PLANNING AND DEVELOPMENT ORDINANCE

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CHAPTER 1 AUTHORITY AND JURISDICTION

Article I Title of Ordinance

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

Article II Authority and Purposes

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

Article III Jurisdiction

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

Article IV Effective Date

This ordinance shall take effect April 21, 2021. Amended November 16, 2021.

Article V Relationship to Existing Ordinances

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

Article VI Fees

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

CHAPTER 2 PLANNING BOARD; HISTORIC PRESERVATION COMMISSIONN; PLANNING AND INSPECTIONS DEPARTMENT

Article I Planning Board Established; Duties

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

(A) To prepare, review, maintain, monitor, and periodically update and recommend to Board of Commissioners a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.

(B) To facilitate and coordinate citizen engagement and participation in the planning process.

(C) To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.

(D) To advise the Board of Commissioners concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.

(E) To exercise any functions in the administration and enforcement of various means for carrying out plans that the Board of Commissioners may direct.

(F) To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.

(G) To perform any other related duties that the Board of Commissioners may direct.

Article II Planning Board Membership and Vacancies

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

by the entire Board of County Commissioners. No more than three (3) members at one time shall be from the same profession or occupation.

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

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

Article III Historic Preservation Commission

There is hereby established the Valle Crucis Historic Preservation Commission (hereafter referred to as the Commission) to consist of five members appointed by the Watauga County Board of Commissioners. Members of the Commission shall serve without compensation.

(A) Tenure

Initially members shall be appointed for staggered terms with one member being appointed for one year, two members for two years and two members for three years. Thereafter, all appointments shall be for a term of three years.

(B) Qualifications

Three (3) members of the Commission shall be resident property owners of the Historic District, two (2) shall be members of the Valle Crucis Community Council and residents of Watauga County, and the majority of the members shall have special interest, experience or education in history or architecture.

(C) Meetings

The Commission shall establish a meeting time and shall meet monthly and more or less often as it shall determine and require. All meetings of the Commission shall be open to the public and reasonable notice of the time and place thereof shall be given to the public. All meetings shall confirm to the North Carolina Open Meeting Law. (See North Carolina General Statutes 143, Article 33C).

(D) Attendance at Meetings

Any member of the Commission who misses more than three consecutive regular meetings or more than half of the regular meetings in a calendar year shall lose status with the Commission and shall be replaced or reappointed by the Watauga County Board of County Commissioners.

Absence due to sickness, death or emergencies of like nature shall be recognized as approved absences and shall not affect a member's status on the Commission, except in the event of long illness or other such cause for prolonged absence a member shall be replaced.

(E) Rules of Procedure

The Commission shall adopt and publish Rules of Procedure for the conduct of its business.

(F) Annual Report

An annual report shall be prepared and submitted by February 1st of each year to the Board of County Commissioners. Such report shall include a comprehensive review of the activities, problems, and actions of the Commission as well as any budget requests or recommendations.

(G) Meeting Minutes

The Commission shall keep permanent minutes of all its meetings. The minutes shall record attendance of its members, its resolution, findings, recommendations and actions.

The minutes of the Commission shall be a public record.

Article IV Historic Preservation Commission Powers

The Commission shall seek to promote, enhance and preserve the character of the Valle Crucis Historic District, provided however that the Commission shall not require the reconstruction of individual or original buildings or structures or portion thereof.

The Commission is authorized and empowered to undertake such action as is reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this ~~Ordinance~~ Chapter and Chapter 160D of the General Statutes of the State of North Carolina including but not limited to the following:

(A) Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance.

(B) Recommend to the governing board areas to be designated by ordinance as "Historic Districts" and individual structures, buildings,

sites, areas, or objects to be designated by ordinance as "Landmarks."

(C) Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks to hold, manage, preserve, restore, and improve such properties, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions that will secure appropriate rights of public access and promote the preservation of the property.

(D) Restore, preserve, and operate historic properties.

(E) Recommend to the governing board that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause.

(F) Conduct an educational program regarding historic properties and districts within its jurisdiction.

(G) Cooperate with the State, federal, and local governments in pursuance of the purposes of this Part. The governing board or the commission, when authorized by the governing board, may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law.

(H) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.

(I) Prepare and recommend the official adoption of a preservation element as part of the local government's comprehensive plan.

(J) Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this Part.

(K) Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.

Article V Department of Planning and Inspections

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

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

Article VI Ordinance Administrator

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

CHAPTER 3 BOARD OF ADJUSTMENT

Article I Establishment of Board

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

Article II Duties of the Board

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

(A) Hear and decide appeals from and review any order, requirement, decision, or determination made by the Department of Planning & Inspections in the performance of official duties.

(B) Hear and decide appeals for variances. Nothing in this Section shall be construed to authorize the Board to permit a use in a district where that use in not a permitted use.

(C) Hear and decide upon applications for special use permits.

(D) Subpoenas. – The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the County, and any person with standing under G.S. 160D-1402(c) may make a written request G.S. 160D-406 Page 2 to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

Article III Administration

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

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

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

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

Section 1. Administrative Materials.

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

Section 2. Presentation of Evidence.

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

Section 3. Appearance of Official New Issues.

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

Section 4. Decisions.

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

Section 5. Appeals in Nature of Certiorari.

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

Section 6. Standing.

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

(A) Any person possessing any of the following criteria:

(1) An ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property

that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

(2) An option or contract to purchase the property that is the subject of the decision being appealed.

(3) An applicant before the decision-making board whose decision is being appealed.

(B) Any other person who will suffer special damages as the result of the decision being appealed.

(C) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

Section 7. Judicial Review.

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). (2019-111, s. 2.4.)

Article IV Notice of Hearing

(A) Notice of evidentiary hearings conducted pursuant to this Chapter shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an

evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

(B) Additional notice for evidentiary hearings conducted under Chapter 13, High Impact Land Uses is required as follows. Notice shall be posted on the subject parcel and mailed to all owners of property abutting and within 500 feet of the subject parcel twenty five (25) days in advance of the hearing. In addition, notice shall be published in a newspaper of general circulation in the area sixty (60) days and again two (2) weeks in advance of the hearing, and an announcement of the hearing shall be placed on the County's web site sixty (60) days in advance of the hearing, and remain there continuously until the hearing.

Article V Voting

(A) The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

(B) A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Article VI Variances

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

(A) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(B) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

(C) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(D) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

No change in permitted uses may be authorized by variance.

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

Article VII Appeals

Section 1. Designated Board.

Except as provided in N.C.G.S 160D-1403.1, appeals of administrative decisions made by the staff under this Chapter shall be made to the board of adjustment unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter. If this function of the board of adjustment is assigned to any other board pursuant to G.S. 160D-302(b), that board shall comply with all of the procedures and processes applicable to a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a storm water control regulation, or a provision of the housing code shall not be made to the board of adjustment unless required by a County ordinance or code provision.

Section 2. Standing.

Any person who has standing under G.S. 160D-1402(c) or the County may appeal an administrative decision to the board. An appeal is taken by filing a

notice of appeal with the clerk or such other local government official as designated by regulation. The notice of appeal shall state the grounds for the appeal.

Section 3. Time to Appeal.

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

Section 4. Record of Decision.

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

Section 5. Stays.

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from including any accumulation of fines, during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law, or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding any other provision of this Section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use such property; in these situations, the appellant or local government may request and the board may

grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

Section 6. Alternative Dispute Resolution.

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

Section 7. No Estoppel.

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

Article VIII Special Use Permits

(A) An application for a special use permit shall be submitted to the Board of Adjustment by filing a copy of the application with the Clerk to the Board.

(B) Subject to subsection (C), the Board of Adjustment shall issue the requested permit unless it concludes, based upon the information submitted at the hearing, that:

- **(1)** The requested permit is not within its jurisdiction according to the district regulations pertaining to uses, or
- **(2)** The application is incomplete, or
- **(3)** If completed as proposed in the application, the development will not comply with one or more requirements of the subject regulation.

(C) Even if the Board finds that the application complies with all other provisions of this chapter, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:

- **(1)** Will materially endanger the public health or safety, or
- **(2)** Will substantially injure the value of adjoining or abutting property, or
- **(3)** Will not be in harmony with the area in which it is to be located, or
- **(4)** Will not be in general conformity with the land-use plan, thoroughfare plan, or other plan officially adopted by the Board of Commissioners.

(D) The Board shall consider whether the application is complete. If the Board concludes that the application is incomplete and the applicant refuses to provide the necessary information, the application shall be denied. A motion to this effect shall specify either the particular type

of information lacking or the particular requirement with respect to which the application if incomplete. A motion to this effect, concurred in by a majority of the Board, shall constitute the Board's finding on this issue. If a motion to this effect is not made and concurred in by a majority of members, this shall be taken as an affirmative finding by the Board that the application is complete.

(E) The Board shall consider whether the application complies with all of the applicable requirements of the subject regulation. If a motion to this effect passes by a majority of members, the Board need not make further findings concerning such requirements. If such a motion fails to receive the majority vote or is not made, then a motion shall be made that the application be found not in compliance with one or more requirements of the ordinance. Such a motion shall specify the particular requirements the application fails to meet. A separate vote may be taken with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the Board to be unsatisfied through this process. As provided in subsection (C) if the Board concludes that the application fails to meet one or more of the requirements of this section, the application shall be denied.

(F) If the Board concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in subsection (C). Such motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion and is carried by a simple majority vote.

(G) Subject to subsection (H), in granting a special use permit, the Board of Adjustment may attach to the permit such reasonable requirements in addition to those specified in this chapter as will ensure that the development in its proposed location:

(1) Will not endanger the public health or safety,

(2) Will not injure the value of adjoining or abutting property,

(3) Will be in harmony with the area in which it is located, and

(4) Will be in conformity with the land-use plan, thoroughfare plan, or other plan officially adopted by the Board of Commissioners.

(H) The board may not attach additional conditions that modify or alter the specific requirements set forth in this ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.

The board may not impose conditions that the County does not otherwise have statutory authority to impose unless agreed to in writing by the applicant.

(I) Without limiting the foregoing, the board may attach to a permit a condition limiting the permit to a specified duration.

(J) All additional conditions or requirements shall be entered on the permit, and consented to in writing by the applicant.

(K) All additional conditions or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirements of the subject Ordinance.

(L) A vote may be taken on application conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in Subsections (B) or (C).

Article IX Appeals of Board Actions

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

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

Article I Hearing with Published Notice

Before adopting, amending, or repealing any development regulation authorized by NCGS 160D, the Board of Commissioners shall hold a legislative hearing. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Article II Notice of Hearing on Proposed Zoning Map Amendments

(A) Mailed Notice. –The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing.

(B) Optional Notice for Large-Scale Zoning Map Amendments. – The first-class mail notice required under subsection (A) of this section is not required if the zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the ordinance administrator elects to use the expanded published notice provided for in this subsection. In this instance, a local government may elect to make the mailed notice provided for in subsection (A) of this section or, as an alternative, elect to publish notice of the hearing as required by G.S. 160D-601, provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement is only effective only for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing

for the affected property, shall be notified according to the provisions of subsection (A) of this section.

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

Article III Citizen Comments

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

Article IV Amendments

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

Article V Down-Zoning

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

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

(A) By decreasing the development density of the land to be less dense than was allowed under its previous usage.

(B) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

Article VI Plan Consistency

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

Article VII Statement of Board of Commissioners

(A) Plan Consistency. – When adopting or rejecting any zoning text or map amendment, the Board of Commissioners shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Board that at the time of action on the amendment the Board was aware of and considered the Planning Board's (and Community Council's if applicable) recommendations and any relevant portions of an adopted comprehensive plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no

additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board of Commissioners' statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

(B) Additional Reasonableness Statement for Rezonings. – When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Board of Commissioners. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board's statement on reasonableness may address the overall rezoning.

(C) Single Statement Permissible. – The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

CHAPTER 5 MISCELLANEOUS PROVISIONS

Article I Conflict with Other Laws

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

Article II Notices of Violation

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

Article III Stop Work Orders

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

deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal.

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, a person violating this ordinance may be subject to a civil penalty, under N.C.G.S. 153A-123(c), in the discretion of the Board of County Commissioners, not to exceed $100.00. No penalty shall be assessed prior to notice to the violator. For every day a violator is in violation of this ordinance, it may be considered a separate offense. If the violator does not pay such penalty within 30 days of notification of its assessment by written citation it may be recovered by the County in a civil action in the nature of a dept. The violator may contest said penalty in the court of appropriate jurisdiction.

Article VI Additional Remedies and Penalties for Soil Erosion and Sedimentation

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

Article VII Severability Clause

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

Article VIII Development Approvals

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

Article IX Duration of Development Approval

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

Article X Inspections

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

inspection warrant has been secured. Pursuant to N.C.G.S 160D-402(b), the Ordinance Administrator may inspect premises at all reasonable hours for which ordinance violations are suspected, upon presentation of proper credentials.

Article XI Revocation of Development Approvals

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

Article XII Development Approvals Run With the Land

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

Article XIII Minor Modifications

Section 1. Special Use Permits & Conditional Zoning

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

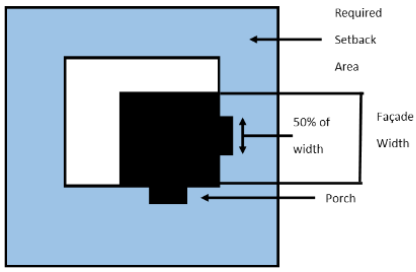
Section 2. Administrative Modification of Setbacks

In keeping with the purpose of these regulations to accomplish coordinated, balanced, and harmonious development in a manner which will best promote the health, safety, and general welfare while avoiding undue and unnecessary hardships, the Administrator is authorized to approve certain requests for deviation from dimensional standards.

(A) Conditions for Modification of Setbacks -Requests for deviation from required setbacks set forth in this ordinance by up to ten percent of the required setbacks or 24 inches, whichever is greater, may be considered upon determination that one or more of the following conditions exists:

(1) There are site or structural conditions that preclude strict adherence to the setback requirements, such as, but not limited to: the lot does not meet the dimensional standards established for the zoning district in which it is located; the lot has topographic limitations that require placement of the structure into the required setback area; or the structure is physically in line with an existing, legally established wall or walls of a principal structure already within the minimum setback area.

(2) The part of the proposed structure that would encroach into the minimum setback area is less than fifty percent of the width of the affected building facade(s), provided the part of the structure that would encroach into a front setback shall either be open (such as a porch or screen room) or not subject to occupancy (such as chimney).



(3) The part of the proposed structure that encroaches into the minimum setback area is necessitated by a life safety code, flood hazard reduction, Americans with Disabilities Act standard, or other public safety code requirements.

(4) A good faith error was made in the location of a building foundation not exceeding two (2) foot due to either field construction error or survey oversight.

(B) Administrative Authority is Permissive Only - The authority given to the Administrator to grant such modification shall be construed to

be permissive and not mandatory and the Administrator may decline to make such modification. In the event this occurs, the applicant shall have the right to submit a variance request to the appropriate Board. Nothing in this section shall be construed as limiting the Administrator's duties and rights under this chapter, or an applicant's right to appeal the decision of the Administrator to the appropriate Board.

Article XIV Conditional Districts

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

Article XV Determinations

The officer making the determination shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected

property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

Article XVI Optional Posting of Signs By Owner

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

Article XVII Word Interpretation

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

Words in the present tense include the future tense.
Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.
The word "person" includes a firm, association, corporation, trust, and company as well as an individual.
The word "structure" shall include the word "building."
The word "lot" shall include the words, "plot," "parcel," or "tract."
The word "shall" is always mandatory and not merely directory.
The word "will" is always mandatory and not merely directory.

CHAPTER 6 STATUTORY PROVISIONS

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

Permit Choice and Vested Rights: NCGS 160D-108 & 108.1

Conflicts of Interest: NCGS 160D-109

Split Jurisdiction: NCGS 160D-203

Agricultural Uses: NCGS 160D-903

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

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

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

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

(1) Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.

(2) Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.

(3) A site-specific vesting plan pursuant to G.S. 160D-108.1.

(4) A multi-phased development pursuant to subsection (f) of this section.

(5) A vested right established by the terms of a development agreement authorized by Article 10 of this Chapter.

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

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

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

(e) Multiple Permits for Development Project. - Subject to subsection (d) of this section, where multiple local development permits are required to complete a development project, the development permit applicant may choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent

development permit applications filed within 18 months of the date following the approval of an initial permit. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

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

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

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

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

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

(1) Development. - As defined in G.S. 143-755(e)(1).

(2) Development permit. - As defined in G.S. 143-755(e)(2).

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

(4) Multi-phased development. - A development containing 25 acres or more that is both of the following:

a. Submitted for development permit approval to occur in more than one phase.

b. Subject to a master development plan with committed elements showing the type and intensity of use of each

phase. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 5(a), 50(b), 51(a), (b), (d).)

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

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

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

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

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

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

(e) Duration and Termination of Vested Right. -

(1) A vested right for a site-specific vesting plan remains vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the local government.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a local government may provide for rights to be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. These determinations are in the sound discretion of the local government and shall be made following the process specified for the particular form of a site-specific vesting plan involved in accordance with subsection (a) of this section.

(3) Upon issuance of a building permit, the provisions of G.S. 160D-1111 and G.S. 160D-1115 apply, except that a permit does not expire and shall not be revoked because of the running of time while a vested right under this section is outstanding.

(4) A right vested as provided in this section terminates at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(f) Subsequent Changes Prohibited; Exceptions. -

(1) A vested right, once established as provided for in this section, precludes any zoning action by a local government which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific vesting plan, except under one or more of the following conditions:

a. With the written consent of the affected landowner.

b. Upon findings, by ordinance after notice and an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan.

c. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consulting fees incurred after approval by the local government, together with interest as provided under G.S. 160D-106. Compensation shall not include any diminution in the value of the property which is caused by the action.

d. Upon findings, by ordinance after notice and an evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the local government of the site-specific vesting plan or the phased development plan.

e. Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan or the phased development plan, in which case the local government may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and an evidentiary hearing.

(2) The establishment of a vested right under this section does not preclude the application of overlay zoning or other development regulations which impose additional requirements but do not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to development regulation by a local government, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations become effective with respect to property which is subject to a site-specific vesting plan upon the expiration or termination of the vesting rights period provided for in this section.

(3) Notwithstanding any provision of this section, the establishment of a vested right does not preclude, change, or impair the authority of a local government to adopt and enforce development regulations governing nonconforming situations or uses.

(g) Miscellaneous Provisions. -

(1) A vested right obtained under this section is not a personal right, but attaches to and runs with the applicable property. After approval of a site-specific vesting plan, all successors to the original landowner are entitled to exercise these rights.

(2) Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

(3) In the event a local government fails to adopt a development regulation setting forth what constitutes a site-specific vesting plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from the Superior Court Division of the General Court of Justice. (2020-25, ss. 5(b), 50(b).)

§ 160D-109. Conflicts of interest.

(a) Governing Board. - A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning

petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

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

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

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

(d) Quasi-Judicial Decisions. - A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

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

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

§ 160D-203. Split jurisdiction.

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

§ 160D-903. Agricultural uses.

(a) Bona Fide Farming Exempt From County Zoning. - County zoning regulations may not affect property used for bona fide farm purposes; provided, however, that this section does not limit zoning regulation with respect to the use of farm property for nonfarm purposes. Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1. Activities incident to the farm include existing or new residences constructed to the applicable residential building code situated on the farm occupied by the owner, lessee, or operator of the farm and other buildings or structures sheltering or supporting the farm use and operation. For purposes of this section, "when performed on the farm" in G.S. 106-581.1(6) includes the farm within the jurisdiction of the county and any other farm owned or leased to or from others by the bona fide farm operator, no matter where located. For purposes of this section, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following is sufficient evidence that the property is being used for bona fide farm purposes:

(1) A farm sales tax exemption certificate issued by the Department of Revenue.

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

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

(b) County Zoning of Residential Uses on Large Lots in Agricultural Districts. - A county zoning regulation shall not prohibit single-family detached residential uses constructed in accordance with the North Carolina State Building Code on lots greater than 10 acres in size and in zoning districts where more than fifty percent (50%) of the land is in use for agricultural or silvicultural purposes, except that this restriction does not apply to commercial or industrial districts where a broad variety of commercial or industrial uses are permissible. A zoning regulation shall not require that a lot greater than 10 acres in size have frontage on a public road or county-approved private road or be served by public water or sewer lines in order to be developed for single-family residential purposes.

(c) Agricultural Areas in Municipal Extraterritorial Jurisdiction. - Property that is located in a city's extraterritorial planning and development regulation jurisdiction and that is used for bona fide farm purposes is exempt from the city's zoning regulation to the same extent bona fide farming activities are exempt from county zoning pursuant to this section. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that ceases to be used for bona fide farm

purposes becomes subject to exercise of the city's extraterritorial planning and development regulation jurisdiction under this Chapter. For purposes of complying with State or federal law, property that is exempt from municipal zoning pursuant to this subsection is subject to the county's floodplain regulation or all floodplain regulation provisions of the county's unified development ordinance.

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

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

CHAPTER 7 DEFINITIONS

(1) Abandoned Sign - A sign which for a period of at least 180 consecutive days or longer no longer advertises or identifies a legal business establishment, product or activity.

(2) Abandonment – Cessation of use of a wireless support structure for wireless telecommunications activity for at least the minimum period of time specified under this ordinance.

(3) Accelerated Erosion - means any increase over the rate of natural erosion as a result of land-disturbing activity.

(4) Accessory Equipment - Any equipment serving or being used in conjunction with a wireless facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

(5) Accessory Structure (Appurtenant Structure, Accessory Building) - means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structures. Garages, carports and storage sheds are common urban accessory structures. Pole barns hay sheds and the like quality 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) Automatic Changeable Facing Billboard. - A sign, display, or device which changes the message or copy on the sign facing electronically by movement or rotation of panels or slats.

(41) 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.

(42) Awning Sign - Any permanent sign painted on or attached to or supported by an awning.

(43) Awning - A shelter extending from the exterior wall of a building and composed of non-rigid materials except for the supporting framework.

(44) 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.

(45) 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.

(46) 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.

(47) 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".

(48) Base Flood - means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

(49) 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.

(50) Basement - means any area of the building having its floor subgrade (below ground level) on all sides.

(51) Being Conducted - means a land-disturbing activity has been initiated and not deemed complete by the Approving Authority.

(52) 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.

(53) Billboard. - A sign structure and/or sign utilized to display a commercial message or provide commercial advertising for an establishment, an activity, a product, service or entertainment, which is sold, produced, manufactured, available or furnished at a place other than on the property on which said sign and/or sign structure is located.

(54) Bona Fide Farm Purposes – Agricultural activities as set forth in G.S. 160D-903.

(55) 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 form 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.

(56) Borrow - means fill material that is required for on-site construction that is obtained from other locations.

(57) Buffer Zone - means the strip of land adjacent to a lake or natural watercourse.

(58) 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.

(59) 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.

(60) 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.

(61) Building Lines - Lines tangent to the exterior surface of a building and parallel to front, side and rear property lines.

(62) 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.

(63) 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.

(64) Building, Principal - The primary building on a lot or a building that house a principal use.

