler, Boone and Hodges Creek

Stormwater , Flood Mitigation and Stream Restoration





Green Stormwater BMPs

Bioswale

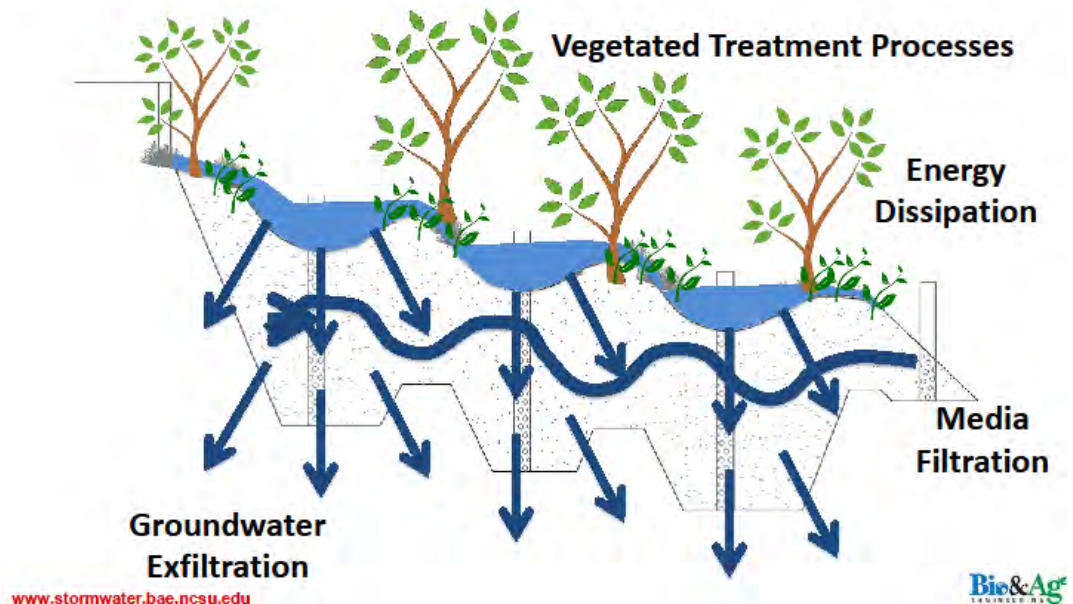
Definition:

- Bioswales are channels designed to concentrate and convey stormwater runoff while removing debris and pollution. Bioswales can also be beneficial in recharging groundwater. Bioswales are typically vegetated, mulched, or xeriscaped. They consist of a swaled drainage course with gently sloped sides. Bioswales include RSCs, simple grassed swales, and Step-pool RSCs among other engineered designs.

Regenerative Stormwater Conveyance (RSC)

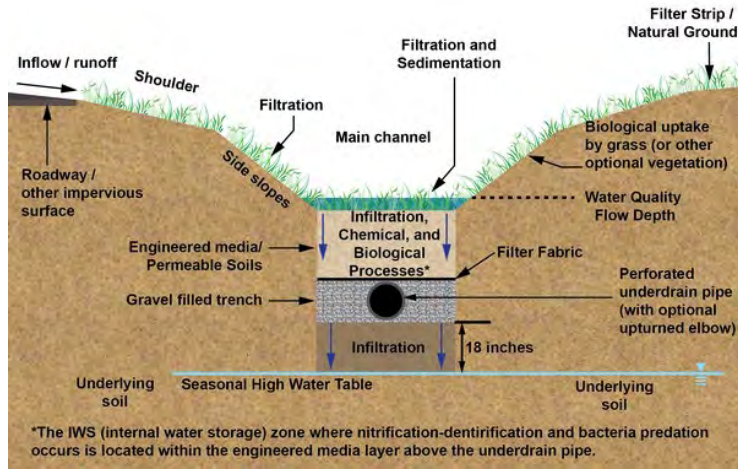
NC STATE UNIVERSITY

RSCs are... a series of pools and riffles designed to convey, manage, and treat stormwater runoff

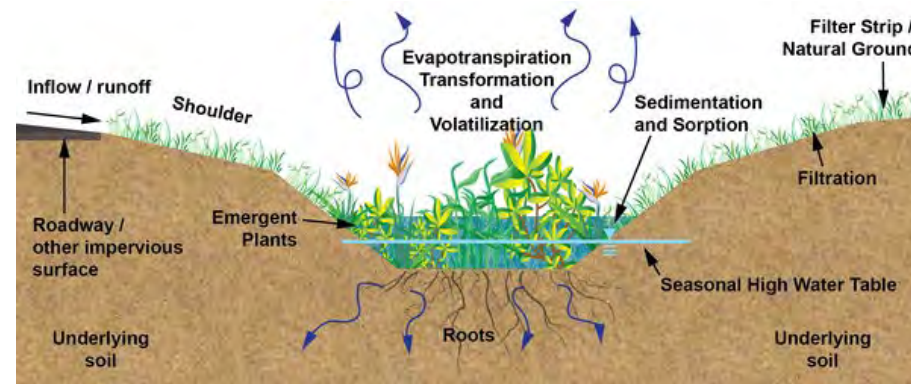


Bioswale design and function

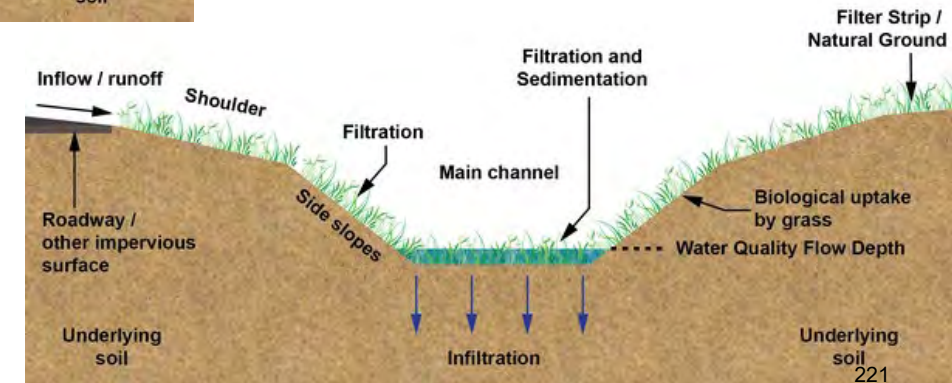
Bioswale



Wet swale



Grass Swale



Bioswale Examples



Wet Swale



RSC



Grassed Bioswale

Stormwater Retention - Bioretention

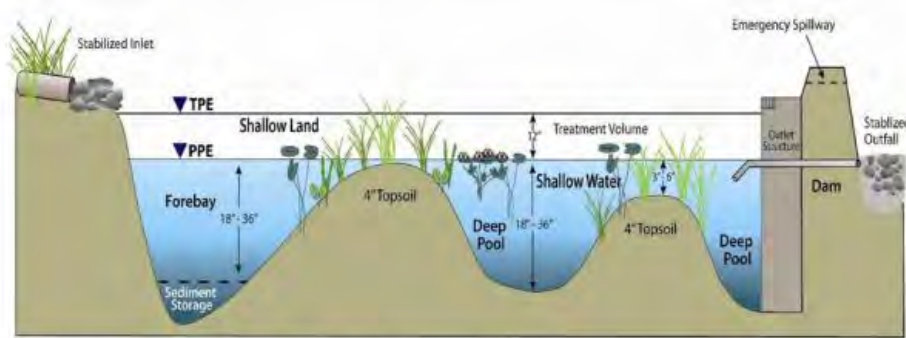
- Definition: Bioretention is the process in which contaminants and sedimentation are removed from stormwater runoff. Stormwater is collected into a treatment area which consists of a grass buffer strip, sand bed, ponding area, organic layer or mulch layer, planting soil, and plants. There are many forms of bioretention including bioretention ponds, stormwater wetlands, bioretention cells, etc.

NCDEQ Stormwater Design Manual

Figure 12: Stormwater Wetlands, Washington, DC & Raleigh, NC



Stormwater Wetlands



Note: Depending on site soils and groundwater elevations, a clay or synthetic liner may be required to maintain PPE at design elevation.

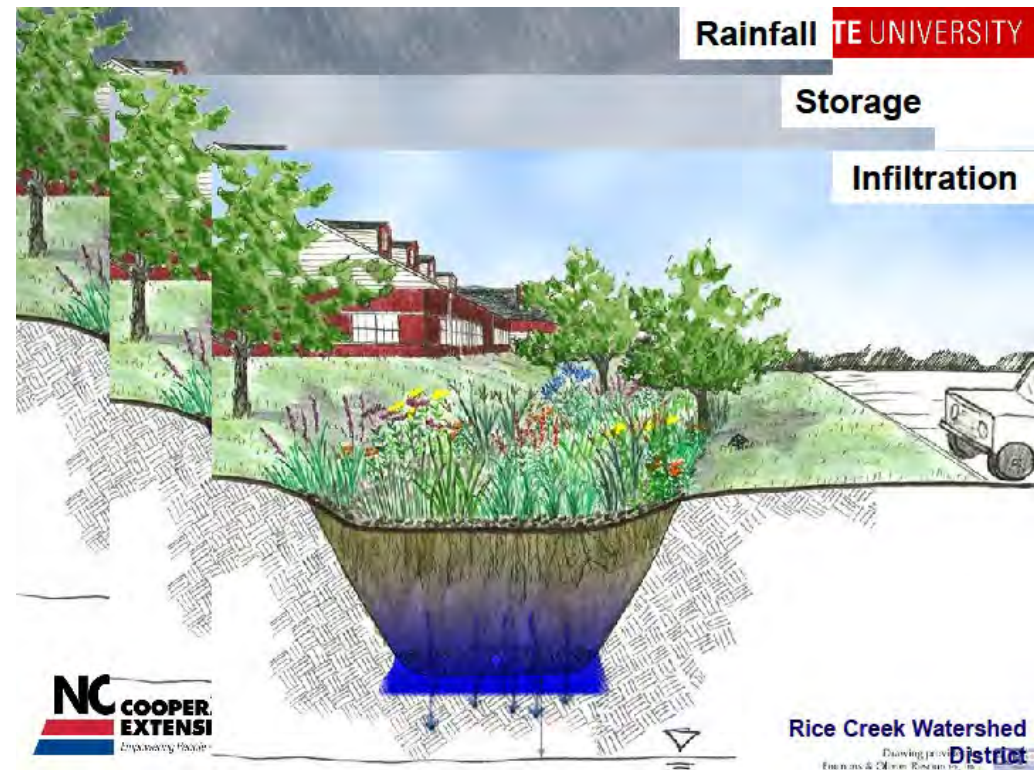
https://files.nc.gov/ncdeq/Energy%20Mineral%20and%20Land%20Resources/Stormwater/BMP%20Manual/C-4_Stormwater_Wetland.pdf



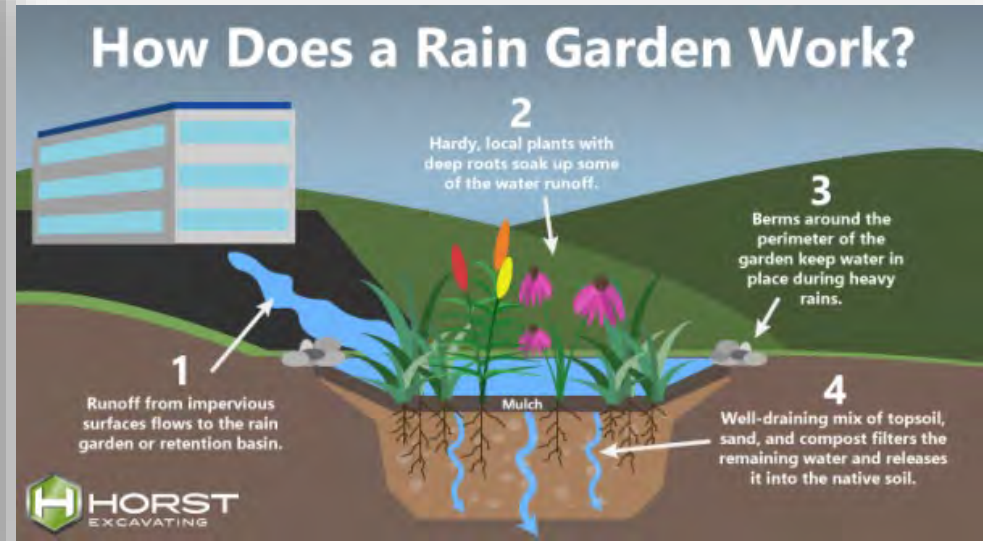
Raingardens – Stormwater Infiltration

- Definition: A rain garden is a depressed area in the landscape that collects rain water from a roof, driveway or street and allows it to soak into the ground. Planted with grasses and flowering perennials, rain gardens can be a cost effective and beautiful way to reduce runoff from your property. Rain gardens can also help filter out pollutants in runoff and provide food and shelter for butterflies, song birds and other wildlife. – US EPA

- Linear Rain Garden



Rain Gardens Improve Landscape Design



Green Infrastructure – “Living” Retaining Walls

- Living retaining walls replace traditional impervious concrete with a vertical “garden” while maintaining structural functionality. When the planted cells have grown out the wall becomes a landscape capable of slowing and filtering stormwater runoff.



Living Retaining Walls





Site 1 – Stormwater

Planned location of stormwater infrastructure to capture and filter stormwater entering Hodges Creek from Hwy 105 runoff.



Site 1 - Stormwater

RSCs are proposed along the lower portion of the reach to filter stormwater runoff from impervious areas before entering Hodges Creek.



Site 1 - Restoration

Stream restoration and floodplain connectivity are needed at this reach. Photo displays severe erosion and floodplain disconnection on stream right.



Site 1 – Restoration

Erosion will be addressed as well as stormwater along this lower portion of the reach.



- Site 2 Proposed Plan:
1. Riparian Buffer
 2. Restoration
 3. Bioswales
 4. Rain Gardens



Site 2 - Stormwater

Impervious stormwater outfalls will be replaced with Regenerative Stormwater Conveyances (RSCs) to help reduce pollutant and sediment loading into Hodges creek from parking and impervious areas along stream right and stream left.



Site 2 - Stormwater

Runoff from brewery and apartment complexes is proposed to be filtered with a bioswale running parallel to the streambank. Additionally, there is room for stormwater raingardens which would improve stormwater percolation into the soil while enhancing the aesthetics of the properties.



Site 2 – Restoration

Some areas along this corridor need invasive removal and will benefit from livestaking/planting alone, however stream restoration in this reach will reduce erosive pressure against the mall parking area while adding much needed habitat, bedform diversity, and grade control.



- Site 3 Proposed Plan:
1. Riparian Buffer
 2. Bioswales
 3. Restoration
 4. Flood Mitigation



Site 3 - Stormwater

Existing stormwater outfalls are outdated, poorly functioning, and are highly polluted. RSCs are proposed to reduce pollutants entering the stream and to slow the velocity of the stormwater runoff during precipitation events.



Site 3 - Restoration

Restoration is necessary in this reach to achieve floodplain connectivity and mitigate flooding downstream. Additionally, the erosion along this reach is severe, and restoration will greatly reduce sediment loading.



- Site 4 Proposed Plan:
1. Bioswales
 2. Riparian Buffer



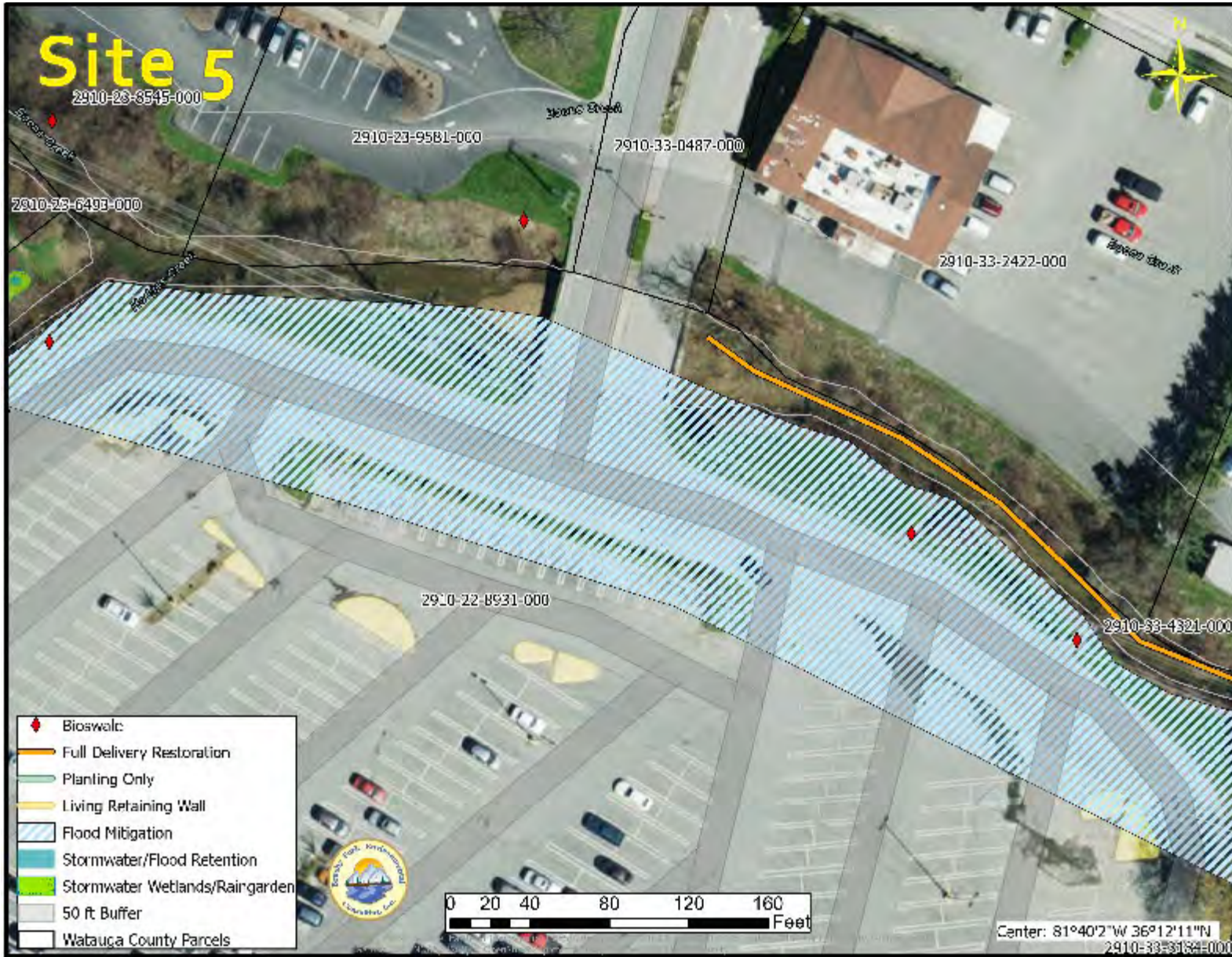
Site 4 - Stormwater

Polluted and poorly functioning outfalls near Wendy's and BoJangle's need to be re-designed and replaced with bioswales to filter parking lot runoff and waste by-products.



Site 4 – Livestaking

Livestaking along this reach would provide habitat, filtration, and a reduction in the velocity of floodwaters.



- Site 5 Proposed Plan:
1. Riparian Buffer
 2. Bioswales
 3. Flood Mitigation



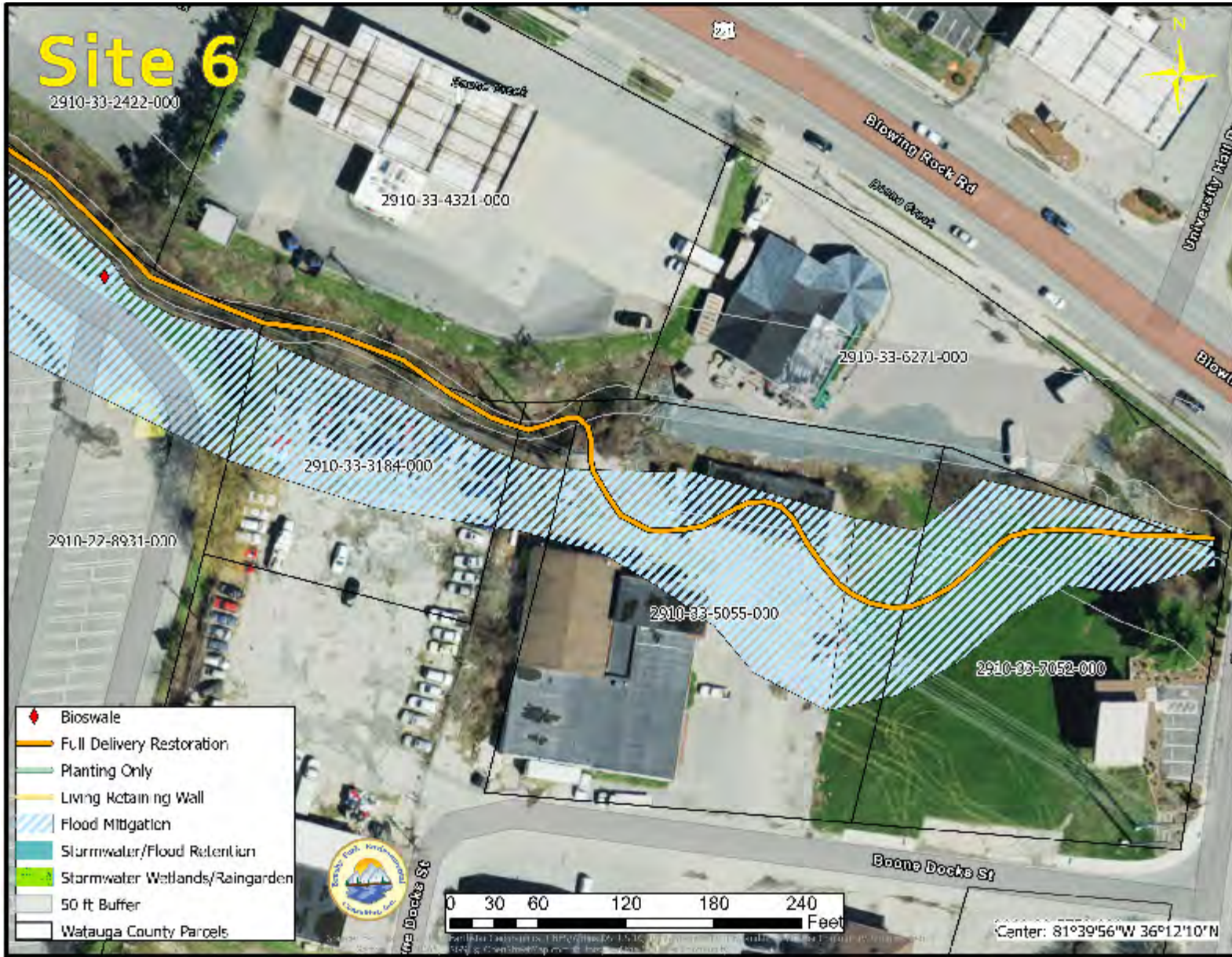
Site 5 - Stormwater

Plan includes proposed RSCs for each impervious stormwater outfall within the mall parking lot.



Site 5 - Restoration

Aggraded material at the Boone Mall bridge needs to be excavated from the channel both up and downstream. The resultant aggraded material raises flood elevations and causes more flooding. Additionally, this reach has no floodplain connectivity. A significant portion of the Boone Mall parking lot is proposed to be removed to allow floodplain access and to mitigate flooding downstream and within the parking lot.



- Site 6 Proposed Plan:
1. Priority 1 Restoration
 2. Riparian Buffer
 3. Bioswale
 4. Flood Mitigation



Site 6 - Restoration

Boone Creek is severely over-widened in this reach due to significant aggradation of sediments and large rip-rap. The accumulation of this material has forced the stream toward the right bank causing substantial erosion and sheer stress. The channel has minimal floodplain access currently. Bedform is lacking and consists of one or two riffles and one deep pool.

Site 6 - Restoration

Severe erosion upstream at the northeast corner of the mall parking lot needs to be addressed and floodplain access is needed throughout the reach.



Priority 1 restoration (channel relocation) is proposed around the culvert to tie back into the culvert underneath Meadowview Drive.





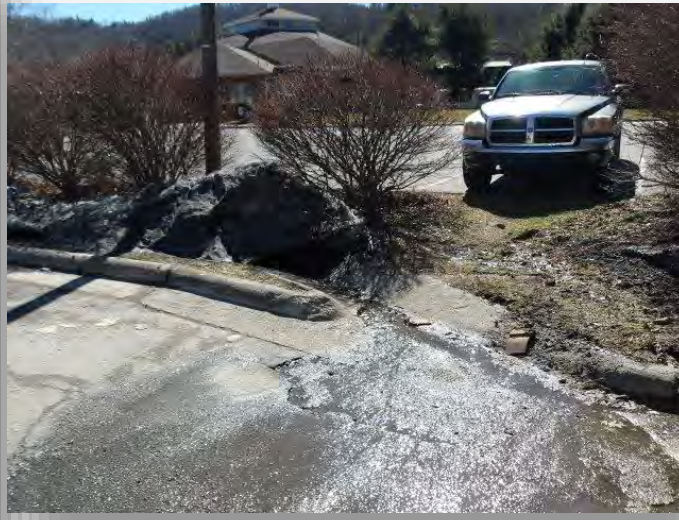
Site 6 - Restoration

The stream is proposed to be relocated to flow through the parcel(s) adjacent to stream right. This will require the demolition of parking lots and buildings, the complete re-forestation of the resultant riparian zone, and the creation of a floodplain bench to allow for high flows and to slow the velocity of flood waters. The existing culvert will be left in-place and will be accessed during flood-events as an "emergency" floodway. This will mitigate flooding in the area as well as downstream. The benefits of the proposed stream relocation will be:

1. Biological uplift (Habitat Creation)
2. Water Quality Improvement (Filtration of impervious runoff)
3. Flood Mitigation
4. Aesthetic Enhancement



- Site 7 Proposed Plan:
1. Riparian Buffer
 2. Restoration
 3. Bioswales
 4. Stormwater Retrofit



111621 BGC Meeting

Site 7 - Stormwater

A roughly 500 foot impervious drainage conveys stormwater runoff from the Boone Mall Parking lot directly to Winkler Creek. This outdated method of drainage is ineffective at treating stormwater and creates the perfect conditions for high velocity storm flows. This project proposes replacing the curb system with vegetated swales with check dams and RSC step-pools integrated into the design for treatment and for slowing the velocity of water during high precipitation events. This is just one of 9 similar drainages which will be addressed at site 7.

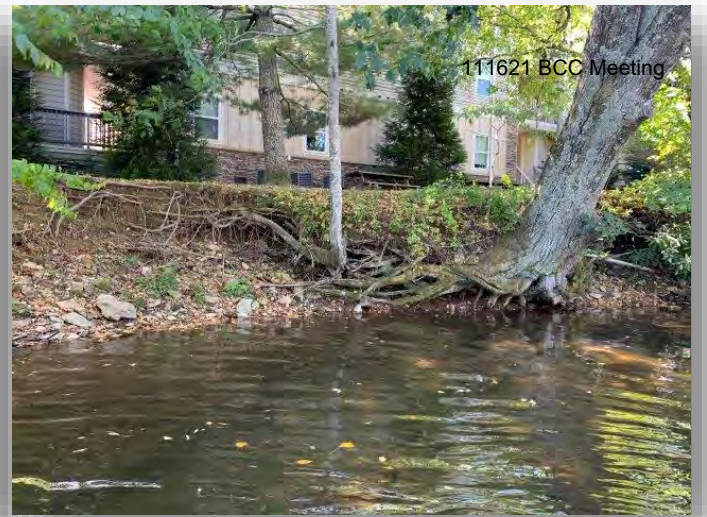
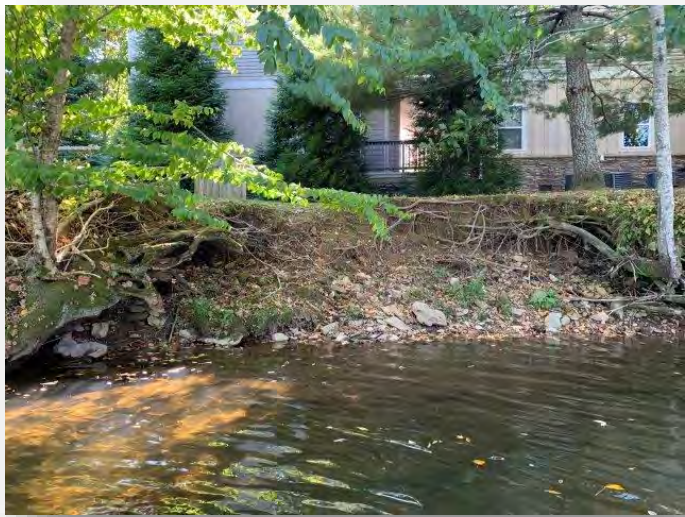




Site 7 – Stormwater Retrofitting

The existing stormwater infrastructure behind the Blue Ridge Pediatric and Adolescent Medicine is currently not functioning during high precipitation events. The drainage clogs and elevations of the outfall were not built to treat stormwater. Proposed retrofitting will make this area a functional and effective method for temporary retaining flood flows while treating stormwater pollutants. Area will be designed as a stormwater wetland.





Site 7 – Restoration

Upstream within site 7, Winkler Creek has extremely erosive banks leading to aggrading sediment and over-widening as you move downstream.



11/6/21 BCC Meeting



Site 7 - Restoration

In addition to the erosion there are large magnitudes of cement, rebar, and trash that should be removed from the reach.



Site 7 - Restoration

Overwidening, aggrading cobble, and severe erosion will be addressed with stream restoration techniques which employ proper bedform and channel width. This will allow the transport of bedload, reduce aggradation and erosion, and mitigate flooding.



- Site 8 Proposed Plan:
1. Rain Garden
 2. Green Infrastructure
 3. Bioswale



Site 8 – Stormwater and Green Infrastructure

A rain garden is proposed between Edward Jones and Boone Honda to collect and infiltrate/treat stormwater runoff from the impervious surfaces to the east. The existing impervious drain will be replaced with a vegetated swale. West of the Honda Dealership the steeply sloping and erosive banks will be addressed with living (vegetated) retaining walls to prevent loss of property, and to help filter runoff.



- Site 9 Proposed Plan:
1. Green Infrastructure
 2. Rain Gardens
 3. Bioswales



Site 9 – Stormwater and Green Infrastructure

Severe erosion and limited room call for living retaining walls along this reach to address the stormwater runoff while providing stabilization for the failing streambanks. Additionally, rain gardens are proposed along this reach behind the Boone Post Office, The Town of Boone Police Department, and along Meadowview Drive to filter and treat stormwater runoff. Bioswales will replace impervious runoff where living retaining walls are not feasible.



- Site 10 Proposed Plan:
1. Restoration
 2. Rain Garden



Site 10 – Restoration and Stormwater

Erosion on the right bank adjacent to the local community garden is severe, so restoration is proposed at this reach. Additionally, a rain garden or stormwater wetland is also proposed within the garden to help slow and treat stormwater runoff from this busy urban area.

Boone Creek Restoration Feasibility Study

Appalachian State University
Boone, North Carolina

May 2021

New River Conservancy
and
Jennings Environmental PLLC



New River Conservancy

*Protecting the waters, woodlands and wildlife
of the New River Watershed*

Jennings
Environmental

Introduction

This report documents results of a study to evaluate stream restoration alternatives for 1,400 linear feet of Boone Creek on the campus of Appalachian State University in Boone, NC (Latitude 36.21426, Longitude -81.68206). The study section of Boone Creek flows along Rivers Street and is currently in a culvert under parking lots adjacent to Peacock Hall, Duncan Hall, and Rankin Building as shown in the aerial photograph in Figure 1 and the map in Figure 2.



Figure 1. Boone Creek Aerial Photograph (2020) Showing Culverted Section Along Rivers Street.

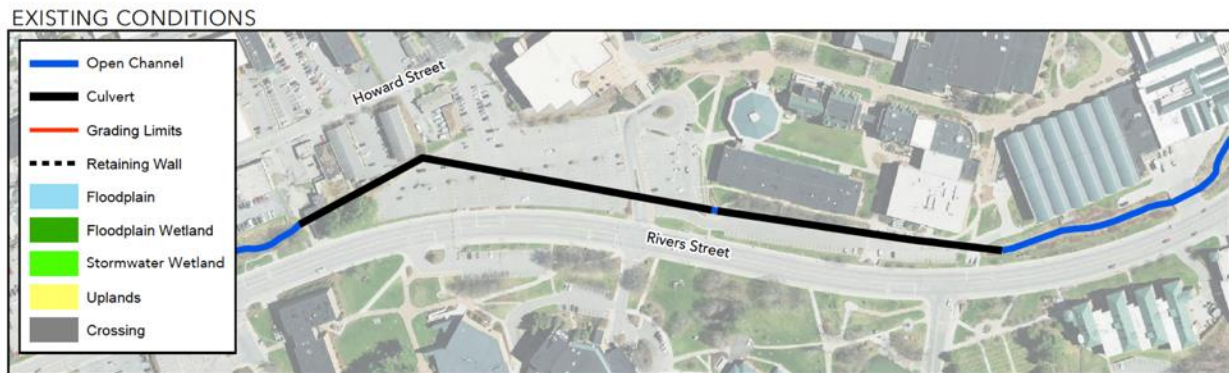


Figure 2. Boone Creek Existing Condition Map Showing Culverted Section.

Natural stream functions in the culverted section of Boone Creek may be greatly enhanced by “daylighting” the stream system. This process consists of excavating the soil and pavement covering the stream and creating a naturalized low-flow stream channel with adjacent vegetated floodplain. Benefits of daylighting the stream include the following:

- Improved ecological conditions for aquatic and terrestrial wildlife using the stream corridor;
- Improved water quality in the restored reach and downstream resulting from stormwater treatment, oxygenation of streamflow, and pollutant assimilation;
- Improved aesthetics and nature-based recreation opportunities for the campus community; and
- Reduction in downstream flood peaks associated with floodplain storage of overbank flows in the restored stream reach.

Objectives of this feasibility study are to: (1) determine engineering alternatives for restoring (daylighting) the culverted section of Boone Creek on the ASU campus; and (2) estimate costs of implementation to support project planning and funding acquisition. For this study, the stream was divided into two reaches with different lateral constraints. The upstream Reach 1 extends down valley to Duncan Hall, and the downstream Reach 2 flows along Duncan Hall and Rankin Building. The study project included the following tasks with results described in this report:

Task 1. Data Collection and Hydraulic Model Development. This task included collecting existing data related to topography, hydrology, soils, geology, and site constraints. A HEC-RAS hydraulic model was developed for the Boone Creek watershed to estimate flows for a range of recurrence interval events under existing land use conditions and alternative restoration scenarios.

Task 2. Stream Restoration Design Plan Evaluation. This task included designing conceptual plans for two alternative restoration scenarios based on input from community stakeholders and campus plans for future infrastructure development. Each concept plan includes channel and floodplain grading that daylights the piped stream, removes site constraints, and adds stormwater control measures to retain flood water in the valley. The hydraulic model was applied to these concept design plans to estimate flow conditions for a range of recurrence interval events. The alternative restoration scenarios are described below and shown in Figure 3.

Alternative A. This restoration concept consists of daylighting Reaches 1 and 2 to create a naturalized stream channel and floodplain flowing within a 100-ft wide stream corridor. This stream alignment accommodates the existing bus stop, proposed parking deck, proposed business school expansion, and vehicle access from Rivers Street via a large bottomless arch culvert. Constructed riffles, boulder steps and rock toe protection will be used to build and stabilize the new channel. Native riparian vegetation will be planted within the riparian corridor to optimize ecological conditions.

Alternative B. This restoration concept is similar to Alternative A but provides a wider floodplain for Reach 1 with floodplain wetlands for storing and treating overbank flows. This plan also adds a stormwater wetland in the vicinity of the existing roundabout and bus stop to collect and treat stormwater runoff flowing toward the stream from the campus. This stream alignment requires a new bus lane be established along Rivers Street with pedestrian access to campus via an arch culvert.

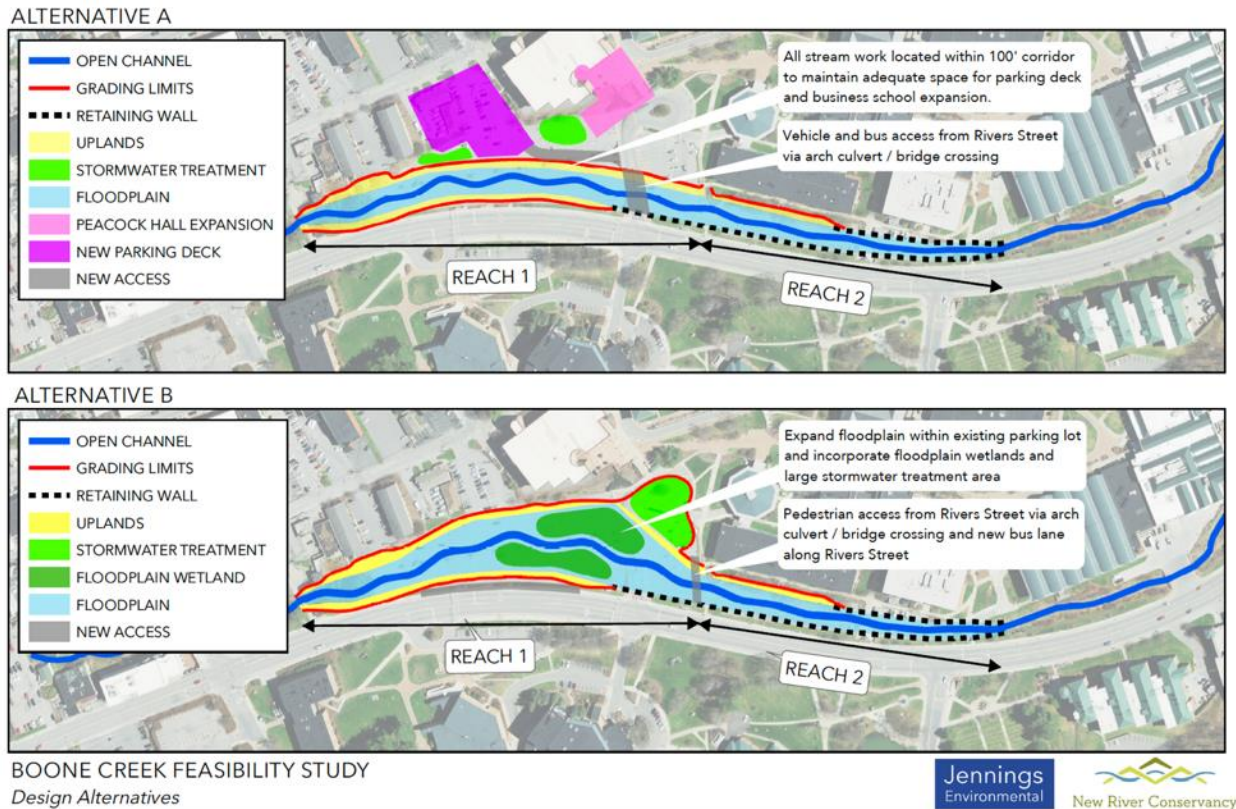


Figure 3. Restoration Design Maps Showing Stream Channel, Floodplain, and Stormwater Treatment Areas for Restoration Alternatives A and B.

Flood Modeling Results

HEC-RAS flood simulation results for the 100-year recurrence interval (1% exceedance probability) events are summarized for existing conditions and the restoration alternatives in Figure 4. The blue shaded flood zones indicate expected flood inundation during the 100-year (100YR) event. Each of the restoration alternatives is expected to contain the 100YR flood within the constructed floodplain corridor.

Flood modeling results for Alternatives A and B are similar at the upstream and downstream ends based on predicted changes in water surface elevations. Near the upstream end, modeled 100-year flood levels are lowered by up to 5 feet compared to existing conditions. Near the downstream end along Duncan Hall and Rankin Building, modeled flood levels for both alternatives are lowered by 0.1 to 4.0 feet compared to existing conditions. Along the middle of the reach, where most of the excavation and floodplain widening is proposed, Alternative B provides the most lowering of in flood levels as expected due to the wider excavated floodplain.

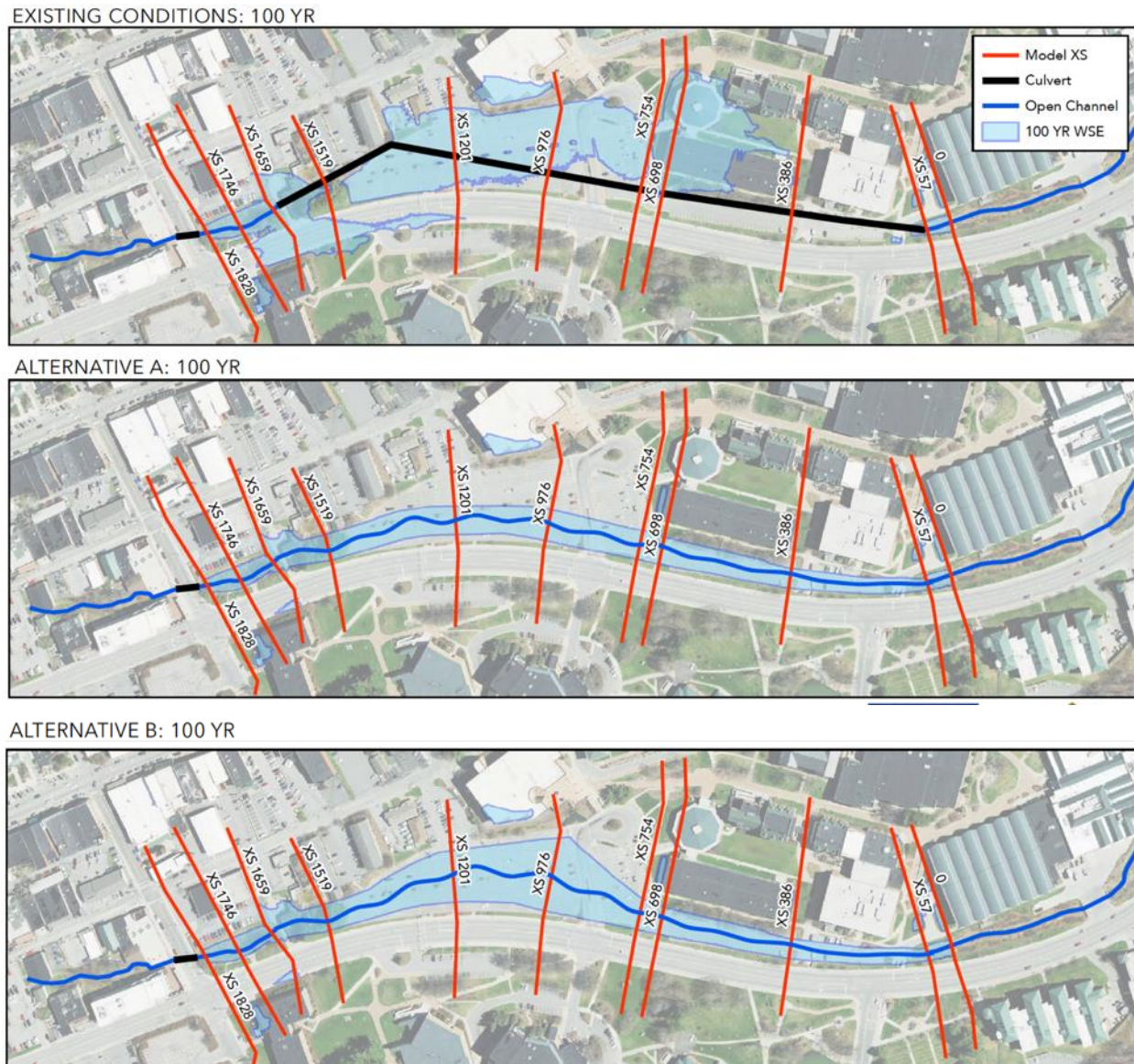


Figure 3. 100-Year Flood Modeling Results for Existing Conditions and Restoration Alternatives.

Cost Estimates

Cost estimates for implementing each restoration alternative were developed based on current engineering and construction cost ranges for similar projects in North Carolina (Table 1). The largest cost elements are demolition of existing parking lot, soil excavation, concrete retaining walls, in-stream structure rock installation, and erosion control matting. The estimates in Table 1 do not include utility relocations and additions, road crossings over the new stream, paving operations, or enhanced landscaping.

Total estimated implementation costs for both reaches of Alternative A is \$3.6M and for Alternative B is \$4.0M. Cost estimates may be determined with greater certainty when final designs are completed.

Table 1. Estimated Costs for Restoration Alternatives (excluding utility relocations and additions, road crossings over the new stream, paving operations, and enhanced landscaping).

| Item | Reach 1 ALT A | Reach 1 ALT B | Reach 2 |
|---------------------------|--------------------|--------------------|--------------------|
| Site Preparation | \$150,000 | \$180,000 | \$120,000 |
| Demolition | \$220,000 | \$260,000 | \$140,000 |
| Excavation | \$520,000 | \$620,000 | \$270,000 |
| Stormwater Infrastructure | \$180,000 | \$240,000 | \$30,000 |
| Stream Restoration | \$330,000 | \$360,000 | \$550,000 |
| Vegetation | \$40,000 | \$50,000 | \$20,000 |
| Engineering, Surveying | \$380,000 | \$460,000 | \$320,000 |
| Contingency | \$200,000 | \$240,000 | \$160,000 |
| TOTAL | \$2,020,000 | \$2,410,000 | \$1,610,000 |

Additional costs associated with full implementation of the stream restoration project may include:

- Utility relocations and additions: \$800,000 to \$1,600,000
- Bridge over the new stream: \$600,000 to \$1,400,000
- Paving and landscaping: \$100,000 to \$300,000
- Parking deck: \$3,000,000 to \$6,000,000

AGENDA ITEM 7:

PROPOSED AMENDMENTS TO THE WATAUGA MEDICAL CENTER BYLAWS

MANAGER'S COMMENTS:

Ms. Deanna S. Mool, ARHS attorney, will request the approval of an amendment to Article II that would allow more flexibility in the At-Large selection process and updates the term limit provisions applicable to the current board members.

In addition, Ms. Mool will request approval of the slate of candidates for the Watauga seats on both the WMC and ARHS boards.

CLERK'S NOTE: THE SLATE OF CANDIDATES ARE UNDER BOARDS AND COMMISSIONS WHERE THEY NORMALLY ARE EACH YEAR.

Board action is required to approve the amendment to Article II regarding the At-Large selection process and term limit provisions along with the slate of candidates.



Deanna S. Mool
Chief Legal Officer

November 9, 2021

Ms. Anita Fogle
Watauga Board of Commissioners
814 W. King Street
Boone, NC 28607

VIA EMAIL TO: anita.fogle@watgov.org

Dear Ms. Fogle:

On behalf of Appalachian Regional Healthcare System, Inc. and Watauga Medical Center, Inc., I am writing to request approval of two items at your board meeting on Thursday, November 18, 2021. Both items would require a vote of the Commissioners.

The first item for which the Appalachian Regional Healthcare System ("ARHS") requests your approval is an amendment to Article II of that would allow more flexibility in the At-Large selection process. This change allows the flexibility to have one of the At-Large members be a part-time resident anywhere in our service area. The goal for the change is to allow representation on the ARHS Board by part-time residents who constitute a significant portion of our patient population. Further, the amendment updates the applicability of the term limit provisions applicable to the current board members.

For ease of review, I have attached a redline version and clean version of the relevant sections. Mr. Jim Deal and I will be at the meeting to answer any questions you might have.

The second item for which the Watauga Medical Center, Inc. (WMC) board seeks approval is the slate of candidates for the Watauga seats on both the WMC and ARHS boards. That slate of names was provided separately to Deron Geouque in the attached letter from Mr. Mantooth.

We look forward to seeing you next week.

Sincerely,

A handwritten signature in black ink, appearing to read "Deanna S. Mool", is written over a circular stamp.

Deanna S. Mool

PROPOSED AMENDMENTS
to the ARHS BYLAWS
REDLINE VERSION

ARTICLE II
BOARD OF TRUSTEES

Section 1. Composition and Election, Powers, Re-Election, County Approval.

Section 1.1 Composition and Election of the Board of Trustees. The Board of Trustees shall be comprised of fifteen (15) members, ten (10) members of which shall be members of the Board of Trustees of Watauga Medical Center, Inc., who shall be designated as "Watauga Trustees," and five (5) members ~~of which~~ who shall be designated as "At-Large Trustees." In order to promote adequate representation of the various counties within the Corporation's primary service area, which for the purposes of these Bylaws shall be defined as those counties in which the Corporation operates a health care facility, four of the At-Large trustees shall be residents of the primary service area in counties of North Carolina other than Watauga County, North Carolina, and one of the At-Large trustees shall, at a minimum, maintain a part-time residence within the primary service area in North Carolina. At all times, no less than two thirds (2/3) of the members of the Board of Trustees shall be Watauga Trustees. The Watauga Trustees shall be elected as provided in the Amended and Restated Bylaws of Watauga Medical Center, Inc., Article V, Section 2. Candidates for election to the Board of Trustees as At-Large trustees shall be determined by the Nominating Committee. The Nominating Committee of the Board of Trustees shall develop and shall present to the Board of Trustees at the Annual Meeting a slate of individuals to serve as At-Large Trustees. The Board of Trustees, at the Annual Meeting, shall vote on all such nominees and shall thus elect those individuals who will serve as At-Large Trustees of the Corporation.

Section 1.3 Eligibility for Re-Election of a Trustee. Each Trustee shall serve a term of three (3) years. Trustees shall be eligible to serve up to four (4) successive terms of three (3) years each, provided, however, such term limitation shall apply only to terms that commence on or after January 1, ~~2012~~ 2010. Any Trustee who has served four (4) consecutive full terms beginning on or after January 1, ~~2012~~ 2010 shall not be eligible for re-election for a period of at least one (1) ear. Each Trustee shall continue to serve until such Trustee's ~~this~~ successor is elected and qualified.

PROPOSED AMENDMENTS
to the ARHS BYLAWS
CLEAN VERSION IF AMENDMENTS ADOPTED

ARTICLE II
BOARD OF TRUSTEES

Section 1. Composition and Election, Powers, Re-Election, County Approval.

Section 1.1 Composition and Election of the Board of Trustees. The Board of Trustees shall be comprised of fifteen (15) members, ten (10) members of which shall be members of the Board of Trustees of Watauga Medical Center, Inc., who shall be designated as "Watauga Trustees," and five (5) members who shall be designated as "At-Large Trustees." In order to promote adequate representation of the various counties within the Corporation's primary service area, which for the purposes of these Bylaws shall be defined as those counties in which the Corporation operates a health care facility, four of the At-Large trustees shall be residents of the primary service area in counties of North Carolina other than Watauga County, North Carolina, and one of the At-Large trustees shall, at a minimum, maintain a part-time residence within the primary service area in North Carolina. At all times, no less than two thirds (2/3) of the members of the Board of Trustees shall be Watauga Trustees. The Watauga Trustees shall be elected as provided in the Amended and Restated Bylaws of Watauga Medical Center, Inc., Article V, Section 2. Candidates for election to the Board of Trustees as At-Large trustees shall be determined by the Nominating Committee. The Nominating Committee of the Board of Trustees shall develop and shall present to the Board of Trustees at the Annual Meeting a slate of individuals to serve as At-Large Trustees. The Board of Trustees, at the Annual Meeting, shall vote on all such nominees and shall thus elect those individuals who will serve as At-Large Trustees of the Corporation.

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Chuck Mantooth, FACHE
President & CEO

November 8, 2021

Mr. Deron Geouque
Watauga County Manager
814 West King Street, Suite 205
Boone, NC 28607

Dear Deron:

The Watauga Medical Center, Inc. Board of Trustees at their October 28, 2021 meeting unanimously approved submitting the following names to be considered by the Watauga County Commissioners for appointment to the Watauga Medical Center, Inc. Board of Trustees:

Lisa Cooper
Kent Tarbutton
Jan Winkler

The appointment will be for a three-year term beginning January 1, 2022 and ending December 31, 2024.

Thank you for your assistance with this process and please contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Mantooth".

Chuck Mantooth, President & CEO
Appalachian Regional Healthcare System, Inc.

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AGENDA ITEM 8:

CORONAVIRUS (COVID-19) COMMUNITY UPDATE

MANAGER'S COMMENTS:

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

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

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AGENDA ITEM 9:

REQUEST TO PURCHASE MOBILE RADIOS

MANAGER'S COMMENTS:

Major Redmon, Watauga County Sheriff's Office, will request Board approval for the purchase of eight dual band mobile radios for the FY 21-22 vehicles from Two Way Radio of Carolina, Inc. Total cost is \$32,080. Adequate funds are available in the Sheriff's budget to cover the expense.

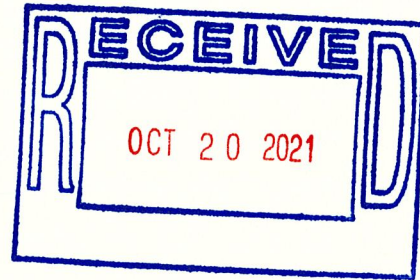
Board action is required to approve the purchase of eight dual band mobile radios from Two Way Radio of Carolina, Inc. in the amount of \$32,080.



WATAUGA COUNTY SHERIFF'S OFFICE

184 HODGES GAP ROAD
BOONE, NORTH CAROLINA 28607
(828) 264-3761 • FAX (828) 263-5345

LEN D. HAGAMAN, JR.
SHERIFF



October 13, 2021

To: Deron Geouque- Watauga County Manager

From: Major Kelly Redmon

Ref: FY 21-22 Mobile Radio Purchase

The Watauga County Sheriff's Office Request Board approval for the purchase of 8 dual band mobile radios for the FY 21-22 vehicles from Two Way Radio of Carolina, Inc.

Two Way Radio of Carolina provided the radios last year at a price of \$4,010 each and has agreed to provide the radios at the same price this year.

The funds for this purchase are available in the 21-22 Sheriff's budget.



WATAUGA COUNTY SHERIFF'S DEPT

2/16/2021

Attn: Major Kelly Redmon
184 Hodges Gap Rd
Boone, NC 28607
828-265-7607



| QTY | DESCRIPTION | EACH | AMOUNT |
|-----|---|-----------------|--------------|
| | NC Convenience Contract 725-G Pricing | | |
| | EF Johnson VM7000 Dual Band VHF/700/800Mhz Rem Mnt Mobile Radio Includes: Bluetooth, Ignition Sense Cable (Qty 2), Speakers (Qty 2), Mounting Hardware, Mobile Microphone, and 3 Year Warranty. | MSRP \$ 5762.00 | |
| | NC Convenience Contract 725-G Pricing | \$ 4,897.70 | |
| | NC TDMA Mandate Promotion (Expires July 2022) | \$ (1,447.70) | |
| 8 | Final Total Pricing After Discounts | \$ 3,450.00 | \$ 27,600.00 |

Includes: Analog FM, P25 CAI AMBE+2, 1024 Channels, Analog Conventional, P25 Conventional, P25 Phase 1 Trunking, P25 Phase 2 TDMA (VIPER Mandate) Multi Key DES-OFB Encryption, ADP Compatible Encryption, True Voice Noise Cancellation, and VIKING Vault Perpetual Software.

INCLUDED

OPTIONS

| | | | |
|---|---|----------------|-------------|
| 8 | Replace Standard Deck with VHF Hi Power, 100 Watt Mobile Deck | \$ 500.00 | \$ 4,000.00 |
| | add Multi-Key AES Encryption (for FBI, ICE, DHS Joint Operations) | \$ 300.00 | |
| | KCH-21 Hand Held Controller Option | \$ 350.00 | |
| 8 | QW-152 VHF 1/4 Wave Mobile Antenna, NMO Mnt, Connector | \$ 30.00 | \$240.00 |
| 8 | QW-8063 800 MHz Mobile Antenna, NMO Mnt, Connector | \$ 30.00 | \$240.00 |
| 8 | Programming Labor TWRC Remote Mount On-Site Installation | FREE \$ 245.00 | FREE |



| | |
|-----------------|--------------|
| Equipment Total | \$ 32,080.00 |
| Tax (6.75%): | \$2,165.40 |

Total Equipment Cost: \$ 34,245.40



Radio Communications Company (Corporate)
 8035 Chapel Hill Road, Cary, NC 27513
 PO Box 68, Cary, NC 27512
 O: 919-467-2421 F: 919-467-6548

Tom Lafferty
 Regional Manager
 M: 704-361-5876
 tlafferty@rccws.com

RCC Asheville
 6 Celtic Drive, Suite B-6
 Arden, NC 28704
 828-417-0200

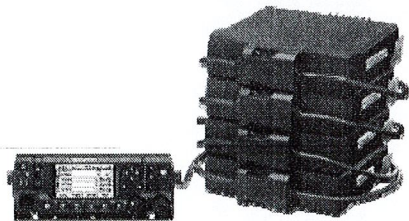
Watauga County Sheriffs Office
 Kelly Redmon
 184 Hodges Gap Road
 Boone, NC 28607
 O: 828-264-3761 M: 828-265-7607

11/17/2020



PROMO CODE: VIPERTDMA - VALID Through July 1, 2022

| QTY | DESCRIPTION | EACH | AMOUNT |
|-----|---|------------|------------|
| 1 | VM7930BF-S Kenwood VM7000 Mobile Radios INCLUDES: VM7930BF-S (700/800) & VM7730HBF-S (HP VHF) Single Remote Mount Control Head KCH-20RV 2 Radio Decks - 700/800 & High Power VHF 25' Control Cable 1024 Channels/Talkgroups Trunking Protocols Included: P25T PH1 & PH2 TDMA P25 CAI AMBE+2 TrueVoice Noise Cancellation Multi-Key (MK) AES Encryption Three Year Warranty External Speakers / Ign Sense / Spkr to CH MDC1200 Signalling | \$4,148.55 | \$4,148.55 |
| 1 | 2990600013 2-Year Extended Warranty (5-Years Total) | \$140.00 | \$140.00 |
| 1 | BMAX150D 2.2dB Gain Mobile VHF Antenna | \$25.00 | \$25.00 |
| 1 | MAX7603S 3dB Gain Mobile Whip Antenna 760-870MHz (Optional Low Profile Ant 740-870MHz \$36.) | \$29.00 | \$29.00 |
| 2 | NM058U-NC Mobile RF Cable | \$20.00 | \$28.00 |



*** Non-Grant Eligible Single-Key DES Encryption & ARC4 (ADP) Encryption
 US Customers only: User understands and acknowledges that the equipment is configured with voice encryption that does not meet DHS OIG Encryption requirements for P25 CAP compliance (Grant Eligible). Free with order.