(65) Built-upon area—Built-upon area means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a slatted deck; the water area of a swimming pool; a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; a trail as defined in G.S. 113A-85 that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour); or landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, such as the area between sections of pavement that support the weight of a vehicle (except as exempted by State law); and artificial turf, manufactured to allow water to drain through the backing of the turf and installed according to the manufacturer’s specifications over a pervious surface.

(66) Canopy - A freestanding permanent roof-like shelter not attached to or requiring support from an adjacent structure.

(67) 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.

(68) 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.

(69) 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.

(70) Certified Local Government (CLG) Program - Certified Local Government (CLG) Programs arc approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

(71) 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.

(72) Chemical – An element, chemical compound, a mixture of elements or compounds or both.

(73) Chemical Manufacturing – A facility involved in the production, synthesis, formation, processing, refining, manufacturing, and/or distribution of chemical products in bulk.

(74) Chemical Storage Facilities – A facility used for the storage of chemical compounds in bulk.

(75) 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.

(76) 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.

(77) Cluster Development - The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. 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. For the purpose of Chapter 21, planned unit developments and mixed-use development are considered cluster development.

(78) 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.

(79) 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.

(80) 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.

(81) Commercial – Used for an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.

(82) 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.

(83) Commission - means the North Carolina Sedimentation Control Commission.

(84) 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.

(85) 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.

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

(87) 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.

(88) Conditional Zoning – A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

(89) Construction Sign - A temporary sign identifying the persons, firms or business directly connected with a construction project.

(90) 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.

(91) 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). 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.

(92) 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.

(93) Customary Home Occupations - Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over twenty-five percent (25%) of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, etc.

(94) Department – when used alone means the North Carolina Department of Environmental Quality.

(95) Determination – A written, final, and binding order, requirement, or determination regarding an administrative decision.

(96) 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.

(97) Development – Unless the context clearly indicated otherwise, the term means any 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 us of land.
- **(e)** Any land disturbing activity which adds to or changes the amount or nature of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

The definition does not alter the scope of regulatory authority granted by this Chapter.

(98) 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.

(99) 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.

(100) 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.

(101) 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.

(102) 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.

(103) Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environment and Natural Resources.

(104) 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.

(105) 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.

(106) 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.

(107) District - means the Watauga County Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

(108) Double Frontage Lot - A continuous (through) lot which borders two or more streets.

(109) 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.

(110) Dwelling Unit - A building, or portion thereof, providing complete and permanent living facilities for one family.

(111) Easement - A strip of land designated by the property owner for a specified purpose and use by the public, a corporation, or persons.

(112) 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.

(113) Electrical Transmission Tower - An electrical transmission structure used to support high voltage overhead power lines. The term shall not include any utility pole.

(114) 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.

(115) 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.

(116) 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.

(117) 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.

(118) Employee (re: Sexually Oriented Business regulations) - 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.

(119) 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.

(120) 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.

(121) Equipment Compound - An area surrounding or near the base of a wireless support structure within which are located wireless facilities.

(122) Erosion - means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.

(123) Escort (re: Sexually Oriented Business regulations) - 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.

(124) Escort Agency (re: Sexually Oriented Business regulations) - 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.

(125) Establishment (re: Sexually Oriented Business regulations) - 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.

(126) 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.

(127) Existing Development - Those projects that are built or those projects that have established a vested right under North Carolina zoning law as of the effective date of this ordinance.

(128) 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.

(129) 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.

(130) Existing Structure (re: Wireless Telecommunications regulations) - 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.

(131) 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.

(132) 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.

(133) 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.

(134) Farm Sign - A sign that advertises a farm, products grown, raised, or produced on a bona fide farm, or services provided on a bona fide farm; or that provides customers with direction to a bona fide farm.

(135) Farmer's Market - A retail establishment primarily engaged in the sale of fresh fruits, vegetables and similar perishable goods.

(136) Feather Flag - A piece of cloth or similar material, typically elongated, oblong, and/or with a curved top or bottom edge, which is attached by two edges or one long, curving edge to a pole, and resembles a feather in shape. Generally, the sign is self-supporting (not attached to a building) and/or stuck into the ground in a temporary fashion, the flag is attached by a sleeve (and not by grommets or rope), and the entire sign is temporary in nature

(137) 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.

(138) 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).

(139) 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.

(140) Flood Insurance - means the insurance coverage provided under the National Flood Insurance Program.

(141) 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 arc delineated.

(142) 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.

(143) Flood Prone Area - see "Floodplain"

(144) 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.

(145) 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.

(146) Floodplain - Any land area susceptible to be inundated by water from any source.

(147) Floodplain Administrator - is the individual appointed to administer and enforce the floodplain management regulations.

(148) 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.

(149) 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.

(150) 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.

(151) 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.

(152) 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.

(153) 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.

(154) 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.

(155) 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.

(156) 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".

(157) 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.

(158) 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.

(159) Gated Community - A development that is enclosed within a geographical area by restrictive gates.

(160) 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.

(161) 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.

(162) Grade (re: Sign regulations) - The level of the site at the property line located at the closest distance to the sign.

(163) Ground Cover - means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

(164) 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.

(165) 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.

(166) 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).

(167) Hazardous Waste Management Facility - means, as defined in NCGS 13OA, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

(168) Height of Sign - Refer to measurement standards in Chapter 16 Article II Section 2.

(169) 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.

(170) 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.

(171) High Quality Waters - means those classified as such in 15A NCAC 02B .0224, which is herein incorporated by reference including subsequent amendments and additions.

(172) 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.

(173) 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.

(174) 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.

(175) Holiday Decorations - Signs or displays including lighting which are a nonpermanent installation celebrating national, state, and local holidays or holiday seasons.

(176) 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.

(177) 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.

(178) 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.

(179) Immediate Family – A person's parents, spouse, children, and siblings, including the parent's spouse. Includes step children and adopted children and their spouses.

(180) Impervious Surface - Any material that substantially reduces or prevents the infiltration of stormwater into previously undeveloped land.

(181) 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.

(182) 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.

(183) Ingress/Egress - The point where vehicles or pedestrians enter and exit a development.

(184) Instructional Signs - A permanent sign clearly intended for instructional purposes, as determined by the Ordinance Administrator, shall not be included in the permitted sum of the sign area of identification wall signs, provided such sign(s) shall contain the minimum information and the minimum area necessary to convey the message and instruct the viewer in the safe and efficient use of the facility.

(185) 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.

(186) 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.

(187) 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.

(188) Lake or Natural Watercourse – means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond.

(189) 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.

(190) 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.

(191) 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.

(192) 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.

(193) 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.

(194) Legislative Hearing – A Hearing to solicit public comment on a proposed legislative decision.

(195) Length of Building 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.

(196) 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.

(197) Licensee (re: Sexually Oriented Business regulations)- 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.

(198) 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 less than 12 persons; or

c. Available with special features enabling off-street or off-highway operation and use.

(199) 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.

(200) Logo, Logogram, or Logotype - An emblem, letter, character, pictograph, trademark, or symbol used to represent any firm, organization, entity, or product.

(201) 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.

(202) 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.

(203) 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.

(204) Lowest Floor (re: Flood Damage Prevention regulations) - 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.

(205) 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.

(206) Major Variance (re: watershed regulations) - A variance that is not a Minor Variance as defined in this chapter.

(207) Manufactured Home or Mobile Home –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".

(208) 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."

(209) 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.

(210) 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.

(211) 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.

(212) Marquee Sign - A permanent sign painted on or attached to or supported by a marquee.

(213) Massage - means the manipulation of body muscular tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.

(214) 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.

(215) 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.

(216) Minor Variance (re: watershed regulations) - A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to five (5) percent of any buffer, density or built-upon area requirement under the high-density option; or that results in a relaxation, by a factor of up to ten (10) percent, of any management requirement under the low-density option. For variances to a vegetated setback requirement, the percent variation shall be calculated using the footprint of built-upon area proposed to encroach with the vegetated setback divided by the total area of vegetated setback within the project.

(217) Modifications (re. Electronic Access Gate regulations) - 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.

(218) 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.

(219) 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.

(220) 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.

(221) Multi-Family Development - Three or more dwelling units intended for residential occupancy contained within one building or a Planned Unit Development.

(222) Multi-Phased Development - A development containing 25 acres or more that is both of the following: (1) submitted for development permit approval to occur in more than one phase and (2) subject to a master development plan with committed elements showing the type and intensity of use of each phase.

(223) 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.

(224) 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.

(225) Neon Sign - A sign with tubing that is internally illuminated by neon or other electrically charged gas.

(226) 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.

(227) Nonconforming existing lot (re: Watershed Protection regulations) - 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.

(228) 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.

(229) 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.

(230) 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).

(231) 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.

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

(233) 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.

(234) 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.

(235) 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.

(236) Official Maps or Plans - Any maps or plans officially adopted by the County Commissioners as a guide to the development of the County.

(237) 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.

(238) On-Premises Sign - Any sign used for promoting a business, individual, product or service available on the premises where the sign is located.

(239) Ordinance Administrator – The Watauga County Department of Planning and Inspections.

(240) 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.

(241) Outdoor storage - shall include any site or use of land that includes the outdoor storage of machinery, equipment, towed vehicles or other bulk material or item. Finished products as included on a business site and placed out of doors for the purposes of sale or display of product shall not be considered as outdoor storage.

(242) Parent – means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

(243) Parking Space - A portion of the vehicle accommodation area set aside for the parking of one vehicle.

(244) 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.

(245) 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.

(246) 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.

(247) 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.

(248) Planning Board – Any board or commission established pursuant to NCGS 160D-301.

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

(250) 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.

(251) 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.

(252) 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.

(253) Principally Above Ground - means that at least 51% of the actual cash value of the structure is above ground.

(254) 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.

(255) 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 homeowner's association, community group, property management company, or similar organization.

(256) 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.

(257) 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.

(258) Propane – A heavy flammable gaseous alkane C3H8, found in crude petroleum and natural gas, also known as LP Gas.

(259) 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.

(260) 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.

(261) 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.

(262) 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.

(263) 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.

(264) 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.

(265) 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.

(266) 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.

(267) Recreational Park Trailer – a trailer type unit that primarily designed to provide temporary living quarters for recreational, camping, or seasonal use that meets following criteria:

(a) Built on a single chassis mounted on wheels;

(b) Having a gross trailer area not exceeding 400 square feet in the setup mode, and if less than 320 square feet in the setup mode would require a special movement permit for highway transit; and

(c) Certified by the manufacturer as complying with ANSI A119.5, Recreational Park Trailer Standard.

(268) Recreational Vehicle (RV) – A vehicular-type unit that is primarily designed as temporary living quarters for recreational, camping, or seasonal use; has its own motive power or is mounted on or towed by another vehicle; is regulated by the National Highway Traffic Safety Administration as a vehicle or vehicle equipment; does not require a special highway use permit for

operation on the highways; and can be easily transported or set up on a daily basis by an individual.

(269) Recreational Vehicle (RV)(re: Flood Damage Prevention regulations) - 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 chapter, "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.

(270) 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.

(271) Reference Level - is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone Al-A30, AE, A, A99 or AO.

(272) 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.

(273) 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.

(274) 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.

(275) 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.

(276) 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.

(277) 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.

(278) 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).

(279) Residence, Single-Family Detached - A residential use consisting of a single detached building containing one dwelling unit and located on a lot or tract.

(280) 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.

(281) Residential Development - Buildings constructed for human habitation 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.

(282) Residential Subdivisions - A collection of land parcels designated and platted (mapped) exclusively for residential development.

(283) 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.

(284) Revolving or Rotating Sign - An Animated Sign.

(285) 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.

(286) Riverine - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

(287) 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.

(288) 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).

(289) 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.

(290) 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.

(291) 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.

(292) 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.

(293) 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.

(294) 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.

(295) Self-Service Storage Facility – Real property designed and used for the purpose of renting or leasing individual storage spaces to customers for the purpose of storing and removing personal property on a self-service basis.

(296) 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.

(297) 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.

(298) 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.

(299) 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.

(300) 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.

(301) 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.

(302) Sign Face - An exterior display surface of a sign including nonstructural trim exclusive of the supporting structure.

(303) Sign Permit - A permit issued by the Ordinance Administrator that authorizes the recipient to erect, move, enlarge, or substantially alter a sign.

(304) Sign, Political -A sign promoting or publicizing a candidate/candidates for election or signs related to issues on a ballot.

(305) 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.

(306) 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.

(307) 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.

(308) Site Specific Vesting Plan - A plan of land development submitted to the County for purpose of obtaining one of the following zoning or land use permits or approvals in which the applicant requests vesting

pursuant to Chapter 24 Article XIV of this Ordinance: any project that is to be reviewed by the Planning Board or Board of Adjustment. The plan shall describe with reasonable certainty the type and intensity of use for a specific parcel or parcels of property and include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, pedestrian walkways, driveways and parking areas; and required landscaping areas and buffers.

(309) 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.

(310) Solid Waste Disposal Facility - means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

(311) 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.

(312) 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.

(313) 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.

(314) 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.

(315) 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.

(316) 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.

(317) 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.

(318) 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.

(319) Stable - A building in which horses or other livestock are kept for commercial use including boarding, hire, and sell.

(320) 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.

(321) 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.

(322) Stormwater Runoff - means the runoff of water resulting from precipitation in any form and occurring immediately after rainfall or melting.

(323) 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.

(324) 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).

(325) Street (Road)(re: Watershed Protection regulations) - A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

(326) Structure - Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

(327) Structure (Flood Damage Prevention) - means a walled and roofed building, a manufactured home, or a gas, liquid or liquefied gas storage tank that is principally above ground.

(328) Subdivider - Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision.

(329) 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.

(330) Subsidiary – means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

(331) Substantially Commenced - For the purposes of this ordinance a development is determined by the Ordinance Administrator to have substantially commenced if evidence is provided that one or more of the following applies:

a. The development has received and maintained a valid erosion and sedimentation control permit and conducted grading activity on

a continuous basis and not discontinued it for more than thirty (30) days; or

b. The development has installed substantial on-site infrastructure; or

c. The development has received and maintained a valid building permit for the construction and approval of a building foundation; or

d. Ten percent (10%) or more of the total cost of design- and construction-related activities authorized by such approvals or permits has been completed on the site.

(332) Substantial Damage (Flood Damage Prevention) - 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".

(333) 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.

(334) Substantial Improvement (Flood Damage Prevention) - 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.

(335) 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.

(336) Surface Waters - All waters of the State as defined in NCGS 143-212 except underground waters.

(337) 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.

(338) Temperature Controlled - means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

(339) Temporary 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.

(340) 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.

(341) 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.

(342) Ten-Year Storm - a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

(343) Tower - A lattice-type structure, guyed or freestanding, that supports one or more antennas.

(344) Toxic Substance - Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

(345) Tract (re: erosion control regulations) - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

(346) 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."

(347) 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.

(348) ~~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.~~

(349) Twenty-five Year Storm – means a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

(350) Uncovered - means the removal of ground cover from, on, or above the soil surface.

(351) 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.

(352) Unit - A structure or portion of a structure which is a single, habitable dwelling or single place of business.

(353) 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 that meets all requirements of NCDOT Administrative Code 2E.0203(5).

(354) Use - The activity or function that actually takes place or is intended to take place on a lot.

(355) 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.

(356) 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.

(357) Variance - is a grant of relief from the requirements of this ordinance.

(358) Vegetative Buffer - shall generally mean an undisturbed area of native plant vegetation, or a restored area of vegetation, adjacent to a lake, perennial stream, or intermittent stream. Clearing, grading, filling, building of structures, and other activities are limited or prohibited.

(359) Vehicle Sign - A sign attached to, painted on or mounted on a parked vehicle or trailer in a location not normally used in the daily activity of the business, with the sign visible from a public location so as to act as a sign for the advertisement of products or direction to a business or activity.

(360) Velocity - 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.

(361) 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.

(362) Visible - Capable of being seen without visual aid by a person of normal acuity.

(363) Violation (re: Flood Damage Prevention regulations) - 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 Chapter 9 Article III and IV is presumed to be in violation until such time as that documentation is provided.

(364) 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.

(365) Waste - means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.

(366) 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.

(367) 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.

(368) Water Surface Elevation (WSE) - means the height, in relation to NAVD 1988, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

(369) 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.

(370) 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.

(371) 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.

(372) Watershed Administrator - An official or designated person of the county responsible for administration and enforcement of this ordinance.

(373) Wholesale Sales - On-premises sales of goods primarily to customers engaged in the business of reselling the goods.

(374) Wind Turbine Height - The height above grade to the tip of the turbine blade when it reaches its highest elevation.

(375) 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.

(376) 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.

(377) 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.

(378) Wireless Support Structure - A freestanding structure, such as a monopole or tower, designed to support wireless facilities. This definition does not include utility poles.

(379) 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.

(380) 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.

(381) 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.

(382) 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.

(383) 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.

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. Provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 90 calendar days following completion of construction or development.

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 documentation of property 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, 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, 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 documentation of property 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 or G.S. 113A-54.1(e), the following apply:

(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 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 upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

Section 5. Control Sedimentation.

All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.

Section 6. Manage Storm Water Runoff.

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 United States Department of Agriculture (USDA), Natural Resources Conservation Service's "National Engineering Field 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 Natural Resources Conservation Service's "National Engineering Field 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) Sediment Basin Design. Sediment basins within HQW zones shall be

designed and constructed 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 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.

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.):

Material	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

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 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 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 Fees

The County may establish a fee schedule for the review and approval of plans.

Article 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:

(1) 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.

(2) 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.

(3) The Planning Board shall make recommendations to the Board of Commissioners within seven (7) days after the date of the hearing on any plan.

(4) 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.

(5) 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 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 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 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. 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 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.

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 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 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 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 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 of 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 County for remission of the assessment within 30

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 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 30 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 30 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 the County for the prior fiscal year.

[In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected.]

Article 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 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 XXIV Effective Date

February 20, 2019, Amended November 16, 2021

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 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 NAVD 1988 of the proposed reference level (including basement) of all structures;

(b) Elevation in relation to NAVD 1988 to which any non-residential structure in Zone AE or A will be floodproofed; and

(c) Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.

(3) If floodproofing, a Floodproofing Certificate (FEMA Form 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)(4) when solid foundation perimeter walls are used in Zones A, AE, and A l-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 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.

(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 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 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 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 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 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 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 Al -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 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 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 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.

(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 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 necessary to preserve the historic character and design of the structure;

2) functionally dependent facilities if determined to meet the definition as stated in Chapter 7, provided provisions of Article III, Section 5(I)(2), (3), and (5) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

3) any other type of development, provided it meets the requirements of this Section.

(D) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

1) the danger that materials may be swept onto other lands to the injury of others;

2) the danger to life and property due to flooding or erosion damage;

3) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4) the importance of the services provided by the proposed facility to the community;

5) the necessity to the facility of a waterfront location as defined in Chapter 7 as a functionally dependent facility, where applicable;

6) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

7) the compatibility of the proposed use with existing and anticipated development;

8) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9) the safety of access to the property in times of flood for ordinary and emergency vehicles;

10) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected. at the site; and

11) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(E) A written report addressing each of the above factors shall be submitted with the application for a variance.

(F) Upon consideration of the factors listed above and the purposes of this chapter, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this chapter.

(G) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to $25 per $100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(H) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

(I) Conditions for Variances:

(1) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

(2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief

(4) Variances shall only be issued prior to development permit approval.

(5) Variances shall only be issued upon:

(a) a showing of good and sufficient cause;

(b) a determination that failure to grant the variance would result in exceptional hardship; and

(c) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(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) 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.

a) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.

b) 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) 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.

(I) 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).

(J) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

(K) 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.

(L) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(M) 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.

(N) 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.

(O) 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.

(P) 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 Al -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 l43~l43.l5. 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 he 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 Al-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:

(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)(4),

An accessory structure with a footprint less than 150 square feet satisfies the criteria outlined above 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 Watauga County, North Carolina, on the 16th day of November, 2021.

CHAPTER 10 FOSCOE GRANDFATHER ZONING

Article I Purpose, Authority and Jurisdiction

Section 1. Purpose.

The zoning regulations and districts as herein set forth are being adopted in accordance with a comprehensive plan and are designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote good health and the general welfare; to provide adequate light and air, to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations are being made with reasonable consideration, among other things, to the character of the district and their peculiar suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the community, and with the goal of preserving the rural environment of the Foscoe-Grandfather Community.

Section 2. Authority.

The provisions of this chapter are enacted under authority granted by the General Assembly of North Carolina. (General Statute 160D, Article 7 and other pertinent statutes and amendments thereto.)

Section 3. Jurisdiction.

The regulations set forth in this chapter shall be applicable to all land within the boundaries of the Foscoe-Grandfather Community as established and amended by the Watauga County Board of County Commissioners.

Article II General Provisions

Section 1. Application.

The regulations set forth in this chapter shall apply to all land, every building and every use of land and/or building except bona fide farms as defined in N.C.G.S. 160D-903 within the boundaries of the Foscoe-Grandfather Community.

Section 2. New Uses or Construction.

After the effective date of these regulations, all new construction and the moving, altering and enlarging of existing structures shall conform to the use, area and bulk regulations for the district in which it is, or is to be, located.

Section 3. Conforming Uses.

After the effective date of these regulations, existing structures, or the use of land or structures which conform to the regulations for the district, may be continued, provided that any structural alteration or change in use shall conform with the regulation herein specified for the district in which it is located.

Section 4. Nonconforming Uses.

After the effective date of these regulations, existing structures, or the uses of land or structures which would be prohibited under the regulations for the district in which it is located (if they existed on the initial adoption date of these regulations), shall be considered as nonconforming. Nonconforming structures or uses may be continued provided they conform to the following provisions:

(A) Continuing the Use of Nonconforming Land

(1) Extensions of Use. Nonconforming uses of land shall not hereafter be enlarged or extended in any way.

(2) Change of Use. Any nonconforming use of land may be changed to conforming use or with the approval of the Board of Adjustment to any use more in character with the uses permitted in the district.

(B) Continuing the Use of Nonconforming Buildings

(1) Extensions of Use. Nonconforming buildings and nonconforming uses of buildings shall not hereafter be enlarged except when such enlargement or extension is in compliance with subparagraph (B)(6) below.

(2) Change of Use. If no structural alterations or enlargements are made, any nonconforming building or use of buildings may be changed (with the approval of Board of Adjustment) to any use more in character with uses permitted in the district. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this ordinance.

(3) Cessation of Use. If active operations are discontinued for a continuous period of six months with respect to a nonconforming use of building, such building or buildings shall thereafter be occupied and used only for a conforming use.

(4) Repair and Alteration. Normal maintenance and repair in a building occupied by a nonconforming use is permitted provided it does not extend the nonconforming use.

(5) Damage or Destruction. If a building occupied by a nonconforming use or a nonconforming building is destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, such building may not be restored for any nonconforming use.

(6) Nonconforming features of buildings may be extended into the yard (setback) which is being violated by the nonconforming feature(s). However, the addition shall not be more than fifty (50) percent of the existing gross floor area and shall not extend further than the existing building line and in no case shall the addition be closer than five (5) feet to the property line. Additional screening shall be required for commercial uses if adjacent to residential uses. Additional screening shall be defined as a six (6) foot high opaque fence or an evergreen tree a minimum six (6) feet in height planted on four (4) foot centers.

Section 5. Open Space Requirements.

No part of a yard, court or other open space provided around any building or structure for the purpose of complying with the provisions of this chapter shall be included as a part of a yard or other open space required under this chapter for another building or structure.

Section 6. Reduction of Lot and Yard Areas Prohibited.

No yard or lot existing at the time of passage of these regulations shall be reduced in size or area below the minimum requirements set forth herein. Yards and lots created after the effective date of these regulations shall meet at least the minimum requirements established by these regulations.

Section 7. Projections into Public Rights-of-way.

No signs or other structures shall project beyond the curb line of any street or other public way.

Section 8. Interpretation of District Boundaries.

When uncertainty exists with respect to the boundaries or districts as shown on the Official Zoning Map, the following rules shall apply:

(A) Delineation. District boundary lines indicated as approximately following property lines, lot lines, the center line of streets, alleys, railroads, easements, other rights-of-way, and creeks, streams, or other water channels, shall be constructed to follow such lines.

(B) Official Zoning Map. In the absence of specified distances on the map, dimensions or distances shall be determined by scaling the distance on the Official Zoning Map

Article III Official Zoning Map

Section 1. Zoning Map.

The boundaries of each zoning district are shown on a map entitled "Foscoe Grandfather Community Official Zoning Map" which is hereby made a portion of this chapter.

Article IV Administration and Enforcement

Section 1. Administration and Enforcement.

The Watauga County Department of Planning and Inspections (hereinafter referred to as Zoning Official) shall administer and enforce this chapter.

(A) Violations. If the Zoning Official shall find that any of the provisions of this chapter are being violated, s/he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it within ten (10) days. S/he shall order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of addition, alterations, or structural changes thereto; the discontinuance of any illegal work being done; and shall take any other action authorized by this chapter to insure compliance with, or to prevent violation of, its provisions.

(B) Remedies and Penalties. Chapter 5 of this Title shall apply.

Section 2. Permit Process.

(A) Zoning Permits. No building or other structures shall be erected, moved, added to, or structurally altered without a zoning permit therefore, issued by the Zoning Official. No building permit shall be issued except in conformity with the provisions of this chapter.

(B) Application for Zoning Permit. All applications for building permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Zoning Official including a description of all existing or proposed buildings or alterations; existing or proposed uses of the buildings and land; the number of families, housekeeping units, or rental units the buildings are designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this chapter.

One copy of the plans shall be returned to the applicant by the Zoning Official after s/he shall have marked such copy either as approved or disapproved and attested to the same by his/her signature on such copy. The second copy of these plans, similarly marked, shall be retained by the Zoning Official.

(C) Zoning Permit for New, Altered, or Nonconforming Uses

(1) It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises, or both, or any part thereof which may be hereafter created, erected, changed, converted, (or wholly or partly altered or enlarged as to its use or structure) until a zoning permit shall have been issued therefore by the Zoning Official stating that the proposed use of the building or land conforms to the requirements of this chapter.

(2) No permit for the erection, alteration, moving, or repair of any building shall be issued until an application has been made for a zoning permit in connection therewith. Such zoning permit shall be issued in conformity with the provisions of this chapter upon the satisfactory completion of the work.

(3) A temporary zoning permit may be issued by the Zoning Official for a period not to exceed six (6) months during alterations or construction for partial occupancy of a building pending its completion, or for bazaars, carnivals, and revivals, provided that such temporary permit shall require such conditions and

safeguards as will protect the safety of the occupants and the public.

(4) The Zoning Official shall maintain a record of all zoning permits and copies shall be furnished upon request to any responsible and interested person.

(5) The Failure to obtain the necessary zoning permit shall be a violation of this chapter and shall be punishable under Chapter 5 of this Ordinance.

(D) Construction and use to be as Stated on Zoning Permits. Zoning permits issued on the basis of plans and applications approved by the Zoning Official authorize only the use, arrangement, and construction set forth in such approved plans and applications. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this chapter, and shall be punishable as provided by Chapter 5.

Section 3. Right of Appeal.

If the zoning permit is denied, the applicant may appeal the action of the Zoning Official to the Board of Adjustment.

Article V District Regulations

For the purpose of this ordinance, the Foscoe-Grandfather Community is hereby divided into four districts:

Rural District

Rural/Residential District

Highway District

Light Industrial Conditional District

Section 1. Rural District.

The Rural District is established as a district in which the principal use of land is for low density residential and agricultural purposes. The regulations of this district are intended to protect the agricultural sections of the community from an influx of uses likely to render them undesirable for farms and future development; to ensure that residential development not having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at sufficiently low densities to insure a healthful environment; and to protect the Watauga River and tributaries from degradation.

(A) Permitted Uses

(1) Land which is used solely for bona fide farming activities.

(2) Construction or placement of single or two-family units in legally-platted subdivision as permitted; included are additions to these units and accessory buildings, provided that the principal use remains residential;

(3) Placement of manufactured housing units in approved residential parks or legally platted subdivision: included are additions to these units and accessory buildings provided that the principal use remains residential;

(4) Construction or placement of and/or addition to single or two-family dwelling units or manufactured housing units outside legally platted subdivisions or residential parks as permitted, provided that the principal use remains residential;

(5) Conduct of a home occupation in or on the premises of single-family dwelling where the dwelling is the original use of the property;

(6) Churches and affiliated uses (standards regarding parking, driveway access, stormwater control, and buffer areas are applicable);

(7) Installation of sign(s) on a non-residential site (on-premise sign) in accordance with Chapter 16 Sign Regulations.

(8) Continued use of any land, structure, or development as it legally existed and was occupied on the effective date of this chapter.

(B) Special Uses

(1) Multi-family and clustered dwellings and manufactured home parks (also subject to review under the Subdivisions and Multi-Unit Structures regulations and Chapter 14 Manufactured Home/Recreational Park Trailer Parks regulations respectively);

(2) Schools, public utility facilities, fire stations, recreational facilities (including golf courses, but not including driving ranges or miniature courses) and public buildings or facilities.

(C) Dimensional Requirements

Minimum required lot area for single and two-family dwellings – One (1) acre (43,560 square feet). Any lot in a residential subdivision recorded prior to June 15, 1973, or otherwise made exempt from subdivision regulation by official action of Watauga County to "grandfather" the development, shall not be subject to the lot size or yard requirements of this chapter. However, in no case shall any structures be built closer than five (5) feet to a property line. Setbacks from stream banks required by this chapter shall apply to

said developments. Preexisting recorded residential lots less than one acre may be used provided that all other requirements of the chapter can be met. In addition to one (1) acre minimum lot size, pursuant to High Quality Waters rules set forth by NC Division of Environmental Quality, all other land uses are subject to a maximum density standard of twelve (12) percent impervious surface (built-upon area), or higher density with approved storm water controls installed, if an erosion control plan due to one (1) acre or more of land-disturbing activity is required.

Minimum required mean lot width for each dwelling unit – 100 feet.

Minimum required depth of front yard – 30 feet.

Minimum required width of any side yard – 15 feet.

Minimum required depth of rear yard – 15 feet.

Off-street parking if applicable shall be provided as required in Article VI, Section 3 of this chapter.

Maximum height of structure (not including chimneys, steeples, antennas, etc.) – 40 feet, measured from entrance grade, as measured under the NC Building Code. One (1) floor may be below entrance grade (basement).

Section 2. Rural/Residential District.

The Rural/Residential District is established as a more restricted, yet similar district to the Rural District. The principal use of land is for low density conventional residential structures.

(A) Permitted Uses

(1) Construction or placement of single-family units in legally-platted subdivision as permitted; included are additions to these units and accessory buildings, provided that the principal use remains residential,

(2) Construction or placement of and/or addition to single family dwelling outside legally platted subdivisions as permitted, provided that the principal use remains residential;

(3) Conduct of a home occupation in or on the premises of single-family dwelling where the dwelling is the original use of the property;

(4) Churches and affiliated uses (standards regarding parking, driveway access, stormwater control, and buffer areas are applicable);

(5) Installation of sign(s) on a non-residential site (on-premise sign) in accordance with the Watauga County Sign regulations.

(6) Continued use of any land, structure, or development as it legally existed and was occupied on the effective date of these regulations.

(B) Special Uses

(A) multi-family and clustered dwellings (also subject to review under the Watauga County Subdivisions and Multi-Unit Structures regulations);

(B) schools, public utility facilities, fire stations, recreational facilities (including golf courses, but not including driving ranges or miniature courses) and public buildings.

(C) public utility buildings and facilities if such use is essential for the service of the immediate area and provided that:

(a) all buildings shall be located at least 35 feet from any lot line.

(b) fences and/or other appropriate safety devices are installed to protect the public safety and welfare.

(c) no vehicles or equipment are stored, maintained or repaired on premises

(d) all structures are in keeping with the residential character of the neighborhood.

(e) adequate landscaping, screening and/or buffering shall be provided to insure compatibility with the neighborhood.

(D) Radio and television transmitting stations and studios provided that:

(a) such facilities shall be housed in structures which are in keeping with the character of the residential neighborhood.

(b) No structure shall be located within 35 feet of any lot line.

(C) Dimensional Requirements

Minimum requirements for lot area, yards, parking, and building height are as described for the Rural District or as established in Article VI.

Section 3. Highway District.

The Highway District is located on the major thoroughfare. It is intended to provide offices, personal services, and retailing of durable and convenience

goods for the community. Because the commercial uses are subject to public view and are important to the economy, they should have an appropriate appearance, ample parking, controlled traffic movement and suitable landscaping.

(A) Permitted Uses

(1) all uses permitted within the Rural District;

(2) non-residential uses which are not subject to a special use permit as shown below or are prohibited by this chapter, except industrial uses which are permitted only in the industrial conditional district. These uses are subject to a site plan review and must comply with the standards of Article VI.

(B) Special Uses

(1) multi-family and clustered dwellings and manufactured home parks as described for the Rural District;

(2) other uses as described for the Rural District, also hospitals, police stations, libraries, circuses, carnivals, fairs, flea markets, and temporary uses;

Standards for Flea Markets

(a) Site Plan Information: A site plan, drawn to scale, shall be submitted which legibly indicates the following:

(i.) Boundary survey;

(ii.) Hours and frequency of operation;

(iii.) Location and dimensions of individual booths and sale areas;

(iv.) Off-street parking (vendor and customer);

(v.) Screening, if applicable.

(b) Off-street parking: Off-street parking will be required at one (1) space per 200 sq. ft. of commercial area used for display and sales of two (2) per booth or individual display area, whichever is greater. All parking facilities shall be provided with on-site drainage in accordance with Article VI, Section 6(C).

(c) Screening/buffering: shall be provided as specified in Article VI.

(d) Signs: One (1) freestanding directory sign shall be allowed provided such sign does not exceed 50 sq. ft. In addition, each vendor may have a four (4) square foot attached sign.

(e) Applicant shall submit a written statement setting forth the method and frequency of maintenance, repair, refuse collection and disposal along with the site plan.

(3) Combination of residential and non-residential uses;

(4) Non-residential uses which consist of multiple units, are greater than 5000 square feet in size, or are deemed by the Zoning Official to be potentially detrimental to the community as follows:

(a) Could materially endanger the public health or safety, or

(b) Could substantially injure the value of adjoining or abutting property, or

(c) May not be in harmony with the area in which it is to be located, or

(d) May not be in general conformity with the land use plan, thoroughfare plan, or other plans officially adopted by the County.

(C) Dimensional Requirements

Minimum required lot area is one-half (1/2) acre. Preexisting recorded lots less than one-half may be used provided all other requirements of the ordinance can be met. However, if an erosion control plan is required pursuant to 15NCAC, Chapter 4, the minimum lot area for single family dwellings is one (1) acre; all other land uses are subject to a maximum density standard of twelve (12%) percent impervious surface (built upon area). Higher Density (than 12% built upon area) will be—allowed if stormwater control systems are permitted by North Carolina Division of Environmental Quality Energy, Minerals and Land Resources (High Quality Waters rules)

Minimum yard requirements for residential structures shall be as established for the Rural District. Yard requirements for nonresidential structures are established in Article VI, Section 4.

Building Height. Same as Article V, Section 1(C).

Off-Street parking, if applicable, shall be provided as required in Article VI, Section 3.

Section 4. Light Industrial Conditional Zoning District.

The Industrial District is established as a district in which the principal use of land is for industries and certain other land use functions which can be operated in a relatively clean and quiet manner, and industries which are not obnoxious to adjacent residential or business districts. The regulations are designed to prohibit the use of land for heavy industry which should be properly segregated and to prohibit any other use which would substantially interfere with the development of industrial establishments in the district.

(A) Rezoning & Permitted Uses

Pursuant to Chapter 5, Article XIV, tracts may be zoned Light Industrial Conditional District upon petition/application of all of the owners of the subject tracts, and approval by the Board of Commissioners, for any of the following land uses:

(1) Manufacturing and/or assembly
(2) Machine shop/welding
(3) Furniture repair if paint/refinishing booth is included
(4) Brewery/distillery/winery
(5) Commercial warehouses, but not "mini-storage" warehouses, which are permitted in the Highway District
(6) Trucking/distribution terminal
(7) Building material and lumber storage

(B) Prohibited Uses

Uses defined as Category 1 and 2 High Impact Land Uses in Chapter 13 of this Title are industrial, and are prohibited.

(C) Conditional Uses

All land uses are conditional and must comply with the Site Plan Review Standards, as well as any other conditions agreed upon by the Board of Commissioners and applicant(s).

(D) Dimensional Requirements

Minimum requirements for lot area, yards, parking, and building height are as described for the Highway District or as established pursuant to Article VI.

Section 5. Accessory Uses.

(A) Sections 1, 2, 3, and 4 of this article describe permitted and special uses for each district. Whenever an activity is conducted in conjunction with another principal use and the former use (i) constitutes only an incidental or insubstantial part of the total activity that takes place on a lot, or (ii) is commonly associated with the principal use and integrally related to it, then the former use may be regarded as accessory to the principal use and may be carried on underneath the umbrella of the permit issued for the principal use. For example, a swimming pool/tennis court complex is customarily associated with and integrally related to a residential subdivision or multi-family development and would be regarded as accessory to such principal uses, even though such facilities, if developed apart from a residential development, would require a special use permit.

(B) For purposes of interpreting Subsection A:

(1) A use may be regarded as incidental or insubstantial if it is incidental or insubstantial in and of itself or in relation to the principal use,

(2) To be "commonly associated" with a principal use it is not necessary for an accessory use to be connected with such principal use more times than not, but only that the association of such accessory use with such principal use takes place with sufficient frequency that there is common acceptance of their relatedness.

(C) Without limiting the generality of Subsection A and B, the following activities, so long as they satisfy the general criteria set forth above, are specifically regarded as accessory to residential principal uses:

(1) Offices or studios within an enclosed building and used by an occupant of a residence located on the same lot as such building to carry on administrative or artistic activities of a commercial nature, so long as such activities do not fall within the definition of a home occupations.

(2) Hobbies or recreational activities of non-commercial nature.

(3) The renting out of one or two rooms within a single-family residence (which one or two rooms do not themselves constitute a separate dwelling unit) to not more than two persons who are not part of the family that resides in the single-family dwelling.

(4) Yard sales or garage sales, so long as such are not conducted on the same lot for more than three days (whether consecutive or not) during any 90-day period.

(D) Without limiting the generality of Subsections A and B, the following activities shall not be regarded as accessory to a residential principal use and are prohibited in residential districts.

(1) Storage outside of a substantially enclosed structure of any motor vehicle that is neither licensed nor operational.

(2) Parking outside a substantially enclosed structure of more than four motor vehicles between the front building line of the principal building and the street on any lot used for single or two-family residences.

Article VI Site Plan Review

All uses except one and two family dwellings are subject to the standards described in this section. Compliance with the standards shall be determined through a site plan review by the Zoning Official. Standards are as follows:

Section 1. Sign Regulations

Placement of signs is regulated by the Watauga County Sign regulations with the following exceptions:

(A) new off-premises signs are prohibited;

(B) the setbacks for new on-premises signs shall be located beyond the right-of-way of Highway 105 and 10 feet from side property lines; and

(C) pre-existing non-conforming on-premises signs shall be permitted to remain until the use of the property is changed or the occupancy of the use is changed. Signs must be brought into compliance with the ordinances at that time.

(D) pre-existing off-premise signs shall be permitted to remain in their present location, however once moved from that location, the off-premise sign shall be considered a new off-premise sign.

(E) off-premise signs shall not be re-established after damage or destruction by an act of nature in excess of sixty (60) percent of its replacement value at the time of the damage or destruction.

Section 2. Buffer Areas

(A) Buffer areas shall be established in order to create the impression of spatial separation between adjacent land uses. The purpose of this separation is to lessen possible adverse effects of land uses upon each other and to provide within development planted/green areas so as to maintain the rural character of the community. Buffer requirements are as follows.

(B) Where a commercial or multi-family use is proposed adjacent to a single-family residential use, side and rear yard setback of 30 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer and shall be landscaped as follows. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no more than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one half (1-1/2) inch caliper (trunk measured six (6) inches above grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet as maturity. In addition, plantings of low growing shrubs, and/or trees shall be placed at ten (10) foot intervals. Plantings within buffer zones shall be staggered unless topography is prohibitive. No planting shall be placed in the road right-of-way. Lists of recommended plantings are available from the Planning and Inspections Department.

(C) Where a commercial or multi-family use is proposed adjacent to a commercial or multi-family use side and rear yard setback of 15 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer and shall be landscaped as follows. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no 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. In addition, permanent ground cover such as grasses shall be established.

(D) Wall, fences, earthen berms, or other natural features may be used in combination with ~~or in~~ lieu of planted buffers if approved as part of the special use permit. Considerations include but are not limited to:

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

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

(E) Open storage areas, exposed machinery and outdoor areas used for the storage and collection of rubbish must be visually screened from roads and surrounding land uses. Suitable types of screening include opaque wood fences and dense evergreen hedges of six (6) feet or more in height. Where evergreen hedges are proposed, a temporary fence should be built to provide screening until the evergreens are of sufficient height.

(F) The recipient of any zoning or special-use permit, or his successor, shall be responsible for maintaining all common areas, improvements, or facilities required by the ordinance or any permit issued in accordance with its provisions, except those areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and

required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

Section 3. Parking Standards

All development shall be provided with adequate parking facilities to handle the expected number of automobiles for that site. Spaces shall be provided as follows; use and occupancy classifications for buildings are the same as those definitions use in the N.C. Building Code.

(A) Required Spaces

(1) Assembly, business, educational, storage and mercantile uses and occupancies shall be provided with parking spaces as follows:

(a) one (1) off-street parking space for each two hundred (200) square feet of gross floor area for operations designed to attract and serve customers and clients on the premises;

(b) one (1) off-street parking space for each four hundred (400) square feet of gross floor area for operations designed to attract little or no customer or client traffic other than employees of the operation.

(c) One (1) off-street parking space for each one thousand (1000) square feet of gross floor area for self-service storage facilities.

(2) Factory Industrial and High Hazard uses and occupancies shall be provided with 1.5 spaces per three employees, computed on the total employment.

(3) Institutional uses and occupancies shall be provided with one space per five person identified in the building's occupant load figures.

(4) Residential uses and occupancies, primarily permanent, shall be provided with two (2) spaces per dwelling unit.

(5) Residential uses and occupancies, primarily transient (motels, hotels and inns), shall be provided with one and one-half (1.5) spaces per bedroom.

Parking spaces shall be calculated as being 162 square feet each, broken down to 9 by 18 feet. Once the total required square footage has been determined as required by (1) through (5), developers shall be permitted to increase the numbers of spaces by downsizing some for use by smaller automobiles. Total space requirements of (1) through (5)

shall, however, be met in any case. Paving is not required, unless required by Subdivisions and Multi-Unit Structures regulations. 4" compacted crusher-run or DOT-approved ABC stone is adequate.

(B) Loading/Unloading Space

Loading/unloading space for non-residential uses shall consist of one (1) space at least three hundred (300) square feet in size for each five thousand (5000) square feet of gross floor area. A minimum of one (1) loading/unloading space is required, regardless of floor area square footage.

(C) Location and Buffering of Parking

In order to preserve the rural environment, developers are encouraged to place parking and loading/unloading areas at the rear or side of buildings. ("Front" is defined as the face of the building which is paralleled to a public road or a county standard road as defined in the Watauga County Subdivisions and Multi-Unit Structures regulations. By this definition, buildings on multiple public road or county standard road frontage would have multiple "front yards".) In any event, parking areas which are exposed to a public road or county standard road shall include a ten (10) foot buffer strip along the front. At a minimum, such strips shall be grassed and/or mulched and shall be planted with low growing trees, or shrubs no more than twenty (20) feet apart. Incentive to place parking areas to the side or rear of buildings is provided in the form of lessened front yard setback requirements. (See Article VI, Section 4)

Section 4. Yard Requirements – Highway and Industrial Districts

(A) Front Yard (side or rear parking) – 20 feet from edge of road right-of-way.

(B) Front Yard (front parking) – 40 feet from edge of right-of-way (includes buffer strip).

(C) Side and rear yards – 30 feet or 15 feet depending upon use of adjacent property (see buffer area requirements)

Section 5. Driveway Connections

Driveway access to Highway 105 shall be limited to two (2) per development; one (1) is preferred. Channelization will be required (unless waived by Watauga County) as part of driveway and parking lot design so that the driveway(s) can be specifically located. Use of the entire frontage as a single driveway connection is prohibited.

NC DOT "Policy on Street and Driveway Access to North Carolina Highways" requires County site plan approval prior to DOT review and approval of driveway connection applications. No building or grading permit, however, shall be issued unless DOT has issued a driveway connection permit or has indicated in writing that a permit can be issued.

Section 6. Drainage, Erosion Control, Storm Water Management

(A) Natural Drainage. To the extent practicable, all development shall conform to the natural contours of the land and natural and pre-existing man-made drainage way shall remain undisturbed.

(B) Erosion Control. All developments which involve one-half (1/2) acre or more of grading (land-disturbing activity) shall comply with the requirements of the Watauga County Erosion Control regulations. All developments which involve less than one-half (1/2) acre of land-disturbing activity shall take adequate measures to prevent sediment from being washed off-site or into waterways during construction, and shall restore permanent vegetative ground cover within seven (7) days after ceasing land disturbance or within 120 days of the date the site is first disturbed. This 120 day period may be extended by Watauga County in the event of inclement weather.

(C) Storm Water Management. All developments shall be constructed and maintained so that adjacent properties are not reasonably burdened with surface waters as a result of such developments. More specifically:

(1) No development may be constructed or maintained so that such development unreasonable impedes the natural flow of water from higher adjacent properties across such development, thereby unreasonably causing substantial damage to such higher adjacent properties; and

(2) No development may be constructed or maintained so that surface waters from such development are unreasonably collected and channeled onto lower adjacent properties at such locations or at such volumes as to cause substantial damage to such lower adjacent properties.