Creation of a new programming template \$350. Includes up to six (6) zones of 16 talkgroups/channels in addition to eight (8) "standard" Viper zones (EVENT A, EVENT B, STATEWIDE, NPS, NCSPLX, SHP (MAID and COM2), ROAM/POOL, TOWER). If more zones are required, please contact us to discuss. Per radio programming \$45. Price includes programming using existing template with no modifications.

| | |
|------------------------------|-------------------|
| Equipment Total without Tax: | \$4,370.55 |
| Estimated Shipping: | \$27.00 |
| Programming: | \$0.00 |
| Installation: | \$0.00 |
| Estimated Sales Tax: | \$296.83 |
| Project Total: | \$4,694.38 |

Confidential, Proprietary & Competition Sensitive

Payment is due upon receipt of radios and not when radio ID's are released by any system. RCC has no responsibility for the assignment and release of radio ID's for NC VIPER / BUNC700 or other system. Prices quoted are based on quantities listed. Changes in quantities may result in price changes. Net 30 - Payment due 30 days after invoice date. (with RCC approved account) Issuance of a Purchase Order based on this quote assumes agreement with these Proposal valid for 30 days from date printed above. Contact Tom Lafferty for further information: M: 704-361-5876 O: 828-417-0200

November 17, 2020

Radio Source LLC
 DBA Radio Express
 5407-C Port Royal Rd
 Springfield, VA 22151
 O: 800-545-7748; F: 703-830-8710
 www.radioexpressinc.com



Quote

| | |
|-----------|---------|
| Date | Quote # |
| 2/10/2021 | 4760 |

Watauga County Sheriff's Office
 Attn: Kelly Redmon
 (828) 265-7607
 kelly.redmon@watgov.org

| Item | Description | Qty | Terms | Rep |
|--|--|--------------|----------|-------------------|
| | | | Cost | Total |
| M/E | VM7000 Dual Deck, Single Remote Dual Band Primary Band - VM7730HBF-P - VHF Hi Power Secondary Band - VM7930BF-S - 7/800 MHz KCH-20 Single Remote Control Head KCT-71M2 - 17 ft Remote Cable KMC-65M Standard Speaker Mic KCT-23M4 - Hi Power Deck DC Cable KCT-23M3 - Standard Deck DC Cable KMB-36 - Hi Power Deck Mounting Bracket KMB33M - Standard Deck Mounting Bracket KCT-71M4 - Control Cable KRK-17BF - Remote Kit Protocol - Analog FM / P25 CAI A MBE=2 System - Analog Conventional / P25 Conventional / P25 Phase 1 Trunking / P25 Phase 2 TDMA 1024 Channels Encryption - Multi Key AES & ARC4 (ADP Compatible) Antenna Kit - 3dB 700/800 MHz Roof Mount Antenna Kit - 2dB VHF Roof Mount Mobile Speaker - 40W Max Input, VM-T | 1 | 5,430.00 | 5,430.00T |
| | Sales Tax (0.0%) | | | \$0.00 |
| We appreciate your business! Any comments (Good -or- Bad) Please let us know. | | Total | | \$5,430.00 |

Customer Signature _____

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AGENDA ITEM 10:

PROPOSED REPLACEMENT OF THE COURTHOUSE HVAC CONTROLS SYSTEM

MANAGER'S COMMENTS:

Mr. Robert Marsh, Maintenance Director, will request after action approval by the Board for repairs to the courthouse HVAC main controls. The cost of the repair was \$15,561.88. Due to the critical nature of the system and cold weather setting in staff authorized the repair to limit any disruption to the system.

Board approval is required to approve the repair of the HVAC system in the amount of \$15,561.88 with Johnson Controls.



Replacement large SNE
Quote Prepared by Brandon Greene
10/27/2021



PROPOSAL

Account Information

Bill To: WATAUGA COUNTY NORTH CAROLINA
274 WINKLERS CREEK RD STE B
BOONE NC
USA 28607

Quote Reference Number: 1-1DMJVPYP

Project Name: Replacement large SNE

Site: COUNTY OF WATAUGA
814 W KING ST STE 205
BOONE NC 28607-3457

Branch Info: JOHNSON CONTROLS TRI-CITIES TN CB - 0N0B

Attn: DERRICK ELLISON

Customer Information

Name: DERRICK ELLISON

This proposal is hereby accepted and Johnson Controls is authorized to proceed with the work, subject to credit approval By Johnson Controls, Inc. Milwaukee, WI.
We propose to furnish the materials and/or perform the work below for the net price of: \$15,561.88

This proposal is valid through: 11/26/2021

WATAUGA COUNTY NORTH CAROLINA

Johnson Controls Inc.

Signature: *Drew George*
 Name: Drew George
 Title: County Manager
 Date: 10-29-2021
 PO: _____

Signature: _____
 Name: _____
 Title: _____
 Date: _____

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

10/29/21 *[Signature]*
 Date Finance Director

Proposal Overview

Benefits/Scope of Work: Watauga County Courthouse - Labor and materials to replace the NAE with SNE. Price does not include troubleshooting performed and will be in addition to the price above.

Exclusions:

- 1.Labor or material not specifically described above is excluded from this proposal.
- 2.Unless otherwise stated, any and all overtime labor is excluded from this proposal.
- 3.Applicable taxes or special freight charges are excluded from this proposal

(IMPORTANT): This proposal incorporates by reference the terms and conditions which are attached to this document. All work is to be performed Monday through Friday during normal Johnson Controls, Inc. (JCI) business hours unless otherwise noted. This proposal, or any accepted alternates, are hereby accepted by Customer, and JCI is authorized to proceed with the work; subject, however, to credit approval by JCI, Milwaukee, Wisconsin.

TERMS AND CONDITIONS

By accepting this proposal, Customer agrees to be bound by the following terms and conditions:

- 1. SCOPE OF WORK.** This proposal is based upon the use of straight time labor only. Plastering, patching, and painting are excluded. Disinfecting of chiller condenser and cooling tower water systems and components for biohazards, such as but not limited to Legionella, are excluded unless otherwise specifically stated in this agreement. In-line duct and piping devices, including, but not limited to valves, dampers, humidifiers, wells, taps, flow meters, orifices, etc., if required hereunder to be furnished by JCI, shall be distributed and installed by others under JCI's supervision but at no additional cost to JCI. Customer agrees to provide JCI with required field utilities (electricity, toilets, drinking water, project hoist, elevator service, etc.) without charge. JCI agrees to keep the job site clean of debris arising out of its own operations. Customer shall not back charge JCI for any costs or expenses without JCI's written consent. Unless specifically noted in the statement of the scope of work or services undertaken by JCI under this agreement, JCI's obligations under this agreement expressly exclude any language or provision of the agreement elsewhere contained which may authorize or empower the Customer to change, modify, or alter the scope of work or services to be performed by JCI and shall not operate to compel JCI to perform any work relating to Hazards or Biohazards, such as but not limited to Legionella, without JCI's express written consent.
- 2. INVOICE AND PAYMENTS.** JCI may invoice Customer monthly for all materials delivered to the job site or to an off-site storage facility and for all work performed on-site and off-site. Customer shall pay JCI at the time Customer signs this agreement an advance payment equal to 10% of the contract price, which advance payment shall be credited against the final payment (but not any progress payment) due hereunder. Unless otherwise agreed to by the parties, payment is due to JCI upon Customer's receipt of JCI's invoice. Invoicing disputes must be identified by Customer in writing within 21 days of the date of the invoice. Payment of any disputed amounts are due and payable upon resolution of such dispute. Failure to make payments when due will give JCI, without prejudice to any other right or remedy, the right to: (i) stop performing any services, withhold deliveries of equipment and other materials, terminate or suspend any unpaid software licenses, and/or terminate this agreement; and (ii) charge Customer interest on the amounts unpaid at a rate equal to the lesser of one and one half (1.5) percent per month or the maximum rate permitted under applicable law, until payment is made in full. Customer will pay all of JCI's reasonable collection costs (including legal fees and expenses). In the event of Customer's default, the balance of any outstanding amounts will be immediately due and payable. Lien waivers will be furnished upon request, as the work progresses, to the extent payments are received.
- 3. MATERIALS.** If the materials or equipment included in this proposal become temporarily or permanently unavailable for reasons beyond the control and without the fault of JCI, then in the case of such temporary unavailability, the time for performance of the work shall be extended to the extent thereof, and in the case of permanent unavailability, JCI shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonably available substitute therefore.
- 4. EQUIPMENT WARRANTY.** JCI warrants that equipment manufactured or labeled by JCI shall be free from defects in material and workmanship arising from normal usage for a period of one year. No warranty is provided for third-party products and equipment installed or furnished by JCI. Such products and equipment are provided with the third party manufacturer's warranty to the extent available, and JCI will transfer the benefits, together with all limitations, of that manufacturer's warranty to Customer. All transportation charges incurred in connection with the warranty for equipment and/or materials not installed by JCI shall be borne by Customer. These warranties shall not extend to any equipment that has been abused, altered, misused or repaired by Customer or third parties without the supervision of and prior written approval of JCI, or if JCI serial numbers or warranty date decals have been removed or altered. Customer must promptly report any failure of the equipment to JCI in writing.
- 5. LIMITED WARRANTY.** JCI warrants its workmanship or that of its agents (Technicians) in relation to installation of equipment for a period of ninety (90) days from date of installation. Customer shall bear all labor costs associated with replacement of failed equipment still under JCI's equipment warranty or the original manufacturer's warranty, but outside the terms of this express labor warranty. All warranty labor shall be executed on normal business days during JCI normal business hours. These warranties do not extend to any equipment which has been repaired by others, abused, altered, or misused in any way, or which has not been properly and reasonably maintained. THESE WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY AND FITNESS FOR A SPECIFIC PURPOSE. UNDER NO CIRCUMSTANCES SHALL JCI BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATING TO ANY DEFECT IN MATERIAL OR WORKMANSHIP OF EQUIPMENT OR THE PERFORMANCE OF SERVICES. JCI makes no and specifically disclaims all representations or warranties that the services, products, software or third party product or software will be secure from cyber threats, hacking or other similar malicious activity, or will detect the presence of, or eliminate, treat, or mitigate the spread, transmission, or outbreak of any pathogen, disease, virus or other contagion, including but not limited to COVID 19.
- 6. LIABILITY.** To the maximum extent permitted by law, in no event shall JCI and its affiliates and their respective personnel, suppliers and vendors ("JCI Parties") be liable to you or any third party under any cause of action or theory of liability even if advised of the possibility of such damages, for any: (a) special, incidental, consequential, punitive, or indirect damages; (b) lost profits, revenues, data, customer opportunities, business, anticipated savings, or goodwill; (c) business interruption; or (d) data loss or other losses arising from viruses, ransomware, cyber-attacks or failures or interruptions to network systems. In any case, the entire aggregate liability of the JCI Parties under this proposal for all damages, losses, and causes of action (whether in contract, tort (including negligence), or otherwise) shall be limited to the amounts payable to JCI hereunder.
- 7. TAXES.** The price of this proposal does not include duties, sales, use, excise, or other taxes, unless required by federal, state, or local law. Customer shall pay, in addition to the stated price, all taxes not legally required to be paid by JCI or, alternatively, shall provide JCI with acceptable tax exemption certificates. JCI shall provide Customer with any tax payment certificate upon request and after completion and acceptance of the work.
- 8. DELAYS.** JCI shall not be liable for any delay in the performance of the work resulting from or attributed to acts of circumstance beyond JCI's control, including but not limited to; acts of God, fire, riots, labor disputes, conditions of the premises, acts or omissions of the Customer, Owner, or other Contractors or delays caused by suppliers or subcontractors of JCI, etc.
- 9. COMPLIANCE WITH LAWS.** JCI shall comply with all applicable federal, state, and local laws and regulations, and shall obtain all temporary licenses and permits required for the prosecution of the work. Licenses and permits a permanent nature shall be procured and paid for by the Customer.
- 10. PRICING; PAYMENT.** JCI may increase prices upon notice to the Customer to reflect increases in material and labor costs. Customer shall pay all invoices

when due in accordance with the payment terms provided for herein, and such payment is a condition precedent to JCI's obligation to provide products or perform services hereunder.

11. DISPUTES. All disputes involving more than \$15,000.00 shall be resolved by arbitration in accordance with the rules of the American Arbitration Association. The prevailing party shall recover all legal costs and attorneys' fees incurred as a result. Nothing here shall limit any rights under construction lien laws.

12. INSURANCE. Insurance coverage in excess of JCI's standard limits will be furnished when requested and required. No credit will be given or premium paid by JCI for insurance afforded by others.

13. INDEMNITY. The Parties hereto agree to indemnify each other from any and all liabilities, claims, expenses, losses or damages, including attorney's fees which may arise in connection with the execution of the work herein specified and which are caused, by the negligent act or omission of the indemnifying Party.

14. CUSTOMER RESPONSIBILITIES. Customer is solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network") and shall supply Johnson Controls secure Network access for providing its services. Products networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Customer and/or end user against unauthorized access. Customer is responsible to take appropriate measures, including performing back-ups, to protect information, including without limit data, software, or files (collectively "Data") prior to receiving the service or products.

15. FORCE MAJEURE. JCI shall not be liable, nor in breach or default of its obligations under this proposal, for delays, interruption, failure to render services, or any other failure by JCI to perform an obligation under this proposal, where such delay, interruption or failure is caused, in whole or in part, directly or indirectly, by a Force Majeure Event. A "Force Majeure Event" is a condition or event that is beyond the reasonable control of JCI, whether foreseeable or unforeseeable, including, without limitation, acts of God, severe weather (including but not limited to hurricanes, tornados, severe snowstorms or severe rainstorms), wildfires, floods, earthquakes, seismic disturbances, or other natural disasters, acts or omissions of any governmental authority (including change of any applicable law or regulation), epidemics, pandemics, disease, viruses, quarantines, or other public health risks and/or responses thereto, condemnation, strikes, lock-outs, labor disputes, an increase of 5% or more in tariffs or other excise taxes for materials to be used on the project, fires, explosions or other casualties, thefts, vandalism, civil disturbances, insurrection, mob violence, riots, war or other armed conflict (or the serious threat of same), acts of terrorism, electrical power outages, interruptions or degradations in telecommunications, computer, network, or electronic communications systems, data breach, cyber-attacks, ransomware, unavailability or shortage of parts, materials, supplies, or transportation, or any other cause or casualty beyond the reasonable control of JCI. If JCI's performance of the work is delayed, impacted, or prevented by a Force Majeure Event or its continued effects, JCI shall be excused from performance under this proposal. Without limiting the generality of the foregoing, if JCI is delayed in achieving one or more of the scheduled milestones set forth in this proposal due to a Force Majeure Event, JCI will be entitled to extend the relevant completion date by the amount of time that JCI was delayed as a result of the Force Majeure Event, plus such additional time as may be reasonably necessary to overcome the effect of the delay. To the extent that the Force Majeure Event directly or indirectly increases JCI's cost to perform the services, Customer is obligated to reimburse JCI for such increased costs, including, without limitation, costs incurred by JCI for additional labor, inventory storage, expedited shipping fees, trailer and equipment rental fees, subcontractor fees or other costs and expenses incurred by JCI in connection with the Force Majeure Event.

16. OCCUPATIONAL SAFETY AND HEALTH. The Parties hereto agree to notify each other immediately upon becoming aware of an inspection under, or any alleged violation of the, Occupational Safety and Health Act relating in any way to the project or project site.

17. ONE-YEAR CLAIMS LIMITATION. No claim or cause of action, whether known or unknown, shall be brought against JCI more than one year after the claim first arose. Except as provided for herein, JCI's claims must also be brought within one year. Claims for unpaid contract amounts are not subject to the one-year limitation.

18. JCI CONNECTED EQUIPMENT SERVICES. Certain equipment sold hereunder includes by default JCI's Connected Equipment Services. Connected Equipment Services is a data-analytics and monitoring Software platform that uses a cellular or network connection to gather equipment performance data to assist JCI in advising Customer on (and Customer in better understanding) such equipment's health, performance or potential malfunction. **If Customer's equipment includes Connected Equipment Services, such services will be on by default and the remote connection will continue to connect to Customer's Equipment through the full equipment lifecycle, unless Customer specifically requests in writing that JCI disable the remote connection or JCI discontinues or removes such remote connection.** For more information on whether your particular equipment includes Connected Equipment Services, a subscription to such services and the cost, if any, of such subscription, please see your applicable order, quote, proposal, or purchase documentation or talk to your JCI sales representative. If Customer's equipment includes Connected Equipment Services, JCI will provide a cellular modem or other gateway device ("Gateway Device") owned by JCI or Customer will supply a network connection suitable to establish a remote connection with Customer's applicable equipment to permit JCI to use Connected Equipment Services to perform first-year and extended warranty services as well as other services, including troubleshooting, quarterly health reports, remote diagnostic and monitoring and aftermarket services. For certain subscriptions, Customer will be able to access equipment information from a mobile or smart device using Connected Equipment Service's mobile or web app. Any Gateway Devices provided hereunder shall remain JCI's property, and JCI may upon reasonable notice access and remove such Gateway Device and discontinue services in accordance with the Software Terms. If Customer does not permit JCI to connect via a connection validated by JCI for the equipment or the connection is disconnected by Customer, and a service representative must therefore be dispatched to the Customer site, then the Customer will pay JCI at JCI's then-current standard applicable contract regular time and/or overtime rate for services performed by the service representative. JCI disclaims any obligation to advise Customer of any possible equipment error or malfunction. **Customer acknowledges that, while Connected Equipment Services generally improve equipment performance and services, Connected Equipment Services does not prevent all potential malfunction, insure against all loss or guarantee a certain level of performance and that JCI shall not be responsible for any injury, loss, or damage caused by any act or omission of JCI related to or arising from the monitoring of the equipment under Connected Equipment Services.**

19. SOFTWARE AND DIGITAL SERVICES. Use, implementation, and deployment of the software and hosted software products ("Software") offered under these terms shall be subject to, and governed by, JCI's standard terms for such Software and Software related professional services in effect from time to time at <https://www.johnsoncontrols.com/techterms> (collectively, the "Software Terms"). Applicable Software Terms are incorporated herein by this reference. Other than the right to use the Software as set forth in the Software Terms, JCI and its licensors reserve all right, title, and interest (including all intellectual property rights) in and to the Software and improvements to the Software. The Software that is licensed hereunder is licensed subject to the Software Terms and not sold. If there is a conflict between the other terms herein and the Software Terms, the Software Terms shall take precedence and govern with respect to rights and responsibilities relating to the Software, its implementation and deployment and any improvements thereto.

20. Privacy. JCI as Processor: Where JCI factually acts as Processor of Personal Data on behalf of Customer (as such terms are defined in the DPA) the terms at www.johnsoncontrols.com/dpa ("DPA") shall apply. **JCI as Controller:** JCI will collect, process and transfer certain personal data of Customer and its personnel related to the business relationship between it and Customer (for example names, email addresses, telephone numbers) as controller and in accordance with JCI's Privacy Notice at <https://www.johnsoncontrols.com/privacy>. Customer acknowledges JCI's Privacy Notice and strictly to the extent consent is mandatorily required under applicable law, Customer consents to such collection, processing and transfer. To the extent consent to such collection, processing and transfer by JCI is mandatorily required from Customer's personnel under applicable law, Customer warrants and represents that it has obtained such consent.

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AGENDA ITEM 11:

TAX MATTERS

A. Monthly Collections Report

MANAGER'S COMMENTS:

Mr. Larry Warren, Tax Administrator, will present the Monthly Collections Report and be available for questions and discussion.


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


Monthly Collections Report**Watauga County**

Bank deposits of the following amounts have been made and credited to the account of Watauga County. The reported totals do not include small shortages and overages reported to the Watauga County Finance Officer

Monthly Report October 2021

| | <u>Current Month</u> <u>Collections</u> | <u>Current Month</u> <u>Percentage</u> | <u>Current FY</u> <u>Collections</u> | <u>Current FY</u> <u>Percentage</u> | <u>Previous FY</u> <u>Percentage</u> |
|------------------------------|--|---|---|--|---|
| <u>General County</u> | | | | | |
| Taxes 2021 | 2,413,517.50 | | 12,190,966.42 | 33.02% | 32.21% |
| Prior Year Taxes | 20,109.07 | | 153,382.81 | | |
| Solid Waste User Fees | 161,692.62 | | 811,916.61 | 30.26% | 29.36% |
| Green Box Fees | 0.00 | | 94.77 | NA | NA |
| Total County Funds | \$2,595,319.19 | | \$13,156,360.61 | | |
| <u>Fire Districts</u> | | | | | |
| Foscoe Fire | 32,704.73 | | 176,922.35 | 37.12% | 36.67% |
| Boone Fire | 48,370.56 | | 279,764.94 | 30.68% | 29.31% |
| Fall Creek Service Dist. | 678.73 | | 3,361.64 | 35.17% | 32.67% |
| Beaver Dam Fire | 7,578.46 | | 33,231.67 | 31.52% | 31.55% |
| Stewart Simmons Fire | 17,598.14 | | 92,870.60 | 35.12% | 29.56% |
| Zionville Fire | 6,589.35 | | 33,807.52 | 28.40% | 30.85% |
| Cove Creek Fire | 15,323.02 | | 80,770.22 | 33.18% | 31.61% |
| Shawneehaw Fire | 8,652.70 | | 41,870.31 | 39.00% | 34.33% |
| Meat Camp Fire | 9,969.48 | | 62,949.55 | 28.86% | 29.38% |
| Deep Gap Fire | 12,203.02 | | 58,926.37 | 30.30% | 28.67% |
| Todd Fire | 5,325.42 | | 21,901.02 | 34.82% | 36.67% |
| Blowing Rock Fire | 33,990.01 | | 191,193.69 | 37.93% | 37.39% |
| M.C. Creston Fire | 570.37 | | 1,823.29 | 30.53% | 30.31% |
| Foscoe Service District | 4,092.09 | | 26,226.76 | 34.72% | 28.59% |
| Beech Mtn. Service Dist. | 281.85 | | 382.96 | 23.10% | 31.13% |
| Cove Creek Service Dist. | 0.00 | | 12.20 | 3.76% | 3.76% |
| Shawneehaw Service Dist | 654.78 | | 1,833.97 | 27.41% | 26.28% |
| | \$203,903.98 | | \$1,104,487.42 | | |
| <u>Towns</u> | | | | | |
| Boone | 542,357.60 | | 1,892,607.66 | 28.00% | 29.18% |
| Municipal Services | 56,055.21 | | 90,838.98 | 43.43% | 32.58% |
| Boone MV Fee | NA | NA | NA | NA | NA |
| Blowing Rock | NA | NA | NA | NA | NA |
| Seven Devils | NA | NA | NA | NA | NA |
| Beech Mountain | NA | NA | NA | NA | NA |
| Total Town Taxes | \$598,412.81 | | \$1,983,446.64 | | |
| Total Amount Collected | \$3,397,635.98 | | \$16,244,294.67 | | |

 Tax Collections Director

 Tax Administrator

AGENDA ITEM 11:

TAX MATTERS

B. Refunds and Releases

MANAGER'S COMMENTS:

Mr. Larry Warren will present the Refunds and Releases Reports. Board action is required to accept the Refunds and Releases Reports.