Section 7. Stream Protection, Flood Plain Protection

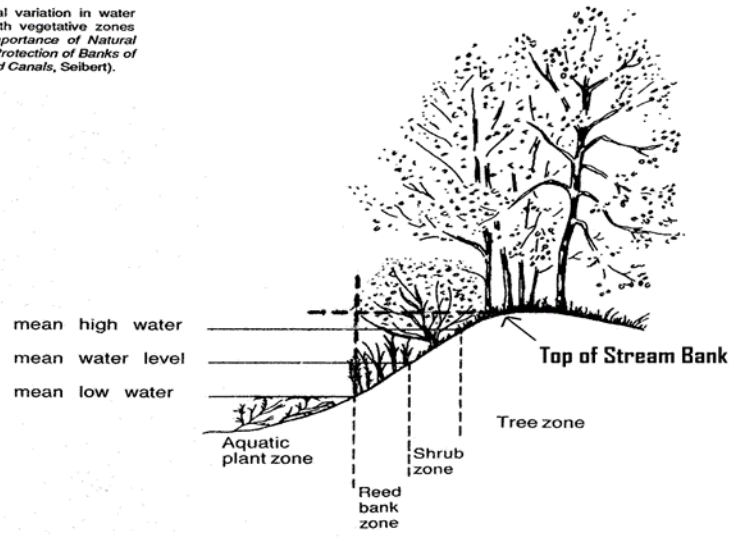
(A) Stream Protection. A minimum vegetative buffer of 50 feet shall be maintained between the top of the banks of Watauga River and Boone Fork Creek and new built upon areas. A minimum vegetative buffer of 40 feet shall be maintained between the top of the banks of Valley Creek, Moody Mill Creek, Spice Bottom Creek and tributaries to the five (5) named streams and new built upon areas. New

developments large enough to warrant an erosion control plan pursuant to the Watauga County Erosion Control regulations shall also maintain a 25-foot undisturbed area adjacent to the top of the banks of designated trout streams and their tributaries as required by the N.C. Sedimentation Pollution Control Act of 1973 as amended (all of the named streams are designated). The undisturbed area is not required for smaller developments. However erosion control measures approved by the Department of Planning and Inspections shall be installed and maintained within the required buffer until permanent vegetation is established. The Zoning Official shall keep lists/map of stream classifications on file.

The buffers (and undisturbed areas, if applicable) may be penetrated by driveways/stream crossings, which are necessary to access property. Under those circumstances, the penetration and any land disturbing activity shall be kept to a minimum and approved erosion control measures shall be installed and maintained. The requirements for buffers or undisturbed areas does not preclude the construction, when necessary, of storm drainage facilities such as detention ponds.

Streams are perennial streams as depicted by a solid blue line on USGS 7 1/2 minute scale topographic sheets. Top of stream bank is the nearest point at the top of the natural stream channel which is the beginning point of an imaginary horizontal line that forms a 90 degree angle with an imaginary vertical line perpendicular to the stream at the low water line. (see diagram) Often, it appears that streams have multiple banks. In most cases, the top of the bank for purposes of this ordinance will be the bank closest to the water's edge.

Typical variation in water level correlated with vegetative zones (modified from: *Importance of Natural Vegetation for the Protection of Banks of Streams, Rivers and Canals*, Seibert).



(B) Flood Plain Protection. In addition to the requirements of stream classifications, development adjacent to the Watauga River shall comply with the Watauga County Flood Damage Prevention regulations. Dredging or filling activity in or adjacent to the Watauga River, Boone Fork Creek, or other wetland areas potentially requires a Section 404 permit from the U.S. Army Corps of Engineers. The Zoning Official shall inform developers of this potential. It is the responsibility of the developer to contact the Corps of Engineers.

CHAPTER 11 INSTALLATION AND MAINTENANCE OF ELECTRONIC ACCESS GATES FOR GATED COMMUNITIES

Article I Authority and Purpose

These regulations are enacted pursuant to the general police powers granted to Watauga County by North Carolina Gen. Stat. §153A-121, N.C. Gen. Stat. §160D-1104, and Section 503 of the 2009 North Carolina State Fire Prevention Code, as amended periodically. The purpose of these regulations is to establish rules and standards for the installation of electronic access gates for gated communities in order to provide for the safe and efficient ingress and egress for fire, law enforcement, and other emergency personnel.

Article II Requirements

New and existing, when applicable, gated communities shall comply with the following requirements:

(A) All streets in the gated community must be private streets.

(B) The location of the gate(s) shall comply with Article III of this chapter and the North Carolina State Fire Prevention Code, as applicable.

(C) The gates shall be maintained in working order and inspected as needed.

(D) Gates pre-existing to the adoption of these regulations shall not be affected by this chapter provided they are maintained and in working order. If such gates are replaced or modified, they shall conform to the requirements of Article III, parts C through K, of this chapter and the North Carolina State Fire Prevention Code as applicable.

(E) Applicants shall adhere to Article IV regarding the process for obtaining approval for gates.

Article III Gate Development Specifics

(A) Entrance gates shall be located a minimum of 40’ from the adjacent public road right-of-way to allow for emergency vehicle clearance at entry.

(B) Combined entry and exit ways shall provide a minimum unobstructed width of twenty (20) feet. Entry and exit ways separated by landscape medians, guard houses, or other obstructions shall provide a minimum unobstructed width of twelve (12) feet. Entry and exit ways shall have a minimum unobstructed vertical clearance of not less than thirteen feet six inches (13’6”).

(C) It shall be determined if the gates are to be manual or electrical in

operation. All electrical vehicular gates shall be provided with access control using a Radio Transceiver for public safety and authorized users. This transceiver will allow emergency vehicles to open the gate from a mobile or portable radio, and must be pre-approved by Watauga County.

(D) All electrical vehicular gates shall be provided with a fail-open device in the event of power failures unless secondary power is provided by battery back-up or generator. During a power failure, the gates will open and remain open. These devices should restore the gate(s) to the closed position after the power is restored. Any residential gated communities consisting of three (3) or less dwelling units are not subject to this requirement.

(E) Gates need to be opened for appropriate personnel to enter the community during an emergency. A fire service recognized/approved dual key activating switch or padlock shall be installed to allow emergency personnel access through vehicular gates.

(F) An approved dual key lock box containing cards, keys, pass codes and operating instructions shall be provided at each entrance gate.

(G) Gates shall be designed so that when fully opened do not obstruct the path of travel for vehicles or pedestrians, whether emergency and non-emergency. Gates shall remain fully open during an emergency event, when activated by responding agency, until reset. A 'Hold Open' code must be included in design and functioning of the gate.

(H) If there are two or more gates in any single development, all gates shall be operated in the same fashion.

(I) Gate activation shall not be altered or placed out of service without prior notification to the Watauga County Fire Marshal's Office, Watauga County Planning and Inspections Department and the Local Fire Department.

(J) Each entrance gate shall be provided with an "override" feature to allow the gate(s) to remain open so that multiple fire apparatus can enter without having to wait for intermittent opening of the gate(s).

(K) Each entrance gate shall be equipped with a manual override feature so as to permit opening during power failures or other emergency.

Article IV Application and Approval Process

(A) The applicant shall submit a detailed plan, including but not limited to, scaled drawings showing the location of the gates, turn radius, dimensions of the gates, pavement, sidewalks, curbs, etc. Information such as topography lines, vegetation, site triangles, etc. shall also be included with the submittal.

(B) The applicant shall submit these plans for review by the Planning & Inspections Department, who shall forward the plans to the Sheriff's

Department, Fire Marshal's Office, EMS, and Local Fire Department for approval.

(C) The Department of Planning & Inspections shall verify approval by the agencies listed in Section B. of the gate plan prior to issuance of a permit.

(D) All property owners shall notify the Watauga County Emergency Services Department of any gate access code changes prior to such changes taking effect.

(E) All gated communities applying for a permit to install a gate shall acknowledge that if the affected properties gate fails to operate in its intended operational capacity, and such failure results in damage to the gate or constitutes the responding emergency agency to alter normal entrance procedures, the responding agency, mutual aid departments and Watauga County shall not be held liable for damages incurred.

Article V Maintenance

Gates subject to this chapter shall be kept in their original working order and shall be repaired and/or replaced in the event they are disabled and/or damaged. It shall not be the responsibility of the County to maintain these gates. Gates subject to this chapter shall be monitored annually by the Local Fire Department and verified by the Watauga County Fire Marshal's Office every three (3) years of their operation or as deemed appropriate by the Watauga County Fire Marshal's Office.

Article VI Modifications

Any gate (new or existing) altered outside the scope of their original installation and/or permitting, will be considered a modification. Notification and plans for modification shall be submitted to the Watauga County Office of Planning and Inspections for review and decision upon compliance with this chapter.

CHAPTER 12 HEIGHT OF STRUCTURES

WHEREAS, the Board of Commissioners of Watauga County are concerned about the health, safety and general welfare of the general public; and

WHEREAS, the fire departments of Watauga County together with other appropriate agencies have stated that structures higher than forty (40) feet are hazardous to the people in them in case of fire or other disasters; and

WHEREAS, the Watauga County Planning Board and Board of Soil and Water Conservation have requested the Board of Commissioners of Watauga County to exercise its ordinance making power to protect the fragile lands of Watauga County in order to promote the general welfare and safety of the citizens of Watauga County and the people who might visit the County; and

WHEREAS, the Board of Commissioners are authorized to enact ordinances for safety and general welfare by North Carolina General Statute 153A-121;

NOW, THEREFORE, the Watauga County Board of Commissioners have enacted the following:

Article I Regulation of Height of Structures

No building or structure intended for dwelling use may be constructed, reconstructed, or remodeled with a vertical height of more than 40 feet. For purposes of calculating vertical height, the applicant may elect to use either of the following two methods:

(A) 40 feet measured vertically from the highest point of the roof to the highest point of finished grade within 6 feet horizontally of an exterior wall, or

(B) 40 feet measured vertically from the average height of the highest roof surface to the "grade plane" as defined in the NC Residential Code and NC Building Code.

Excluded from this ordinance are the following:

(1) Water, radio, television, or telephone towers or any equipment for the transmission of electricity or communications, or both.

(2) Structures which are slender in nature and minor vertical projections of a parent building including chimneys, flag poles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires or windmills, provided that part of the structure which is higher than 40 feet is no intended for human habitation.

Article II Permits

In the event any person, partnership, or corporation requests a building permit for a structure that is in violation of this chapter the Watauga County Planning and Inspections Department shall deny the issuance of a building permit.

CHAPTER 13 HIGH IMPACT LAND USES

Article I Introduction

Section 1. General Purpose.

The following regulations of High Impact Land Uses (HILU) are adopted for the purpose of promoting the health, safety and general welfare of the citizens of Watauga County, and to promote the peace and dignity of the county; the Watauga County Commissioners hereby establish certain criteria relating to high impact land uses. These uses by their very nature produce objectionable levels of noise, odors, vibrations, fumes, light, smoke, and other impacts upon the lands adjacent to them. These standards shall allow for the placement and growth of such uses, while maintaining the health, safety, and general welfare standards of established residential and commercial areas in Watauga County.

Section 2. Legal Authority.

These regulations are enacted under the general ordinance authority granted to counties by the General Assembly of North Carolina. (General Statutes 153A-121 *et seq.*, and other pertinent statutes and amendments thereto).

Section 3. Territorial Coverage.

Pursuant to NCGS § 153A-122, this chapter shall apply to all areas of unincorporated Watauga County which are not within the extraterritorial planning jurisdictions of any municipalities. All municipalities, their respective corporate limits, and extra-territorial jurisdiction shall be exempted from the chapter, unless they choose to adopt this chapter or some form thereof. This chapter does not apply to Watauga County owned and operated solid waste facilities or container sites.

Article II Regulated Land Uses

Section 1. Regulated Uses.

This chapter applies to the following High Impact Land Uses:

(A) Category 1. Asphalt Plants, Cement Mixing Facilities, Quarries/Stone Crushers, Chemical Manufacturing, Chemical Storage Facilities, Explosives Manufacturing, and Explosives Storage Facilities, Chip

Mills, and Electricity Generating Facilities (excluding Wind and Solar Power Farms), Motor Sports Facilities.

(B) Category 2. Automotive Graveyards, Propane, Gasoline, or Fuel Oil Bulk Storage Facilities, and Junk/Scrap Yards.

(C) Category 3. Electric Substations, Commercial/Industrial Development with aggregate building footprint 50,000 square feet or greater, Recycling Facilities, and Solar Power Farms. (Note: Wind Power Farms are regulated by separate Watauga County Ordinance.)

Section 2. Regulations and Standards Imposed.

(A) Parking Space Requirements. Adequate parking facilities shall be provided to accommodate the type and intensity of vehicles likely to frequent High Impact Land Uses. Spaces shall be provided as follows; use and occupancy classifications for buildings are the same as those definitions used in the N.C. Building Code.

(1) Assembly, business, educational, storage and mercantile uses and occupancies shall be provided with parking spaces as follows:

(i.) one (1) off-street parking space for each two hundred (200) square feet of gross floor area for operations designed to attract and serve customers and clients on the premises;

(ii.) one (1) off-street parking space for each four hundred (400) square feet of gross floor area for operations designed to attract little or no customer or client traffic other than employees of the operation;

(iii.) one (1) off-street parking space for each one thousand (1000) square feet of gross floor area for mini-warehouse uses.

(2) Factory Industrial uses and occupancies shall be provided with 1.5 spaces per three employees, computed on the total employment.

(3) Institutional uses and occupancies shall be provided with one space per five persons identified in the building's occupant load figures.

(4) Residential uses and occupancies, primarily permanent, shall be provided with 2 spaces per dwelling unit

(5) Residential uses and occupancies, primarily transient (motels, hotels and inns), shall be provided with one and one-half (1.5) spaces per bedroom.

Parking spaces shall be at least nine (9) by eighteen (18) feet. Accessible spaces shall be provided in accordance with NC Building

Code requirements. The Ordinance Administrator may permit deviations from the preceding specified standards based upon the expected parking needs of the establishment while recognizing the desire to limit excess parking area.

(B) Building Height Limits. In order to allow for adequate fire protection, no building shall exceed a height of forty (40) feet, measured as defined by the Watauga County Height of Structures regulations.

(C) Outdoor Lighting Standards. High Impact Land Uses shall use outdoor lighting that does not create a nuisance on adjacent property, roadways, or pollute the night sky. These objectives are easily accomplished by choosing good quality, shielded fixtures.

(1) All parking lot lighting shall use full cutoff lighting fixtures;

(2) Wall-packs and floodlights shall be either full cutoff design or have shields such that they do not put any light above the horizon and will be mounted to not shine on roadways and neighboring properties. Use of floodlights is discouraged;

(3) Typical pole-mounted "dusk-to-dawn" security lights shall use reflecting "sky caps" instead of clear plastic refractors;

(4) Building façade lighting shall not shine above the facades; and

(5) For buildings required by the NC Building Code to have plans prepared by a design professional, the lighting levels shall be determined as defined by the Recommended Practices of the Illuminating Engineering Society of North America, or other recognized lighting publication. All other buildings comply with the requirement by virtue of compliance with (1) through (4) of this section.

(D) Setbacks Required.

(1) Category 1 & Category 2 High Impact Land Uses shall be set back 200 feet from side and rear property lines.

(2) Category 3 High Impact Land Uses shall be set back 100 feet from side and rear property lines.

(3) Where High Impact Land Uses adjoin each other, the required setbacks along common boundary lines for each High Impact Use may be reduced as follows:

(a) Category 1 & Category 2 High Impact Land Uses – 50 feet;

(b) Category 3 High Impact Land Uses – 25 feet.

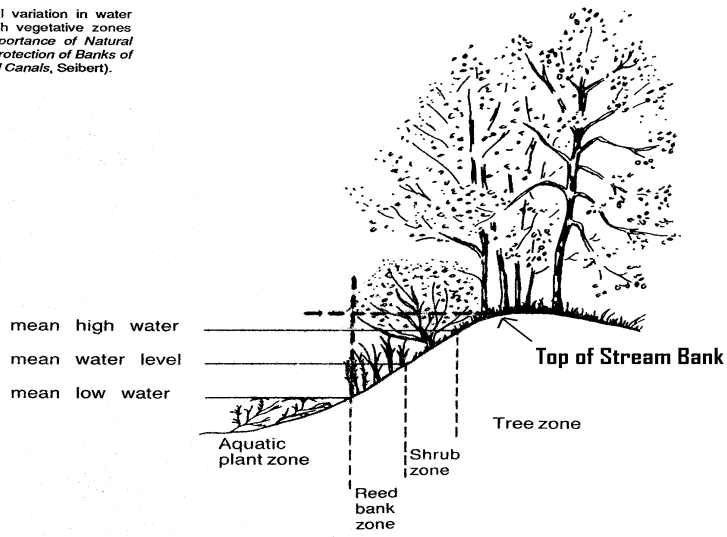
(4) Category 1 & 2 High Impact Land Uses shall be set back 200 feet from the edge of travelled area (stone or paved) of all

public roads, unless spacing requirements (subsection F) apply. In no instance shall such setbacks be less than 20 feet from any recorded right of way or NCDOT property boundary.

(5) High Impact Land Uses shall be set back from all perennial waters indicated by blue lines on the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps as follows:

There shall be a 100-foot vegetative buffer (measured from the top of the stream bank as indicated below) for all "blue line" streams; the 30 feet closest to the top of the stream bank being undisturbed and 70 feet managed vegetation. Publicly accessible walkways may be allowed within the managed vegetation area.

Typical variation in water level correlated with vegetative zones (modified from: *Importance of Natural Vegetation for the Protection of Banks of Streams, Rivers and Canals*, Seibert).



(6) No part of a yard provided around any building or structure for the purpose of complying with the provisions of this chapter shall be included as a part of a yard required under this chapter for any other building or structure.

(E) Landscape Buffers Required. Each High Impact Land Use shall be effectively buffered by landscaping which lessens the visual impact of the development at road grade level and from all sides with non-High Impact Uses in place and increases the buffering of noise and particulate matter. Each applicant shall submit a landscape plan which describes in detail how the above objectives will be met. The Ordinance Administrator may reasonably require adjustments and/or

alterations to any proposed landscape plan necessary to comply with the provisions of this chapter.

(1) Category 1 & Category 2 Landscape Buffers. All Category 1 & Category 2 High Impact Land Uses shall be buffered utilizing the following combination of landscape material designed for screening effect:

(a) Deciduous trees – three (3) per 100 lineal feet of property boundary line; and

(b) Evergreen trees – six (6) per 100 lineal feet of property boundary line; and

(c) Shrubs – ten (10) per 100 lineal feet of property boundary line.

(2) Category 3 Landscape Buffers. All Category 3 High Impact Land Uses shall be buffered utilizing the following combination of landscape material designed for aesthetic effect:

(a) Deciduous/Evergreen trees – four (4) per 100 lineal feet of property boundary line; and

(b) Shrubs – ten (10) per 100 lineal feet of property boundary line.

Opaque fencing made from conventional material or masonry walls and existing healthy trees and shrubs may be used in combination with a reduced number of required trees and shrubs when landscape buffer objectives are met and plans are approved by the Ordinance Administrator.

(3) Plant material shall be inspected and approved prior to planting and must meet the following minimum size requirements:

(a) Deciduous trees shall be a minimum of 6 feet tall with a 1 ½ -inch caliper measured six inches above grade upon planting;

(b) Evergreen trees shall be a minimum of 6 feet tall upon planting;

(c) Shrubs shall be a minimum of 1 foot tall upon planting.

(F) Spacing Requirements.

(1) Category 1 & Category 2 High Impact Land Uses may not be established within 1,500 feet of a public or private Educational Facility, NC licensed Child Care Facility, NC licensed Assisted Living Facility, NC licensed Nursing Home, Public Outdoor Recreation Area, or Religious Facility. In order to establish required spacing, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building, structure, or outdoor

storage area utilized by Category 1 or 2 Land Uses, to the nearest property line of the above-listed facilities.

(2) Category 1 High Impact Land Uses may not be established within 750 feet of a dwelling. In order to establish required spacing, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building, structure, or outdoor storage area utilized by a Category 1 Land Use, to the nearest property line of a dwelling.

(3) Category 1 High Impact Land Uses may not be established within 1,500 feet of the right-of-way line of a roadway designated by NCDOT as a NC Scenic Byway or a roadway designated by Watauga County as a Gateway, or within 1,500 feet of the Blue Ridge Parkway. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the spacing requirements of this Section.

(4) The recipient of any High Impact Land Use permit, or their 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. 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.

(G) Driveway Connection Permit Required: A driveway connection permit issued by NC Department of Transportation shall be obtained. A Traffic Impact Analysis shall be required from the applicant under the following circumstances, unless the Ordinance Administrator and NCDOT concur that one is unnecessary:

(1) The development proposes to have access to any public road at a location where sight distance in any direction along the road is less than 500 feet; or

(2) The development proposes access onto a public road that does not have a paved width of at least 18 feet; or

(3) The development proposes access to a public road with current NCDOT traffic counts that are 85% of capacity shown in the most recent Watauga County Comprehensive Transportation

Plan and based upon ITE trip generation rates is projected to generate 1,500 or more weekday trips; or

(4) The Ordinance Administrator determines that the proposed project will have a potential negative impact on the public road system due to the size of the project or existing transportation system or determines that there are safety concerns with the driveway location and design. If a traffic impact analysis is performed and that analysis concludes that improvements are required to the transportation system, the applicant may be required to complete those improvements in connection with the project as a condition of issuing a permit. Unless an agreement is executed by the County in which the time for the improvement is specified, the improvement shall be completed prior to issuance of a certificate of occupancy.

(H) Federal and State Permits: The developer shall obtain all applicable Federal and State Permits as a condition of issuance of a HILU Special Use Permit. Failure to obtain said permits shall result in revocation of the conditional Special Use Permit.

Article III Pre-Existing High Impact Land Uses

Section 1. Grandfathering of Pre-existing High Impact Land Uses.

Any High Impact Land Use existing upon the date of adoption of these regulations which does not conform to the requirements of These regulations may continue so long as the use is not discontinued for more than One Hundred Eighty (180) days. In cases where repair or renovation is necessary to re-occupy a vacant building, a permit for such construction must be obtained within one hundred eighty (180) days of last occupancy and repairs must proceed continuously to completion. A High Impact Land Use shall not be deemed to be discontinued during such time as the owner or operator thereof has temporarily suspended operations solely due to the seasonal nature of the business.

(A) Expansion. Grandfathered nonconforming High Impact Land Uses may be expanded provided the degree of nonconformity is not increased. In addition, the expansion shall comply with the standards of Article II, and the pre-existing development shall comply with the standards of Article II to the extent physically practicable as determined by the Ordinance Administrator, and upon issuance of a Special Use Permit pursuant to Article IV.

(B) Reconstruction. In cases of damage to grandfathered nonconforming buildings to the extent of seventy-five percent (75%) or less of the

replacement value, repairs may be made, provided the original building footprint is maintained. When such damage exceeds seventy-five percent (75%) of the replacement value, repairs may be made only if the original building footprint is maintained and the standards of Article II are met to the extent physically practicable as determined by the Ordinance Administrator, and upon issuance of a Special Use Permit pursuant to Article IV.

Compliance with a requirement of this chapter is not physically practicable if compliance cannot be achieved without adding land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting requirements does not constitute grounds for finding that compliance is not physically practicable.

Section 2. New High Impact Land Uses Regulated.

After the effective date of this chapter all new High Impact Land Uses as well as any pre-existing High Impact Land Uses which are moved, altered or enlarged shall conform to the regulations contained in this chapter except as set forth in Article III, Section 1.

Section 3. Pre-existing Regulated Land Uses.

After the effective date of this chapter, new permits or approvals for any of the protected land uses listed in Article II, Section 2 (F) Spacing Requirements shall not have the effect of creating new non-conformities for any lawfully existing High Impact Land Use.

Article IV Permit Required

Section 1. Permitting Process.

(A) Special Use Permit Required. No use subject to this chapter shall be established, reconstructed or expanded, and no building used or occupied without a Special Use Permit having been issued pursuant to Chapter 3.

(B) Applications for Special Use Permits. All applications for Special Use permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of any buildings already existing; the location and dimensions of the proposed building or alteration; and compliance with the standards of Article II. The

application shall include such other information as may reasonably be required by the Ordinance Administrator, including a description of all existing or proposed buildings or alterations; existing and proposed uses of the buildings and land; conditions existing on the land parcel; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this chapter.

(C) Administrator to Maintain Permit Records. The Ordinance Administrator shall maintain a record of all Special Use Permits and copies shall be furnished upon request to any interested person.

(D) Building Permit. No permit required under the North Carolina State Building Code Shall be issued for any activity for which a HILU Special Use Permit is required until the Special Use Permit has been issued.

Section 2. Permit Expiration.

A HILU Special Use Permit shall expire if a Building Permit or High Impact Land Use Occupancy Permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

Section 3. High Impact Land Use Occupancy Permit.

(A) The Ordinance Administrator shall issue a High Impact Land Use Occupancy Permit certifying that all requirements of this ordinance have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.

(B) A High Impact Land Use Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Special Use Permit and shall be issued or denied within ten (10) days after the construction or structural alterations of the building, provided all ordinance requirements are met.

Should any Federal or State regulation or statute incorporated herein by reference or otherwise referred to herein, be changed or amended, or should either require or mandate a different procedure or change or impose new, different or additional requirements, then, in that event, this chapter shall be deemed to have been amended without further action to have complied with such new, additional or amended requirements.

CHAPTER 14 MANUFACTURED HOME AND RECREATIONAL PARK TRAILER PARKS

Article I Authority and Purpose

Pursuant to the authority granted to counties in North Carolina General Statute 153A-121 and for the purpose of establishing minimum standards for the design and construction of manufactured home and recreational park trailer parks in order to protect and promote the health, safety, and general welfare of the public, the Board of Commissioners of Watauga County enact the following.

Article II Health Department Review

Unless connecting to public or community water and sewer systems, each proposed manufactured home and recreational park trailer park shall be reviewed and approved by AppHealthCare (health department) for well and septic system design and usage. Applicants are advised to work simultaneously with the County Department of Planning and Inspections and AppHealthCare to devise plans for proposed parks.

Article III Preliminary Site Plan Submission

No person, firm, or corporation shall commence construction or alteration of a manufactured home or recreational park trailer park within Watauga County without first securing the approval of a preliminary site plan from the Watauga County Planning Board.

Section 1. Preliminary Site Plan Specifications.

The preliminary site plan shall be drawn at a scale of not less than one hundred (100) feet to the inch on sheets 18 x 24 inches and shall include the following:

- **(A)** Items specified by AppHealthCare.
- **(B)** Sketch vicinity map of the park's location.
- **(C)** Landscaping, buffering, open space plans.
- **(D)** Designated parking areas.
- **(E)** AppHealthCare certificate indicating approval of the plan.

Article IV Park Development Standards

The standards of the AppHealthCare approval shall be met. In addition, the following standards shall apply:

- **(A)** Maximum permissible density for a manufactured home and recreational park trailer park is six (6) spaces per acre.

(B) Minimum setbacks:

(1) from right-of-way of roads bordering park 20 feet.

(2) from right-of-way of roads inside park 10 feet, but at least 15 feet from the edge of the road travel surface.

(3) between all manufactured homes and recreational park trailers and attachments thereto including porches, decks, storage areas, etc. - 25 feet.

(4) from exterior property line – 25 feet.

(C) Parking space sufficient to accommodate at least two (2) automobiles shall be constructed for each manufactured home and recreational park trailer space.

(D) Roads within manufactured home and recreational park trailer parks shall be constructed to either NC DOT standards or "county standards" as defined in the Watauga County Subdivisions and Multi-Unit Structures regulations as amended from time-to-time, with the exception that right-of-way may be reduced to thirty (30) feet.

(E) A minimum of four hundred (400) square feet of common open space per lot shall be required. Common open space shall be exclusive of road right-of-way, parking areas, or any areas set aside for solid waste collection or utility equipment.

(F) A twenty-five (25) foot-wide buffer shall be provided around the perimeter of the park. The purpose of the buffer is to create the impression of spatial separation between parks and adjacent land uses without eliminating visual contact. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no more than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one-half (1-1/2) inch caliper (trunk measured six (6) inches above grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet a maturity. In addition, plantings of low-growing shrubs, bushes, and/or trees shall be placed at ten (10) foot intervals.

Plantings within buffer areas shall be staggered unless topography is prohibitive. No planting shall be placed in a public road right-of-way. Lists of recommended plantings are available from the Planning and Inspections Department.

In combination with or in lieu of a buffer, the following may be provided: A ten (10) foot-wide screening strip shall be provided around the perimeter of the park. The purpose of screening is to eliminate visual contact between the park and adjacent land uses. Screening shall consist of plantings of evergreen trees at ten (10) foot intervals. Such trees shall meet the height and caliper standards described in this section for buffer areas.

(G) The recipient of any Manufactured Home and Recreational Park Trailer Park permit, or their 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.

Article V Individual Manufactured Homes and Recreational Park Trailers Within a Park

Individual manufactured homes within a park shall be set-up, connected to utilities, and tied down in compliance with the State of North Carolina Regulations for Manufactured Homes and shall be inspected for compliance by the Planning and Inspections Department in order to be approved for permanent electrical power.

Individual recreational park trailers within a park shall only be set-up temporarily. They cannot have any permanent electrical, plumbing or mechanical connections. However, for safety reasons these units can be temporarily blocked up and anchored against overturning forces, but to remain classified as a temporary structure, the wheels and axles must remain on the unit at all times

Prior to performing any individual manufactured home or recreational park trailer inspections, the Planning and Inspections department shall confirm compliance with this and all other applicable regulations. Such regulations may include (when applicable) but are not limited to Soil Erosion and Sedimentation Control, Flood Damage Prevention, Structures Located on Land Adjacent to National Park Service Land.

Article VI Applicability to Existing Manufactured Home Parks

All manufactured home parks in operation on the effective date of this chapter shall not be affected by this chapter, except for expansions or additions, which must comply.

Article VII Registration

It shall be the duty of the owner of a manufactured home park to keep an accurate register containing a record of all manufactured homes, recreational park trailers, owners, and occupants of the park. Said information shall be reported annually to the Watauga County Tax Supervisor in accordance with NCGS 105-316.

Should any Federal or State regulation or statute incorporated herein by reference or otherwise referred to herein, be changed or amended, or should either require or mandate a different procedure or change or impose new, different or additional requirements, then, in that event, this ordinance shall be deemed to have been amended without further action to have complied with such new, additional or amended requirements.

CHAPTER 15 SEXUALLY ORIENTED BUSINESSES

REGULATIONS REQUIRING THE DISPERSING OF SEXUALLY ORIENTED BUSINESSES AND LIMITING THEM TO SPECIFIED PLACES; PRESCRIBING DEFINITIONS OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES; AND PROVIDING FOR ADDITIONAL MISCELLANEOUS REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES.

WHEREAS, the Watauga County Board of Commissioners enacted on September 10, 1999 an Ordinance establishing a moratorium on Sexually Oriented Businesses in Watauga County pursuant to North Carolina General Statute 160A-181.1 (superseded by 160D-902 in 2020) expressly authorizing county regulation of sexually oriented businesses, being authority in addition to that contained in North Carolina General Statutes 153A-45 and 153A-121; and

WHEREAS, the Watauga County Planning Board and staff of the Department of Planning and Inspections have studied the secondary impacts of sexually oriented businesses and conducted a public hearing, all of which is a matter of record; and

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of the County; and

WHEREAS, the Planning Board has found by study of impacts in other counties and municipalities that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the County which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators and employees of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not allow their establishments to be used improperly or as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on the existing uses, including but not limited to businesses, schools, daycare facilities, religious institutions, parks and rural fire departments around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby downgrading the quality of life in the adjacent area; and

WHEREAS*,* family-oriented tourism is an important aspect of the local economy that would be negatively affected by increased crime and downgraded quality of life resulting from sexually oriented businesses; and

WHEREAS, the Board of Commissioners desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and

WHEREAS, the Board of Commissioners has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this County; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the Board of Commissioners to condone or legitimize the distribution of obscene material, and the Board recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the County.

THEREFORE, pursuant to the authority granted by the Constitution and the legislature of the State of *NORTH CAROLINA*, BE IT ENACTED BY THE BOARD OF COMMISSIONERS OF WATAUGA COUNTY, NORTH CAROLINA, February 22, 2000:

Article I Purpose and Findings

Section 1. Purpose.

It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the County. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

Section 2. Findings.

Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Board, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Horry County and Myrtle Beach, S.C.; Richland County, S.C.; Charlotte-Mecklenburg County, N.C.; Winston Salem-Forsyth County, N.C.; Broward County, Florida; St. Johns County, Florida; Kansas City, Missouri; and also on findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Board finds:

(A) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities, the control of which elsewhere presents challenges to the operators of such establishments. Further, there is presently no mechanism in this County to make the owners of such establishments responsible for the activities that would occur on their premises.

(B) Certain employees of sexually oriented businesses defined in this chapter as adult theatres and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(C) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide poorly lit, overly crowded private or semi-private areas, booths or cubicles for viewing films, videos, or live sex shows.

(D) Offering and providing such space encourages such activities, which creates unhealthy conditions.

(E) Persons frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(F) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.

(G) The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

(H) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(I) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(J) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

(K) The findings noted in (A) through (J) raise substantial governmental concerns.

(L) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(M) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the County. It is appropriate to require reasonable assurances that the licensee is the actual operator

of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(N) Prohibition of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theatres.

(O) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(P) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(Q) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding employees who may engage in the conduct which this ordinance is designed to prevent or who are likely to be witnesses to such activity.

(R) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational concern that the applicant may engage in that conduct in contravention of this chapter.

(S) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(T) The general welfare, health, morals and safety of the citizens of the County will be promoted by the enactment of this chapter.

Article II Classification

Sexually oriented businesses are classified as follows:

(A) adult arcades;
(B) adult bookstores, adult novelty stores, or adult video stores;
(C) adult cabarets;
(D) adult motels;
(E) adult motion picture theaters;
(F) adult theaters;
(G) escort agencies;
(H) nude model studios; and
(I) sexual encounter centers.

Article III License Required

Section 1. Unlawful Operation and Employment Without License

It is unlawful:

(A) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the County Official pursuant to this chapter.

(B) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the County Official pursuant to this chapter.

(C) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.

(D) For any person who operates a sexually oriented business to allow any person to perform or participate in any contest or exhibition who does not have a valid and current sexually oriented business employee license pursuant to this chapter.

Section 2. Application.

An application for any license must be made on a form provided by the County Official.

Section 3. Qualified Applicant.

All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the County Official to determine whether the applicant meets the qualifications established in this chapter.

Section 4. Signatures.

If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a financial percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following Section and each applicant shall be considered a licensee if a license is granted.

Section 5. Application Contents.

The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

(A) If the applicant is:
- **(1)** an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 21 years of age;
- **(2)** a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
- **(3)** a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

(B) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state 1) the sexually oriented business's fictitious name and 2) submit the required registration documents.

(C) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this chapter, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.

(D) Whether the applicant, or a person residing with the applicant, has had a previous license under this chapter or other similar sexually oriented business regulations from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this chapter whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(E) Whether *the applicant or a person residing with the applicant h*olds any other licenses under this chapter or other similar sexually oriented business regulations from another city or county and, if so, the names and locations of such other licensed businesses.

(F) The single classification of license for which the applicant is filing.

(G) The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

(H) The applicant's mailing address and residential address.

(I) A recent photograph of the applicant(s).

(J) The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number.

(K) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(L) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor accurately depicting the property lines and the structures containing any existing sexually oriented businesses within 1500 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, public park or recreation area, nursing home, daycare establishment, or fire department, within 1500 feet of the property to be certified and the location of all residential structures within 660 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(M) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Article XII.

Section 6. Employee Application.

Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the County Official the following information:

(A) The applicant's name or any other name (including "stage" names) or aliases used by the individual;

(B) Age, date, and place of birth;

(C) Height, weight, hair and eye color;

(D) Present residence address and telephone number;

(E) Present business address and telephone number;
(F) Date, issuing state and number of driver's permit or other identification card information;
(G) Social Security number; and
(H) Proof that the individual is at least twenty-one (21) years of age.

Section 7. Additional Requirements.

Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

(A) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the sheriff's department. Any fees for the photographs and fingerprints shall be paid by the applicant.
(B) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
(C) A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

Article IV Issuance of License

Section 1. Investigation.

Upon the filing of said application for a sexually oriented business employee license, *t*he application shall be referred to the appropriate county departments for an investigation to be made on such information as is contained on the application. The investigation process shall be completed within thirty (30) calendar days from the date the completed application is filed. After the investigation, the County Official shall issue a license, unless he/she determine*s* by a preponderance of the evidence that one or more of the following findings is true*,* whereupon the application must be denied:

(A) The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
(B) The applicant is under the age of twenty-one (21) years;
(C) The applicant has been convicted of a "specified criminal activity" as defined in this ordinance;
(D) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this chapter; or
(E) The applicant has had a sexually oriented business employee license revoked by the County Official or comparable license in any jurisdiction within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Article VIII.
(F) Each such determination and denial shall be documented in writing, a copy of which shall be mailed to the applicant by first class mail to the address shown on the application.

Section 2. Annual Renewal.

A license granted pursuant to Section 1 shall be subject to annual renewal upon the written application of the applicant received not less than thirty (30) calendar days before the license expires and a finding by the County that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Article V.

Section 3. Approval/Denial.

Within 30 calendar days after receipt of a completed sexually oriented business application, the County Official shall approve or deny the issuance of a license to an applicant. The County Official shall approve the issuance of a license to an applicant unless he determines by a preponderance of the evidence that one or more of the following findings is true, whereupon the application must be denied:

(A) An applicant is under twenty-one (21) years of age.
(B) An applicant or a person with whom applicant is residing is overdue in payment to the County of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.

(C) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

(D) An applicant or a person with whom the applicant is residing has been denied a license by the County Official to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

(E) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this ordinance.

(F) The premises to be used for the sexually oriented business have not been approved by the health department, fire marshal's office, and the planning and inspections department as being in compliance with applicable laws and ordinances.

(G) The license fee required by this ordinance has not been paid.

(H) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.

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

Section 4. Posted License.

The license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to Article II. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

Section 5. Timeline for Review.

The health department, fire marshal's office, and the planning and inspections department shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the County Official.

Section 6. License Classification.

A sexually oriented business license shall be issued for only one classification as found in Article II.

Article V Fees

Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a $1000.00 non-refundable application and investigation fee.

In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the County Official an annual non-refundable license fee of $ 1000.00 within thirty (30) days of license issuance or renewal.

Every application for a new sexually oriented business employee license shall be accompanied by $ 250.00 non-refundable application, investigation, and license fee.

In addition to the application and investigation fee required above, every sexually oriented business employee that is granted a license shall pay to the County Official an annual non-refundable license fee of $150.00 within thirty (30) days of license issuance or renewal.

All license applications and fees shall be submitted to the County Official.

Article VI Inspection

An applicant or licensee shall permit representatives of the Sheriff's Department, Health Department, Fire Marshal's Office, Planning and Inspections Department, or other County departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law.

A person who operates a sexually oriented business or his agent or employee 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.

Section 2. Evidence.

The County Official shall revoke a license if he/she determines by a preponderance of the evidence that one or more of the following findings is true that:

(A) a licensee gave false or misleading information in the material submitted during the application process;
(B) a licensee has allowed possession, use, or sale of controlled substances on the premises;
(C) a licensee has allowed prostitution on the premises;
(D) a licensee operated the sexually oriented business during a period of time when the licensee's license was suspended;
(E) except in the case of an adult motel, a licensee has allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or
(F) a licensee is delinquent in payment to the County or State for any taxes or fees past due.

Each such revocation under Section 1 or 2 shall be documented in writing, a copy of which shall be mailed to the licensee by first class mail to the address shown on the license.

Section 3. Length of Revocation.

When the County Official revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective.

Section 4. Judicial Review.

After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek judicial review of such administrative action in any court of competent jurisdiction.

Article X Transfer of License

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

Article XI Location of Sexually Oriented Businesses

Section 1. Residential Structures.

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

Section 2. Non-Residential Structures.

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.

No person shall cause or permit 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.

No person shall cause or permit 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

No person shall cause or permit 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 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. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The County may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(B) The application shall be sworn to be true and correct by the applicant.

(C) No alteration in the configuration or location of a manager's station may be made without the prior approval of the County.

(D) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(E) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(F) It shall be the duty of the licensee to ensure that the view area specified in (E) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to (A).

(G) No viewing room may be occupied by more than one person at any time.

(H) Regardless of the square footage of the premises or any section thereof, each sexually oriented business other an adult motel shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.

(I) No licensee shall allow openings of any kind to exist between viewing rooms or booths.

(J) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(K) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(L) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(M) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.

Section 2. Maintenance.

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

Section 3. Penalties.

A person having a duty under Section 1 or 2 above 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 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 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 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 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.

Section 2. Exterior Appearance.

Except as permitted by Article XIX, it shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner.

Section 3. Parking

One (1) parking space per one hundred (100) square feet of gross floor area shall be provided upon the premises immediately adjoining the structure housing the sexually oriented business.

- **(A)** Parking spaces shall be not less than nine (9) feet in width and eighteen (18) feet in length.
- **(B)** Aisle width between rows of parking spaces shall be not less than twelve (12) feet in width (to accommodate maneuvering and one-way traffic) where angled parking spaces are used and not less than twenty-four (24) feet (to accommodate maneuvering and two-way traffic) where perpendicular parking spaces are used.
- **(C)** Handicapped parking spaces shall be provided in accordance with the North Carolina State Building Code.

Section 4. Lighting.

All parking areas and exterior entrance/exits shall be fully illuminated with night-lighting to deter criminal activities.

Section 5. Buffering.

Perimeter buffer areas shall be established in order to create spatial separation and to lessen the possible adverse impacts upon adjacent land uses.

- **(A)** Side and rear yard setbacks of thirty (30) feet shall be observed for buildings or parking. This area is to be used as a buffer and shall be landscaped as follows. Buffers shall consist of planting of evergreen

and/or deciduous trees spaced no less than thirty (30) feet apart. Such trees shall be at least six (6) feet high and one (1") inch caliper (trunk diameter at chest height) at time of planting and shall reach a height of no less than twenty (20) feet at maturity. In addition, plantings of low growing shrubs, and/or trees shall be placed at ten (10) foot intervals. Plantings within buffer zones shall be staggered unless topography is prohibitive. No planting shall be placed in the road right-of-way. Lists of recommended plantings are available from the Planning and Inspection Department.

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

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

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

(C) The recipient of any Sexually Oriented Business permit, or their 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 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

No owner or operator of any sexually oriented business or any other person 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 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.

CHAPTER 16 SIGNS

Article I Purpose and Legislative Intent

The purpose of this chapter is to provide for the public health, safety and welfare pursuant to the general ordinance authority granted to counties by the General Assembly of North Carolina. (NCGS §153A-121 *et seq.* and other pertinent statutes and amendments thereto). By enacting this chapter, it is the County's intent to:

(A) To promote the creation of an attractive visual environment that promotes a healthy economy by:
- **(1)** Permitting businesses to inform, identify, and communicate effectively; and
- **(2)** Directing the general public through the use of signs while maintaining attractive and harmonious application of signs on buildings and sites.

(B) To protect and enhance the physical appearance of the community in a lawful manner that recognizes the rights of property owners by:
- **(1)** Encouraging the appropriate design, scale, and placement of signs.
- **(2)** Encouraging the orderly placement of signs on buildings while avoiding regulations that are so rigid and inflexible that all signs in a series are monotonously uniform.
- **(3)** Assuring that the information displayed on a sign is clearly visible, conspicuous, legible and readable so that the sign achieves the intended purpose.

(C) To foster public safety along public and private streets within the community by assuring that all signs are in safe and appropriate locations.

(D) To have administrative review procedures that is the minimum necessary to:
- **(1)** Balance the community's objectives and regulatory requirements with the reasonable advertising and way finding needs of businesses.
- **(2)** Allow for consistent enforcement of the Sign regulations.
- **(3)** Minimize the time required to review a sign application.
- **(4)** Provide flexibility as to the number and placement of signs so the regulations are more responsive to business needs while maintaining the community's standards.

Article II Sign Review Procedures.

(A) A sign permit shall be required for all permanent signage.
(B) A sign permit shall be required for all temporary signage permitted under Article IV Section 6, except no permit is required for Article IV Section 6(C) and (D).
(C) All appeals and variances regarding the sign regulations shall be heard by the Board of Adjustment in accordance with Watauga County's Planning & Development Ordinance Chapter 3 Board of Adjustment.

Article III Sign Regulations

Section 1. Exempt from these Regulations.

The following shall be exempt from regulation under this Ordinance:
(A) Government Signs.
(B) Works of Art.
(C) Holiday Decorations, when displayed during the appropriate time of the year.
(D) Flags, except feather flags.
(E) Building Identification Signs
(F) Directional sign as defined in the NC Dept of Transportation Outdoor Advertising Manual Rule .0201(10)(a)(b)(c) and less than 6 feet above finished grade.
(G) Political and Farm signs in accordance with NCGS §136-32.
(H) Fence Wraps in accordance with NCGS §160D-908.

Section 2. Prohibited Signs.

The following signs are prohibited in the County:
(A) Abandoned Signs.
(B) Animated Signs.
(C) Roof Signs.
(D) Signs containing any words or symbols that would cause confusion because of their resemblance to highway traffic control or direction signals.
(E) Signs located on trees, utility poles, public benches or any other form of public property or within any public right-of-way unless explicitly permitted by the regulations.
(F) Off-Premises temporary signs, other than those explicitly permitted by Article IV Section 6.
(G) Any signs placed on public property without consent or placed in violation of local, state, or federal requirements.

(H) Signs containing words or graphics that are obscene as defined by NCGS §14-190.1.

(I) Vehicle Signs.

Article IV Development Standards

Section 1. Wall Signs.

(A) The basic allowance for wall signs shall be limited to 1.5 square feet of sign area for each lineal foot of building or tenant frontage.

(B) Each tenant may have multiple wall signs as long as the total wall sign area does not exceed the basic allowance established for wall signs.

(C) The wall sign or signs shall not be greater than 80% of the length of the tenant space or the length of the building frontage for single tenant buildings.

(D) The area of any wall sign may be increased by 25% when the building is setback at least 200 feet from the public right-of-way.

(E) Additional wall sign area is permitted for a secondary frontage (see Definitions) which shall be equal to 100% of the primary sign area allowance.