10/29/2021 14:32
Larry.Warren

WATAUGA COUNTY
RELEASES - 10/01/2021 TO 10/29/2021

P 1
tncrapt

| OWNER NAME AND ADDRESS | CAT YEAR PROPERTY REASON | BILL | EFF DATE | JUR | REF NO | VALUE | CHARGE | AMOUNT |
|--|---|------|------------|-----|--------|--------|-----------------------------------|---|
| 1539663 BANNER MANOR CORP 600 SILVER SPRINGS DR BANNER ELK, NC 28604-7486 | PP 2021 539663999 TAX RELEASES BUSINESS SOLD | 2619 | 10/29/2021 | F01 | 7920 | 0 | G01 F01 G01L F01L | 102.72 12.75 10.27 1.28 <hr/> 127.02 |
| 1022094 BYRD, BERNICE 209 DOCK BYRD RD BANNER ELK, NC 28604- | RE 2021 1878-56-7000-000 TAX RELEASES EXEMPTION DID NOT TRANSFER | 1430 | 10/29/2021 | F01 | 7930 | 38,350 | F01 G01 | 19.18 154.55 <hr/> 173.73 |
| 1348234 DANCY, AGNES IRENE W 147 FRANK BROWN RD VILAS, NC 286928341 | PP 2021 348234999 TAX RELEASES SOLD MH IN 2019 | 2045 | 10/29/2021 | F07 | 7924 | 0 | SWF G01 F07 G01L F07L | 80.00 4.11 .51 .41 .05 <hr/> 85.08 |
| 1794566 HUNT, PETE HUNT, ANNE 1812 TOPSAIL LANE NORTH MYRTLE BEACH, SC 29582-6823 | PP 2020 3071 REFUND RELEASE SOLD IN 2019-NEW OWNER HAS LISTED AND PAID 2020 FORWARD | 3507 | 10/29/2021 | F12 | 7926 | 0 | F12 G01 SWF F12L G01L | 7.28 58.64 80.00 .73 5.86 <hr/> 152.51 |
| 1794566 HUNT, PETE HUNT, ANNE 1812 TOPSAIL LANE NORTH MYRTLE BEACH, SC 29582-6823 | PP 2020 3071 REFUND RELEASE SOLD IN 2019-NEW OWNER HAS LISTED AND Reversal of release | 3507 | 10/29/2021 | F12 | 7929 | 0 | F12 G01 SWF F12L G01L | -7.28 -58.64 -80.00 -.73 -5.86 <hr/> -152.51 |
| 1794566 HUNT, PETE HUNT, ANNE 1812 TOPSAIL LANE NORTH MYRTLE BEACH, SC 29582-6823 | PP 2021 3071 TAX RELEASES SOLD IN 2019 Reversal of release | 1129 | 10/29/2021 | F12 | 7927 | 0 | F12 G01 SWF F12L G01L | -7.06 -56.86 -80.00 -.71 -5.69 <hr/> -150.32 |

10/29/2021 14:32
Larry.Warren

WATAUGA COUNTY
RELEASES - 10/01/2021 TO 10/29/2021

P 2
tncraprt

| OWNER NAME AND ADDRESS | CAT YEAR PROPERTY REASON | BILL | EFF DATE | JUR | REF NO | VALUE | CHARGE | AMOUNT |
|---|--|------------------|------------|-----|--------------|------------|-----------------------------------|---|
| 1794566 HUNT, PETE HUNT, ANNE 1812 TOPSAIL LANE NORTH MYRTLE BEACH, SC 29582-6823 | PP 2021 3071 TAX RELEASES SOLD IN 2019 | 1129 | 10/29/2021 | F12 | 7925 | 0 | F12 G01 SWF F12L G01L | 7.06 56.86 80.00 .71 5.69 <hr/> 150.32 |
| 1558569 LOWES HOME CENTERS, INC ATTN: TAX DEPARTMENT 1000 LOWES BLVD MOORESVILLE, NC 28117 | RE 2021 2910-61-1916-000 TAX RELEASES PROPERTY TAX COMMISSION SETTLEMENT | 39945 | 10/29/2021 | C02 | 7921 | 3,424,200 | C02 G01 | 15,066.48 13,799.53 <hr/> 28,866.01 |
| 1558569 LOWES HOME CENTERS, INC ATTN: TAX DEPARTMENT 1000 LOWES BLVD MOORESVILLE, NC 28117 | RE 2021 2910-61-1916-000 TAX RELEASES PROPERTY TAX COMMISSION SETTLEMENT Reversal of release | 39945 | 10/29/2021 | C02 | 7922 7921 | -3,424,200 | C02 G01 | -15,066.48 -13,799.53 <hr/> -28,866.01 |
| 1558569 LOWES HOME CENTERS, INC ATTN: TAX DEPARTMENT 1000 LOWES BLVD MOORESVILLE, NC 28117 | RE 2021 2910-61-1916-000 TAX RELEASES PROPERTY TAX COMMISSION SETTLEMENT | 39945 | 10/29/2021 | C02 | 7923 | 3,424,200 | C02 G01 | 15,066.48 13,799.53 <hr/> 28,866.01 |
| 1748978 MOUNTAIN MYSTIC SPRAY TANNING LLC 285 HWY 105 EXT BOONE, NC 28607 | PP 2021 1229 TAX RELEASES BUSINESS CLOSED 2020 | 395 | 10/29/2021 | C02 | 7919 | 0 | C02 G01 | 35.77 32.76 <hr/> 68.53 |
| 1519481 RHYNE, ROBIN RHODES 349 LEISURE LN BOONE, NC 28607 | RE 2021 2809-46-7225-000 TAX RELEASES From CAMA Integration | 24741 | 10/28/2021 | F02 | 7931 | 0 | F02 G01 | 56.85 381.84 <hr/> 438.69 |
| DETAIL SUMMARY | COUNT: 12 | RELEASES - TOTAL | | | | 3,462,550 | | 29,759.06 |

10/29/2021 14:32
Larry.Warren

WATAUGA COUNTY
RELEASES - 10/01/2021 TO 10/29/2021

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tncrapt

RELEASES - CHARGE SUMMARY FOR ALL CLERKS

| YEAR | CAT | CHARGE | AMOUNT | |
|------|-----|--------|-----------------------------|-----------|
| 2020 | PP | F12 | BLOWING ROCK FIRE PP | .00 |
| 2020 | PP | F12L | BLOWING ROCK FIRE LATE LIST | .00 |
| 2020 | PP | G01 | WATAUGA COUNTY PP | .00 |
| 2020 | PP | G01L | WATAUGA COUNTY LATE LIST | .00 |
| 2020 | PP | SWF | SANITATION USER FEE | .00 |
| | | | 2020 TOTAL | .00 |
| 2021 | RE | C02 | BOONE RE | 15,066.48 |
| 2021 | RE | F01 | FOSCOE FIRE RE | 19.18 |
| 2021 | RE | F02 | BOONE FIRE RE | 56.85 |
| 2021 | RE | G01 | WATAUGA COUNTY RE | 14,335.92 |
| 2021 | PP | C02 | BOONE PP | 35.77 |
| 2021 | PP | F01 | FOSCOE FIRE PP | 12.75 |
| 2021 | PP | F01L | FOSCOE FIRE LATE LIST | 1.28 |
| 2021 | PP | F07 | COVE CREEK FIRE PP | .51 |
| 2021 | PP | F07L | COVE CREEK FIRE LATE LIST | .05 |
| 2021 | PP | F12 | BLOWING ROCK FIRE PP | .00 |
| 2021 | PP | F12L | BLOWING ROCK FIRE LATE LIST | .00 |
| 2021 | PP | G01 | WATAUGA COUNTY PP | 139.59 |
| 2021 | PP | G01L | WATAUGA COUNTY LATE LIST | 10.68 |
| 2021 | PP | SWF | SANITATION USER FEE | 80.00 |
| | | | 2021 TOTAL | 29,759.06 |
| | | | SUMMARY TOTAL | 29,759.06 |

10/29/2021 14:32
Larry.Warren

WATAUGA COUNTY
RELEASES - 10/01/2021 TO 10/29/2021

P 4
tncrapt

RELEASES - JURISDICTION SUMMARY FOR ALL CLERKS

| JUR | YEAR | CHARGE | AMOUNT | |
|-----|------|---------------|-----------------------------|-----------|
| C02 | 2021 | C02 | BOONE PP | 15,102.25 |
| C02 | 2021 | G01 | WATAUGA COUNTY PP | 13,832.29 |
| | | C02 TOTAL | | 28,934.54 |
| F01 | 2021 | F01 | FOSCOE FIRE PP | 31.93 |
| F01 | 2021 | F01L | FOSCOE FIRE LATE LIST | 1.28 |
| F01 | 2021 | G01 | WATAUGA COUNTY PP | 257.27 |
| F01 | 2021 | G01L | WATAUGA COUNTY LATE LIST | 10.27 |
| | | F01 TOTAL | | 300.75 |
| F02 | 2021 | F02 | BOONE FIRE RE | 56.85 |
| F02 | 2021 | G01 | WATAUGA COUNTY RE | 381.84 |
| | | F02 TOTAL | | 438.69 |
| F07 | 2021 | F07 | COVE CREEK FIRE PP | .51 |
| F07 | 2021 | F07L | COVE CREEK FIRE LATE LIST | .05 |
| F07 | 2021 | G01 | WATAUGA COUNTY PP | 4.11 |
| F07 | 2021 | G01L | WATAUGA COUNTY LATE LIST | .41 |
| F07 | 2021 | SWF | SANITATION USER FEE | 80.00 |
| | | F07 TOTAL | | 85.08 |
| F12 | 2020 | F12 | BLOWING ROCK FIRE PP | .00 |
| F12 | 2020 | F12L | BLOWING ROCK FIRE LATE LIST | .00 |
| F12 | 2020 | G01 | WATAUGA COUNTY PP | .00 |
| F12 | 2020 | G01L | WATAUGA COUNTY LATE LIST | .00 |
| F12 | 2020 | SWF | SANITATION USER FEE | .00 |
| F12 | 2021 | F12 | BLOWING ROCK FIRE PP | .00 |
| F12 | 2021 | F12L | BLOWING ROCK FIRE LATE LIST | .00 |
| F12 | 2021 | G01 | WATAUGA COUNTY PP | .00 |
| F12 | 2021 | G01L | WATAUGA COUNTY LATE LIST | .00 |
| F12 | 2021 | SWF | SANITATION USER FEE | .00 |
| | | F12 TOTAL | | .00 |
| | | SUMMARY TOTAL | | 29,759.06 |

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AGENDA ITEM 12:

FINANCE MATTERS

A. FY 2021 Carry Forward Purchase Orders

MANAGER'S COMMENTS:

Ms. Watson will present carry forward purchase orders for Fiscal Year 2021.

Board action is required to approve the carry forward purchase order as presented.

Carry Forward Purchase Orders

111621 BCC Meeting

| Account | Description | Purpose | Amount | PO# |
|---------------|---|---|--------------|----------|
| 104141-429000 | Marketspace Solutions | Monitors for revaluation | 3,829.00 | 20201187 |
| 104141-469500 | Vincent Valuations | Revaluation for commercial and residential properties | 207,173.00 | 2021201 |
| 104180-451000 | Antivirus Security | Antivirus security | 1,000.00 | 2021181 |
| 104199-469103 | Clark Nexsen | Facilities study | 7,500.00 | 2020118 |
| 104210-439500 | Vermont Systems | Training for software for CRC | 2,926.74 | 2019148 |
| 104210-439500 | Vermont Systems | Rec Trac training | 4,160.00 | 2020103 |
| 104210-442201 | Rec Trac | Rec Trac software for CRC | 480.00 | 2019148 |
| 104210-442201 | Antivirus Security | Antivirus security | 9,500.00 | 2021181 |
| 104210-442201 | Tyler Technologies | ESS module | 1,500.00 | 2020038 |
| 104210-442201 | Tyler Technologies | Crystal reporting module | 4,940.00 | 2020221 |
| 104210-444000 | Rec Trac | Maintenance for Rec Trac for CRC | 1,357.37 | 2019148 |
| 104210-444000 | Tyler Technologies | ESS maintenance | 897.04 | 2020038 |
| 104210-444000 | Vermont Systems | Rec Trac maintenance | 211.79 | 2020103 |
| 104210-452000 | Firewall | IT - Firewall | 25,000.00 | 2021198 |
| 104261-435100 | Muter | Courthouse roof | 634,777.00 | 2021111 |
| 104263-435101 | Admin roof | Admin building roof | 10,285.50 | 2021111 |
| 104267-435101 | Carolina Pavement Technology | Sealing and striping admin lot | 8,564.00 | 2021154 |
| 104272-458000 | Western Watauga Community Center | Renovations for grant received | 3,491.00 | 2020242 |
| 104273-435101 | Carolina Pavement Technology | Sealing and striping parking lots | 3,504.00 | 2021154 |
| 104273-458000 | Parking deck study | Parking deck study | 64,175.47 | 2021201 |
| 104275-435101 | Carolina Pavement Technology | Sealing and striping human services lot | 18,058.00 | 2021154 |
| 104277-435100 | Midway Carpet | LEC carpet replacement | 4,847.44 | 2021175 |
| 104283-135103 | CRC relocation of fields, tennis courts, basketball and pickle ball | CRC relocation of fields, tennis courts, basketball and pickle ball | 335,416.69 | 2021201 |
| 104283-135103 | Triangle Fence | Color coating, striping and equipment at Sports Complex | 58,250.00 | 2021115 |
| 104283-135103 | Tri-County Paving | paving at Sports Complex | 104,298.99 | 2021116 |
| 104283-135103 | McCall Commercial Fencing | Fencing at Sports Complex | 22,647.59 | 2021114 |
| 104283-457006 | JW Hampton | Middlefork Greenway Sect 4 | 1,204,298.00 | 2021178 |
| 104285-457007 | South Fork New River Phase II | South Fork New River Phase II | 68,167.80 | 2021201 |
| 104289-456000 | Community Rec Center equipment | Small cleaning equipment | 8,161.47 | 2021201 |
| 104289-458003 | Timmons Group Design Services for Watauga County | Engineering and design of the outdoor facilities at the new Community Recreation Center | 3,410.00 | 2019149 |
| 104310-421200 | Dana Safety | Ballistic duty vests | 4,378.20 | 2021186 |
| 104310-439501 | Dana Safety | Ammunition | 1,500.00 | 2021184 |
| 104310-454000 | Police upfitting on vehicles | Police upfitting on vehicles | 26,488.92 | 2021173 |
| 104310-454000 | Dana Safety | K-9 kennel for Durango | 4,173.00 | 2021185 |
| 104310-454000 | Ilderton Dodge | Police vehicles (7) | 211,236.00 | 2021137 |
| 104310-454000 | NCDMV | Taxes and tag on vehicles | 6,412.58 | 2021138 |
| 104310-454000 | Piedmont Specialty Vehicle | Emergency equipment for vehicles | 8,250.00 | 2021189 |
| 104310-454000 | Mobile Communications | Kenwood Viking Dual radio | 4,583.50 | 2020222 |
| 104311-451000 | Emergency Management Equipment upgrades | Emergency Management Equipment upgrades | 96,484.49 | 2021201 |
| 104311-451008 | Emergency Management Tower Upgrades | Emergency Management Tower Upgrades | 6,111.05 | 2021201 |
| 104380-454000 | Animal Control vehicle replacement | Animal Control vehicle replacement | 24,795.00 | 2021201 |
| 104920-463000 | Artemis Independent | Boonies Videos | 10,000.00 | 2020053 |
| 104960-429002 | No Till Drill | Carry forward per Grant | 3,829.76 | 2016238 |

Carry Forward Purchase Orders

111621 BCC Meeting

| | | | | |
|---------------|---|--|--------------|---------|
| 104960-449902 | Bill Edmisten Memorial donations | Memorial donations | 380.61 | 2010369 |
| 104960-449917 | Wards Mill Dam Removal | Wards Mill Dam Removal | 102,443.75 | 2021201 |
| 104960-469853 | Soil and Water Special Allocation | Soil and Water Special Allocation | 4,577.98 | 2021202 |
| 105550-449901 | POA carry forward funds | Carry forward MIPAA grant funds | 3,020.00 | 2021194 |
| 105550-449902 | POA carry forward funds | Carry forward Exxon grant funds | 5,826.21 | 2021197 |
| 106120-412600 | Childcare part-time salaries Rec Center | Childcare part-time salaries Rec Center | 20,000.00 | 2021195 |
| 106120-449900 | Carry forward senior games | Senior games | 7,263.73 | 2016237 |
| 145310-449902 | Foster Care Discretionary Funds | Carry forward foster care funds | 3,689.39 | 2021199 |
| 145310-449903 | Adult Protective Services | Carry forward adult protective service funds | 1,836.47 | 2021199 |
| 145310-449904 | CPS Discretionary Funds | Carry forward CPS funds | 1,354.28 | 2021199 |
| 145410-440006 | Adoption promotion | Adoption promotion | 1,144.91 | 2021199 |
| 145310-442201 | Antivirus Security | Antivirus security | 2,500.00 | 2021181 |
| 264330-422000 | Priority Dispatch | Annual maintenance | 16,800.00 | 2021050 |
| 505914-469103 | Clark Nexsen | Valle Crucis School architect | 2,457,750.00 | 2021192 |
| 667420-441100 | Rent at container site | Container Site | 4,400.00 | 2020233 |
| 667420-449966 | Antivirus Security | Antivirus security | 500.00 | 2021181 |
| 667420-457001 | Padco Excavating | Transfer station improvements | 163,789.97 | 2021168 |
| 667420-457001 | Transfer station improvements | Stormwater pond, trailer storage, transfer station, scale turning lane, and inbound scale improvements | 1,573,837.00 | 2021181 |

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AGENDA ITEM 12:

FINANCE MATTERS

B. Proposed Inmate Catastrophic Insurance Contract

MANAGER'S COMMENTS:

Ms. Misty Watson, Finance Director, will present the contract renewal with Insurance Management Consultants for catastrophic insurance for inmates housed in the County jail. The insurance shields the County from large medical claims that occur while inmates are being housed in the Watauga County Jail.

Board action is required to approve the contract with Insurance Management Consultants, Inc. for catastrophic insurance coverage for \$25,328.52, a \$11,567 decrease, with a \$5,000 deductible. Adequate funds are available to cover the contracted cost.



WATAUGA COUNTY

FINANCE OFFICE

814 West King St., Room 216 - Boone, NC 28607 - Phone (828) 265-8007 Fax (828) 265-8006

MEMORANDUM

TO: Deron Geouque, County Manager
FROM: Misty Watson, Finance Director
SUBJECT: Inmate Catastrophic Insurance Contract
DATE: November 9, 2021

Attached please find information on the renewal contract from Insurance Management Consultants, Inc. (administered through Hunt Insurance Group, LLC) for the insurance policy for large medical claims incurred on behalf of inmates in the County's care. The renewal amount is \$25,328.52 with the \$5,000 deductible. This represents an \$11,567 decrease from last year's premium. Funds of \$45,000 are available in the current detention budget for this contract. Option 1 includes prior to booking coverage and option 2 excludes the booking coverage. Based on prior claims, I recommend the acceptance of option 2 with a \$5,000 deductible.

Board approval is requested for the contract.



Date of Proposal: October 11, 2021
 Proposed Insured: Watauga County Sheriff's Office
 City, State: Boone, NC
 Facilities Include: Watauga County Detention Center
 Issuing Company: Sirius America Insurance Company, A.M. Best Rating "A-" Excellent
 Coverage Type: Limited Health Expense Benefits - provided outside the walls of the facility, or facilities, listed above and as outlined in the Insurance Policy.
 Policy Form: Blanket Accident Medical
 Effective Date: December 1, 2021
 Number of Inmates: 69

| Specific Coverage: | Option 1 | Option 2 |
|---|---|---|
| Per Inmate Deductible: | \$5,000 | \$5,000 |
| Per Inmate Coverage Limit: | \$250,000 | \$250,000 |
| Policy Maximum: | \$1,000,000 | \$1,000,000 |
| Rate Per Inmate Per Month: | \$45.89 | \$30.59 |
| Prior to Booking / During Pursuit Coverage: | Included | Excluded |
| Claim Accumulation Basis: | Eligible Medical Services shall accumulate to satisfy the Per Inmate Deductible as outlined below and be reimbursed at the following: | |
| Covered Expenses: | | |
| In-Patient Hospital Services: | Per NC Statutes 153A-225.2 and 148-19.3 | Per NC Statutes 153A-225.2 and 148-19.3 |
| Outpatient Hospital Services: | | |
| Physician Services: | | |
| Outpatient Diagnostic and Lab Services: | | |
| Ambulance Services: | | |
| Medical Services and Supplies: | | |
| Dialysis: | | |
| Prescription Drugs: | Limited to those provided and administered during a Hospital Stay. Specialty Drugs are not covered. | Limited to those provided and administered during a Hospital Stay. Specialty Drugs are not covered. |
| TOTAL ANNUAL PREMIUM: | \$37,996.92 | \$25,328.52 |

Conditions and Assumptions

- Includes coverage for AIDS/HIV & Pregnancy; Specialty Drugs are excluded.
- Mental and Nervous or Substance Abuse benefits are excluded from coverage.
- This proposal is based on data submitted and other information furnished relevant to underwriting the risk, including all claims or possible claims, paid, pending, or denied pending additional information, or which the prospective insured or authorized representative should otherwise be aware of. Any inaccuracy in the data submitted or failure to disclose any such information can change the terms, conditions, rates, or factors of this offer or can void offer and coverage.
- Claim Provisions:

| | |
|------------------------------------|-------------------|
| From: | To: |
| Claims Incurred: December 1, 2021 | November 30, 2022 |
| Claims Reported: December 1, 2021 | May 31, 2023 |
| Claims Submitted: December 1, 2021 | May 31, 2023 |
- This proposal is valid for the stated effective date shown above provided the prospective insured or its authorized representative elects one of the above options by November 30, 2021, by submitting a signed application, which will be provided after your selection is made. Until we obtain the signed application, the rates and factors are subject to change as additional information is received.
- Acceptance of this quote is contingent upon and subject to the actual terms of the policy as issued, which occurs upon binding and premium payment. If there is any conflict between this quote and the policy, the policy will govern in all cases.

Desired Coverage: Option 1 Option 2

Printed Name: _____ Title: _____ Date: _____

Signature of Prospective Insured: _____



North Carolina Sheriffs' Association

Catastrophic Inmate Medical Insurance Administered by: Hunt Insurance Group, LLC
 2075 Center Pointe Blvd. Ste. 101, Tallahassee, FL 32308 ☎ Toll Free: (800) 763-4868 ☎ huntbenefits@huntins.com ☎ www.inmatemedicalinsurance.com

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AGENDA ITEM 13:**MISCELLANEOUS ADMINISTRATIVE MATTERS*****A. Proposed Acceptance of Communications Grant on Behalf of NC State Highway Patrol
TSU/NCEM*****MANAGER'S COMMENTS:**

Board approval is requested to accept the grant as a subrecipient from the Homeland Security Grant Program (HSGP) in the amount of \$400,000 for the VIPER System for their use in installing a microwave monitoring system throughout the state. The system will be in use at multiple radio sites within Watauga County and is a critical upgrade which benefits our public safety radio systems. The grant is similar to the \$350,000 grant that was previously accepted for radios for our State EM local members.

Board action is required to accept the grant as a subrecipient from the Homeland Security Grant Program (HSGP) in the amount of \$400,000.



Watauga County Emergency Services

184 Hodges Gap Rd, Suite D
Boone, NC 28607
Phone 828-264-4235
Fax 828-265-7617



Fire Marshal ♦ Emergency Management ♦ Communications

November 4, 2021

To: Board of Commissioners

CC: Deron Geouque, County Manager
Misty Watson, Finance Director
Anita Fogle, Clerk to the Board

Subject: Acceptance of Communications Grant on behalf of NCSHP TSU/NCEM

Board of Commissioners,

Please consider my request to accept the FY21 HSPG Grant as a subrecipient on behalf of North Carolina Emergency Management (NCEM) and the NC State Highway Patrol VIPER System for their use in installing a microwave monitoring system for use in all 100 Counties and the Eastern Band of the Cherokee Indians. This grant is in the amount of \$400,000.00 and will be executed by the NC State Highway Patrol. This system will be in use at multiple radio sites within Watauga County and is a critical upgrade which benefits our public safety radio systems.

Respectfully,

Will Holt
ES Director

Roy Cooper, Governor
Eddie M. Buffaloe Jr., Secretary

William C. Ray, Director

Homeland Security Grant Program (HSGP)

Fiscal Year 2021

AL #: 97.067

Grant#: EMW-2021-SS-00039

SUBAWARD NOTIFICATION

William Holt
Watauga County
184 Hodges Gap Rd
Boone, NC 28607-8736

Period of Performance: October 1, 2021 to February 28, 2024
Project Title: VIPER Microwave Monitoring System - Telenium
Total Amount of Award: \$400,000.00
MOA #: 2140046

North Carolina Emergency Management (NCEM) is pleased to inform you that the federal Fiscal Year (FY) 2021 Homeland Security Grant Program (HSGP) has been approved for funding. In accordance with the provisions of FY 2021 HSGP award, NCEM hereby awards to the foregoing subrecipient a grant in the amount shown above.

Payment of funds: The grant shall be effective upon final approval by NCEM of the grant budget and program narrative and the execution of the forthcoming Memorandum of Agreement. Grant funds will be disbursed (according to the approved project budget) upon receipt of evidence that funds have been invoiced and products received and/or that funds have been expended (i.e., invoices, contracts, itemized expenses, etc.).

Conditions: The subrecipient shall understand and agree that funds will only be expended for those projects outlined in the funding amounts as individually listed above. Subrecipient shall also certify the understanding and agreement to comply with the general and fiscal terms and conditions of the grant including special conditions; to comply with provisions of the 2 CFR 200 and all applicable laws governing these funds and all other federal, state and local laws; that all information is correct; that there has been appropriate coordination with affected agencies; that subrecipient is duly authorized to commit the applicant to these requirements; that costs incurred prior to grant application approval will result in the expenses being absorbed by the subrecipient; and that all agencies involved with this project understand that federal funds are limited to the period of performance. Subrecipient must read and sign forthcoming Memorandum of Agreement for acceptance of the award.

For projects involving construction or the installation of equipment:

Prior to funds being expended from this award the subrecipient must complete and submit an Environmental Planning and Historical Preservation form to NCEM for approval. On receipt of the approval letter from NCEM the subrecipient may begin to expend grant funds.

Supplanting: The subrecipients confirm that sub-grant funds will not be used to supplant or replace local or state funds or other resources that would otherwise have been available for homeland security activities. In compliance with that mandate, the subrecipient will certify that the receipt of federal funds through NCEM shall in no way supplant or replace state or local funds or other resources that would have been made available for homeland security activities.

GRANT AWARD NOTICE: THIS AWARD IS SUBJECT TO THE GRANT SPECIAL CONDITIONS AND FINAL APPROVAL BY THE DEPARTMENT OF PUBLIC SAFETY, NORTH CAROLINA EMERGENCY MANAGEMENT GRANT PROGRAM BUDGET AND NARRATIVE



MAILING ADDRESS
4236 Mail Service Center
Raleigh NC 27699-4236
www.readync.org
www.ncdps.gov

OFFICE LOCATION
1636 Gold Star Drive
Raleigh, NC 27607-3371
Telephone: (919) 825-2500
Fax: (919) 825-2685



North Carolina Department of Public Safety

Emergency Management

Roy Cooper, Governor
Eddie M. Buffaloe Jr., Secretary

William C. Ray, Director

Homeland Security Grant Program (HSGP)

Fiscal Year 2021

AL #: 97.067

Grant #: EMW-2021-SS-00039

Memorandum of Agreement (MOA)

between

Recipient:

State of North Carolina
Department of Public Safety
Emergency Management

Subrecipient:

Watauga County
Tax ID/EIN #: 566001816-A
Duns #: 08-998-8216

MOA #: 2140046

Award amount: \$400,000.00

Period of performance:

October 1, 2021 to February 28, 2024

1. Purpose

The purpose of this Memorandum of Agreement (MOA) is to establish responsibilities and procedures to implement the terms and conditions of the US Department of Homeland Security (DHS) Homeland Security Grant Program (HSGP). More information about HSGP is available at: <https://www.fema.gov/grants/preparedness/homeland-security>. This MOA is to set forth terms by which the Recipient, State of North Carolina, Department of Public Safety, North Carolina Emergency Management (NCEM), shall provide HSGP funding to the Subrecipient to fund projects related to Homeland Security Planning, Operations, Equipment purchases, Training and Exercises. For a more detailed description of the approved Scope of Work see Attachment 1.

2. Program Authorization and Regulations

This MOA is authorized under the provisions of: (1) Section 2002 of the *Homeland Security Act of 2002* (Pub. L. No. 107-296, as amended) (6 U.S.C. § 603 - § 609), (2) *Department of Homeland Security Appropriations Act, 2021* (Pub. L. No. 116-260), (3) FY 2021 HSGP Notice of Funding Opportunity (NOFO): <https://www.fema.gov/media-collection/homeland-security-grant-notices-funding-opportunity>, (4) applicable FEMA Grant Programs Directorate Information Bulletins (see <https://www.fema.gov/grants/preparedness/about/informational-bulletins>), and (5) *NC Emergency Management Act*, North Carolina General Statutes (N.C.G.S.) Chapter 166A.

The funds awarded under this grant must be used in compliance with all applicable federal, state, local and tribal laws and regulations, including N.C.G.S. §§ 143C-6-21, 143C-6-22, 143C-6-23 and 09 NCAC 03M. By accepting this award, the Subrecipient agrees to use these funds in a manner consistent with all applicable laws and regulations.

3. Projects managed by Recipient (NCEM) on behalf of Subrecipient - Return of Funds

___ By initialing, Subrecipient requests that Recipient (NCEM on behalf of State of North Carolina) retains all funds awarded to Subrecipient under this grant. Subrecipient desires for NCEM and/or its assigns to conduct the activities described in Attachment 1 of this MOA on its behalf. These activities are related to planning, making equipment purchases, and conducting training and exercises to improve prevention, protection, preparedness, response, and recovery capabilities. Subrecipient relieves itself from the requirements set forth in this MOA with respect to all funds returned to Recipient.

4. Assignment of Funds by Subrecipient to Designated Third Party (not NCEM)

___ By initialing, Subrecipient agrees to assign all funds awarded under this grant to a designated third party (an entity/organization other than NCEM). Subrecipient and designated third party agree to complete Appendix 6 to this MOA, which is to be signed by both parties, designating third party to assume responsibility for all requirements set forth in this MOA with respect to all funds assigned to third party.

5. Compensation

Recipient agrees that it will pay Subrecipient compensation for eligible services to be rendered by Subrecipient. Payment to Subrecipient for expenditures under this MOA will be reimbursed after Subrecipient's cost report is submitted and approved for eligible scope of work activity. Grant funds will be disbursed (according to the approved project budget) upon receipt of evidence that funds have been invoiced, products or services received (i.e., invoices, contracts, itemized expenses, etc.), and proof of payment is provided.

Subrecipients must meet all reimbursement requirements contained herein. Non-compliance may result in denial of reimbursement request(s) or revocation of equipment and/or grant funds awarded for this project. See also paragraph 9 below regarding compliance.

6. Funding Eligibility Criteria

Federal funds administered through Recipient (NCEM on behalf of State of North Carolina) are available to local governments to assist in the cost of developing and maintaining a comprehensive homeland security response program. Continued HSGP funding is contingent upon completion of all HSGP funding requirements. The following eligibility criteria must be adhered to during the entire duration of the grant program:

A. Recipient/Subrecipient must:

- i. Be established as a state, local, or nonprofit agency by appropriate resolution/ordinance.
- ii. Subrecipient must have a DUNS number, prior to any funds being released. DUNS numbers may be obtained from either of the following websites: www.dnb.com or <http://fedgov.dnb.com/webform>.
- iii. Each subrecipient shall ensure their organization is registered with the System for Award Management (SAM). Every applicant is required to have their name, address, DUNS number and EIN up to date in SAM, and the DUNS number used in SAM must be the same one used to apply for all FEMA awards. SAM information can be found at <http://www.sam.gov>. Future payments will be contingent on the information provided in SAM; therefore it is imperative that the information is correct.
- iv. Complete any procurement(s) and expenditures no later than February 28, 2024.
- v. Provide quarterly progress reports to NCEM Grant Managers (ncemgrants1@ncdps.gov) using the grant Quarterly Report form (Attachment 2), by the following dates: *January 15th, April 15th, July 15th and October 15th*.
- vi. Submit requests for reimbursement with all required documentation attached.