(F) The following additional wall signs may be permitted:

- **(1)** Projecting Signs **-** In addition to the allowances for wall signs, projecting signs are permitted when designed and placed for the purpose of identifying the businesses for a pedestrian walking along the same side of the street as the business they seek or under a continuous rain canopy projecting from the building. Projecting signs shall have a maximum area of 16 square feet; the bottom of the sign shall be a minimum of 8 feet above the sidewalk; the sign shall not project more than 4 feet from the wall; and adjacent projecting signs shall not be closer than 20 feet.
- **(2)** Building Directory – In addition to the allowances for wall signs, a directory sign may be permitted up to a maximum of 16 square feet for the purpose of identifying first floor tenants that do not have outside building frontage or upper floor tenants.

(G) Additional Wall Signs for Multiple Story Buildings – An additional building sign is permitted on each of the building's primary and secondary frontages according to the following:

- **(1)** For a building with two floors, the area of any wall sign may be increased by 25% for each eligible wall.
- **(2)** This additional permitted sign area may be increased by 10% for each additional building floor.

(3) The sign must be placed at the height for which the bonus has been granted.

Section 2. Freestanding signs.

(A) One freestanding sign is permitted for each 200 feet of primary road frontage with a maximum of 3 freestanding signs per parcel.

(B) The permitted area of each freestanding sign shall not exceed 50 square feet except for: Properties entitled to more than one freestanding sign based on primary frontage. In this instance the sign area of a single sign may be increased to a maximum area of 100 or 150 square feet in lieu of erecting a second or third sign.

(C) No portion of a freestanding sign shall be in, or project over, the public right-of-way.

(D) The maximum height of a freestanding sign shall be 35 feet in height above the road grade or natural grade level, whichever is higher.

Section 3. On-Premise Electronic Message Center/Changeable Copy Signs.

(A) Changeable copy by non-electronic means may be utilized on any permitted sign.

(B) Only one EMC sign is permitted on each road on which the development fronts.

(C) EMCs may not contain or display flashing, intermittent, or moving lights, including animated or scrolling advertising.

(D) EMCs are permitted provided that the copy does not change more than once every 8 seconds.

(E) Copy changes must be accomplished within a one second interval.

(F) EMCs are required to have automatic diming capability that adjusts the brightness to the ambient light at all times of the day and night.

(G) EMCs may not exceed 50% of the total sign area.

Section 4. Instructional signs.

On-premises instructional signs shall be permitted in addition to all other signs when they are of such size and location that satisfy the intended instructional purpose and based on their size, location, and intended purpose will not constitute additional advertising. Instructional signs may include the name of the establishment and logos.

Section 5. Window Signs.

Permanent window signs shall not exceed 25% of the area of a window and the total area of all window signs, including both permanent and temporary, shall not exceed 50% of the window area.

Section 6. Temporary Signs.

(A) Temporary signs related to Special Events are allowed on private property for a time period not to exceed 30 days. Such signs are permitted on and off-premises.

(B) Temporary signs related to a single event for commercial enterprises are allowed on private property for a time period not to exceed 30 days, with a limit of 4 events per calendar year. Such signs are permitted on-premises only.

(C) Temporary Political signs containing any message are allowed on private property during an election period subject to the area limitations stated herein. An election period begins on the 30th day before the beginning date of one-stop early voting and ends ten days after any election conducted under federal, state, county, or city laws or ordinances in which residents of Watauga are entitled to vote, including elections or votes regarding selection or recall of any federal, state, county or city officials, any ballot questions, referendum, constitutional amendments, or advisory vote.

(D) Temporary signs located on property offered for sale or lease are allowed for time periods exceeding those listed herein provided such signs are promptly removed following the sale or lease closing date. All signs are subject to the area limitations stated in this Section.

(E) Temporary construction signs located on property for which a building permit has been issued may remain throughout construction but shall be removed upon issuance of certificate of occupancy. There shall be no more than one (1) sign per construction site.

(F) Temporary sign(s) located in residential subdivisions may not exceed a total area of 16 square feet per parcel.

(G) Temporary sign(s) located in areas other than residential subdivisions may not exceed a total area of 32 square feet per parcel.

(H) No temporary signs may be illuminated.

(I) All temporary signs must be secured to prevent them from becoming a hazard to pedestrians, vehicles or adjacent property during high winds.

Section 7. Highway Signs.

(A) Highway signs shall not exceed 200 square feet in area. This square footage includes both sign face and border.

(B) Highway signs shall:

- **(1)** Be located outside the right-of-way of all roads, or 35 feet from the center line if there is no recorded right-of-way, provided that on corner lots no part of a highway sign may be located within a triangular area formed by the street right-of-way lines and a line connecting them at points 70 feet from the right-of-way intersection.
- **(2)** Be located only in "Unzoned Commercial Areas" as defined in the North Carolina DOT Outdoor Advertising Manual. Highway signs shall be spaced at least 500 feet apart. Both sides of the road shall be included in this spacing. This paragraph shall be applicable on all streets/roads in Watauga County which are not within the jurisdiction of a municipality.
- **(3)** Be located not closer than 100 feet to a pre-existing residential structure on an adjoining lot. This does not prevent the owner of a residence from placing a highway sign on the same lot as the residence provided that the placement of such sign complies with subparagraph "b" above.
- **(4)** Be located not closer than 15 feet to a property line.
- **(5)** Not exceed 35 feet in height above the street/road grade level.
- **(6)** Not exceed a width of 30 feet.
- **(7)** Be located in such a way that they maintain horizontal and vertical clearance of all overhead electrical conductors in accordance with the National Electric Code and local electric utilities' requirements.
- **(8)** Be located only on primary highway systems (i.e. 105, 221, 321, and 421) with evidence of NCDOT approval.
- **(9)** Not be located on designated scenic byways.

(C) No existing highway sign may be converted to, or replaced with, an EMC billboard.

(D) No new locations for automatic changeable face billboards shall be permitted.

(E) Side-by-side signs shall be prohibited.

(F) Only one highway sign shall be permitted per parcel.

Article V Measurement Standards

Section 1. Determining Sign Area and Dimensions.

(A) For a wall sign which is framed, outlined, painted or otherwise prepared and intended to provide a background for a sign display, the area and dimensions shall include the entire portion within such background or frame.

(B) For a wall sign comprised of individual letters, figures or elements on a wall or similar surface of the building or structure, the area and dimensions of the sign shall encompass a regular geometric shape (rectangle, circle, trapezoid, triangle, etc.), or a combination of regular geometric shapes, which form, or approximate, the perimeter of all elements in the display, the frame, and any applied background that is not part of the architecture of the building.

(C) When separate elements are organized to form a single sign, but are separated by open space, the sign area and dimensions shall be calculated by determining the geometric form, or combination of forms, which comprises all of the display areas, including the space between different elements.

(D) Minor appendages to a particular regular shape, as determined by the Ordinance Administrator, shall not be included in the total area of a sign.

(E) For a freestanding sign, the sign area shall include the frame, if any, but shall not include:

- **(1)** A pole or other structural support unless such pole or structural support is internally illuminated or otherwise so designed to constitute a display device, or a part of a display device.
- **(2)** Architectural features that are either part of the building or part of a freestanding structure, and not an integral part of the sign, and which may consist of landscaping, building or structural forms complementing the site in general.

(F) When two identical sign faces are placed back to back so that both faces cannot be viewed from any point at the same time, and are part of the same sign structure, the sign area shall be computed as the measurement of one of the two faces. When the sign has more than two display surfaces, the area of the sign shall be the area of largest display surfaces that are visible from any single direction.

(G) In the event of a dispute in determining the area or dimensions of any sign, a negative decision of the Ordinance Administrator may be appealed to the Board of Adjustment.

Section 2. Determining Sign Height.

(A) The height of a freestanding sign shall be measured from the base of the sign or supportive structure at its point of attachment to the ground, to the highest point of the sign. A freestanding sign on a man-made base, including a graded earth mound, shall be measured from the grade of the nearest pavement or top of any pavement curb.

(B) Clearance for freestanding and projecting signs shall be measured as the smallest vertical distance between finished grade and the lowest point of the sign, including any framework or other embellishments.

Section 3. Determining Building Frontages and Frontage Lengths.

(A) Building Unit - The building unit is equivalent to the tenant space. The frontage of the tenant space on the first floor shall be the basis for determining the permissible sign area for wall signs.

(B) Primary and Secondary Frontage - The frontage of any building unit shall include the elevation(s) facing a public street, facing a primary parking area for the building or tenants, or containing the public entrance(s) to the building or building units.

(1) The primary frontage shall be considered the portion of any frontage containing the primary public entrance(s) to the building or building units.

(2) The secondary frontage shall include those frontages containing secondary public entrances to the building or building units, and all building walls facing a public street or primary parking area that are not designated as the primary building frontage by subsection (A) above.

Section 4 . Length of Building Frontage.

(A) The length of any primary or secondary building frontage as defined in Watauga County's Planning & Development Ordinance Chapter 7 Definitions, shall be the sum of all wall lengths parallel, or nearly parallel, to such frontage, excluding any such wall length determined by the Administrator as clearly unrelated to the frontage criteria.

(B) For buildings with two or more frontages, the length of the wall and allowable sign area shall be calculated separately for each such building frontage.

(C) The building frontage for a building unit shall be measured from the centerline of the party walls defining the building unit.

Article VI Non-Conforming Signs

Section 1. General Provisions.

(A) Nonconforming signs shall be maintained in good condition pursuant to Article VII.

(B) A Nonconforming sign shall not be altered, modified or reconstructed except:

(1) When such alteration, modification or reconstruction would bring such sign into conformity with these regulations;

(2) When the existing use has new ownership which results in a change in the name or logo of the use or business on the property, and such change complies with subsection (4) below;

(3) When the space is re-occupied by a similar use and the new occupant requires no external building or site renovation, and such change complies with subsection (4) below;

(4) Any alteration, modification or reconstruction permitted in this section shall be limited to the replacement of a sign panel, replacing individual letters and logos within the same area or repainting a sign face, and does not permit changes to the structure, framing, erection or relocation of the sign unless such changes conform to subsection (1) above.

(C) Nonconforming highway signs for which there is in effect a valid NCDOT permit may be repaired or reconstructed without limitation so long as the square footage of the sign face is not increased.

(D) A nonconforming sign shall be removed upon verification that the use to which such non-conforming sign refers has been abandoned for more than 180 consecutive days.

Article VII Supplemental Considerations

Section 1. Construction Standards.

The construction, erection, safety and maintenance of all signs shall comply with the North Carolina State Building Code and all of the following:

(A) Signs shall be structurally sound and located so as to pose no reasonable threat to pedestrian or vehicular traffic.

(B) All permanent freestanding signs shall have self-supporting structures erected on, or permanently attached to, concrete foundations.

(C) If possible, signs should not be in locations that obscure architectural features such as pilasters, arches, windows, cornices, etc.

(D) Signs shall not be in locations that interfere with safe vehicular and pedestrian circulation or public safety signals and signs.

(E) No signs shall be erected, constructed or maintained so as to obstruct any fire escape, required exit, window, or door opening used as a means of egress.

(F) Signs shall be structurally designed in compliance with ANSI and ASCI standards. All electric signs shall be constructed according to the technical standards of UL or other certified testing laboratory.

(G) Signs may be illuminated – by external or internal means -- provided that:

(1) The brightness and intensity shall not be greater than necessary to meet reasonable needs of the business or use served;

(2) Light sources shall be shielded from all adjacent buildings and streets; and

(3) The lighting shall not create excessive glare to pedestrians and/or motorists, and will not obstruct traffic control or any other public informational signs.

Section 2. Maintenance.

(A) All signs shall be maintained in accordance with the following:

(B) The property owner shall maintain signs in a condition appropriate to the intended use and to all County standards.

(C) The property owner has a continuing obligation to comply with all building code requirements.

(D) If the sign is deemed by the Ordinance Administrator to be in an unsafe condition, the owner of the business shall be immediately notified in writing, and shall, within 48 hours of receipt of such notification, respond to the county with a plan to correct the unsafe condition, remove the unsafe sign, or cause it to be removed. If after 30 days, the unsafe condition has not been corrected through repair or removal, the Ordinance Administrator may cause the repair or removal of such sign, at the expense of the property owner or lessee. If the total costs are not paid in full within 60 days of the repairs or removal, the amount owed shall be certified as an assessment against the property of the sign owner, and lien upon that property, together with an additional 10 percent penalty for collection as prescribed for unpaid real estate taxes.

(E) In cases of emergency, the Ordinance Administrator may cause the immediate removal of a dangerous or defective sign without notice.

(F) Whenever any sign, either conforming or nonconforming to these regulations, is required to be removed for the purpose of repair, re-lettering or repainting, the same may be done without a permit or without any payment of fees provided that all of the following conditions are met:

(1) There is no alteration or remodeling to the structure or the mounting of the sign itself;
(2) There is no enlargement or increase in any of the dimensions of the sign or its structure; and
(3) The sign is accessory to a legally permitted or nonconforming use.

Article VIII Jurisdiction

The provisions of this chapter shall be applicable only to unincorporated areas of Watauga County which are not included in the extraterritorial jurisdiction of a municipality. The Valle Crucis Historic District and Foscoe-Grandfather Community have additional regulations concerning allowable signage.

CHAPTER 17 STRUCTURES LOCATED ON LAND ADJACENT TO NATIONAL PARK SERVICE LAND

WHEREAS, the Board of Commissioners are concerned with protecting National Parks Service Lands from encroachment which could damage the unique scenic importance of such lands; and

WHEREAS, the economy of Watauga County is partially dependent upon maintaining the quality of such scenic lands; and

WHEREAS, the Board of Commissioners are authorized to enact ordinances to promote the general welfare generally by N.C.G.S. 153A-121 and specifically to regulate the location of buildings, structures, etc. by N.C.G.S. 160D;

NOW, THEREFORE, the Watauga County Board of Commissioners do enact the following:

Article I Regulation of Location of Structures

No building or structure which is located upon land which is adjacent to National Park Service Land shall be located closer than fifteen (15) feet to the Park Service property line.

Article II Permit

Prior to issuance of a building permit for structure(s) located upon land adjacent to National Park Service Land, National Park Service personnel, upon notification by the County Department of Planning and Inspection, shall determine said property line and shall establish the required fifteen(15) foot setbacks within fifteen(15) days of the application for a building permit.

Article III Jurisdiction and Effective Date

This chapter shall be applicable within all areas of Watauga County not within the jurisdiction of a municipality and shall be effective upon enactment.

CHAPTER 18 SUBDIVISION, PLANNED UNIT DEVELOPMENT AND MULTI-UNIT STRUCTURES

Article I Title

This chapter is known and may be cited as the Subdivisions, Planned Unit Development and Multi-Unit Structures Regulations for Watauga County, North Carolina

Article II Authority and Enactment Clause

The County Commissioners of the County of Watauga, pursuant to the authority conferred by Chapter 160D, Article 8, of the General Statutes of the State of North Carolina, do hereby enact into law these Articles and Sections.

Article III Jurisdiction and Purpose

Section 1. Jurisdiction

On and after the date of adoption, these regulations shall govern each and every subdivision of land, planned unit development and/or multi-unit structure within Watauga County (hereinafter referred to as the "County") and outside the jurisdiction of any incorporated municipality. However, this ordinance may also regulate territory within the subdivision regulation jurisdiction of any municipality whose governing body by resolution agrees to such regulation provided, however, that any such municipal governing body may, upon written notice, withdraw its approval of these County Regulations, and those regulations shall not have further effect within the municipality's jurisdiction 30 days after the day the County receives the written notice. (N.C.G.S. 153A-122)

Section 2. Purpose

The purpose of these subdivision regulations is to guide and regulate the subdivision of land, planned unit development and/or multi-unit structures within the county in order to preserve the public health, safety, and welfare. The regulations included herein are designed to insure an adequately planned street system and to avoid hazardous conditions; to avoid overcrowding of the land and extreme concentration of population; to secure safety from fire, panic, and other dangers; to provide for adequate water and sewage systems, schools, parks and playgrounds; to insure against flood damage and soil erosion; to facilitate an orderly system for the design, layout, and use of the land; to insure the proper legal description and monumentation of subdivided land; and to provide for the re-subdivision of large land parcels.

Article IV Planning Board Review and Legal Status Provisions

Section 1. Planning Board Review and Approval.

Pursuant to N.C.G.S. 160D, Article 8 unless otherwise noted, no real property within the jurisdiction of this chapter shall be subdivided and offered for sale or a plat thereof recorded until a preliminary and final plat have been reviewed and approved by the Watauga County Planning Board as provided hereinafter. Plans of group developments for housing, commercial, industrial, or other uses, or for any combination of uses shall be submitted in the same manner as other plats for review by the Planning Board.

Section 2. Exemptions.

(A) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the local government as shown in its subdivision regulations.

(B) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.

(C) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.

(D) The division of a tract in single ownership whose entire area is no greater than 2 acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the local government, as shown in its subdivision regulations.

(E) The division of land solely among members of the same family, which shall include all lineal descendants or ancestors plus brothers, sisters, aunts, uncles, fathers-in-law, mothers-in-law, brothers-in-law, sisters-in-law, nieces, nephews and stepchildren by any method of transfer except where the parties contemplate development for resale, and where the resultant lots are equal to or exceed the standards of the county as shown in this chapter.

(F) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

Section 3. Building Permits.

Approval of the final plat by the Planning Board shall be required before issuance of any building permit for a structure to be erected in a subdivision, except in Planned Unit Developments, or up to two (2) may be issued in any

subdivision to the owner/developer only, when the owner is also the developer**.**

Section 4. Recording of Plats.

No subdivision plat of land within the County's jurisdiction shall be filed or recorded until it has been submitted to and approved by the Watauga County Planning Board or Staff, and until this approval is entered in writing on the face of the plat by the designated representative of the County Planning Board.

Section 5. Duty of Register of Deeds.

The Register of Deeds shall not file or record a plat of a subdivision of land located within the territorial jurisdiction of the County that has not been approved in accordance with these provisions, nor shall the Clerk of Superior Court order or direct the recording of a plat if the recording would be in conflict with this section. No subdivision plat of land within a Public Water Supply Watershed shall be filed or recorded by the Register of Deeds until it has been approved in accordance with the provisions of Watauga County's Watershed Protection regulations. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with the watershed protection regulations.

Section 6. Relationship to Effective Changes in the Chapter.

It is not intended that this chapter will in any way repeal, annul, or interfere with any valid permits or approvals which were legally issued under previous ordinances for the use or development of land or structures. In addition, future changes in this chapter shall not repeal, annul, or interfere with any valid permits or approvals issued pursuant to this chapter prior to said changes. This provision shall include approved master plans for phased developments. If the density in the approved master plan is not increased, any plats and extensions thereof shall be subject to the regulations under which the original master plan was approved.

Article V Procedures For Review and Approval of Subdivisions

Section 1. Plat Required on Any Subdivision of Land.

Pursuant to N.C.G.S. 160D-803, a final plat shall be prepared, approved, and recorded pursuant to the provisions of this chapter whenever any subdivision of land takes place. Prior to recording, such plat shall be approved pursuant to Article V. To secure such approval, the subdivider shall follow the procedures established in this Article as applicable.

Section 2. Submission of Preliminary Plat.

(A) A preliminary plat meeting the requirements of this ordinance shall be submitted for review and shall be approved by the Planning Board before any improvements or land disturbing activities are made in a subdivision.

(B) A Developer Authorization Form (Appendix M) must accompany the Preliminary Plat application when the application is made by person(s) other than the land owner(s).

(C) The Planning Staff shall provide that the following agencies be given an opportunity to make recommendations as appropriate concerning an individual subdivision plat before the plat is approved: AppHealthCare, Department of Transportation, County Board of Education, County Fire Marshal. The Planning Staff shall transmit copies of the plat to those agencies and others upon their request.

(D) The Planning Board shall review the preliminary plat and identify any changes required in order that the subdivision may comply with the provisions of this chapter.

(E) After receiving approval of the preliminary plat by the Planning Board, providing evidence of N.C.D.O.T. driveway connection permit and issuance of the grading permit by the staff (and not before that time), the subdivider may proceed to construct the proposed road and other improvements in accordance with the requirements of this chapter and as shown on the approved preliminary plat.

Section 3. Specifications for Preliminary Plat.

The preliminary plat shall be at a scale of one-hundred (100) feet to one (1) inch or larger and shall be on a sheet, 18" x 24". However, if the size and shape of the property is such that a sheet 18" x 24" will not accommodate the entire tract, a sheet not larger than 24" x 36" may be used, and in unusual circumstances may be at a scale of no smaller than 1"=200'. In addition, the developer shall provide an electronic version of the plat.

The following information shall be required as applicable:

(A) A sketch vicinity map showing the relationship of the proposed subdivision with the surrounding area.

(B) The location of existing property lines, streets, buildings, water courses, transmission lines, sewers, bridges, and water mains, city and county lines (if adjoining) and any public utility easements.

(C) Boundaries of the tract shown with distances and approximate acreage.

(D) Evidence of access right-of-way from state road.

(E) Names of adjoining property owners and/or subdivisions.

(F) Zoning classification, if any, both on the land to be subdivided and on adjoining land.

(G) Proposed streets, street names, rights-of-way, roadway widths, approximate grades, curve radiuses, and proposed drainage facilities.

(H) Other proposed rights-of-way or easements showing locations, widths and purposes.

(I) Proposed lot lines, lot numbers, and approximate area. Statement that all lots will comply with the Subdivision Regulations.

(J) Proposed minimum building set back lines.

(K) Proposed utility layouts (sewer, water, electricity) showing connections to existing systems or plans for central water system or package sewage system, or designation for individual water and sewage.

(L) Proposed parks, open spaces, or any other public areas.

(M) Name of owner, developer, engineer and registered surveyor.

(N) Title, date, north point, and graphic scale.

(O) Statement of intended use of the lots (single or multi-family).

(P) When an area covered in the plan includes or abuts a water area (stream, river or lake) the following additional information is required:

- **(1)** Relationship with floodway and flood plain as delineated by the flood insurance rate maps.
- **(2)** Any proposed dock lines beyond which no dock structure may be constructed.
- **(3)** Methods of providing ingress and egress from uplands to water area.
- **(4)** Names of the owners of the water area.

(Q) If road (s) are to be "county standard", the developer shall maintain the road(s) until such time as a property owners association assumes maintenance. Prior to final plat approval, the developer shall comply with Article VI, Section 2(A)(1) concerning recording of property owner’s association road maintenance provisions.

Section 4. Minor Subdivisions.

(A) Procedures set forth here for handling applications for approval of minor subdivisions are intended to simplify processing of routine small subdivisions with due regard to protection of the public interest.

(B) For the purpose of these regulations, a minor subdivision is defined as any subdivision requiring no variances and consisting of not more than ten (10) lots. One phase of a phased development cannot be considered a minor subdivision unless the entire development is not more than 10 lots.

(C) After January 1, 2006, all new divisions of land shall comply with all of the requirements of this ordinance, with the exception of the following**:** The division of one (1) lot or tract out of a larger tract will be allowed provided 1) the new lots meet the size, dimensional, and setback requirements of this or any applicable ordinance; 2) no public street or road dedication or change in existing public streets or road is involved; 3) the original lot or tract was created prior to January 1, 2006 and is over ten (10) acres in size; or 4) if the original tract is less than ten (10) acres, it shall have been created prior to June 15, 1973, or be otherwise exempt from this ordinance; 5) only one (1) such division shall be allowed from the original tract without total compliance with this ordinance.

(D) The Watauga County Planning Staff shall review the preliminary plat of each minor subdivision and shall find that it either is or is not a minor subdivision and shall find that it either does or does not meet the requirements of this ordinance. Said findings shall be stated in writing and recorded in the records of the Planning Board. Based upon said findings the Staff shall either approve, not approve, or approve conditionally the proposed minor subdivision.

(E) The decision of the Staff is subject to appeal by the subdivider to the Planning Board.

(F) A final plat shall be submitted to the Watauga County Planning Staff for consideration and approval before the conveyance of any of the property or the recording of the plat.

(G) The County may require only a plat for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

- **(1)** The tract or parcel to be divided is not exempted under Article IV, Section 2. (i.e. no resultant tract is 10 acres or more)
- **(2)** No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division.
- **(3)** The entire area of the tract or parcel to be divided is greater than five acres.
- **(4)** After division, no more than three lots results from the division.

(5) After the division, all resultant lots comply with all of the following:

a) Any lot dimension size requirements of the applicable land-use regulations, if any.

b) The use of the lots is in conformity with the applicable zoning requirements, if any.

c) A permanent means of ingress and egress is recorded for each lot.

Section 5. Phased Developments.

If a developer proposes that a subdivision (including PUD's) will be constructed in phases, the following procedure shall apply.

(A) A master plan showing the entire proposed subdivision and the phases of development, proposed density, proposed type and location of utilities, and proposed development timetable shall be submitted to the Planning Board for approval.

(B) Each phase of development shall be preceded by submission and approval of a preliminary plat as outlined in Section 3 unless such plat submission is waived by the Planning Board. The master plan may be submitted prior to or simultaneously to submission of the preliminary plat for the first phase of development.

(C) As each phase is completed, a final plat must be submitted and approved for that phase as outlined in Sections 6 and 7.

Section 6. Submission of Final Plat.

Unless a final plat is submitted to the Planning Board within eighteen (18) months from the date on which the preliminary plat was approved, such action on the preliminary plat shall become void and of no effect, and will necessitate the resubmission of the preliminary to the Planning Board for consideration, except in the case of preliminary plats for Multi-Phased Development shall be valid for seven years from the time of initial site plan approval. Roads and lots shall be clearly marked in the field upon submission of the final plat.

(A) Final Plat. The final plat shall constitute only that portion of the approved preliminary sketch plan which the subdivider proposes to record provided that such portion conforms to all requirements of this ordinance. All final plats shall be on sheets with overall measurements of 18" x 24" and shall be on a scale no smaller than 1" = 100'.

The final plat shall show as applicable:

(1) A sketch vicinity map showing the location of the subdivision in relation to the surrounding area.

(2) The right-of-way lines and easements of all streets and roads, and access right-of-way to state road.

(3) Lot lines and lot numbers showing bearings and distances**,** and lot sizes. All dimensions should be to the nearest one-hundredth (0.01) of a foot and angles to the nearest minute.

(4) Minimum building setback lines. (Show typical lot setback; not required on all lots.)

(5) Relationship with floodway and flood plain as delineated by the flood insurance maps.

(6) Sufficient data to determine readily and reproduce on the ground the location, bearing and length of every street line, lot line, boundary line, and block line whether curved or straight.

(7) Accurate location and description of all monuments and markers and block tie lines.

(8) The names and locations of adjoining subdivisions and streets, and the location and ownership of adjoining un-subdivided property, including water areas.

(9) Title, date, name, and location of subdivision, graphic scale, and true north point.

(10) Name of owner, developer, surveyor, engineer and land planner.

(11) Reservations for easements, and areas to be dedicated to public use or sites for other than residential use shall be shown on the plat with notes stating their purposes.

(12) One of the following statements:

a) Drinking water source to be individual or shared wells (not a community or public water supply). Wastewater disposal method to be septic tanks. Individual lots have/have not been approved by App HealthCare for septic system.

b) Drinking water source to be a public water supply (name system if to be connected to existing system, or indicate proposed new supply). Wastewater disposal method to be septic tanks. Individual lots have/have not been approved by AppHealthCare for septic system.

c) Drinking water source to be a community water system (name system if to be connected to existing system, or indicate proposed new supply). Wastewater disposal method to be septic tanks. Individual lots have/have not been approved by AppHealthCare for septic system.

d) Drinking water source to be individual or shared wells (not a community or public water system). Wastewater disposal method to be NPDES sewer (name system if to

be connected to existing system, or indicate proposed new system).

e) Drinking water source to be a public water supply (name system if to be connected to existing system, or indicate proposed new supply). Wastewater disposal method to be NPDES sewer (name system if to be connected to existing system, or indicate proposed new system).

f) Drinking water source to be a community water supply (name system if to be connected to existing system, or indicate proposed new supply). Wastewater disposal method to be NPDES sewer (name system if to be connected to existing system, or indicate proposed new system).

(13) Statement of intended use of the lots (single or multi-family).

(14) Location and size of culverts/ drainage facilities.

(15) Density in units per acre if PUD.

(16) Variances granted, if any.

(17) Reference shall be made on final plat to deed book and page number of recorded Restrictive Covenants and/or Road Maintenance Agreement.

(B) The following certificates shall be shown on the final plat as applicable:

(1) Certificate of Ownership and Dedication

I (We) hereby certify that I am (we are) the owner(s) of the property shown and described here on, that the property is within the regulatory jurisdiction of Watauga County, and that I (we) hereby adopt this plan of subdivision with my (our) free consent, establish all lots, and dedicate all streets, alleys, walks, parks, easements, right-of way, and other open spaces to public or private use as noted.

_____ _____

DATE OWNER

(2) Certificate of Accuracy

The undersigned surveyor, being duly sworn, deposes and says that the plat upon which this certificate appears was prepared in accordance with N.C.G.S.47-30 as amended, is in all respects correct according to the best of his knowledge and belief, and was prepared from an actual survey made by him on the _____ day of _____ 20___, with maximum linear error of closure of _____ and a maximum field error of angular closure of _____.

Pursuant to N.C.G.S. 47-30, the surveyor shall certify to one of the following.

(a) That this survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land;

(b) That this survey is located in a portion of a county or municipality that is unregulated as to an ordinance that regulates parcels of land;

(c) Any one of the following:

i. That the survey is of an existing parcel or parcels of land and does not create a new street or change an existing street;

ii. That the survey is of an existing building or other structure, or natural feature, such as a watercourse; or

iii. That the survey is a control survey.

(d) That this survey is of another category, such as the recombination of existing parcels, a court ordered survey, or other exception to the definition of subdivision;

(e) That the information available to the surveyor is such that the surveyor is unable to make a determination to the best of the surveyor's professional ability as to provisions contained in (a) through (d) above.

(3) Certificate of the Approval of Water and Sewage System

I hereby certify that the water supply and sewage disposal utility system installed, or proposed for installation, in each lot of the subdivision entitled _____ fully meets the requirements of the undersigned agency(ies), and are hereby approved as shown.

_____ _____

DATE APPHEALTHCARE

_____

NC PUBLIC WATER SUPPLY SECTION

_____

NC DEPT. OF ENVIRONMENTAL QUALITY

(4) Certification of the Approval of Streets and Utilities

hereby certify: (1) that streets, utilities and other improvements have been installed in an acceptable manner and according to County specifications in the subdivision entitled _____ or (2) that a security guarantee in the amount of $_____or cash in the amount of $_____ has been posted with the

county to assure completion of all required improvements in case of default.

_____ _____
DATE WATAUGA COUNTY AUTHORIZED REPRESENTATIVE

(5) Certificate of Approval of Recording.

I hereby certify that the subdivision plat shown hereon has been found to comply with the subdivision regulations of Watauga County, North Carolina, with the exception of such variances, if any, as are noted in the Minutes of the Planning Board and are recorded on the plat and that it has been approved by the Watauga County Planning Board at their regular meeting of _____ for recording in the office of the County Register of Deeds.

_____ _____
DATE WATAUGA COUNTY AUTHORIZED REPRESENTATIVE

(6) Certificate of Approval of Recording.

(watershed; can be combined with (5) or (10))

I certify that the plat shown here on complies with the Watershed Protection regulations and is approved by the Watauga County Planning Board or Staff (choose which is applicable) for recording in the Register of Deeds Office.

_____ _____
DATE WATAUGA COUNTY AUTHORIZED REPRESENTATIVE

NOTICE: This property is located within a Public Water Supply Watershed – development restrictions may apply.

(7) Certificate of Approval and Acceptance of Dedications

I,_____, the Authorized Representative of Watauga County, North Carolina, do certify that Watauga County approved of this plat or map and has accepted the dedication of the streets, easements, right-of-way, and public parks shown thereon, but assume no responsibility to open or maintain the same until, in the opinion of the governing body of Watauga County it is in the public interest to do so.

_____ _____
DATE WATAUGA COUNTY AUTHORIZED REPRESENTATIVE

(8) Certification of Approval of N.C.D.O.T Division of Highways

NCDOT DIVISION OF HIGHWAYS
PROPOSED SUBDIVISION ROAD
CONSTRUCTION STANDARDS CERTIFICATION

APPROVED _____
DISTRICT ENGINEER

DATE _____
(or as otherwise specified by D.O.T.)

(9) Certificate of Exemption

I hereby certify that the plat shown hereon is exempt from the Watauga County subdivision regulations pursuant to _____ of the Planning & Development Ordinance. No approval is required.

_____ _____

DATE WATAUGA COUNTY AUTHORIZED REPRESENTATIVE

(10) Certificate of Approval of Minor Subdivision

I hereby certify that the subdivision plat shown hereon has been found to comply with the subdivision regulations of Watauga County, North Carolina. It has been approved as a minor subdivision as defined in Chapter 18 Article V Section 4 of the Planning & Development Ordinance for recording in the office of the County Register of Deeds.

_____ _____

DATE WATAUGA COUNTY AUTHORIZED REPRESENTATIVE

(NOTE: Authorized representatives shall be the Director of Planning and Inspections and Planner/Property Development Coordinator, and in their absence, the Chair and Vice Chair of the Planning Board.)

Section 7. Approval of Final Plat.

Upon receipt of the final plat, the Planning Board and Staff shall review it for compliance with the provisions of the ordinance. The Planning Board may approve the plat in whole or in part, or subject to modifications. The approval of the final plat by the Planning Board shall be on the condition that such plat be recorded in the office of the Register of Deeds within ninety (90) days after such approval.

Section 8. Advisory Opinion.

A subdivider is encouraged to submit a sketch to the Planning Staff prior to submission of a preliminary plat if s/he wishes to ascertain the feasibility of development of his property.

Article VI General Requirements and Minimum Standards of Design

Section 1. General Requirements.

The subdivider shall observe the following general requirements and principles of land subdivision.

(A) Suitability of Land. Land which has been determined by the Watauga County Planning Board on the basis of engineering and/or other

studies prepared by licensed professionals to pose an ascertainable danger to life or property by reason of its unsuitability for the use proposed shall not be platted for that purpose, unless and until the subdivider has taken the necessary measures to correct said conditions and to eliminate said dangers.

(1) Land subject to flooding may be considered unsuitable for building development. The decision by the Planning Board shall be based on flooding history of the area and survey information furnished by Federal Emergency Management Agency (FEMA) as delineated on the Watauga County Floodway Boundary and Flood Rate Insurance Maps. Subdivision developments shall comply with the Watauga County Flood Damage Prevention regulations.

(2) Generally, property which has a natural cross slope of fifty (50) percent or more is considered unfeasible for subdivision development. Any variance beyond a fifty (50) percent slope shall require the approval of the Planning Board. See Appendix H for method of defining average cross slope.

(B) Conformity to Existing Plans. All proposed subdivisions shall conform to any adopted plans for the county and to any applicable regulations of any existing county zoning regulations. Whenever a tract to be subdivided embraces any part of a state maintained road, as designated on any officially adopted plan, such part of such public right-of-way shall be platted by the subdivider in the location and at the width indicated by said plan and provisions of this ordinance.

(C) Driveway Connection Permit. A driveway connection permit issued by NC Department of Transportation shall be obtained. A Traffic Impact Analysis shall be required from the applicant under the following circumstances, unless the Planning Board and NCDOT concur that one is unnecessary:

(1) The development proposes to have access to any public road at a location where sight distance in any direction along the road is less than 500 feet; or

(2) The development proposes access onto a public road that does not have a paved width of at least 18 feet; or

(3) The development proposes access to a public road with current NCDOT traffic counts that are 85% of capacity shown in the most recent Watauga County Comprehensive Transportation Plan and based upon ITE trip generation rates is projected to generate 1,500 or more weekday trips; or

(4) The Planning Board determines that the proposed project will have a potential negative impact on the public road system due

to the size of the project or existing transportation system or determines that there are safety concerns with the driveway location and design. If a traffic impact analysis is performed and that analysis concludes that improvements are required to the transportation system, the applicant may be required to complete those improvements in connection with the project as a condition of issuing a permit. Unless an agreement is executed by the County in which the time for the improvement is specified, the improvement shall be completed prior to issuance of final plat approval.

(D) Coordination and Continuation of Streets. The proposed street layout within a subdivision shall be coordinated with the existing street system of the surrounding area and where possible, existing principal streets shall be extended.

(E) Access to Adjacent Properties. Where, in the opinion of the Planning Board it is necessary to provide for street access to an adjoining property, proposed streets shall be extended by dedication to the boundary of such property and a temporary turnaround shall be provided. This provision shall apply only to roads which will be state maintained (dedicated to the public).

(F) Access Right-of-Way. Where a right-of-way, less than forty-five (45) feet, which provides access to property proposed for subdivision had been granted prior to June 15, 1973, and the developer presents proof in writing that s/he cannot feasibly obtain a forty-five (45) foot right-of-way to the property then s/he may be permitted to develop the property provided s/he secure at least a thirty (30) foot right-of-way into the property proposed for subdivision. If the right-of-way is less than thirty (30) feet, the Planning Board may grant a variance for development provided that the road width will meet county standards. Less-than-county-standard-width may be permitted under extreme circumstances in the judgment of the Planning Board, provided the access right-of-way is no greater than 300 feet in length and there are no view obstructions from either end of the access. Roads providing access to subdivisions shall meet the same standard as the roads within the subdivision unless a variance specifying otherwise is granted by the Planning Board. In all cases where less than a forty-five (45) foot right of-way is used for access to a subdivision, this fact shall be contained in the disclosure statement and shown on the final plat as specified in Article V, Section 7. For purposes of this section, access road shall not include any state-maintained road. When an access road passes by an existing structure, the subdivision developer shall make efforts to protect the structure(s) from visual, noise, stormwater and other impacts potentially caused by the access road.

(G) Large Tracts or Parcels. Where land is subdivided into larger parcels than ordinary building lots, such parcels should be arranged so as to allow for the opening of future streets and logical further re-subdivisions.

(H) Marginal Access Streets. Where a tract of land to be subdivided adjoins a principal arterial street or a major arterial street, the subdivider may be required to provide a marginal access street parallel to the arterial street or reverse frontage on a minor street for the lots to be developed adjacent to the arterial. Where reverse frontage is established, private driveways shall be prevented from having direct access to the expressway.

(I) Lots. All lots shall front, except as provided in Article VI, Section 3(E)**,** with a minimum of forty (40) feet on a dedicated through street; thirty (30) feet on cul-de-sacs. Double frontage lots shall be encouraged where terrain necessitates double frontage for reasonable access to property.

(J) Street Names. Proposed streets which are obviously in alignment with existing streets shall be given the same name. In assigning new names, the provisions of the Ordinance Establishing Names For Public And Private Roads In Watauga County shall apply. Street names shall be subject to the approval of the Watauga County Emergency Services Department.

(K) Name of Subdivision. The name of a subdivision shall not duplicate nor closely approximate the name of an existing subdivision within the county. Subdivision names shall be subject to the approval of the Watauga County Emergency Services Department.

(L) Natural Assets. In any subdivision due consideration will be given to preserving natural features such as trees, ponds, streams, rivers, lakes and for any historical sites which are of value not only to the subdivision but to the county as a whole.

(M) Erosion Control. In order to prevent soil erosion and sedimentation of streams, springs, flat water bodies, or other drainage networks, the subdivider shall retain the natural vegetation cover wherever possible. Further, land cleared of the natural vegetation shall be reseeded or replanted with an appropriate vegetative cover which shall be approved by the Planning Staff and Soil and Water Conservation District. In all cases of street construction, or land disturbing activity of one half (1/2)acre or more, the subdivider shall comply with the Watauga County Soil Erosion Control Regulations. In addition, the grading plan and specifications controlling execution of land-disturbing activities shall adhere to the following standards:

(1) Maximum cut slopes shall be 2H:1V.

(2) Maximum fill slopes shall be 2H:1V.

(3) Innovative designs exceeding the slope standards specified herein may be approved when accompanied by a site-specific subsurface investigation, report and recommendation performed by a registered professional engineer competent in geotechnical engineering. All grades shall be sloped to drain surface water away from buildings, pavements, slopes and structures as applicable.
Also see Appendix B-D for further detail.

(N) Storm Water Drainage. The subdivider shall provide an adequate drainage system for the proper drainage of all surface water. The design of such a system shall be subject to the approval of the Planning Staff.

(1) No surface water shall be channeled or directed into a sanitary sewer.

(2) Where feasible, the subdivider shall connect to an existing storm drainage system.

(3) Where an existing storm drainage system cannot feasibly be extended to the subdivision, a surface drainage system shall be designed to protect the proposed development and adjoining property from water damage.

(O) Proposed Water and Sewage Systems. The preliminary subdivision plat must be accompanied by satisfactory evidence as to the proposed method and system of water supply and sanitary sewage collection and disposal.

(1) Where the system is to be connected to the system owned and operated by the Towns of Boone, Blowing Rock, Beech Mountain, Seven Devils, or any associated sanitary district, or any sanitary facility of Watauga County, but not constructed by the municipalities or county, the preliminary subdivision plat shall be accompanied by a letter of approval from the proper official representing the owner of the existing system to which the proposed system is to be connected. After preliminary approval but prior to installation of a public water or sewer system, the developer shall present to the Planning Board plans for the proposed system, prepared by a registered engineer and approved by the proper official representing the owner of the system to which the proposed system is to be connected, and by the designated state agency.

(2) Where community water/sewer systems are proposed, the preliminary plat shall be accompanied by a letter of approval from the proper official of the designated state agency or AppHealthCare, whichever is applicable. The developer shall note the type of systems to be utilized on the preliminary and final plat and shall record with the Watauga County Register of

Deeds an instrument setting forth provisions for the establishment of a property owner's association for the purpose of assessing dues for maintenance of the community systems by purchasers of property which will be served within the development. The developer shall maintain community systems at least until such time that the property owner's association assumes maintenance.

(3) Where the proposed system does not contemplate the use of facilities owned and operated by any of the above, the developer shall note on the preliminary and final plat that each lot shall have an individual water supply and sewage disposal facility to be approved by the AppHealthCare. The developer shall note further which lot(s) have or have not received prior approval for septic tank use by AppHealthCare.

(P) Cemeteries: Where a subdivision plat encompasses an existing cemetery - whether active or abandoned - existing cemeteries shall be deeded as a separate lot in the subdivision and shall be accessed by a minimum twenty (20) foot wide private or public easement. Major Subdivisions shall provide access with a minimum twenty (20) foot wide right-of-way (road construction not required).

Section 2. Design Standards for Streets.

The design standards for subdivision streets shall meet either the minimum construction standards for secondary roads as required by the N.C. Department of Transportation or the minimum construction requirements for county standard roads. When state standards are to be met, the developer shall submit proposed road specifications for the approval of the local Department of Transportation office prior to submitting a preliminary plat. It is recommended that subdivision roads be constructed to meet D.O.T. requirements in all areas where terrain is suitable for D.O.T. approval.

(A) County Standard Roads. County standards may be utilized under the following conditions:

(1) Prior to the recording of the final plat, the developer shall record a Declaration of Restrictions and/or approved Road Maintenance Agreement having provisions for the establishment of a property owner's association for the purpose of assessing dues for road maintenance. The developer shall maintain the road at least until such time that the property owner's association assumes maintenance.

(2) County standard roads shall be maintained to the original graveled or paved width.

(3) The Planning Staff may perform periodic inspections to ensure that the roads are being maintained to the required width.

(B) Design Requirements for County Standard Roads.

(1) Right-of-Way Width. Right of way width for County standard roads shall be not less than forty-five (45) feet.

(2) Width of Road Bed. Graded width of road bed including ditch and shoulder areas shall have a minimum width of twenty-five (25) feet. This amount may be reduced pursuant to Article VI, Section 2(B)(4)

(3) Stoned or Paved Area. Road travel area may be either stoned or paved, shall have a minimum width of twenty (20) feet.

(a) Where stone is used, it shall be "crusher-run" or DOT approved "ABC" stone compacted to a minimum of four (4) inches. In locations where soil conditions require additional stone to attain a stable road bed, the developer shall add the required amount of stone before attaining approval of the final plat.

(b) If the developer elects to pave county standard roads, s/he shall meet requirements of the State Department of Transportation pertaining to stone base and top surface.

(c) In the case of roads which were approved and for which construction began prior to the adoption of the 20-foot width requirement on May 15, 2012 the Planning Board may allow 18-foot road width provided the Board determines the following:

(i.) the subject road received a preliminary plat approval prior to May 15, 2012, and

(ii.) the road was substantially completed to the formerly-required 18 foot width, and

(iii.) it is impractical from an engineering or environmental perspective to increase the width to 20 feet. Examples include, but are not limited to: 1) underground utilities have been placed in the road right-of-way, 2) cut and fill slopes have been stabilized and additional grading would unnecessarily affect the slopes, and 3) the subject road segment is the final segment of an existing road.

(4) Shoulder Areas and Ditches. Shoulder area on cut side shall be a minimum of four (4) feet in width and shall provide a drainage ditch of adequate size to accommodate storm water run-off based on terrain and location. Shoulder width on fill side shall be a minimum width of three (3) feet. In locations where cuts are required on both sides of the road, drainage ditches and

shoulders shall occupy approximately three and one-half (3 1/2) feet wide on each side. The Planning Staff may recommend shoulder design which differs from the above during site inspection and depending upon terrain and cut and fill. In addition, the staff may approve a reduction in shoulder area on the ditch side of up to one and one-half (1 1/2) feet where the road is paved and "roll type" curb and gutter is used. The total reduction in shoulder area could be three (3) feet if there is a ditch on both sides. This reduction is dependent upon adequacy of this design to handle runoff as calculated by the erosion control plan.

(5) Road Grades. Maximum grade shall be fifteen (15) percent. A variance up to eighteen (18) percent may be granted by the Planning Board in extreme cases where terrain prohibits a lesser grade to attain access to a nearby area, if in the opinion of the Planning Board such variance will not create a hazardous or destructive condition. In no case shall a variance be granted for road grades exceeding eighteen (18) percent. In addition, for any road containing grade(s) exceeding fifteen (15) percent, the entire road network shall be paved unless deemed unnecessary by the Planning Board in considering the variance. The Planning Board may require the placement of safety barriers on curves of such roads. The Planning Board shall also require a slope stake road profile for roads (or portions of roads where practical) with grade(s) fourteen (14) to eighteen (18) percent subsequent to preliminary plat approval. Certification of road grade by a NC licensed surveyor shall be required when deemed necessary by the Planning Board or Staff.