B. File Retention (see Attachment 5 "Required Subrecipient File Documentation"):

Subrecipient is required to maintain records and (invoices) of this grant for three years after termination of the grant, or audit if required, or longer where required by law, as outlined below, attached and incorporated by reference. Recipient must meet the record retention requirements in 2 CFR 200.334 and must maintain a file for each HSGP grant award. However, if any litigation, claim or audit has been initiated prior to the expiration of the three-year period and extends beyond the five-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The following files must be available for review by NCEM staff for site visits, project closeout and audits:

- i. Resolution/ordinance establishing Subrecipient as a state or local government, or nonprofit organization.
- ii. Award letter, MOA, and supporting appendices.
- iii. Completed appropriate reports with specifications, solicitations, competitive quotes or proposals, basis for selection decisions, purchase orders, contracts, invoices and proof(s) of payment.
- iv. Audit findings and corrective action plans.
- v. Equipment inventory records with photo documentation of labeling using labels provided by NCEM.

7. Conditions

The Subrecipient certifies that it understands and agrees that funds will only be expended for those projects outlined in the funding amounts as individually listed in the FY 2021 HSGP Application packet, incorporated by reference herein. The Recipient and Subrecipient certify that each understands and agrees to comply with the general and fiscal terms and conditions of the grant including special conditions; to comply with provisions of the applicable laws, rules and

policies governing these funds; that all information is correct; that there has been appropriate coordination with affected agencies; that the Recipient is duly authorized to commit the Subrecipient to these requirements; that costs incurred prior to grant application approval will result in the expenses being absorbed by the Subrecipient; and that all agencies involved with this project understand that all federal funds are limited to the federal period of performance.

8. Supplantation

Subrecipients are required to assure and certify that these grant funds will not be used to supplant or replace local or state funds or other resources that would otherwise have been available for homeland security activities. Subrecipients may be required to supply documentation certifying that a reduction in non-federal resources occurred for reasons other than the receipt or expected receipt of federal funds.

9. Compliance

Subrecipient shall comply with applicable federal, state, local and/or tribal statutes, regulations, ordinances, licensing requirements, policies, guidelines, reporting requirements, certifications and other regulatory matters for the conduct of its business and purchase requirements performed under this MOA. This includes all requirements contained in the applicable FY 2021 HSGP NOFO referenced in paragraph 2 above. Subrecipient shall be wholly responsible for the purchases made under this MOA and for the supervision of its employees and assistants.

Failure to comply with the specified terms and conditions of this MOA may result in the return of funds and any other remedy for noncompliance specified in 2 CFR 200.339, and/or termination of the award per 2 CFR 200.340. Additional conditions may also be placed upon Subrecipient for noncompliance with the specified terms and conditions of this MOA, including (but not limited to) additional monitoring.

10. Responsibilities

Recipient:

- A. Recipient shall provide funding to Subrecipient to perform the activities as described herein.
- B. Recipient shall conduct a review of the project to ensure that it is in accordance with HSGP requirements.
- C. The federal award date is October 1, 2021. Funds allocated must be encumbered and invoices received by NCEM by February 28, 2024.
- D. Recipient shall directly monitor the completion of this project.

Subrecipient:

- A. This MOA must be signed and returned to NCEM within 45 days after Subrecipient receives notice of this award. The grant shall be effective upon return of the executed Grant Award and MOA and final approval by NCEM of the grant budget and program narrative.
- B. The Subrecipient shall expend FY 2021 HSGP Grant Program funds in accordance with the FY2021 HSGP NOFO, the grant application, and Subaward Notification.
- C. Closeout Reporting Requirements. In accordance with 2 CFR 200.344, Subrecipient must submit to Recipient, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the federal award, this MOA and [DHS Standard Terms and Conditions](#) (Attachment 4), incorporated by reference herein, for the performance of the activities.
- D. Procurement. The Subrecipient shall utilize State of North Carolina and/or local procurement policies and procedures for the expenditure of funds, and conform to applicable state and federal law and the standards identified in 2 CFR 200.317 – 200.327. Subrecipient must follow procurement procedures and policies as outlined in the applicable FY2021 HSGP NOFO, Appendix II of 2 CFR Part 200-Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and the 2021 FEMA Preparedness Grants Manual. Subrecipient shall comply with all applicable laws, regulations and program guidance. Subrecipient must comply with the most recent version of the funding administrative requirements, cost principles, and audit requirements. Administrative and procurement practices must conform to applicable federal requirements. A non-exclusive list of regulations commonly applicable to DHS grants are listed below, codified in the following guidance: 15 CFR Part 24; Federal Acquisition Regulations (FAR), Part 31.2; 28 CFR Part 23 “Criminal Intelligence Systems Operating Policies”; 49 CFR Part 1520 “Sensitive Security Information”; Public Law 107-296, The Critical Infrastructure Act of 2002; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000 et. seq.; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et. seq; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C.

794; The Age Discrimination Act of 1975, as amended, 20 U.S.C. 6101 et. seq.; Cash Management Improvement Act (CMIA) and its implementing regulations at 31 CFR Part 205; FEMA Grant Programs Directorate, Grants Management Division, Match Guidance; Certifications and Assurances regarding Lobbying 31 U.S.C. 1352, Drug-Free Workplace Act, as amended, 41 U.S.C. 701 et. seq. and Certification Regarding Drug-Free Workplace Requirements, Debarment and Suspension Executive Orders 12549 and 12689 and certification regarding debarment, suspension and other responsibility matters; 28 CFR Parts 66, 67, 69, 70 and 83; and Grant Award and Special Conditions documents.

- E. Submit invoice(s) requesting reimbursement for item(s) received to NCEM Grants Management Branch (ncemgrants1@ncdps.gov). Recipient will reimburse Subrecipient for eligible costs as outlined in the applicable DHS program guidelines and FY2021 HSGP NOFO . Subrecipient must take possession of all purchased equipment and receive any grant-eligible service prior to seeking reimbursement from the Recipient. Subrecipient must submit request for reimbursement within 60 days of payment of invoice. Requests for reimbursement submitted more than 60 days after Subrecipient payment of invoice may be denied.
- F. Complete the procurement(s) process not later than February 28, 2024.
- G. Provide quarterly progress reports to NCEM Grant Managers (ncemgrants1@ncdps.gov) using the grant Quarterly Report form (Attachment 2), by the following dates: January 15th, April 15th, July 15th and October 15th.
- H. Maintain a grant management filing system as required in this MOA (Attachment 5).
- I. Provide a list at project Closeout to NCEM Grants Management Branch (ncemgrants1@ncdps.gov), DPR Chair, and Branch Office of all items purchased through this grant. This information is to be reported on the “Grant-Funded Typed Resource Report” (Attachment 3) or similar spreadsheet. See FEMA Resource Typing Library Tool (RTLTL) at <https://rtlt.preptoolkit.fema.gov/Public>.
- J. Comply with the applicable federal statutes, regulations, policies, guidelines and requirements, reporting requirements and certifications as outlined in the FY 2021 HSGP NOFO and Subaward Notification, and [DHS Standard Terms and Conditions](#) (Attachment 4).
- K. Comply with current federal laws and suspension and debarment regulations pursuant to 2 CFR 200.213 – 200.214, 2 CFR Part 180 and U.S. Office of Management and Budget (OMB) Guidance, which requires in pertinent part that when a non-federal entity enters into a covered transaction with an entity at a lower tier, the non-federal entity must verify that the entity is not suspended or debarred or otherwise excluded. Subrecipient shall be responsible to ensure that it has checked the federal System for Awards Management (SAM), <https://sam.gov/content/exclusions> and the State Debarred Vendors Listing, <https://ncadmin.nc.gov/documents/nc-debarred-vendors>, to verify that contractors or subrecipients have not been suspended or debarred from doing business with the federal government.
- L. Ensure that HSGP funds are not used to support hiring sworn public safety officers for the purposes of fulfilling traditional public safety duties or to supplant traditional public safety positions and responsibilities.
- M. Non-Supplanting Requirement. See paragraph 8 (Supplantation).
- N. All materials publicizing or resulting from award activities shall contain this acknowledgement: “This project was supported by a federal award from the US Department of Homeland Security, Department of Public Safety, North Carolina Emergency Management.” Use of the federal program logo must be approved by DHS. Printed as a legend, either below or beside the logo shall be the words “Funded by US Department of Homeland Security”.
- O. Subrecipient shall have sole responsibility for the maintenance, insurance, upkeep, and replacement of any equipment procured pursuant to this MOA as follows:
 - i. Recipient and Subrecipient shall take an initial physical inventory of any equipment. Equipment is defined as tangible, non-expendable property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Subrecipient may have property management guidelines that are more restrictive, requiring a unit of equipment with a value of less than \$5,000 to be inventoried. If so, such equipment purchased under this award allocation shall be included on the report submitted to Recipient. The grant summary, cost reports with backup documentation, certificate of title, and any other Subrecipient reports or inventory reports that include information regarding the grant, vendor, invoice number, cost per item, number of items, description, location, condition and identification number may be used to meet this requirement.

- ii. Subrecipient must ensure a control system exists to ensure adequate safeguards to prevent loss, damage or theft. Subrecipient shall be responsible for replacing or repairing equipment which is willfully or negligently lost, stolen, damaged, or destroyed. Any loss, damage or theft of the property must be investigated and fully documented, and made part of the official project records.
 - iii. Subrecipient or equipment owner must ensure adequate maintenance procedures exist to keep the equipment in good condition.
 - iv. Disposition Procedures. Unless otherwise directed by NCEM, DHS and/or FEMA, Subrecipient may dispose of the equipment when the original or replacement equipment acquired under the grant award is no longer needed for the original project or program, or for other activities currently or previously supported by a federal awarding agency. However, Subrecipient must notify NCEM Grants Management Branch prior to disposing of any equipment purchased with grant funds. Items with a fair market value of less than \$5,000 may be retained, transferred or otherwise disposed of with prior approval of NCEM and in accordance with disposition requirements in 2 CFR 200.313. Unless otherwise directed by NCEM, DHS and/or FEMA, items with a current per unit standard federal or fair market value in excess of \$5,000 may be retained, transferred or otherwise disposed of with prior NCEM approval in accordance with disposition requirements in 2 CFR 200.313. Subrecipient must provide documentation that includes the method used to determine current fair market value.
 - v. Only allowable equipment listed in the [Authorized Equipment List \(AEL\)](#) for HSGP are eligible for purchases from this grant.
- P. Property and Equipment. Property and equipment purchased with HSGP funds shall be titled to Subrecipient, unless otherwise specified by NCEM, DHS and/or FEMA. Subrecipient shall be responsible for the custody and care of any property and equipment purchased with HSGP funds furnished for use in connection with this MOA, and shall reimburse the Recipient for any loss or damage to said property until the property is disposed of in accordance with HSGP Program requirements. Recipient will not be held responsible for any property purchased under this MOA. Subrecipient must utilize all property and equipment as intended in their project application to NCEM. Any variation from this intended use must be requested in writing and approved by NCEM. Any property and equipment purchased under the HSGP grant, including this specific grant award to Subrecipient, is subject to use as a regional asset to be utilized and directed by DHS, NCEM, and Domestic Preparedness Region (DPR) partners statewide as needed.
- Per 2 CFR 200.313, during the time that equipment is used on the project or program for which it was acquired, Subrecipient must also make the equipment available for use on other projects or programs currently or previously supported by this or other federal grants, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by DHS that financed the equipment and second preference must be given to other programs or projects under grants from other federal awarding agencies. NCEM, in conjunction with DHS and DPR partners, will determine and direct how equipment will be redeployed.
- Failure to comply with these terms and conditions may result in the return of funds and any other remedy for noncompliance specified in 2 CFR 200.339, and/or termination of the award per 2 CFR 200.340. Additional conditions may also be placed upon Subrecipient for noncompliance with the specified terms and conditions of this MOA, including (but not limited to) additional monitoring and special conditions placed on future awards per 2 CFR 200.208.
- Q. Indirect Costs. No indirect or administrative costs will be charged to this award. See 2 CFR 200.332(a).
 - R. Communications equipment. In an effort to align communications technologies with current statewide communications plans, systems, networks, strategies and emerging technologies, the NCEM Communications Branch requires that purchases made with grant funds meet the standards identified in Attachment 6.
 - S. The purchase or acquisition of any additional materials, equipment, accessories or supplies, or the provision of any training, exercise or work activities beyond that identified in this MOA, shall be the sole responsibility of Subrecipient and shall not be reimbursed under this MOA.
 - T. Conflicts of Interest. Per 2 CFR 200.112 and the 2021 FEMA Preparedness Grants Manual, all subrecipients must disclose in writing to NCEM, and attempt to avoid, any real or potential conflict of interest that may arise during the administration of a federal grant award. For purposes of this MOA, conflicts of interest may arise in situations

where a subrecipient employee, officer, or agent, any members of his or her immediate family, or his or her partner has a family relationship, close personal relationship, business relationship, or professional relationship, with anybody at DHS, FEMA and/or NCEM involved in the administration of this grant award.

Per 2 CFR 200.318 and the 2021 FEMA Preparedness Grants Manual, all subrecipients that are non-federal entities other than states are required to maintain written standards of conduct covering conflicts of interest and governing the actions of their employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such conflicts of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, subrecipients may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the subrecipient. All subrecipients must disclose in writing to NCEM, and attempt to avoid, any real or potential conflicts of interest with respect to procurement, contracting and subcontracting with funds provided under this grant award. Upon request, subrecipients must also provide a copy of their standards of conduct policy covering conflicts of interest with respect to procurement, contracting and subcontracting with funds provided under this grant award.

- U. **Environmental Planning and Historic Preservation (EHP) Compliance.** Subrecipients proposing projects that could impact the environment, including, but not limited to, the construction of communication towers, modification or renovation of existing buildings, structures, and facilities, or new construction including replacement of facilities, must participate in the DHS/FEMA EHP review process. For details see: <https://www.fema.gov/grants/preparedness/preparedness-grants-ehp-compliance>.
- V. Subrecipient must have an acceptable local travel regulation plan or accept the state travel regulations. Refer to 2 CFR 200.475 for travel costs.

11. Funding

All terms and conditions of this MOA are dependent upon and subject to the allocation of funds from DHS and NCEM for the purposes set forth, and the MOA shall automatically terminate if funds cease to be available.

Allowable costs shall be determined in accordance with applicable DHS Program Guidelines, which include, but may not be limited to, the FY2021 HSGP NOFO, 2 CFR 200 Subpart E, Federal Acquisition Regulations (FAR) Part 31.2, OMB Circulars A-21, and applicable DHS and FEMA financial management guidance available at <https://www.dhs.gov/dhs-grants> and <https://www.fema.gov/grants/guidance-tools>. Allowable costs are also subject to the approval of the State Administrative Agent for the State of North Carolina, the Secretary of the Department of Public Safety.

12. Taxes

Subrecipient shall be considered to be an independent subrecipient and as such shall be responsible for ALL taxes. There shall be no reimbursement for taxes incurred by the subrecipient under this grant.

13. Warranty

As an independent subrecipient, the Subrecipient will hold Recipient harmless for any liability and personal injury that may occur from or in connection with the performance of this MOA to the extent permitted by the North Carolina Tort Claims Act. Nothing in this MOA, express or implied, is intended to confer on any other person any rights or remedies in or by reason of this MOA. This MOA does not give any person or entity other than the parties hereto any legal or equitable claim, right or remedy. This MOA is intended for the sole and exclusive benefit of the parties hereto. This MOA is not made for the benefit of any third person or persons. No third party may enforce any part of this MOA or shall have any rights hereunder. This MOA does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this MOA. Nothing herein shall be construed as a waiver of the sovereign immunity of the State of North Carolina.

14. State of North Carolina Reporting Requirements per NCGS 143C-6-23 and 09 NCAC 03M

North Carolina state law ([N.C.G.S. 143C-6-23](#) and [09 NCAC 03M](#)) requires every non-state entity (including non-profit organizations, counties and local governments) that receives state or federal pass-through grant funds from state

agencies to file annual reports on how those grant funds were used no later than three months after the end of the non-state entity's fiscal year.

Refer to "State Grant Compliance Reporting Forms" on the following website for instructions and applicable forms for subrecipients to meet these requirements: <https://www.ncdps.gov/our-organization/emergency-management/emergency-management-grants/grants-management-compliance> .

Level I (Less than \$25,000)

A grantee receiving less than \$25,000 (combined) in state or federal pass through funds must submit:

- Certification Form.
- State Grants Compliance Reporting for Receipts of Less than \$25,000.
- Level I form and reporting instructions are available on the above website.

Level II (\$25,000 - \$499,999)

A grantee that receives between \$25,000 - \$499,999 (combined) in state or federal pass-through funding must submit:

- Certification Form.
- State Grants Compliance Reporting for Receipts of \$25,000 or More.
- Schedule of Receipts and Expenditures.
- Program Activities and Accomplishments Reports.
- Level II form and reporting instructions are available on the above website.

Level III (\$500,000 - \$749,999)

A grantee that receives a combined \$500,000 or more in state funding or federal pass-through funding must submit:

- Certification Form.
- State Grants Compliance Reporting for Receipts of \$25,000 or More.
- Program Activities and Accomplishments Reports.
- Level III form and reporting instructions are available on the above website.
- Submit within nine months of the grantee's fiscal year end: Submit to DPS Internal Audit a single audit prepared and completed in accordance with Generally Accepted Government Auditing Standards. See paragraph 15 below for audits.

Level III Continued (\$750,000+)

A grantee that receives a combined \$750,000 or more in funding from all federal funding sources, even those passed through a state agency must submit:

- Certification Form.
- State Grants Compliance Reporting for Receipts of \$25,000 or More.
- Program Activities and Accomplishments Reports.
- Level III form and reporting instructions are available on the above website.
- Submit within nine months of the grantee's fiscal year end:
 - Submit to DPS Internal Audit a single audit prepared and completed in accordance with Generally Accepted Government Auditing Standards.
 - Post the single audit to the Federal Audit Clearinghouse (<https://harvester.census.gov/facweb/>).
 - Make copies of the single audit available to the public. See paragraph 15 below for audits.

15. Audit Requirements

For all federal grant programs, Subrecipient is responsible for obtaining audits in accordance with 2 CFR 200 Subpart F.

Per 09 NCAC 03M .0205, a subrecipient that receives a combined **\$500,000** or more in **North Carolina state funding or federal funding passed through a state agency** must within 9 months of the subrecipient's fiscal year end submit to DPS Internal Audit (AuditGrantsReport@ncdps.gov) a single audit prepared and completed in accordance with Generally Accepted Government Auditing Standards (GAGAS): <https://www.gao.gov/yellowbook>.

Per 2 CFR 200.501, a subrecipient that receives a combined **\$750,000** or more in funding from all **federal** funding sources, even those passed through a state agency, must have a single audit conducted in accordance with 2 CFR 200.514 and GAGAS within 9 months of Subrecipient's fiscal year end. Subrecipient must:

- A. Post the single audit conducted in accordance with 2 CFR 200.514 and GAGAS to the Federal Audit Clearinghouse <https://harvester.census.gov/facweb/>.
- B. Submit to DPS Internal Audit (AuditGrantsReport@ncdps.gov) a single audit prepared and completed in accordance with GAGAS. This can, at the option of Subrecipient, be the same single audit submitted to the Federal Audit Clearinghouse in paragraph 15.A. above.
- C. Make copies of the single audit available to the public.

16. Subrecipient Monitoring

See Attachment 7 for subrecipient monitoring.

17. Points of Contact

To provide consistent and effective communication between Subrecipient and the NCEM, each party shall appoint a Principal Representative(s) to serve as its central point of contact responsible for coordinating and implementing this MOA. The NCEM contact shall be, Assistant Director - Administration, the NCEM Grants Management Branch Staff, and the NCEM Field Branch Staff. The Subrecipient point of contact shall be the person designated by the Subrecipient. All confidential information of either party disclosed to the other party in connection with the services provided hereunder will be treated by the receiving party as confidential and restricted in its use to only those uses contemplated by the terms of this MOA. Any information to be treated as confidential must be clearly marked as confidential prior to transmittal to the other party. Neither party shall disclose to third parties, the other party's confidential information without written authorization to do so from the other party. Specifically excluded from such confidential treatment shall be information that:

- A. As of the date of disclosure and/or delivery, is already known to the party receiving such information.
- B. Is or becomes part of the public domain, through no fault of the receiving party.
- C. Is lawfully disclosed to the receiving party by a third party who is not obligated to retain such information in confidence.
- D. Is independently developed at the receiving party by someone not privy to the confidential information.

18. Public Records Access

While this information under federal control is subject to requests made pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552 et. seq., all determinations concerning the release of information of this nature are made on a case-by-case basis by the FEMA FOIA Office. This MOA may be subject to the North Carolina Public Records Act, Chapter 132 of the North Carolina General Statutes.

19. Contracting/Subcontracting

If Subrecipient contracts/subcontracts any or all purchases or services under this MOA, then Subrecipient agrees to include in the contract/subcontract that the contractor/subcontractor is bound by the terms and conditions of this MOA. Subrecipient and any contractor/subcontractor agree to include in the contract/subcontract that the contractor/subcontractor shall hold NCEM harmless against all claims of whatever nature arising out of the contractors/subcontractor's performance of work under this MOA. If Subrecipient contracts/subcontracts any or all purchases or services required under this MOA, a copy of the executed contract/subcontract agreement must be forwarded to NCEM. A contractual arrangement shall in no way relieve Subrecipient of its responsibilities to ensure that all funds issued pursuant to this grant be administered in accordance with all state and federal requirements. Subrecipient is bound by all special conditions of this grant award as set out in the grant application and the grant award

letter Subaward Agreement incorporated by reference herein, as well as all terms, conditions and restrictions of the FY2021 HSGP NOFO referenced herein.

20. Situs

This MOA shall be governed by the laws of North Carolina and any claim for breach or enforcement shall be filed in State Court in Wake County, North Carolina.

21. Antitrust Laws

All signatories of this MOA will comply with all applicable state and federal antitrust laws.

22. Other Provisions/Severability

Nothing in this MOA is intended to conflict with current federal, state, local, or tribal laws or regulations. If a term of this MOA is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this MOA shall remain in full force and effect.

23. Entire Agreement

This MOA and any annexes, exhibits and amendments annexed hereto and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral and written statements or agreements.

24. Modification

This MOA may be amended only by written amendments duly executed by the Recipient and the Subrecipient.

25. Prohibition on purchasing certain telecommunications - John S. McCain National Defense Authorization Act for Fiscal Year 2019 – Public Law 115-232, section 889 – 2 CFR 200.16

Effective August 13, 2020, FEMA recipients and subrecipients may not use any FEMA funds under open or new awards to:

- A. Procure or obtain any equipment, system, or service that uses *covered telecommunications equipment or services* as a substantial or essential component of any system, or as critical technology of any system.
- B. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses *covered telecommunications equipment or services* as a substantial or essential component of any system, or as critical technology of any system.
- C. Enter into, extend, or renew contracts with entities that use *covered telecommunications equipment or services* as a substantial or essential component of any system, or as critical technology as part of any system.

Replacement Equipment and Services

FEMA grant funding may be permitted to procure replacement equipment and services impacted by this prohibition. Recipients and subrecipients should refer to applicable program guidance or contact the applicable program office to determine if replacement equipment or services is eligible under that program.

Definitions

Per section 889(f)(2)-(3) of the FY 2019 NDAA, covered telecommunications equipment or services means:

- A. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- B. For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- C. Telecommunications or video surveillance services provided by such entities or using such equipment.

Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the People's Republic of China.

FEMA Policy #405-143-1

Refer to FEMA Policy #405-143-1 for specific guidance:

https://www.fema.gov/sites/default/files/documents/fema_prohibitions-expending-fema-award-funds-covered-telecommunications-equipment-services.pdf

26. Certification of eligibility--Under the Iran Divestment Act

Pursuant to G.S. 147-86.60, any company identified as engaging in investment activities in Iran, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.58, is ineligible to contract with the State of North Carolina or any political subdivision of the state. The Iran Divestment Act of 2015, G.S. 147-86.55 et seq. requires that each vendor, prior to contracting with the state certifies, and the undersigned on behalf of the Vendor does hereby certify, to the following:

- A. That the vendor is not identified on the Final Divestment List of entities that the State Treasurer has determined engages in investment activities in Iran.
- B. That the vendor shall not utilize on any contract with the state agency any subcontractor that is identified on the Final Divestment List.
- C. That the undersigned is authorized by the Vendor to make this Certification.

The State Treasurer's Final Iran Divestment List can be found on the State Treasurer's website at the address: <https://www.nctreasurer.com/office-state-treasurer/divestment-and-do-not-contract-rules>.

Further, pursuant to G.S. 147-86.82, any company identified as boycotting Israel, determined by appearing on the Final Divestment List created by the State Treasurer pursuant to G.S. 147-86.81, is ineligible to contract with the State of North Carolina or any political subdivision of the State. The State Treasurer's Final Companies Boycotting Israel List can be found on the State Treasurer's website at the address: <https://www.nctreasurer.com/office-state-treasurer/divestment-and-do-not-contract-rules>.

27. Termination

The terms of this MOA, as modified with the consent of all parties, will remain in effect until February 28, 2024. Either party upon thirty days advance written notice to the other party may terminate this MOA. Upon approval by DHS, FEMA and the issuance of the Grant Adjustment Notice, if this MOA is extended, the termination date for the extension will be the date listed in the applicable DHS, Grant Adjustment Notice, incorporated by reference herein. If DHS suspends or terminates funding in accordance with 2 CFR 200.340 and the 2021 HSGP NOFO, incorporated by reference herein, the Subrecipient shall reimburse NCEM for said property and/or expenses.

28. Scope of Work

Subrecipient shall implement the HSGP project summarized below and as described in the approved project application. That application is hereby incorporated by reference into this MOA:

- A. Scope of Work Summary
 - i. Completed appropriate report forms with invoices and proof(s) of payment.
 - ii. Audit findings and corrective action plans.
 - iii. Equipment inventory records with photo documentation of labeling.
- B. Documentation to be provided throughout the Period of Performance of the grant:
 - i. Quarterly project progress reports.
 - ii. Subrecipient involved legal action that pertains to Planning, Organization, Training, Exercise and Equipment purchased with HSGP.
 - iii. After-action report from exercise in accordance with Homeland Security Exercise and Evaluation Program Doctrine (HSEEP).
 - iv. Training course roster and description.
 - v. Any other documentation that would be pertinent.
 - vi. All legible and complete invoices and receipts detailing the expenses associated with the project. Receipts must contain the following information:
 - Name and address of the vendor or establishment providing the product or service.
 - Vendor/Payee invoice number, account number, and any other unique meaningful identifying number
 - Date the product or service was provided.
 - Itemized description of all products or services.
 - Unit price of products or services (if applicable).
 - Total amount charged.
 - vii. Proof of payment of expenses associated with the project.

29. Lobbying Prohibition

The Subrecipient certifies, to the best of its knowledge and belief, that:

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

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

30. Assurance of Compliance with Title VI of the Civil Rights Act of 1964 - procurement

During the performance of this contract, the subrecipient, for itself, its assignees and successors in interest (hereinafter referred to as the "subrecipient") agrees as follows:

- A. Compliance with Regulations: The subrecipient shall comply with the Regulations relative to nondiscrimination in Federally-Assisted Programs of the 2 CFR 200.300 and North Carolina regulation as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- B. Nondiscrimination: The subrecipient, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, sex, or national origin in the selection and retention of subrecipients, including procurements of materials and leases of equipment. The subrecipient shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- C. Solicitation for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the subrecipient for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subrecipient or supplier shall be notified by the subrecipient of the subrecipients obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- D. Information and Reports: The subrecipient shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Research and Special Programs Administration (RSPA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a subrecipient is in the exclusive possession of another who fails or refuses to furnish this information the subrecipient shall so certify to the Recipient or the Research and Special Programs Administration as appropriate, and shall set forth what efforts it has made to obtain such information.
- E. Sanctions for Noncompliance: In the event of the subrecipients noncompliance with nondiscrimination provisions of this contract, the Recipient shall impose contract sanctions as it or the Research and Special Programs Administration may determine to be appropriate, including, but not limited to:
 - i. Withholding of payments to the subrecipient under the contract until the subrecipient complies.
 - ii. Cancellation, termination, or suspension of the contract, in whole or in part.
- F. Incorporation of Provisions: The subrecipient shall include the provisions of every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant

thereto. The contract shall take such action with respect to any subcontract or procurements as the Recipient or the Research and Special Programs Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provide, however, that in the event a subrecipient becomes involved in, or is threatened with, litigation with a subcontract or supplier as a result of such direction, the subrecipient may request the Recipient to enter into such litigation to protect the of the Recipient and, in addition the subrecipient may request the United States to enter such litigation to protect the interests of the United States.

31. Assurance of Compliance with Title VI of the Civil Rights Act of 1964 - regulations

Subrecipient hereby agrees that as a condition to receiving any federal financial assistance from the DHS it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act) and all requirements imposed by or pursuant to 2 CFR 200.300 , Nondiscrimination in Federally Assisted Programs of the DHS - Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex or national origin, be excluded from participation in, be denied the benefits of, or be otherwise discrimination under any program or activity for which the Subrecipient receives federal financial assistance from the DHS, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this MOA. This assurance is required by subsection 21.7(a) (1) of the Regulations. More specifically and without limiting the above general assurance, the Subrecipient hereby gives the following specific assurance with respect to the project:

- A. Agrees that each "program" and each "facility" as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to ("facility")) operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
- B. Insert the following notification in all solicitations for bids for work or material subject to the Regulations and, in adapted form in all proposals for negotiated agreements:

In accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and 2 CFR 200.300 issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in regard to any contract entered into pursuant to this advertisement, minority, business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for an award.

- C. Insert the clauses of this MOA in every contract subject to the Act and the Regulations.
- D. This assurance obligates the Recipient for the period during which federal financial assistance is extended to the project.
- E. Provide for such methods of administration for the program as are found by the Secretary of DHS or the official to whom he delegates specific authority to give reasonable guarantee that is, other recipients, subrecipients, contractors, subcontractors, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.
- F. Agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, and Regulations, and this assurance.

This assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts or other federal financial assistance extended after the date hereof to the Recipient by the DHS and is binding on it, other recipients, subrecipients, contractors, subcontractors, transferees, successors in interest and other participants in the DHS Program. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the recipients.

32. Assurance of Compliance with Title VI of the Civil Rights Act of 1964 – deeds, licenses, permits, leases

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by Subrecipient executed in expending these grant funds:

- A. The [Subrecipient, licensee, lessee, permittee, etc., as appropriate] for itself, herself/himself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this [deed, license, lease, permit,

etc.] for a purpose for which a DHS program or activity is extended or for another purpose involving the provision of similar services or benefits, the Subrecipient [licensee, lessee, permittee, etc.] shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 2 CFR 200.300 and as said Regulations may be amended.

- B. That in the event of breach of the above nondiscrimination covenants, Subrecipient shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.
- C. That in the event of breach of any of the above nondiscrimination covenants, Subrecipient shall have the right to re-enter said lands and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of Subrecipient and its assigns.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by Subrecipient:

- A. The [Subrecipient, licensee, lessee, permittee, etc., as appropriate] for herself/himself, his/her personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in case of deeds, and leases add "as a covenant running with the land"] that (1) no person on the grounds of race, color, sex, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing services thereon, no person on the grounds of race, color, sex, or national origin shall be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination, and (3) that the [Subrecipient, licensee, lessee, permittee, etc.] shall use the premises in compliance with all other requirements imposed by or pursuant 2 CFR 200.300, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
 - B. That in the event of breach of any of the above nondiscrimination covenants, Subrecipient shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.
 - C. That in the event of breach of any of the above nondiscrimination covenants, Subrecipient shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of Subrecipient and its assigns.
- * Reverted clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purpose of Title VI of the Civil Rights Act of 1964.

33. Assurance of Compliance with Privacy Act

The Subrecipient agrees:

- A. To comply with the provisions of the Privacy Act of 1974, 5 U.S.C. §552A and regulations adopted there under, when performance under the program involves the design, development, or operation of any system or records on individuals to be operated by the Subrecipient, its third-party subrecipients, contractors, or their employees to accomplish a DHS function.
- B. To notify DHS when the Subrecipient or any of its third-party contractors, subcontractors, subrecipients, or their employees anticipate a system of records on behalf of DHS in order to implement the program, if such system contains information about individuals name or other identifier assigned to the individual. A system of records subject to the Act may not be used in the performance of this MOA until the necessary and applicable approval and publication requirements have been met.
- C. To include in every solicitation and in every third-party contract, sub-grant, and when the performance of work, under that proposed third-party contract, sub-grant, or sub-agreement may involve the design, development, or operation of a system of records on individuals to be operated under that third-party contract, sub grant, or to accomplish a DHS function, a Privacy Act notification informing the third party contractor, or subrecipient, that it will be required to design, develop, or operate a system of records on individuals to accomplish a DHS function subject to the Privacy Act of 1974, 5 U.S.C. §552a, and applicable DHS regulations, and that a violation of the Act may involve the imposition of criminal penalties; and
- D. To include the text of Sections 30 parts A through C in all third-party contracts, and sub grants under which work for this MOA is performed or which is awarded pursuant to this MOA or which may involve the design,

development, or operation of a system of records on behalf of the DHS.

34. Certification Regarding Drug-Free Workplace Requirements (Subrecipients Other Than Individuals)

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988. The regulations, published in the January 31, 1989 Federal Register, require certification by subrecipient, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of the act upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or government-wide suspension of debarment, (See 2 CFR 200.415). Subrecipient certifies that it will or will continue to provide a drug-free workplace by:

- A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Subrecipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
- B. Establish a drug-free awareness program to inform employees about:
 - i. The dangers of drug abuse in the workplace.
 - ii. The Subrecipient's policy of maintaining a drug-free workplace.
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs.
 - iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- C. Require that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph A. .
- D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the grant, the employee will:
 - i. Abide by the terms of the statement.
 - ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
- E. Notifying the agency within ten days after receiving notice under subparagraph (D) (ii), from an employee or otherwise receiving actual notice of such conviction.
- F. Taking one of the following actions, within 30 days of receiving notice under subparagraph (D)(ii), with respect to any employee who is convicted:
 - i. Taking appropriate personnel action against such an employee, up to and including termination.
 - ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purpose by federal, state, local health, law enforcement, or other appropriate agency.
- G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).

35. Execution and Effective Date

This grant shall become effective upon return of this original Grant Award and MOA, properly executed on behalf of the Subrecipient, to NCEM and will become binding upon execution of all parties to this MOA. The terms of this MOA will become effective October 1, 2021. The last signature shall be that of Eddie M. Buffaloe Jr., Secretary for the North Carolina Department of Public Safety.

36. Term of this Agreement

This MOA shall be in effect from October 1, 2021 to February 28, 2024.

37. Statement of Assurances

Subrecipient must complete either [Office of Management and Budget \(OMB\) Standard Form 424B Assurances – Non-Construction Programs](#), or [OMB Standard Form 424D Assurances – Construction Programs](#), or both, as applicable.

- A. Subrecipients that only have construction work and do not have any non-construction work need only submit the construction form (i.e., SF-424D) and not the non-construction form (i.e., SF-424B), and vice versa. However, subrecipients who have both construction and non-construction work under this grant must submit both the construction and non-construction forms.
- B. Subrecipient must complete the appropriate form(s) and submit to NCEM Grants Management Branch (ncemgrants1@ncdps.gov) upon execution of this MOA. Subrecipient must still complete the appropriate form(s)

even if certain assurances in the form may not directly apply to subrecipient's specific program to ensure that all possible situations are covered.

38. Attachments

All attachments to this Agreement are incorporated as if set out fully herein.

- A. In the event of any inconsistency or conflict between the language of this MOA and the attachments hereto, the language of such attachments shall be controlling, but only to the extent of such conflict or inconsistency.
- B. This MOA includes the following attachments or documents incorporated by reference as if fully set out herein:
- Attachment 1 Scope of Work
 - Attachment 2 Quarterly Report Form
 - Attachment 3 Grant Funded Typed Resource Report
 - Attachment 4 [DHS Standard Terms and Conditions](#)
 - Attachment 5 Required Subrecipient File Documentation
 - Attachment 6 NCEM Communications Branch Memo
 - Attachment 7 Subrecipient Monitoring

IN WITNESS WHEREOF, the parties have each executed this MOA and the parties agree that this MOA will be effective as of October 1, 2021.

N.C. DEPARTMENT OF PUBLIC SAFETY
DIVISION OF EMERGENCY MANAGEMENT
1636 GOLD STAR DR
RALEIGH, NC 27607

WATAUGA COUNTY
184 HODGES GAP RD
BOONE, NC 28607-8736

BY: William C. Ray
WILLIAM C. RAY, DIRECTOR
& DEPUTY HOMELAND SECURITY ADVISOR
NC EMERGENCY MANAGEMENT

BY: _____

BY: _____

APPROVED AS TO PROCEDURES:

BY: _____

BY: _____
TARA WILLIAMS-BROWN, CONTROLLER
DEPARTMENT OF PUBLIC SAFETY

BY: _____

BY: William Polk
WILLIAM POLK, DEPUTY GENERAL COUNSEL
REVIEWED FOR THE DEPARTMENT OF
PUBLIC SAFETY, BY WILLIAM POLK,
DPS DEPUTY GENERAL COUNSEL, TO FULFILL THE
PURPOSES OF THE US DEPARTMENT OF
HOMELAND SECURITY GRANT PROGRAMS

BY: _____
EDDIE M. BUFFALOE JR., SECRETARY
DEPARTMENT OF PUBLIC SAFETY

THIS MOA WAS PREVIOUSLY APPROVED AS TO FORM BY THE NORTH CAROLINA DEPARTMENT OF JUSTICE FOR THE FY 2021 HOMELAND SECURITY GRANT PROGRAM ONLY AND IS SUBJECT TO EXECUTION BY CASANDRA SKINNER HOEKSTRA, INTERIM SECRETARY OF THE DEPARTMENT OF PUBLIC SAFETY. THIS MOA SHOULD NOT BE USED FOR OTHER MOAS FOR THE HSGP FOR OTHER FISCAL YEARS.

Attachment 1

North Carolina Emergency Management

Homeland Security Grant Program (HSGP) Application

Fiscal Year 2021

All fields are mandatory. Responses should be limited to the spaces allocated. If additional space is needed append the added text to this application. Clear, complete, and concise information is required for the review panel to make fair and equitable decisions.

Contacts

Enter requested information for all contacts listed below.

Applicant

| Applicant | | | |
|--|--|-----------------|-----------|
| <i>This is the agency applying for grants.</i> | | | |
| Applying agency | Department of Public Safety – State Highway Patrol - VIPER | | |
| Street address | 512 North Salisbury Street | | |
| City | Raleigh | ZIP + 4 | 27604 |
| Email | Tanya.Luter@ncshp.org | | |
| EIN/Tax ID number | 30-0712287 | | |
| DUNS number | 078351786 | | |
| SAM registered | Yes | Expiration date | 3/11/2021 |
| Is the agency applying as a nonprofit with 501(c)(3) status? | | | No |
| Your name | Tanya Luter | | |
| Are you authorized to apply for grants on behalf of the applying agency? | | | Yes |

Field help

Point of contact

| Grants point of contact | | | |
|---|------------------------------------|----------------|--------------|
| <i>This is the focal point for any ongoing communications regarding the grants.</i> | | | |
| Name | Tanya Luter | | |
| Agency | DPS – State Highway Patrol - VIPER | | |
| Title | IT Project Manager II | | |
| Phone (work) | 984-349-6913 | Phone (mobile) | 919-268-1167 |
| Street address | 3318 Garner Road | | |
| City | Raleigh | ZIP + 4 | 27610 |
| Email | Tanya.Luter@ncshp.org | | |

Field help

MOA signatory

| Grants MOA signatory | | | |
|---|-----------------------------------|---------|----------------------------------|
| <i>This is the individual whose name appears on the signature page of the memorandum of agreement. While only one signatory is required, space for an additional signatory is provided. If even more signatories are required, add them in the project Additional information section.</i> | | | |
| Name | Click or tap here to enter text. | | |
| Agency | Click or tap here to enter text. | | |
| Title | Click or tap here to enter text. | | |
| Street address (not PO Box) | Click or tap here to enter text. | | |
| City | Click or tap here to enter text. | ZIP + 4 | Click or tap here to enter text. |
| Email | Click or tap here to enter text. | | |
| Name | William Holt | | |
| Agency | Watauga County Emergency Services | | |
| Title | Emergency Services Director | | |
| Street address (not PO box) | 184 Hodges Gap Road | | |
| City | Boone | ZIP + 4 | 28607 |
| Email | Will.Holt@watgov.org | | |

[Field help](#)

Host local government (if project funds are being returned to the State)

| Hosting county | | | |
|---|------------------------------|-----------------|----------------------|
| <i>This is the county that is agreeing to "turn back" awarded funds to the State.</i> | | | |
| Contact name | Will Holt | | |
| County | Watauga | | |
| Street address | 184 Hodges Gap Road, Suite D | | |
| City | Boone | ZIP + 4 | 28607-8635 |
| Email | Will.Holt@watgov.org | | |
| EIN/Tax ID number | 56-6001816 | | |
| DUNS number | 089988216 | | |
| SAM registered | Yes | Expiration date | 1/16/2022 |
| MOA signatory name | John Welch | E-mail | Will.Holt@watgov.org |

[Field help](#)

Projects

Complete information for up to three projects.

Project # 1

Enter requested information in the sections listed below.

Project information

| General information | | | |
|--|--|-----------------------|-----------------|
| <i>Enter information describing the project.</i> | | | |
| Title | VIPER Microwave Monitoring System – Telenium MegaSystem | | |
| Description | VIPER's current monitoring system does not have the capability of monitoring the microwave radios at our tower facilities. We are seeking grant funds to purchase the Telenium MegaSystem. This system would tie into our existing DPS monitoring system and enable us to monitor our microwave radios and paths. With this system, we would be able to map the microwave paths across the network which is a critical element when troubleshooting network outages. This system would enable us to detect issues with our microwave radios and paths to proactively provide our statewide users with continuous voice communications. | | |
| Goal | Provide monitoring of our microwave network to ensure continuous, statewide voice communications. | | |
| Classification | Local non-DPR | DPR number (if "DPR") | Choose an item. |
| Does the project address a gap identified in THIRA? | | | Choose an item. |
| Is the project deployable? | | | Yes |
| Is the project shareable? | | | Yes |
| Does the project contribute to the development or operation of the fusion center? | | | No |
| If this project supports a previously awarded investment enter the following: | | | |
| Year of award | 2004-2020 | Project name | VIPER |
| Award amount | | | |
| Construction/renovation required | No | | |
| Structural attachment required | No | | |
| Core capabilities addressed | | | |
| <i>Select primary and secondary (if applicable) core capabilities addressed by this project.</i> | | | |
| Primary | Operational Communications | | |
| Secondary | Infrastructure Systems | | |
| Capabilities building | Build (increase current capabilities) | | |
| Project timeline milestones | | | |
| <i>List the major project events and their completion dates.</i> | | | |
| Milestone | Completion Date | | |
| MOA executed | 4/2021 | | |
| Grant budget setup | 4/2021 | | |
| Purchase all equipment | 5/2021 | | |
| Equipment delivery | 7/2021 | | |
| Equipment installation completed | 9/2021 | | |
| Click or tap here to enter text. | Click or tap to enter a date. | | |
| Click or tap here to enter text. | Click or tap to enter a date. | | |
| Click or tap here to enter text. | Click or tap to enter a date. | | |

Field help

Budget

| Planning/Training/Exercise costs | | | | | | |
|--|----------------------------------|----------|-----------|-------------------------|-----------------------|-------------|
| <i>For each cost item select an activity area and then a description and the amount.</i> | | | | | | |
| Activity area | Description | | | | | Cost |
| Choose an item. | Click or tap here to enter text. | | | | | Enter cost. |
| Choose an item. | Click or tap here to enter text. | | | | | Enter cost. |
| Choose an item. | Click or tap here to enter text. | | | | | Enter cost. |
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| Choose an item. | Click or tap here to enter text. | | | | | Enter cost. |
| Choose an item. | Click or tap here to enter text. | | | | | Enter cost. |
| Equipment costs | | | | | | |
| <i>Enter equipment items and their costs into the table and then enter the total of the costs in the field below.</i> | | | | | | |
| Description | AEL # | Quantity | Item cost | Extended cost | Shipping/ handling | Total cost |
| Telenium MegaSystem | | 1 | | | | 400,000.00 |
| Click or tap here to enter text. | | | | | | Enter cost. |
| Click or tap here to enter text. | | | | | | Enter cost. |
| Click or tap here to enter text. | | | | | | Enter cost. |
| Click or tap here to enter text. | | | | | | Enter cost. |
| Funding summary | | | | | | |
| <i>For each activity area enter the amount funded and any funds allocated for Law Enforcement Terrorism Prevention (LETP).</i> | | | | | | |
| Activity area | Funding amount | | | Funds dedicated to LETP | | |
| Planning | Enter amount. | | | Enter amount. | | |
| Equipment | 400,000.00 | | | Enter amount. | | |
| Training | Enter amount. | | | Enter amount. | | |
| Exercise | Enter amount. | | | Enter amount. | | |
| Total funding | 400,000.00 | | | Enter total. | | |

Field help

[Additional information \(if needed\)](#)[Project information](#)[Budget](#)

| Planning/Training/Exercise costs | | |
|---|----------------------------------|-------------|
| <i>For each cost item select an activity area and then a description and the amount.</i> | | |
| Activity area | Description | Cost |
| Choose an item. | Click or tap here to enter text. | Enter cost. |
| Choose an item. | Click or tap here to enter text. | Enter cost. |
| Choose an item. | Click or tap here to enter text. | Enter cost. |
| Choose an item. | Click or tap here to enter text. | Enter cost. |
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| Choose an item. | Click or tap here to enter text. | Enter cost. |
| Choose an item. | Click or tap here to enter text. | Enter cost. |
| Choose an item. | Click or tap here to enter text. | Enter cost. |
| Equipment costs | | |
| <i>Enter equipment items and their costs into the table and then enter the total of the costs in the field below.</i> | | |

Certification

| Certification | |
|--|---|
| <i>Review each certification item and check where appropriate.</i> | |
| I certify that: | <ul style="list-style-type: none"> <input checked="" type="checkbox"/> This application includes complete and accurate information. <input checked="" type="checkbox"/> No project (supported through federal and/or matching funds) having the potential to impact Environmental or Historical Preservation (EHP) can be started without the prior approval of FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings, structures and objects that are 50 years old or greater. Applicant must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work requires re-evaluation for compliance with these EHP requirements. Any activities that have been initiated without the necessary EHP review and approval will result in a non-compliance finding and will not be eligible for FEMA funding. <input checked="" type="checkbox"/> In accordance with HSPD-5, the adoption of the National Incident Management System (NIMS) is a requirement to receive federal preparedness assistance through grants, contracts, and other activities. By submitting this grant application, you and all participating entities are certifying that your locality/state agency is NIMS compliant. <input checked="" type="checkbox"/> Submission of the project proposal does not guarantee funding. <input checked="" type="checkbox"/> Projects with funds allocated for equipment are required to check all equipment purchases against the Allowable Equipment List. (https://www.fema.gov/authorized-equipment-list). <input checked="" type="checkbox"/> Any changes made to this grant application after the submission deadline must be approved by the NCEM Grants Branch Manager and an updated application must be submitted. <input checked="" type="checkbox"/> If applying as a nonprofit agency you must have a 501(c)(3) status. A copy of that certification must be submitted with your application. |

Attachment 2

Quarterly Progress Report

FY 2021 HSGP

Subrecipient: NC State Highway Patrol

MOA #: 2140046

Grant award amount: \$ 400,000.00

| | | |
|--|--|-----------------------|
| <i>Select a quarter and complete the funds-expended blanks, activities status, and submission information. Return the completed form to your grants manager.</i> | | |
| Quarter | <input type="checkbox"/> October – December (due January 15) <input type="checkbox"/> January – March (due April 15) <input type="checkbox"/> April – June (due July 15) <input type="checkbox"/> July – September (due October 15) | |
| Funds expended prior quarters | Click or tap here to enter text. | |
| Funds expended this quarter | Click or tap here to enter text. | |
| Activities | Metric | Current Status |
| Equipment | Dates, current status. For examples, list identified needs, items in vendor negotiation, purchased, placed in service, etc. | |
| Planning | Dates, current status. For examples, list identified needs, updates or revisions made to plans, or those to be made. | |
| Training | Dates, status of training. For example, list identified needs, training planned, in progress, or conducted. Attach agenda and roster. | |
| Exercise | Dates, status of exercise. For example, list identified needs, exercise(s) planned, in progress, or conducted. Attach after action report. | |
| Submitted by | Click or tap here to enter text. | |
| Date | Click or tap here to enter text. | |

Forward the completed report to ncemgrants1@ncdps.gov.

Attachment 3

Attachment 3 - EXAMPLE**Grant-Funded Typed Resource Report**

111621 BCC Meeting

Tool Instructions:

- Each row should contain one piece of equipment purchased with or training held using grant funds for current reporting period. **Only report purchases and trainings that have already been completed and funds have been expended and drawn down.**
- Choose from the drop-down menu whether the line is for equipment or training, the NIMS Typed Discipline, NIMS Typed Resource and NIMS Type #, as published by FEMA's National Integration Center (NIC) that the equipment supports, if NIMS Typed.
- If equipment or training is not NIMS Typed, choose "State/Local Other" in drop-down menu and provide State/Local typing or Community of Interest information in the Comments.
- Choose whether the piece of equipment or training is to "Sustain Current" existing capabilities or will increase or "Add New" capability .
- Choose the Core Capability or Capabilities that the Typed Resource supports. If more than one Core Capability is applicable, expand the columns by clicking the '+' above the 'Cost of Purchase' column to show more 'Core Capability Supported' columns.
- Enter the cost of the equipment or training.
- Enter additional information in the Comments, including a brief description of whether the training or equipment purchased sustains existing capabilities; adds or improves an existing capability; or builds a new capability from scratch. This Form Can be accessed at www.fema.gov/media-library/assets/documents/28973?id=6432

| SUBGRANTEE: | | GRANT#: | | PROJECT: | | | | | | | |
|-----------------------|---|---|---------------------|--|----------------------------------|--|--------------------------|---|--|------------------|---|
| Carolina County | | 2013-SS-00033-S01-13xx | | Generators & Generator Switches | | | | | | | |
| Equipment or Training | NIMS Typed Discipline or State/Local Discipline/Community of Interest Supported | NIMS Typed Resource Supported | NIMS Type # | State/Local Typed Resource Supported (if applicable) | Typed Equipment Purchased | # of Personnel Trained for Typed Teams | # of Typed Teams Trained | Sustain Current Capability/Add New Capability | Core Capability Supported | Cost of Purchase | Comments |
| Equipment | Fire / Hazmat | HazMat Entry Team | I | N/A | WMD Liquid Splash-Protective CPC | N/A | N/A | Add New | Environmental Response / Health and Safety | \$ 90,000.00 | This new PPE will increase a Type II to a Type I HazMat Entry Team by fulfilling the PPE requirements for a Type I team. This investment completes the upgrade of this team. |
| Training | Incident Management | Incident Management Team | III | N/A | N/A | 53 | 2 | Sustain Current | Operational Coordination | \$ 150,000.00 | This Training sustained policy awareness for a State and two Regional IMTs. This training maintains emergency staff awareness that would have otherwise been out-of-date within 3 months of the training. |
| Equipment | Public Health and Medical | State / Local Other (provide in comments section) | State / Local Other | Water Ambulance | ALS Rescue Boat | N/A | N/A | Add New | Mass Care Services | \$ 100,000.00 | The ALS Rescue Boat meets State typing for Water Ambulance. This equipment purchase adds a new capability to the local EMS. Teams will begin training to complete the resource. |
| Training | Search and Rescue | US&R Task Forces | II | N/A | N/A | 63 | 23 | Sustain Current | Mass Search and Rescue Operations | \$ 75,000.00 | 63 Responders were trained in structural collapse to support 23 Type II USAR Teams. This training sustained current levels of staffing in anticipation of current staff retiring. |

Attachment 4

2021 DHS Standard Terms and Conditions

The 2021 DHS Standard Terms and Conditions apply to all new federal financial assistance awards funded in FY 2021. These terms and conditions flow down to subrecipients, unless an award term or condition specifically indicates otherwise. The United States has the right to seek judicial enforcement of these obligations.

Assurances, Administrative Requirements, Cost Principles, Representations and Certifications

DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) [Standard Form 424B Assurances – Non-Construction Programs](#), or [OMB Standard Form 424D Assurances – Construction Programs](#), as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the DHS FAO if you have any questions.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at [Title 2, Code of Federal Regulations \(C.F.R.\) Part 200](#), and adopted by DHS at [2 C.F.R. Part 3002](#).

By accepting this agreement, the recipient and its executives, as defined in 2 C.F.R. § 170.315, certify that the recipient's policies are in accordance with OMB's guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

DHS Specific Acknowledgements and Assurances

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Recipients of federal financial assistance from DHS must complete the *DHS Civil Rights Evaluation Tool* within thirty (30) days of receipt of the Notice of Award or, for State Administrative Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. After the initial submission for the first award under which this term applies, recipients are required to provide this information once every two (2) years if they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>.

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3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. Recipients of federal financial assistance from DHS must complete the *DHS Civil Rights Evaluation Tool* within thirty (30) days of receipt of the Notice of Award or, for State Administrative Agencies, thirty (30) days from receipt of the DHS Civil Rights Evaluation Tool from DHS or its awarding component agency. After the initial submission for the first award under which this term applies, recipients are required to provide this information once every two (2) years if they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>.

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The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

Standard Terms & Conditions

I. Acknowledgement of Federal Funding from DHS

Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

II. Activities Conducted Abroad

Recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

III. Age Discrimination Act of 1975

Recipients must comply with the requirements of the *Age Discrimination Act of 1975*, Pub.L No. 94-135 (1975) (codified as amended at [Title 42, U.S. Code, § 6101 et seq.](#)), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

IV. Americans with Disabilities Act of 1990

Recipients must comply with the requirements of Titles I, II, and III of the *Americans with Disabilities Act*, Pub. L. No. 101-336 (1990) (codified as amended at [42 U.S.C. §§ 12101–12213](#)), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

V. Best Practices for Collection and Use of Personally Identifiable Information

Recipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: [Privacy Guidance](#) and [Privacy Template](#) as useful resources respectively.

VI. Civil Rights Act of 1964 – Title VI

Recipients must comply with the requirements of Title VI of the *Civil Rights Act of 1964* (codified as amended at [42 U.S.C. § 2000d et seq.](#)), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at [6 C.F.R. Part 21](#) and [44 C.F.R. Part 7](#).

VII. Civil Rights Act of 1968

Recipients must comply with Title VIII of the *Civil Rights Act of 1968*, [Pub. L. 90-284, as amended through Pub. L. 113-4](#), which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see [42 U.S.C. § 3601 et seq.](#)), as implemented by the U.S. Department of Housing and Urban Development at [24 C.F.R. Part 100](#). The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in

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buildings without elevators)—be designed and constructed with certain accessible features. (See [24 C.F.R. Part 100, Subpart D.](#))

VIII. **Copyright**

Recipients must affix the applicable copyright notices of [17 U.S.C. §§ 401 or 402](#) and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

IX. **Debarment and Suspension**

Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) [12549](#) and [12689](#), which are at [2 C.F.R. Part 180](#) as adopted by DHS at [2 C.F.R. Part 3000](#). These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

X. **Drug-Free Workplace Regulations**

Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of [2 C.F.R. Part 3001](#), which adopts the Government-wide implementation ([2 C.F.R. Part 182](#)) of Sec. 5152-5158 of the *Drug-Free Workplace Act of 1988* ([41 U.S.C. §§ 8101-8106](#)).

XI. **Duplication of Benefits**

Any cost allocable to a particular federal financial assistance award provided for in [2 C.F.R. Part 200, Subpart E](#) may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

XII. **Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX**

Recipients must comply with the requirements of Title IX of the *Education Amendments of 1972*, Pub. L. 92-318 (1972) (codified as amended at [20 U.S.C. § 1681 et seq.](#)), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at [6 C.F.R. Part 17](#) and [44 C.F.R. Part 19](#)

XIII. **Energy Policy and Conservation Act**

Recipients must comply with the requirements of the *Energy Policy and Conservation Act*, Pub. L. 94- 163 (1975) (codified as amended at [42 U.S.C. § 6201 et seq.](#)), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

XIV. **False Claims Act and Program Fraud Civil Remedies**

Recipients must comply with the requirements of the *False Claims Act*, [31 U.S.C. §§3729-3733](#), which prohibit the submission of false or fraudulent claims for payment to the federal government. (See [31 U.S.C. §§ 3801-3812](#), which details the administrative remedies for false claims and statements made.)

XV. **Federal Debt Status**

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit

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overpayments. (See [OMB Circular A-129](#).)

XVI. Federal Leadership on Reducing Text Messaging while Driving

Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in [E.O. 13513](#), including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

XVII. Fly America Act of 1974

Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under [49 U.S.C. § 41102](#)) for international air transportation of people and property to the extent that such service is available, in accordance with the *International Air Transportation Fair Competitive Practices Act of 1974*, [49 U.S.C. § 40118](#), and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, [amendment](#) to Comptroller General Decision B-138942.

XVIII. Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the *Hotel and Motel Fire Safety Act of 1990*, [15 U.S.C. § 2225a](#), recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the *Federal Fire Prevention and Control Act of 1974*, (codified as amended at [15 U.S.C. § 2225](#).)

XIX. Limited English Proficiency (Civil Rights Act of 1964, Title VI)

Recipients must comply with Title VI of the *Civil Rights Act of 1964*, ([42 U.S.C. § 2000d et seq.](#)) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

XX. Lobbying Prohibitions

Recipients must comply with [31 U.S.C. § 1352](#), which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

XXI. National Environmental Policy Act

Recipients must comply with the requirements of the [National Environmental Policy Act of 1969](#), (*NEPA*) [Pub. L. 91-190 \(1970\)](#) (codified as amended at [42 U.S.C. § 4321 et seq.](#) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

XXII. Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in [6 C.F.R. Part 19](#)

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and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

XXIII. Non-Supplanting Requirement

Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

XXIV. Notice of Funding Opportunity Requirements

All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.

XXV. Patents and Intellectual Property Rights

Recipients are subject to the *Bayh-Dole Act*, [35 U.S.C. § 200 et seq](#), unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at [37 C.F.R. Part 401](#) and the standard patent rights clause located at 37 C.F.R. § 401.14.

XXVI. Procurement of Recovered Materials

States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, [Pub. L. 89-272](#) (1965), (codified as amended by the *Resource Conservation and Recovery Act*, [42 U.S.C. § 6962](#).) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 C.F.R. Part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

XXVII. Rehabilitation Act of 1973

Recipients must comply with the requirements of Section 504 of the *Rehabilitation Act of 1973*, Pub. L. 93-112 (1973), (codified as amended at [29 U.S.C. § 794](#),) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

XXVIII. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirements

If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the [Federal Awardee Performance and Integrity Information System \(FAPIIS\)](#)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under [Pub. L. 110-417, § 872](#), as amended [41 U.S.C. § 2313](#). As required by [Pub. L. 111-212, § 3010](#), all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for federal procurement contracts, will be publicly available.

2. Proceedings about Which Recipients Must Report

Recipients must submit the required information about each proceeding that:

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- a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the federal government;
- b. Reached its final disposition during the most recent five-year period; and
- c. One or more of the following:
 - 1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - 2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - 3) An administrative proceeding, as defined in paragraph 5, that resulted in a finding of fault and liability and the recipient's payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - 4) Any other criminal, civil, or administrative proceeding if:
 - a) It could have led to an outcome described in this award term and condition;
 - b) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on the recipient's part; and
 - c) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Recipients must enter the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition in the SAM Entity Management area. Recipients do not need to submit the information a second time under financial assistance awards that the recipient received if the recipient already provided the information through SAM because it was required to do so under federal procurement contracts that the recipient was awarded.

4. Reporting Frequency

During any period of time when recipients are subject to the main requirement in paragraph 1 of this award term and condition, recipients must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that recipients have not reported previously or affirm that there is no new information to report. Recipients that have federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For the purpose of this award term and condition:

- a. *Administrative proceeding*: means a non-judicial process that is adjudicatory in nature to decide fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the federal and state level but only in connection with performance of a federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

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- b. *Conviction*: means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. *Total value of currently active grants, cooperative agreements, and procurement contracts* includes—
 - 1) Only the federal share of the funding under any federal award with a recipient cost share or match; and
 - 2) The value of all expected funding increments under a federal award and options, even if not yet exercised.

XXIX. Reporting Subawards and Executive Compensation

1. Reporting of first tier subawards.

- a. *Applicability. Unless the recipient is exempt as provided in paragraph 4 of this award term, the recipient must report each action that equals or exceeds \$30,000 in federal funds for a subaward to a non-federal entity or federal agency (See definitions in paragraph 5 of this award term).*
- b. *Where and when to report.*
 - 1) Recipients must report each obligating action described in paragraph 1 of this award term to the [Federal Funding Accountability and Transparency Act Subaward Reporting System](#) (FSRS).
 - 2) For subaward information, recipients report no later than the end of the month following the month in which the obligation was made. For example, if the obligation was made on November 7, 2016, the obligation must be reported by no later than December 31, 2016.
- c. *What to report.* The recipient must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov>.

2. Reporting Total Compensation of Recipient Executives.

- a. *Applicability and what to report.* Recipients must report total compensation for each of the five most highly compensated executives for the preceding completed fiscal year, if—
 - 1) The total federal funding authorized to date under this federal award equals or exceeds \$30,000 as defined in 2 C.F.R. § 170.320;
 - 2) In the preceding fiscal year, recipients received—
 - a) Eighty percent or more of recipients' annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the *Federal Funding Accountability and Transparency Act* (Transparency Act), as defined at [2 C.F.R. § 170.320](#) (and subawards); and

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- b) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and
 - c) The public does not have access to information about the compensation of the executives through periodic reports filed under Section 13(a) or 15(d) of the *Securities Exchange Act of 1934* ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or Section 6104 of the Internal Revenue Code of 1986. (See the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>. to determine if the public has access to the compensation information.)
- 3) *Where and when to report.* Recipients must report executive total compensation described in paragraph 2.a. of this award term:
- a) As part of the recipient's registration profile at <https://www.sam.gov>.
 - b) By the end of the month following the month in which this award is made, and annually thereafter.

3. Reporting of Total Compensation of Subrecipient Executives.

- a. *Applicability and what to report.* Unless recipients are exempt as provided in paragraph 4. of this award term, for each first-tier subrecipient under this award, recipients shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - 1) In the subrecipient's preceding fiscal year, the subrecipient received—
 - a) Eighty percent or more of its annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and
 - b) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
 - 2) The public does not have access to information about the compensation of the executives through periodic reports filed under Section 13(a) or 15(d) of the *Securities Exchange Act of 1934* ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or Section 6104 of the Internal Revenue Code of 1986. (See the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>. to determine if the public has access to the compensation information.)
- b. *Where and when to report.* Subrecipients must report subrecipient executive total compensation described in paragraph 3.a. of this award term:
 - 1) To the recipient.
 - 2) By the end of the month following the month during which recipients make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), subrecipients must report any required compensation information of the subrecipient by November 30 of that year.

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4. Exemptions

If, in the previous tax year, recipients had gross income, from all sources, under \$300,000, then recipients are exempt from the requirements to report:

- a. Subawards, and
- b. The total compensation of the five most highly compensated executives of any subrecipient

5. Definitions

For purposes of this award term:

- a. *Federal Agency* means a federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).
- b. *Non-Federal Entity*: means all the following, as defined in 2 C.F.R. Part 25:
 - 1) A Governmental organization, which is a state, local government, or Indian tribe;
 - 2) A foreign public entity;
 - 3) A domestic or foreign nonprofit organization;
 - 4) A domestic or foreign for-profit organization;
- c. *Executive*: means officers, managing partners, or any other employees in management positions.
- d. *Subaward*: means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible subrecipient.
 - 1) The term does not include recipients' procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R. § 200.331).
 - 2) A subaward may be provided through any legal agreement, including an agreement that a recipient or a subrecipient considers a contract.
- e. *Subrecipient*: means a non-federal entity or federal agency that:
 - 1) Receives a subaward from the recipient under this award; and
 - 2) Is accountable to the recipient for the use of the federal funds provided by the subaward.
- f. *Total compensation*: means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (see [17 C.F.R. § 229.402\(c\)\(2\)](#)):
 - 1) *Salary and bonus*.
 - 2) *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

2021 DHS Standard Terms and Conditions

- 3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
- 4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
- 5) *Above-market earnings on deferred compensation which is not tax-qualified.*
- 6) *Other compensation,* if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

XXX. SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the [SAFECOM](#) Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

XXXI. Terrorist Financing

Recipients must comply with [E.O. 13224](#) and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

XXXII. Trafficking Victims Protection Act of 2000 (TVPA)

Trafficking in Persons.

1. Provisions applicable to a recipient that is a private entity.

- a. Recipients, the employees, subrecipients under this award, and subrecipients' employees may not—
 - 1) Engage in severe forms of trafficking in persons during the period of time the award is in effect;
 - 2) Procure a commercial sex act during the period of time that the award is in effect; or
 - 3) Use forced labor in the performance of the award or subawards under the award.
- b. DHS may unilaterally terminate this award, without penalty, if a recipient or a subrecipient that is a private entity —
 - 1) Is determined to have violated a prohibition in paragraph 1.a of this award term; or
 - 2) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph 1.a of this award term through conduct that is either—
 - a) Associated with performance under this award; or
 - b) Imputed to recipients or subrecipients using the standards and due process for imputing the conduct of an individual to an organization that are provided in [2 C.F.R. Part 180](#), "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 C.F.R. Part 3000.

2021 DHS Standard Terms and Conditions

2. Provision applicable to recipients other than a private entity.

DHS may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- a. Is determined to have violated an applicable prohibition in paragraph 1.a of this award term; or
- b. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph 1.a of this award term through conduct that is either—
 - 1) Associated with performance under this award; or
 - 2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. Part 3000.

3. Provisions applicable to any recipient.

- a. Recipients must inform DHS immediately of any information received from any source alleging a violation of a prohibition in paragraph 1.a of this award term.
- b. It is DHS’s right to terminate unilaterally that is described in paragraph 1.b or 2 of this section:
 - 1) Implements TVPA, Section 106(g) as amended by 22 U.S.C. 7104(g)), and
 - 2) Is in addition to all other remedies for noncompliance that are available to us under this award.
- c. Recipients must include the requirements of paragraph 1.a of this award term in any subaward made to a private entity.

4. Definitions.

For the purposes of this award term:

- a. *Employee*: means either:
 - 1) An individual employed by a recipient or a subrecipient who is engaged in the performance of the project or program under this award; or
 - 2) Another person engaged in the performance of the project or program under this award and not compensated by the recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- b. *Forced labor*: means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- c. *Private entity*: means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25. It includes:

2021 DHS Standard Terms and Conditions

- 1) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).
 - 2) A for-profit organization.
- d. *Severe forms of trafficking in persons, commercial sex act, and coercion* are defined in [TVPA, Section 103](#), as amended (22 U.S.C. § 7102).

XXXIII. Universal Identifier and System of Award Management

1. Requirements for System for Award Management and Unique Entity Identifier

Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at [2 C.F.R. Part 25, Appendix A](#), the full text of which is incorporated here by reference.

2. Definitions

For purposes of this term:

1. *System for Award Management (SAM)*: means the federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found on [SAM.gov](#).
2. *Unique Entity Identifier*: means the identifier assigned by SAM to uniquely identify business entities.
3. *Entity*: includes non-Federal entities as defined at 2 C.F.R. § 200.1 and includes the following, for purposes of this part:
 - a. A foreign organization;
 - b. A foreign public entity;
 - c. A domestic for-profit organization; and
 - d. A federal agency.
4. *Subaward*: means a legal instrument to provide support for the performance of any portion of the substantive project or program for which a recipient received this award and that the recipient awards to an eligible subrecipient.
 - a. The term does not include the recipients' procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R. § 200.330).
 - b. A subaward may be provided through any legal agreement, including an agreement that a recipient considers a contract.
5. *Subrecipient* means an entity that:
 - a. Receives a subaward from the recipient under this award; and
 - b. Is accountable to the recipient for the use of the federal funds provided by the subaward.

2021 DHS Standard Terms and Conditions

XXXIV. USA PATRIOT Act of 2001

Recipients must comply with requirements of Section 817 of the [Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 \(USA PATRIOT Act\)](#), which amends 18 U.S.C. §§ 175–175c.

XXXV. Use of DHS Seal, Logo and Flags

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

XXXVI. Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at [10 U.S.C § 2409](#), [41 U.S.C. § 4712](#), and [10 U.S.C. § 2324](#), [41 U.S.C. §§ 4304](#) and [4310](#).

Attachment 5

Required Sub-Recipient File Documentation

Sub-grantee or sub-recipient must meet the financial administration requirements in 2 C.F.R Part 200 and must maintain a file for each Homeland security grant award. The files must be available for review by the North Carolina Division of Emergency Management – Homeland Security Branch Staff for site visits, project closeout and future audits.

Sub-grantee or sub-recipient must include appropriate documentation in the file, including but not limited to the following documents:

- Grant Award and Memorandum of Agreement/ Memorandum of Understanding and Supporting Appendices
- Completed appropriate cost report forms with invoices and proof(s) of payment
- Audit Findings and Corrective Action Plans
- Equipment Inventory records with photo documentation of labeling

Non-Federal entities are required to maintain and retain the following:

- Backup documentation, such as bids and quotes.
- Cost/price analyses on file for review by Federal personnel, if applicable.
- Other documents required by Federal regulations applicable at the time a grant is awarded to a recipient.

FEMA requires that non-Federal entities maintain the following documentation for federally funded purchases:

- Specifications
- Solicitations
- Competitive quotes or proposals
- Basis for selection decisions
- Purchase orders
- Contracts
- Invoices
- Cancelled checks

Non-Federal entities should keep detailed records of all transactions involving the grant. FEMA may at any time request copies of purchasing documentation along with copies of cancelled checks for verification.

Non-Federal entities who fail to fully document all purchases will find their expenditures questioned and subsequently disallowed.

Attachment 6



North Carolina Department of Public Safety

Emergency Management

Roy Cooper, Governor
Erik A. Hooks, Secretary

Michael A. Sprayberry, Executive Director

MEMORANDUM

TO: Erik Miller – Grants Branch Manager

FROM: Greg Hauser – Communications Branch Manager

SUBJECT: Communications equipment grant requirements

DATE: April 12, 2021

In an effort to align communications technologies with current statewide communications plans, systems, networks, strategies and emerging technologies, the Communications Branch requires that purchases made with U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) federal financial assistance to include the Emergency Management Performance Grant (EMPG), Emergency Management Performance Supplemental Grant (EMPG-S), and the Homeland Security Grant (HSGP) meet the below standards. Included are the equipment identifiers as listed on the FEMA Authorized Equipment List (AEL) that are allowable.

Radio purchases (06CP-01-BASE, 06CP-01-MOBL, 06CP-01-PORT)

Radio purchases can be classified into three parts; portable (handheld), mobile (vehicular/desktop) or console/consolette (software/infrastructure). These radios must have the following capabilities, i.e. the feature must be purchased and present in the radio:

- Capable of operating on a P25 radio system/network
- Capable of operating in a P25 Phase II (TDMA) environment
- Capable of passing and receiving AES/256-bit encryption
- Capable of utilizing more than one encryption key

Further information is available at:

<https://www.dhs.gov/science-and-technology/approved-grant-eligible-equipment>

If a radio purchase is requested for other, non-P25 networks the following are **NOT** eligible:

- Wouxun handheld or mobile radios (multiband)
- Baofeng handheld or mobile radios (multiband)

Any other wireless device outlined in the FEMA “Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim)” dated August 3, 2020 (attached) and effective August 13, 2020. https://www.fema.gov/sites/default/files/documents/fema_prohibitions-expending-fema-award-funds-covered-telecommunications-equipment-services.pdf

Public Alerting Software Platforms (04AP-09-ALRT)

Public alerting software platforms are a means of alerting citizens of emergencies. There are two distinct functions that a software platform provides. There is a citizen sign up option for notifications and a wireless emergency alerting (WEA) function. The WEA function alerts smartphones and devices based on geographic location through the Integrated Public Alert and Warning System (IPAWS). Please make

MAILING ADDRESS:
4236 Mail Service Center
Raleigh, NC 27699-4236
www.ncdps.gov/ncem



An Equal Opportunity Employer

OFFICE LOCATION:
1636 Gold Star Drive
Raleigh, NC 27607
Telephone: (919) 825-2500

sure the purchasing agency is a North Carolina/FEMA approved public alerting authority (PAA). **If purchasing software, it must be identified on the attached “*List of Alert Software Providers (AOSP) That Have Successfully Demonstrated Their IPAWS Capabilities.*”**

Voice Gateway Devices (06CP-02-BRDG)

Gateway devices are used to bridge disparate voice sources together to create a single line of communications. This can include radio, voice over IP, smart device application, etc. These devices are **NOT** allowed to be permanently mounted at Public Safety Answering Points (PSAP), tower sites or network rooms to permanently patch disparate radio systems. If a permanent patch is required, written permissions **must** be obtained from all system administrators. Once this is completed, the requestor must obtain approval from the grant’s manager through an email. This email should include the Communications Branch Manager and their NCEM Area Coordinator.

If you have any questions, please do not hesitate to contact me at 919-618-0536 or greg.hauser@ncdps.gov .

Attachment 7

Subrecipient Monitoring

Subrecipient is subject to monitoring by Recipient in accordance with the provisions of 2 CFR 200.332.

- A. Recipient may assess Subrecipient's risk of noncompliance with applicable laws, rules, regulations, policies and guidelines, and with the terms and conditions of this award, per 2 CFR 200.332(b).
 1. This includes the application and award process when Subrecipient was selected to receive this award, and it continues throughout the life of the award, such as ensuring Subrecipient remains eligible to receive funding as specified in **Funding Eligibility Criteria**.
 2. Subrecipient's prior experience with other grant awards by/through Recipient may also be included in the risk assessment.
 3. Depending on the risk, additional conditions may be imposed on this award at any time per 2 CFR 200.332(c).
 4. Subrecipient's activities may be continually monitored as necessary to ensure that this award is used for authorized purposes and in compliance with all applicable laws, rules, regulations, polices and guidelines, per 2 CFR 200.332(d).
- B. Monitoring will include Recipient reviewing all financial, performance and/or or cost reports - including all requests for reimbursement (and associated invoices and proof of payment) - submitted by Subrecipient as required in this MOA.
 1. Recipient will also review all other documentation required to be submitted by Subrecipient in this MOA, including equipment lists and inventories, after action reports for exercises, training course rosters and descriptions, all contracts and subcontracts executed by Subrecipient with funds from this award, and all project closeout documents.
 2. All documentation required to be retained by Subrecipient in this MOA, including all required Subrecipient file documentation per 2 CFR 200.334, is also subject to review and monitoring by Recipient (see **File Retention**).
 3. Any/all reports and audits required to be filed under federal and state law as specified in **State of North Carolina Reporting Requirements** and **Audit Requirements** are also subject to review and monitoring by Recipient.
- C. Any required documentation, reports or requests for reimbursement submitted late, incompletely, inaccurately and/or with discrepancies may elevate the risk status of Subrecipient and cause additonal monitoring, imposition of additional award conditions, return of funds, negative determinations for future awards, and/or any other remedy for noncompliance specified in 2 CFR 200.339 (see **Compliance**).
 1. This includes any/all reports and audits required to be filed under federal and state law as specified in **State of North Carolina Reporting Requirements** and **Audit Requirements**.
 2. Failure to timely file complete and accurate audits and reports required under federal and state law may subject Subrecipient to additional monitoring and the full range of remedies for noncompliance specified in **Compliance**.
- D. Any findings or corrective actions identified in Subrecipient audits specifically related to this award may elevate the risk status of Subrecipient and cause additonal monitoring, imposition of additional award conditions, return of funds, negative determinations for future awards, and/or any other remedy for noncompliance specified in 2 CFR 200.339 (see **Compliance**).

1. Such audit findings and corrective actions must be appropriately resolved by Subrecipient and are subject to monitoring, follow-up and verification by Recipient.
 2. Recipient may issue a Management Decision for applicable audit findings pertaining specifically to this award per 2 CFR 200.332 and 2 CFR 200.521, in addition to any Management Decisions issued by Subrecipient.
- E. Depending on the risk, Subrecipient monitoring may include, but is not limited to, the following measures: training and technical assistance, site visits, desk reviews, and audits (in addition to the audits specified in **Audit Requirements**).

AGENDA ITEM 13:**MISCELLANEOUS ADMINISTRATIVE MATTERS*****B. Proposed Appalachian State University Tower Lease Renewal*****MANAGER'S COMMENTS:**

Appalachian State University is requesting the renewal of a lease for a tower, antenna, and small building at the County's Rich Mountain tower site for broadcasting of their radio station. ASU continues to assure there would be no interference with County equipment at that site.

Property owned by the County may be leased or rented for such terms and upon such conditions as the Board may determine, for up to ten (10) years. Property may be rented or leased only pursuant to a resolution of the Board authorizing the execution of the lease or rental agreement adopted at a regular Board meeting upon 10 days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the Board's intent to authorize the lease or rental at its next regular meeting.

The resolution was advertised and adopted previously in September 2020. Board approval, contingent upon County Attorney review, is required to approve the lease and completion of PO-28 Lease proposal form.

Staff seeks direction from the Board.

Prepared by and Return to: Attorney General's Office / Property Control Section
Post Office Box 629, Raleigh, NC 27602
SPO File No.: 95-4 (95-BF) / DOJ File No.: PC-12-00168

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

MEMORANDUM OF LEASE

THIS MEMORANDUM LEASE, is made as of the last date set forth in the notary acknowledgements below, by and between the COUNTY OF WATAUGA, a body politic and corporate, hereinafter referred to as "Lessor"; and the STATE OF NORTH CAROLINA, a body politic and corporate, hereinafter referred to as "Lessee."

Lessor and Lessee entered into a Lease Agreement dated _____, 2021 (the "Lease"), the terms, covenants and conditions of which are hereby incorporated in this Memorandum of Lease, for a term of nine (9) years, commencing on the 1st day of January 2021 and terminating on the 31st day of December 2029 (the "Term").

In consideration of the terms, covenants, conditions and rental as set forth in the Lease, Lessor leased to Lessee that certain premises lying and being in or near the Town of Boone, Watauga County, North Carolina, consisting collectively of ground space to accommodate a communications tower, an equipment building and other improvements appurtenant thereto, on that certain parcel or tract of land containing 0.489 acres, more or less, having a physical address of 759 Fire Tower Road, Boone, North Carolina, GPS coordinates of W 81°41'54", N 36°13'59" and parcel identification number 2901-44-0447-000, said premises being depicted and described on a drawing attached hereto and incorporated herein as Exhibit A.

[signatures begin on following page]

IN TESTIMONY WHEREOF, this Memorandum of Lease has been executed by the parties hereto, as of the dates set forth in the notary acknowledgements below.

LESSOR:

COUNTY OF WATAUGA

By: _____

Print Name: _____

Title: _____

ATTEST:

Clerk

(Seal)

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

I, _____, a Notary Public in and for the aforesaid County and State do hereby certify that _____ personally came before me this day and acknowledged that he/she is Clerk of the COUNTY OF WATAUGA and that by authority duly given and as an act of the COUNTY OF WATAUGA, the foregoing instrument was signed by _____, its _____, attested by himself/herself as Clerk and sealed with the common seal.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the _____ day of _____, 2021.

My Commission Expires: _____

Notary Public
Print Name: _____

LESSEE:

STATE OF NORTH CAROLINA

By: _____
Governor

ATTEST:

Secretary of State

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, _____, a Notary Public for _____
County, North Carolina, do certify that ELAINE F. MARSHALL, Secretary of State of the State of North
Carolina, personally came before me this day and acknowledged that she is Secretary of State of the State
of North Carolina, and that by authority duly given and as the act of the State, the foregoing instrument was
signed in its name by ROY COOPER, Governor of the State of North Carolina, sealed with the Great Seal
of the State of North Carolina, and attested by herself as Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the _____ day
of _____, 2021.

Notary Public

My commission expires: _____

Print Name: _____

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF WATAUGA

THIS LEASE AGREEMENT (hereinafter "Lease"), made and entered into as of the last date set forth in the notary acknowledgements below, by and between, COUNTY OF WATAUGA, a body politic and corporate, hereinafter referred to as "Lessor"; and the STATE OF NORTH CAROLINA, a body politic and corporate, hereinafter referred to as "Lessee";

WITNESSETH:

THAT WHEREAS, Appalachian State University has requested and approved the execution of this instrument for the purposes herein specified; and

WHEREAS, the execution of this Lease for and on behalf of the State of North Carolina has been duly approved by the Governor and Council of State at a meeting held in the City of Raleigh, North Carolina, on the 1st day of December 2020; and

WHEREAS, the parties hereto have mutually agreed to the terms of this Lease as hereinafter set out.

NOW THEREFORE, in consideration of the Premises, as described herein, and the promises and covenants contained in the terms and conditions hereinafter set forth, Lessor does hereby rent, lease and demise unto Lessee for and during the term and under the terms and conditions hereinafter set forth, those Premises, as defined herein, with all rights, privileges and appurtenances thereto belonging, lying and being in or near the Town of Boone, Watauga County, North Carolina, and being more particularly described herein.

The terms and conditions of this Sublease are as follows:

1. Premises. The "Premises" consists collectively of ground space to accommodate a communications tower (the "Tower"), an equipment building (the "Building") and other improvements appurtenant to the operation of Lessee's Communications Equipment, as said term is defined herein, on that certain parcel or tract of land containing 0.489 acres, more or less, having a physical address of 759 Fire Tower Road, Boone, North Carolina, GPS coordinates of W 81°41'54", N 36°13'59" and parcel identification number 2901-44-0447-000, said Premises being depicted and described on a drawing attached hereto and incorporated herein as Exhibit A.
2. Term. The term of this Lease shall be for a period of nine (9) years, commencing on the 1st day of January 2021 (the "Commencement Date") and terminating on the 31st day of December 2029 (the "Term").
3. Rent. Lessee shall pay to Lessor as rental for the Premises, the sum of ONE DOLLAR (\$1.00) for the Term.

4. Use and Equipment. Subject to the terms and conditions of this Lease, Lessee shall use the Premises for purpose of operating, maintaining, repairing, and/or replacing the existing Tower and Building, and for the purpose of installing, operating, maintaining, repairing, replacing and removing radio communications equipment including, without limitation, antenna, microwave dishes, transmission lines, cables, wires, receivers, generator(s), transmitter(s), transfer switch(es) and other accessories (all such equipment whether located in the Building or on the Tower being collectively referred to herein as the "Communications Equipment"). The Tower, the Building and Communications Equipment shall be used by Lessee to support the operation and broadcast of radio station WASU. Lessee shall not use or knowingly permit any part of the Premises to be used for any unlawful purpose, nor for any purpose or in any manner which is in violation of any present or future federal, State or local governmental laws or regulations.

5. Fixtures. Lessor hereby acknowledges and agrees that the Tower, the Building, the Communications Equipment and any other improvements or trade fixtures constructed or installed on the Premises shall remain the property of Lessee and shall not be, become or be deemed by Lessor to be fixtures upon the Premises.

6. Utilities / Maintenance. Lessee shall be responsible for the maintenance and operation of the Tower, the Building and the Communications Equipment, including, but not limited to all utility charges attributable to Lessee's use of the Premises. Lessee, at its own expense, may install, maintain, repair and replace such utilities on the Premises as needed for the proper operation of its Communications Equipment. Lessee shall repair at its own expense damage to the Premises, the Tower, the Building or the Communications Equipment, which is the result of Lessee's use of the Premises except if such cost arises out of the negligent or wrongful acts or omissions of Lessor, its contractors or agents.

7. Access. Lessor grants to Lessee free and unrestricted ingress and egress to the Premises during the Term for the purpose of constructing, installing, maintaining, operating, repairing, replacing, upgrading and removing the Tower, the Building and the Communications Equipment.

8. Insurance & Liability.

(a) Lessor agrees that Lessee's decision to self-insure satisfies all insurance requirements of this Lease applicable to Lessee.

(b) As between Lessor and Lessee, Lessee, subject to the terms of this Lease, will be primarily liable for the negligent or intentional acts or omissions of its agents or employees. As to third parties, Lessee is an immune sovereign and is not ordinarily subject to suit. However, Lessee has enacted Chapter 143, Article 31, of the North Carolina General Statutes (the "Tort Claims Act"), pursuant to which the Lessee may be liable for the torts of its officers and employees, within the terms of the Tort Claims Act, and accordingly, Lessee will be primarily liable for any claims within the coverage of the Tort Claims Act.

(c) As between Lessor and Lessee, Lessor, subject to the terms of this Lease, shall be primarily liable for the negligent or intentional acts or omissions of its agent and employees. As

to third parties, Lessor, solely to the extent indemnified by an insurance policy such that any amounts paid by Lessor to Lessee comes from insurance proceeds and not from Lessor's funds, agrees to save Lessee harmless from and against any and all loss, damage, claim, demand, liability, or expense, including reasonable attorney's fees, by reason of damage to any person(s) or property on or about the Premises, which may arise or be claimed to have arisen as a result of the use of the Premises by Lessee, its agents or employees, except where such loss or damage arises from the willful or negligent misconduct of Lessee, its agents or employees.

9. Governmental Approvals & Compliance. During the Term, Lessee shall comply with all applicable laws affecting the Premises. Lessee shall obtain any necessary governmental licenses or authorizations required for its use of the Premises and shall comply with government regulations applicable to its operations, including those of the Federal Aviation Administration ("FAA") and the Federal Communications Commission ("FCC").

10. Interference. The Communications Equipment shall be designed, constructed, installed, maintained, and operated in compliance with the applicable rules and regulations of the FCC and good engineering practices.

11. Condition of Tower. Lessee has the right to and responsibility to repair and maintain the Tower. Subject to other provisions contained in this Lease, Lessee, at its cost, except if such cost arises out of a negligent or wrongful act or omission of Lessor, its employees or agents, shall maintain and repair the Tower and access to the Premises, if applicable thereto, such that Lessee may utilize the Premises for the purposes and to the extent herein permitted. Lessee's maintenance responsibilities with respect to the Tower, if applicable, shall include the lighting system, the super structure and the support system. The maintenance and repair of the Tower must comply with all State and federal ordinances, rules and regulations and adhere to standard industry practices. In addition, Lessee shall keep and maintain records of its communications with the FAA concerning the Tower, including any notifications from said agency documenting maintenance and repair deficiencies. Subject to the terms of this Paragraph, Lessee assumes all responsibility for any fines, levies and /or other penalties imposed as a result of non-compliance with any laws or regulations governing the Tower.

12. Security. Lessor agrees that the building and Communications Equipment will be secured by a locked fence.

13. Taxes. Lessee is exempt from taxation and therefore shall not pay any real or personal property taxes attributable to or assessed on, its interest in the Tower, the Building or the Communications Equipment.

14. Right to Terminate. Lessee may terminate this Lease, at its option, after giving not less than thirty (30) days' notice to Lessor, if:

(a) Any governmental agency denies a request by Lessee for or revokes a permit, license or approval, which is required for Lessee to install or operate the Communications Equipment on the Premises; or

(b) Lessee determines that technical problems or radio interference problems from other antennas or from nearby radio transmitting facilities, which problems cannot reasonably be corrected, preclude Lessee from using Premises for its intended purpose; or

(c) Utilities necessary for Lessee's use of the Premises are not available to the Premises; or

(d) The Premises are damaged or destroyed to an extent, which prohibits or materially interferes with Lessee's use of the Premises; or

(e) Lessee determines the Premises are no longer needed.

15. Termination. Upon termination of this Lease, Lessee will peaceably surrender the Premises in as good order and condition as when received, reasonable use and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God, or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this Lease, excepted. It is understood and agreed that Lessee shall have the right to remove from the Premises: (i) the Tower, (ii) the Building and (iii) the Communications Equipment and any other personal property or trade fixtures belonging to Lessee. Lessee hereby agrees to repair to the reasonable satisfaction of Lessor any portion of the Premises damaged by the removal of the Tower, Building or Communications Equipment.

16. Title & Quiet Possession. Lessor agrees that Lessee, upon keeping and performing the covenants and agreements herein contained, shall at all times during the existence of this Lease peaceably and quietly have, hold, and enjoy the Premises free from the adverse claims of any person. Lessor represents and warrants to Lessee that Lessor has the full right to make this Lease and that Lessee shall have quiet and peaceful possession of the Premises throughout the Term.

17. Holdover. Any hold over after the expiration of the Term, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, so far as applicable; however, either Party shall give not less than sixty (60) days written notice to terminate the tenancy.

18. Hazardous Materials.

(a) For purposes of this Lease: (i) "Hazardous Material" or "Hazardous Materials" means and includes, without limitation, (1) solid or hazardous waste, as defined in the Resource Conservation and Recovery Act of 1980, or in any applicable state or local law or regulation, (2) hazardous substances, as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("CERCLA"), or in any applicable state or local law or regulation, (3) gasoline, or any other petroleum product or by-product, (4) toxic substances, or rodenticides, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act of 1975, or in any applicable state or local law or regulation, as each such Act, statute, or regulation may be amended from time to time; (ii) "Release" shall have the meaning given such term, in Environmental Laws, including, without limitation, CERCLA; and (iii) "Environmental Law" or "Environmental Laws" shall mean "Super Fund" or "Super Lien" law or any other federal, state, or local statute, law, ordinance, or code,

regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be legally in effect, including, without limitation, the following, as same may be amended or replaced from time to time, and all regulations promulgated and officially adopted thereunder or in connection therewith: Super Fund Amendments and Reauthorization Act of 1986 ("SARA"); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"); The Clean Air Act ("CAA"); the Clean Water Act ("CWA"); the Toxic Substance Control Act ("TSCA"); the Solid Waste Disposal Act ("SWDA"), as amended by the Resource Conservation and Recovery Act ("RCRA"); the Hazardous Waste Management System; and the Occupational Safety and Health Act of 1970 ("OSHA"). All obligations and liabilities arising under this Paragraph which arise out of events or actions occurring prior to the expiration or termination of this Lease shall survive the assignment of this Lease and the expiration, termination, cancellation or release of record of this Lease.

(b) Lessee agrees that it will conduct its activities on the Premises in compliance with all applicable Environmental Laws. As between Lessor and Lessee, Lessee, subject to the terms of this Lease and to the extent permitted by the Tort Claims Act, will be primarily liable for the existence or discovery of any Hazardous Materials on the Premises or for the migration of any Hazardous Materials to other properties or for the release of any Hazardous Materials into the environment in violation of applicable Environmental Laws, arising solely from Lessee's use of the Premises. Lessor represents warrants and agrees that it has in the past and that also during the Term will conduct its activities on the Premises in compliance with all applicable Environmental Laws and that the Premises is free of Hazardous Materials as of the date of this Lease. Lessor shall be responsible for, and promptly conduct any investigation and remediation as required by any Environmental Law or common law, of all spills or other release of Hazardous Materials on the Premises, not caused solely by Lessee, that have occurred in the past or which may occur during the Term. To the extent permitted by applicable law, Lessor agrees to be liable and hold Lessee harmless from and against any and all liens, demands, defenses, suits, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including, without limitation, attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against Lessee with respect to, or as a direct or indirect result of the violation of any Environmental Laws applicable to the Premises, caused by or within the control of Lessor.

19. Availability of Funds. Lessor and Lessee agree and understand that the continuation of this Lease for the Term or any extension thereof is dependent upon and subject to the appropriation, allocation or availability of funds for this purpose to the agency of Lessee responsible for payment of any cost or expense associated with this Lease. Lessor and Lessee also agree that in the event the agency of Lessee or that body responsible for the appropriations of said funds, in its sole discretion, determines, in view of its total local operations that available funding for the payment of the costs and expenses associated with this Lease are insufficient to continue its operations on the Premises, it may choose to terminate this Lease by giving Lessor written notice of said termination, and this Lease shall terminate immediately without any further liability to Lessee.

20. Assignment & Subletting. Lessee shall not assign this Lease without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Lessee, in its reasonable discretion, shall have the right to sublet the Premises in whole or in part.
21. Prohibition on Gifts. North Carolina General Statute § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any employee of Lessee of any gift from anyone with a contract with Lessee, or from any person seeking to do business with Lessee. By execution of this Lease, Lessor attests, for its entire organization, including its employees or agents, that it is not aware that any such gift has been offered, accepted, or promised by any employees of its organization.
22. Modification. No modification of any provision hereof and no cancellation or surrender hereof shall be valid unless in writing and signed and agreed to by both parties.
23. Binding Effect. Subject to the provisions herein, this Lease shall extend to and bind the parties and their successors and assigns.
24. Applicable Law. This Lease shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina, regardless of conflict of law principles.
25. Effect of Waiver. The failure of either party to insist in any instance upon strict performance of any of the terms and conditions set forth in this Lease shall not be construed as a waiver of the same in any other instance.
26. Complete Agreement. This Lease represents the entire agreement between the parties covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties.
27. Severability. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Lease shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
28. Construction. No provision of this Lease shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.
29. Interpretation. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural may be substituted for the singular number in any place or places herein in which the context may require such substitution or substitutions.

30. Terms. Capitalized terms used in this Lease shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

31. Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

32. Memorandum of Lease for Recording. At the request of either party, Lessor and Lessee shall execute a memorandum of this Lease for recording in the public records at the requesting party's sole cost and expense. The memorandum of Lease shall set forth the parties, provide a description of the Premises, specify the Term and incorporate this Lease by reference.

33. Notices. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows:

to Lessor: Watauga County Manager
680 West King Street
Boone, North Carolina 28607

to Lessee: Appalachian State University
Attn: Provost & Executive Vice Chancellor
438 Academy Street, BB Dougherty Admin, 2nd Floor
Boone, North Carolina 28608

w/copy to: Appalachian State University
Attn: General Counsel
438 Academy Street, BB Dougherty Admin, 3rd Floor
Boone, North Carolina 28608

w/copy to: State Property Office
Attn: Manager, Leasing and Space Planning Section
1321 Mail Service Center
Raleigh, North Carolina 27699-1321

Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

[signatures begin on following page]

IN TESTIMONY WHEREOF, this Lease has been executed by the parties hereto, in duplicate originals, as of the last date set forth in the notary acknowledgements below.

LESSOR:

COUNTY OF WATAUGA

By: _____

Print Name: _____

Title: _____

ATTEST:

Clerk

(Seal)

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public in and for the aforesaid County and State do hereby certify that _____ personally came before me this day and acknowledged that he/she is Clerk of the COUNTY OF WATAUGA and that by authority duly given and as an act of the COUNTY OF WATAUGA, the foregoing instrument was signed by _____, its _____, attested by himself/herself as Clerk and sealed with the common seal.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the _____ day of _____, 2021.

My Commission Expires: _____

Notary Public
Print Name: _____

LESSEE:

STATE OF NORTH CAROLINA

By: _____
Governor

ATTEST:

Secretary of State

APPROVED AS TO FORM:
JOSHUA H. STEIN, Attorney General

By: _____
Special Deputy Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, _____, a Notary Public for _____ County, North Carolina, do certify that ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, personally came before me this day and acknowledged that she is Secretary of State of the State of North Carolina, and that by authority duly given and as an act of the State, the foregoing instrument was signed in its name by ROY COOPER, Governor of the State of North Carolina, sealed with the Great Seal of the State of North Carolina, and attested by herself as Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the _____ day of _____, 2021.

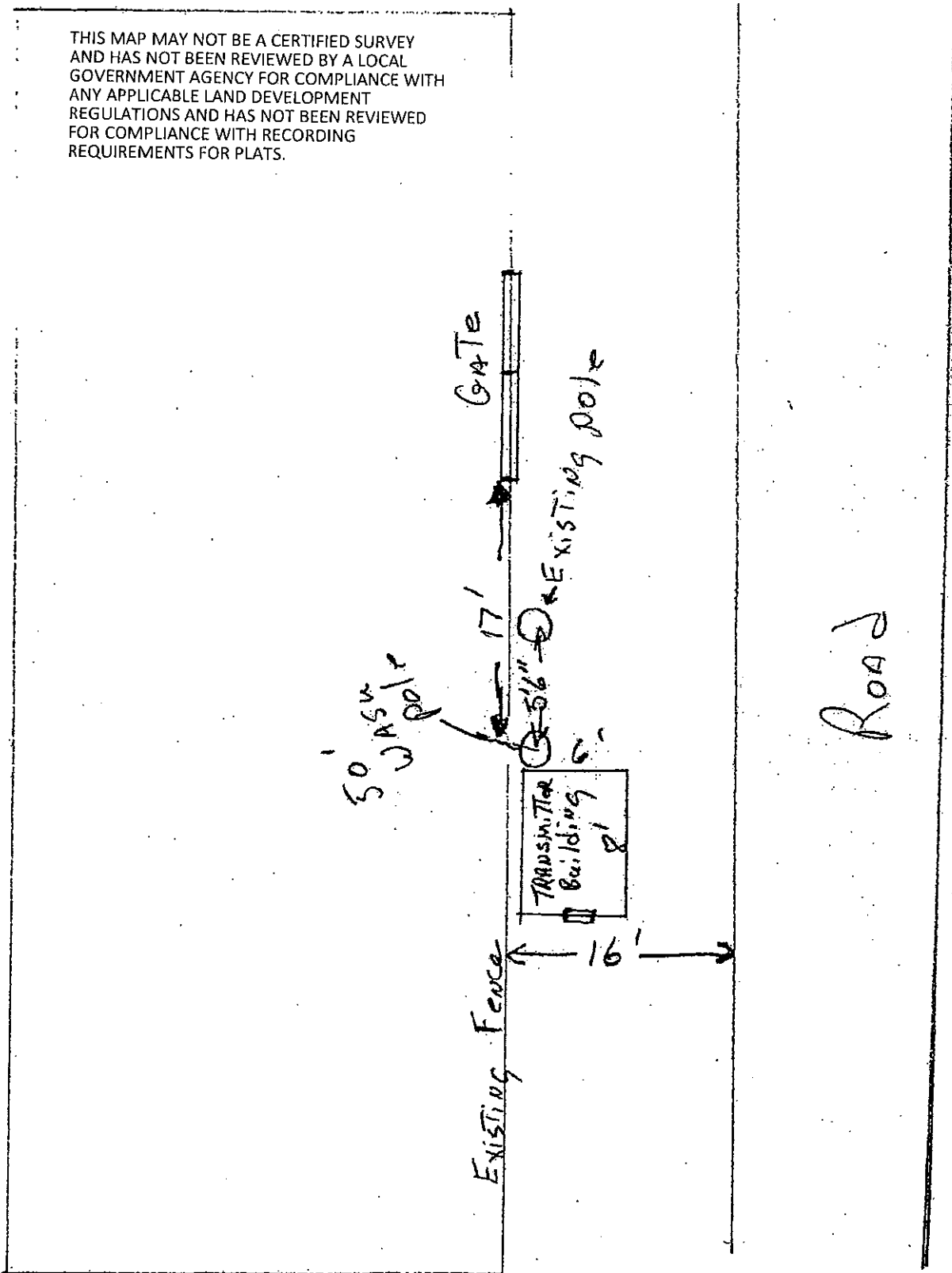
Notary Public

My Commission Expires: _____

Print Name: _____

EXHIBIT A

THIS MAP MAY NOT BE A CERTIFIED SURVEY
AND HAS NOT BEEN REVIEWED BY A LOCAL
GOVERNMENT AGENCY FOR COMPLIANCE WITH
ANY APPLICABLE LAND DEVELOPMENT
REGULATIONS AND HAS NOT BEEN REVIEWED
FOR COMPLIANCE WITH RECORDING
REQUIREMENTS FOR PLATS.



STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

Resolution of Watauga County Board of County Commissioners

Pursuant to NCGS 160A-272, notice is hereby given that at the regular commissioner meeting of the Watauga County Board of County Commissioners on September 15, 2020, the Watauga County Board of County Commissioners adopted a resolution which authorized Deron T. Geouque, County Manger, of Watauga County to lease to Appalachian State University (ASU), a certain tract located certain parcel or tract of land containing 0.489 acres, more or less, having a physical address of 759 Fire Tower Road, Boone, North Carolina, GPS coordinates of W 81°41'54", N 36°13'59" and parcel identification number 2901-44-0447-000, said Premises being depicted and described on a drawing attached hereto and incorporated herein as Exhibit A for a term commencing on the 1st day of September, 2020, and terminating on the 31st day of August, 2029. The rent to be paid by Appalachian State University to Watauga County during the term of the lease is One Dollar (\$1.00) per term. The lease shall become effective ten (10) days after the publication of this notice and formal adoption of the lease by the Board of Commissioners.

ADOPTED this the 15th day of September, 2020.



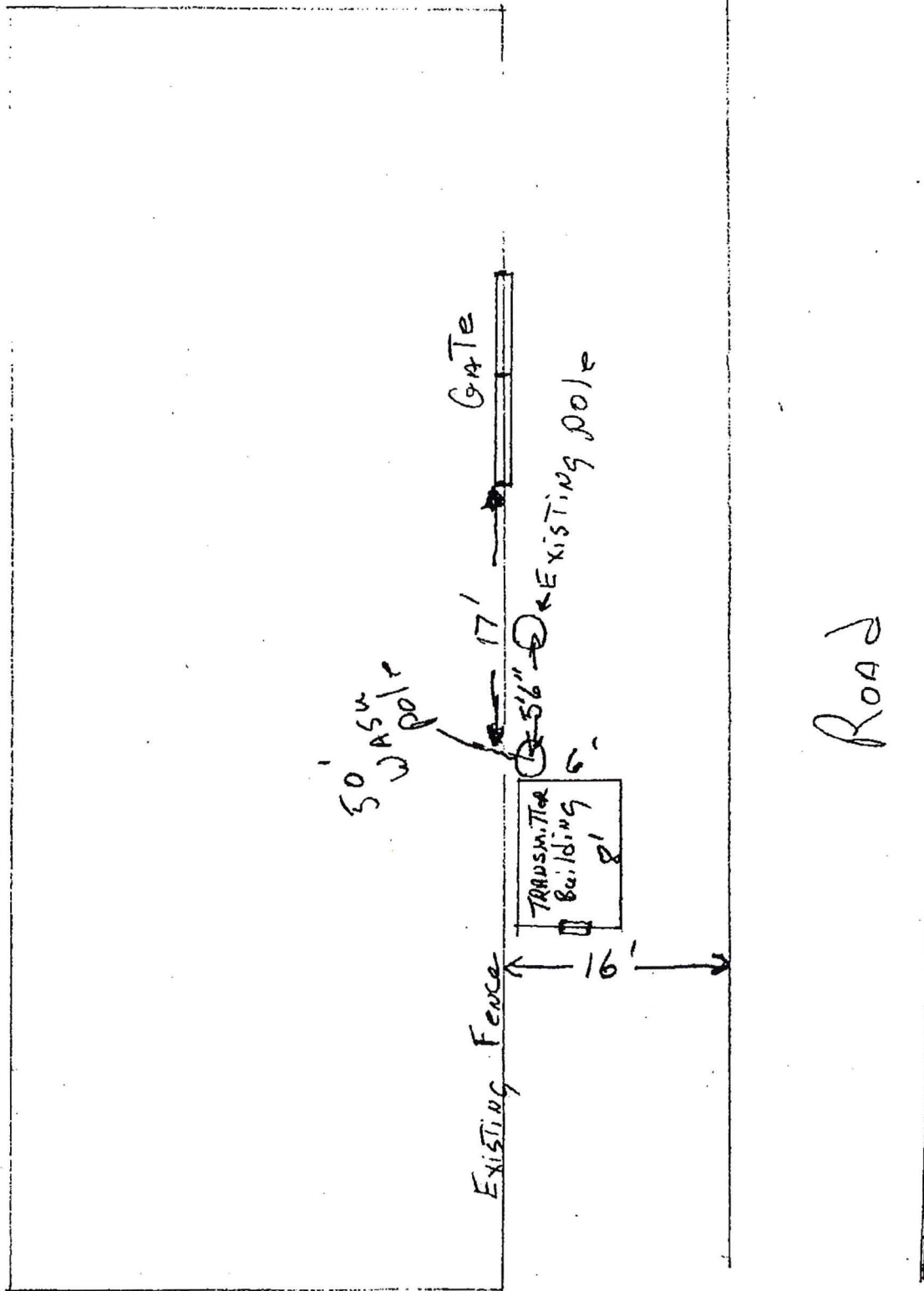
John Welch, Chairman
Watauga County Board of County Commissioners

ATTEST:



Anita Fogle, Clerk to the Board

EXHIBIT A



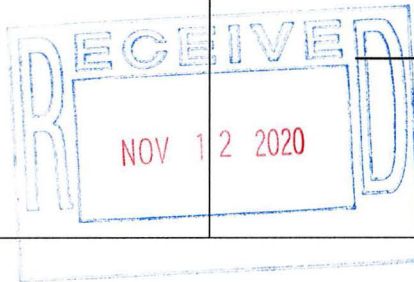
MOUNTAIN TIMES
 PUBLICATIONS
 P.O. BOX 1815
 BOONE NC 28607
 (828) 264-6397

Fax(828) 262-0282

Advertising Invoice

| | | | |
|---------------------------------------|-----------------------------|---|-----------------------------|
| 1 Billing Period 09/2020 | | 2 Advertiser/Client Name WATAUGA CO MANAGER | |
| 23 Total Amount Due 1116.94 | | *Unapplied Amount | 3 Terms of Payment |
| 21 Current Net Amount Due 1116.94 | 22 30 Days .00 | 60 Days .00 | Over 90 Days .00 |
| 4 Page Number 1 | 5 Billing Date 09/30/20 | 6 Billed Account Number | 7 Advertiser/Client Number |

| | | |
|--|--|--------------------|
| 8 Billed Account Name and Address WATAUGA CO MANAGER SUITE 205 814 W KING STREET BOONE NC 28607 | | Amount Paid: _____ |
| | | Comments: _____ |
| | | |



PAYMENT TERMS - NET 10
 1.5% MONTHLY SERVICE CHARGE ON PAST DUE BALANCES

Please Return Upper Portion With Payment

| 10 Date | 11 Reference | 12 13 14 Description-Other Comments/Charges | 15 SAU Size 16 Billed Units | 17 Times Run 18 Rate | 19 Gross Amount | 20 Net Amount |
|----------|---------------|--|----------------------------------|---------------------------|------------------|----------------|
| 09/23/20 | 1482842 | BALANCE FORWARD | | | | 291.81 |
| | PAY | PAYMENTS | | | | -291.81 |
| 09/23/20 | 2104393 | CK# 93198 | | | | |
| | LG1 | ASU TOWER LEASE FOR WA | 1X | 6.75 | 1 | |
| | | - | | 6.75 | 0.00 | 271.69 |
| | | 09/23 | | | | 271.69 |
| | | HCWD | | | | |
| 09/23/20 | 2104732 | 2020 CDBG HEARING | 3X | 7.00 | 1 | |
| | LG1 | 09/23 | | 21.00 | 0.00 | 845.25 |
| | | HCWD | | | | 845.25 |

Salesperson: HOUSE

Statement of Account - Aging of Past Due Amounts

Due date: 10/15/20

| | | | | | |
|---------------------------------------|---------------------|-----------------|----------------------|-------------------|---------------------------------|
| 21 Current Net Amount Due 1116.94 | 22 30 Days 0.00 | 60 Days 0.00 | Over 90 Days 0.00 | *Unapplied Amount | 23 Total Amount Due 1116.94 |
|---------------------------------------|---------------------|-----------------|----------------------|-------------------|---------------------------------|

MOUNTAIN TIMES
 (828) 264-6397

* UNAPPLIED AMOUNTS ARE INCLUDED IN TOTAL AMOUNT DUE

| | | | | | |
|----------------------------------|-------------------------------|---|-----|--|--|
| 24 Invoice Number 0920105399 | 25 Billing Period 09/2020 | Advertiser Information | | | |
| 6 Billed Account Number | 7 Advertiser/Client Number | 2 Advertiser/Client Name WATAUGA CO MANAGER | 376 | | |

AGENDA ITEM 13:

MISCELLANEOUS ADMINISTRATIVE MATTERS

C. Proposed Resolution Establishing the Sheriff's Salary

MANAGER'S COMMENTS:

Per Statute, prior to the filing period for the fall elections, the Board must establish the salary for the Sheriff in order for filing fees to be determined as listed in the draft resolution. The entry level salary on the County's current pay plan is \$81,919.

Board action is required to set the salary by adopting the proposed resolution.

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

DRAFT

**A RESOLUTION ESTABLISHING THE
SHERIFF’S SALARY**

WHEREAS, filing for the office of Watauga County Sheriff begins on Monday, December 6, 2021, at 12:00 noon; and

WHEREAS, the deadline for filing is Friday, December 17, 2021, at 12:00 noon; and

WHEREAS, the Watauga County Board of Commissioners desires to adopt a new salary for the office of Sheriff pursuant to North Carolina General Statutes 153A-92 at a rate of \$81,919 for the next term of office of the then Sheriff; and

WHEREAS, this resolution is made more than fourteen (14) days before the last day of filing notice of candidacy for this office.

NOW THEREFORE, BE IT RESOLVED that the annual salary for the office of the Sheriff shall be \$81,919 when such person elected to the office in the next general election takes said office.

ADOPTED this the 16th day of November, 2021.

John Welch, Chairman
Watauga County Board of Commissioners

ATTEST:

Anita J. Fogle, Clerk to the Board

AGENDA ITEM 13:

MISCELLANEOUS ADMINISTRATIVE MATTERS

D. January Meeting Schedule

MANAGER'S COMMENTS:

The Board has traditionally cancelled one of the meetings in December or January depending on how the holidays have fallen. Due to where Christmas and New Year's fall during the week, staff would recommend the Board cancel the first meeting in January as there would be insufficient time to prepare the Board packets. Historically, December and the first weeks in January have few issues requiring Board action.

Staff seeks direction from the Board in cancelling the first meeting in January.

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AGENDA ITEM 13:**MISCELLANEOUS ADMINISTRATIVE MATTERS***E. Boards and Commissions***MANAGER'S COMMENTS:**Watauga County Board of Adjustment

The Board of Adjustment term of Mr. Lonnie Webster expires in November. He does not wish to be reappointed. The revised NC General Statute 160D no longer makes any mention of appointments representing zoned areas of counties with partial-county zoning; therefore, it is not necessary to consider where appointees live. The term will be for three years.

Watauga Medical Center Board of Trustees

The Watauga Medical Center Board of Trustees has recommended Ms. Lisa Cooper, Mr. Kent Tarbutton, and Ms. Jan Winkler for reappointment as Board Trustees. Each of their terms would be effective January 1, 2022, through December 31, 2024. These are first readings.

Vaya Board

1. Each Board of County Commissioners needs to vote on up to two (2) Regional Board representatives during their November or December meeting, criteria (included in the Oct. 13 CCAB Resolution, and approved by DHHS on Oct. 27) as follows:

* Required: one of whom is an elected county commissioner,

* Optional: in addition to the required county commissioner member above, BOCCs may additionally appoint a representative from their county that meets the following criteria: a county commissioner, county manager, Department of Social Services director, public health director, or law enforcement representative

2. County Manager submits Regional Board representative names to your Community Relations Regional Director, and the Secretary to the Board, Christina Rose Carter

3. The Secretary to the Board and the Community Relations Regional Directors will schedule the first Regional Board meetings for each of the four (4) regions, to occur in either December or no later than January

* Regional Boards will appoint their two (2) Governing Board representatives

4. Goal: *New* Vaya Health Governing Board initial meeting in February 2022



Deanna S. Mool
Chief Legal Officer

November 9, 2021

Ms. Anita Fogle
Watauga Board of Commissioners
814 W. King Street
Boone, NC 28607

VIA EMAIL TO: anita.fogle@watgov.org

Dear Ms. Fogle:

On behalf of Appalachian Regional Healthcare System, Inc. and Watauga Medical Center, Inc., I am writing to request approval of two items at your board meeting on Thursday, November 18, 2021. Both items would require a vote of the Commissioners.

The first item for which the Appalachian Regional Healthcare System ("ARHS") requests your approval is an amendment to Article II of that would allow more flexibility in the At-Large selection process. This change allows the flexibility to have one of the At-Large members be a part-time resident anywhere in our service area. The goal for the change is to allow representation on the ARHS Board by part-time residents who constitute a significant portion of our patient population. Further, the amendment updates the applicability of the term limit provisions applicable to the current board members.

For ease of review, I have attached a redline version and clean version of the relevant sections. Mr. Jim Deal and I will be at the meeting to answer any questions you might have.

The second item for which the Watauga Medical Center, Inc. (WMC) board seeks approval is the slate of candidates for the Watauga seats on both the WMC and ARHS boards. That slate of names was provided separately to Deron Geouque in the attached letter from Mr. Mantooth.

We look forward to seeing you next week.

Sincerely,

A handwritten signature in black ink, appearing to read "Deanna S. Mool", is written over a circular stamp.

Deanna S. Mool



**APPALACHIAN REGIONAL
HEALTHCARE SYSTEM**

Chuck Mantooth, FACHE
President & CEO

November 8, 2021

Mr. Deron Geouque
Watauga County Manager
814 West King Street, Suite 205
Boone, NC 28607

Dear Deron:

The Watauga Medical Center, Inc. Board of Trustees at their October 28, 2021 meeting unanimously approved submitting the following names to be considered by the Watauga County Commissioners for appointment to the Watauga Medical Center, Inc. Board of Trustees:

Lisa Cooper
Kent Tarbutton
Jan Winkler

The appointment will be for a three-year term beginning January 1, 2022 and ending December 31, 2024.

Thank you for your assistance with this process and please contact me should you have any questions.

Sincerely,

Chuck Mantooth, President & CEO
Appalachian Regional Healthcare System, Inc.

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AGENDA ITEM 13:

MISCELLANEOUS ADMINISTRATIVE MATTERS

F. Announcements

MANAGER'S COMMENTS:

Due to the ongoing COVID pandemic, the Annual County Christmas Luncheon has been cancelled.

AGENDA ITEM 14:

PUBLIC COMMENT

AGENDA ITEM 15:

BREAK

AGENDA ITEM 16:

CLOSED SESSION

Attorney/Client Matters – G. S. 143-318.11(a)(3)