(6) Culverts and Drainage. Culverts shall be of adequate size to discharge storm water from any given area depending upon terrain and location. Minimum culvert size shall be eighteen (18) inches (may be reduced at the discretion of the Planning Staff) inside diameter and shall be located and installed as recommended by the project engineer or as recommended by the Planning Staff.

(a) Culverts may be made of any NCDOT approved material and design and shall be installed on a constant grade of a sufficient degree to ensure proper drainage and a minimum danger of becoming clogged with debris or mud.

(b) All culverts shall have a minimum cover of twelve (12) inches of well compacted earth. The first six (6) inches of earth surrounding the culvert shall be free of stones larger than two (2) inches square.

(7) Curve Radius. All curves in county standard roads shall have a radius of no less than thirty five (35) feet.

(8) Bridges. Proposed bridges which will be part of a county standard road or bridges used by more than one house, townhouse or duplex shall be constructed and maintained in accordance with AASHTO HB-17 and designed to accommodate two (2) lanes of traffic unless a variance for a one (1) lane bridge is granted by the Planning Board. Factors to be considered by the Board in deciding upon such variances are: (1) environmental impact of a one (1) lane bridge as opposed to a two (2) lane bridge; (2) density (number of houses to be served by bridge); (3) traffic flow (one lane bridges should not be placed so as to cause traffic to back up onto a major thoroughfare). In any event, bridges serving more than one house, townhouse or duplex shall be permitted and constructed to meet NC Department of Transportation specifications, except that the width may be reduced to twenty (20) feet. Confirmation that bridges meet such specifications may be provided by either Department of Transportation engineer or a registered private engineer. In addition, one-lane bridges shall include gravel or paved turnouts on each side of the bridge(s) to provide access to the water body for fire-fighting equipment where feasible. Developers proposing bridges should request an advisory opinion from the Planning Staff to assist in designing appropriate and adequate bridges. Private bridges shall be maintained by the developer or property owners' association. Suggested maintenance procedures are found in Appendix I. It is recommended that these or similar procedures be adopted as an annual procedure.

(9) Cul-de-sacs. Turn-around right-of-way width shall be a minimum of one hundred (100) feet in diameter for round-design cul-de-sacs; the travel surface shall be a minimum of seventy (70) feet in diameter**.** Provided, however, that if terrain prevents construction of a round-design cul-de-sac, "tee" and "y" types of turn-arounds may be constructed; right-of-way shall be forty-five (45) feet in width; travel surface shall be twenty (20) feet. See Appendix K for drawings.

(10) Turnarounds. County standard roads shall be provided with turnarounds located as near as practical to the first 1000-foot point and each 1000-foot point thereafter, but not to vary by more than 100 feet longer. Road right-of-way shall be established so as to encompass turnarounds.

(11) Property Lines - - Concerning County Standard Roads. Roads which are to have a forty-five (45) foot right-of-way may also

have the property line located along and with the centerline of the road with a twenty-two and one-half (22 1/2) foot road right-of-way measured from the centerline to each side of the road. If this method is used, it shall be clearly indicated on the plats and incorporated in all deed conveyances. If the developer elects, s/he may place property line(s) twenty-two and one-half (22 1/2) feet from the centerline of the road(s) thereby providing a forty-five (45) foot right-of way.

(a) Property line markers (iron rod, granite, or concrete monument) shall be placed on the side property lines at a point measured twenty-two and one-half (22 1/2) feet from the center of the road where a forty-five (45) foot right-of-way is provided.

(b) The minimum building set-back distance from the road abutting the front of the property shall be forty (40) feet from the center of a forty-five (45) foot right-of-way. This will place the structure 17 1/2 feet behind the right-of-way line.

(12) Designation of Road Status. All roads shown on the preliminary and final plats shall be clearly noted as to which roads are county standard and which are constructed to meet N.C. Department of Transportation requirements.

(a) It is permissible to have both county standard and state approved roads within a subdivision. It is suggested that for a subdivision of substantial size with a main entrance road entering from an existing state road which will have a length of one thousand (1000) feet or more and may be extended in the foreseeable future, the entrance road should be constructed to meet N.C. Department of Transportation standards. This plan is suggested in order to ensure mail delivery, state road maintenance and school bus service to a closer proximity of property owners located on county standard roads which may intersect the new public road.

(b) Construction of a county standard road intersecting an existing state road with the intention of connecting and serving a new state approved road is prohibited.

(13) Disclosure. The developer shall comply with N.C.G.S.136-102.6 which provides for a Disclosure Statement from the developer to the purchaser setting forth the status (whether public or private) of the road on which the property is located. The disclosure statement shall also fully disclose the party or parties upon whom responsibility for maintenance of such roads shall rest.

Section 3. Design Standards for Lots.

The lot size, width, depth, shape and orientation, shall be appropriate for the location and terrain of the subdivision and for the type of development and use contemplated.

(A) Lot Area. (SEE ALSO TABLE 1)

(1) Lots served by public/community water and NPDES sewer shall have an area of at least eight thousand (8000) square feet.

(2) Lots served by NPDES sewer but individual water shall have an area of at least ten thousand (10,000) square feet.

(3) Lots served by individual sewer shall have an area of at least twenty-one thousand, seven hundred eighty (21,780) square feet (one-half acre). These requirements shall be increased on the recommendation of the AppHealth Care based on site investigations or percolation rates and subsoil conditions.

(4) Lots located within drinking water supply watersheds shall comply with the size requirements specified for WS-I, WS-II, WS-III, or WS-IV found in the Watauga County Watershed Protection regulations.

(5) Individual lots within townhouse developments or townhome conversions must include an individual dwelling, together with front and rear yards or rights to yards in common areas, but are otherwise exempt from minimum lot area and setback requirements.

TABLE 1 - LOT AREA REQUIREMENTS

	PUBLIC/COMMUNITY WATER, NPDES & NON-DISCHARGE SEWER SYTEMS	PUBLIC/COMMUNITY/ INDIVIDUAL WATER, INDIVIDUAL SEPTIC SYSTEMS	INDIVIDUAL WATER, SHARED SEPTIC SYSTEMS	INDIVIDUAL WATER NPDES SEWER SYSTEMS
Minimum Lot area in square feet	8,000	21,780	21,780	10,000
Minimum Lot width in feet	75-average 40-street line**	75-average 40-street line	75-average 40-street line	75-average 40-street line
Minimum lot depth in feet	125-average	125-average	125-average	125-average
Density in units per acres	5.4 (conventional) 6.155 (PUD***)	2 (conventional) 2.261 (PUD***)	4 (conventional) 4.522 (PUD***)	4.3 (conventional) 4.924 (PUD***)

** Street line width for cul-de-sacs may be 30 feet.

*** Multiply gross area by figures shown here. These figures have 15% deduction for roadways built in. These figures do not apply where the average cross slope is 30% or greater.

NOTES:

a) Minimum lot size requirements may exceed those shown above if subdivision is located in areas of the County affected by the following state and local regulations:

(i.) Valle Crucis Historic District
(ii.) Foscoe-Grandfather Zoning
(iii.) Watershed Protection
(iv.) High Quality Waters (HQW)
(v.) Outstanding Resource Waters (ORW)

b) Formula for units per acre: #units divided by total acres. Example: 10 units on 2 acres = 10/2= 5 units per acre.

c) Except as set forth as follows in Subsection (F), A residential lot, meeting the minimum standards of this ordinance, or being a lot which was established prior to June 15, 1973, may accommodate a single residence, a duplex, or a single residence and a detached secondary residence such as a garage apartment, provided there are no more than two (2) units.

(B) Lot Width. All lots shall have an average width of seventy-five (75) feet and a minimum width at the street line of forty (40) feet, thirty (30) feet on a cul-de-sac.

(C) Lot Depth. All lots shall have an average depth of at least one hundred twenty-five (125) feet.

(D) Orientation of Lot Lines. Side lot lines are encouraged to be designed substantially at right angles or radial to street lines depending upon terrain.

(E) Panhandle Lots. The Planning Board or Staff may approve panhandle lots where it is impractical to serve an isolated lot by a state or county standard road. The frontage of the panhandle lot shall have a minimum width of thirty-five (35) feet which will provide an access strip between two standard lots to the isolated building site. The area of such strip shall be excluded in computing the lot area and the length of said strip shall not exceed three-hundred (300) feet. If the panhandle widens to seventy (70) feet or more, it shall be included in the acreage calculation.

(F) Access to Lots. All lots within a subdivision shall have direct vehicular access to state or county standard roads, provided however that access to a maximum of three (3) lots (each lot containing no more than one residential unit) may be provided through use of a shared private driveway. A shared private driveway shall not exceed eighteen (18) percent grade**,** shall be contained within a 20 foot or greater right-of-way, and shall have a 35 foot minimum curve radii. Driveway travel area may be either stoned or paved and shall have a minimum width of ten (10) feet with a vertical clearance of not less

than 13 feet 6 inches. The travel area must be designed to support the loads imposed by fire apparatus and provide all weather driving capabilities. Driveways that exceed 1,000 feet in length shall have an approved pullout area with a minimum width of 10 feet and minimum length of 40 feet to allow for two-way traffic. Shared driveways shall be constructed at the time of final plat submission**.** There shall be no obstructions within the right-of-way of shared driveways. The developer shall record with the Watauga County Register of Deeds an instrument setting forth provisions for maintenance of the shared driveway and shall maintain the driveway at least until such time that the maintenance is assumed by others. The provisions of this subsection are applicable to shared driveways serving more than one subdivision, or a subdivision and property outside of the subdivision.

(G) Building Setback Lines. The minimum building setback distance shall be as stipulated in Table 2. Structures subject to setback requirements may be completed without regard to older, more stringent setback requirements found in older subdivisions. Building setbacks shall be measured from the property line to any part of the structure above ground, including eaves and overhangs, but not including walkways or driveway/parking areas**.** The owner or contractor shall certify compliance with setbacks prior to inspection of the building footings.

TABLE 2 - BUILDING SETBACK REQUIREMENTS

Type of Setback	Amount of Setback
1. Distance from center of right-of-way on Highways 321,421,221,105,194. (includes all frontages on multiple frontage lots)	80 feet, but shall in all cases be at least 15 feet from the street right-of-way line.
2. Distance from center of right-of-way on all other streets. (includes all frontages on multiple frontage lots)	45 feet, or 40 feet per Article VI Section 2 (B) (11) (b)
3. Distance from cul-de-sac right-of-way.	15 feet
4. Distance from side property line.	15 feet
5. Distance from rear property line. (If rear property line does not front on a road)	15 feet
6. Distance (horizontal) from a stream, river or lake.	To be determined by Watauga County Flood Damage Prevention Chapter 9 or other applicable regulations including but not limited to High Quality Waters, Outstanding Resource Waters, and Watershed Protection.

7. Pre-existing Situations. Setback requirements contained herein are not applicable to structures and lots lines which pre-existed this ordinance and/or pre-existed the subdivision of land upon which the structures are located. The setbacks contained herein shall apply to any new or rebuilt structures located on the subject land.

Section 4. Design Standards for Easements.

Easements shall be provided as follows:

(A) Utility Easements. Easements for underground or above ground utilities shall be provided where necessary across lots or preferably centered on rear or side lot lines and shall be at least ten (10) feet in width.

(B) Drainage Easements. Where a subdivision is traversed by a stream or drainage way, a minimum easement of fifteen (15) feet shall be provided conforming to the lines of such stream.

Article VII Planned Unit Development

Section 1. Definition.

A "planned unit development" (PUD) is a tract of land under single, corporate, firm, partnership, or association ownership which is planned and developed as an integral unit. It is established in a single development operation or a definitely programmed series of development operations according to an approved master development plan and a preliminary site plan.

Section 2. Purpose.

It is the objective of this Article to encourage PUD proposals that exhibit such special qualities or concepts that they may deviate from standard requirements. These regulations are established in order that each PUD proposal will be evaluated on its own merits. It is recognized that some proposals or concepts will be more successful than others and the approval of a specific proposal in one situation does not mean that a similar proposal would be acceptable in other circumstances. It is also recognized that only through ingenuity, imagination, and high quality design can residential or commercial developments be produced which are in keeping with the intent of this article but which are not constrained by the strict application of conventional use and dimensional requirements of the subdivision regulations.

A Voluntary Alternate Procedure

Use of the PUD procedure is not mandatory for the development of any site or area. Rather, this process will provide a voluntary alternate development procedure which has one or more of the advantages listed below.

(a) Permit creative approaches to the development of residential or commercial land, reflecting changes in the technology of land development.

(b) Accomplish a more desirable environment than would otherwise be possible, by providing for a variety of housing types, designs and arrangements.

(c) Provide for an efficient use of land which can result in smaller networks of utilities and streets and reduce development costs.

(d) Enhance the appearance of neighborhoods through the preservation of natural features, and the provision of recreational and open space areas.

(e) Provide an opportunity for new approaches to home ownership.

(f) Provide an environment of stable character compatible with surrounding residential and natural areas.

(A) Minimum Requirements.

(1) The normal lot size, setbacks and frontage requirements are hereby waived for lots or building sites within the planned unit development, provided that the spirit and intent of this article are complied with in the total development plan, as determined by the Planning Board. Compliance with the buffering and screening requirements found in Appendix J along the perimeter of a PUD is required.

(2) Height limitations: All buildings shall comply with the Watauga County Height of Structures regulation or the NC Ridge Law, whichever is applicable.

(3) All streets providing access to a PUD and streets within a PUD shall be constructed to at least County standards regarding right-of-way and width, and must be paved per NCDOT Subdivision Roads minimum construction standards.

(4) Every dwelling unit shall have access to a public or private street, walkway or other area dedicated to common use, and there shall be provision for adequate vehicular circulation to all development properties, in order to ensure acceptable levels of access for emergency vehicles.

(5) All development shall be provided with adequate parking facilities to handle the expected number of automobiles for that site. Spaces shall be provided as follows; use

and occupancy classifications for buildings are the same as those definitions used in the N.C. Building Code.

(a) Assembly, business, educational, storage and mercantile uses and occupancies shall be provided with parking spaces as follows:

(i.) one (1) off-street parking space for each two hundred (200) square feet of gross floor area for operations designed to attract and serve customers and clients on the premises;

(ii.) one (1) off-street parking space for each four hundred (400) square feet of gross floor area for operations designed to attract little or no customer or client traffic other than employees of the operation;

(iii.) one (1) off-street parking space for each one thousand (1000) square feet of gross floor area for mini-warehouse uses.

(b) Factory Industrial uses and occupancies shall be provided with 1.5 spaces per three employees, computed on the total employment.

(c) Institutional uses and occupancies shall be provided with one space per five persons identified in the building's occupant load figures.

(d) Residential uses and occupancies, primarily permanent, shall be provided with 2 spaces per dwelling unit.

(e) Residential uses and occupancies, primarily transient (motels, hotels and inns), shall be provided with one and one-half (1.5) spaces per bedroom.

(6) Parking spaces shall be a minimum of nine feet by eighteen feet (9' x 18') in size.

(7) Loading/unloading space for commercial/ office uses shall consist of one (1) space at least three hundred (300) square feet in size for each five thousand (5000) square feet of gross floor area.

(8) Parking and loading areas for all multi-unit buildings shall be accessible to fire department apparatus through the use of fire lanes or other means of access approved by the County Fire Marshal /Emergency Management Office.

(9) Grading and erosion control shall be undertaken in accordance with Article VI, Section 1(M).

(B) Land Development Standards. Subject to the provisions set forth herein, residential, office, commercial, or mixed use PUD's are permitted uses. Common land must be an essential element of the

PUD, provided in lieu of standard individual lots. A minimum of thirty – three percent (33%) of the total land area must be permanently dedicated as any combination of common space, open space or green space. Road and parking areas and buildings shall not be included in common land for purposes of this subsection; areas designated for septic drain fields and repair areas and well buffers shall be included. Also included, for example, are outdoor recreation areas and no-wall structures such as picnic shelters.

(1) Residential Uses. Residential units within a PUD may include single family detached or attached units, townhouse developments, garden apartments, patio homes, and other type residential units. Condominium, cooperative, individual, municipal, or any other type of ownership development may be recorded, and the plan shall be approved as a preliminary and final plat according to the requirements of the subdivision regulations.

(2) Non-Residential Uses. Non-residential uses (commercial and office) within residential PUD's shall not constitute the primary use in the PUD, and non-residential uses shall be carefully designed to complement the residential uses within the PUD. Commercial/office PUD's are permitted, and are subject to the same requirements as residential PUD's including the preceding subsection.

(3) Privacy. Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walkways, barriers, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants.

(4) Perimeter Requirements. The standards of Appendix J shall apply.

(C) Density. The density which may be constructed within the Planned Unit Development shall be determined by dividing the gross project area minus fifteen percent (15%) of the total (to account for roadways) by the required lot area per unit which is required on Table 1 for conventional subdivisions, and modified by the increases in density permitted under this Section. Density (units per acre) may be increased (see Table 1) if the character of the development and/or amenities incorporated in the development warrant such increases provided that in no case shall the density increase cause the density of the Planned Unit Development to be more than thirty-three percent (33%) in excess of the density which would be achieved under standard subdivision regulations.

(1) Limits Upon Density Increases. If the Planning Board finds that any of the following conditions would be created by an increase in density, it may either deny an application for increase in density, or limit the increase in density by an amount sufficient to avoid the creation of any of the following conditions:

(a) Inconvenient or unsafe access to the development.

(b) Traffic congestion in streets adjoining the development.

(c) An excessive burden imposed on parks, recreational areas, schools, and other public facilities which serve or are proposed to serve the development.

(2) Denial of Density Increases. The increases in density shall not apply where the average cross slope is thirty (30) percent or greater. See Appendix H for method of determining average cross slope.

(D) Conveyance and Maintenance of Common Land. Conveyance and maintenance of common land, common elements, open space, green space, recreational areas and other facilities owned in common shall be in accordance with the Unit Ownership Act (Chapter 47-A of the North Carolina General Statutes), the Condominium Act (Chapter 47-C), the Planned Community Act (Chapter 47-F) and/or any other applicable state or federal law.

(E) Improvements

(1) Circulation Facilities. The arrangement of public and common ways for pedestrian and vehicular circulation in relation to other existing or planned streets in the area, together with provisions for street improvements, shall be in compliance with standards set forth in Article VI, Section 2(B)(3)&(4) (unless a variance for one lane traffic has been granted).——Upon application by the developer and good cause shown, the Planning Board may permit changes or alterations of such standards which are consistent with the spirit and intent of this section.

(2) Utilities. Whenever reasonably possible, all Planned Unit Developments shall provide for underground installation of utilities (including electricity and telephone) in both public ways and private extensions thereof. Provisions shall be made for acceptable design and construction of storm water facilities including grading, gutters, piping, treatment of turf to handle storm waters and erosion prevention. Utilities and maintenance of facilities shall

be in accordance with the requirements and regulations of the appropriate governmental authority having jurisdiction thereof.

A planned unit development application shall not be approved unless adequate assurance is given that public or community water and sanitary sewer service will be available, except that upon application by the developer and good cause shown, the Planning Board may modify or waive this requirement provided such action is consistent with the spirit and intent of this section.

(3) Pedestrian Circulation. Any pedestrian circulation system and its related walkways shall be insulated as completely and as reasonably as possible from the vehicular street system in order to provide separation of pedestrian and vehicular movement. This shall include where deemed to be necessary by the Planning Board pedestrian underpass or overpass in the vicinity of schools, playgrounds, local shopping areas, and other neighborhood uses which generate a considerable amount of pedestrian traffic.

(F) PUD Reviewed as Subdivision.

It is the intent of this regulation that subdivision review be carried out as an integral part of the review of a Planned Unit Development under the Section. The plans required under this Section must be submitted in a form which substantially will satisfy requirements of these regulations for the preliminary and final plat approvals. The plans may also be subject to review by the County Board of Adjustment if the PUD is proposed in a zoned area. Approval of a Special Use Permit for a PUD by the Board of Adjustment shall constitute preliminary plat approval; Planning Board approval of preliminary plat(s) is not required. The Planning Board shall approve all final plats. The Planning Staff has the authority to approve final plats consisting of up to ten (10) lots or buildings. The Planning Board shall approve all other final plats.

(1) Phased Developments. If the proposed PUD is to be developed in phases, the developer shall submit a master plan as specified in Chapter 24.

(2) Advisory Opinion. Prior to formal master plan or a preliminary plat submission, the developer is encouraged to submit a sketch plan of the PUD to the Planning Staff in order to obtain an advisory opinion of the project's feasibility.

Use the following certificate for final plats being approved by Planning Staff:

Certificate of Approval of Recording

I hereby certify that the plat shown heron complies with the Watauga County subdivision regulations. It is approved for recording in the office of the Watauga County Register of Deeds pursuant to Article VII Section 2 (F) of Chapter 18 of the Planning & Development Ordinance.

_____ _____

DATE WATAUGA COUNTY AUTHORIZED REPRESENTATIVE

Section 3. Affordable Housing PUD.

It is the objective of this section to encourage the provision of housing that is affordable to low and moderate income households. These regulations are established in support of Watauga County's adopted Affordable Workforce Housing policy (See Appendix "L") and provide a voluntary alternative procedure to encourage development of housing affordable to all income levels, particularly first time home buyers.

The following are definitions of the words or terms utilized in this Section:

Affordable Dwelling Unit. A dwelling unit that is offered for sale or rent at a total monthly mortgage or rental price (including utilities) which is no greater than 1/12 of 30% of the Area Median Income as established annually by the United Stated Department of Housing and Urban Development, adjusted for assumed household size based on unit size. The assumed household size shall be (2) persons in a one bedroom unit, (3) persons in a two bedroom unit, and (4) persons in units containing three or more bedrooms.

Affordable Housing PUD. A Planned Unit Development, as defined by Article VII Section 1, in which 51% or more of the included dwelling units meet the definition of an Affordable Dwelling Unit.

(A) Minimum Requirements.

The minimum requirements for development of an Affordable Housing PUD shall be as established in Article VII, Section 2(A), with the exception of the following:

(1) Streets within an Affordable Housing PUD shall be constructed in accordance with Article VI, Section 2(B)(3). The right-of-way shall not be less than thirty (30) feet.

(2) Affordable Dwelling Units within an Affordable Housing PUD shall provide one (1) off-street parking space per unit.

(3) When an Affordable Housing PUD contains both Affordable Dwelling Units and market rate housing, the Affordable Dwelling Units shall be intermixed with the market rate units.

(4) When an Affordable Housing PUD contains both Affordable Dwelling Units and market rate housing, the general exterior design and appearance of the Affordable Dwelling Units shall be compatible with the market rate units.

(B) Land Development Standards.

The land development standards for an Affordable Housing PUD shall be as established in Article VII, Section 2(B).

(C) Density.

The density which may be constructed within an Affordable Housing PUD shall be determined by the capacity of the proposed water and sewer systems, provided that the proposed density does not result in the any of the following conditions:

(1) Inconvenient or unsafe access to the development.

(2) Traffic congestion in the streets adjoining the development.

(3) An excessive burden imposed on parks, recreation areas, schools and other public facilities which serve or are proposed to serve the development.

(D) Conveyance and Maintenance of Common Land.

Conveyance and maintenance of common land within an Affordable Housing PUD shall be as established in Article VII, Section 2(D).

(E) Improvements.

Required improvements within an Affordable Housing PUD shall be as established in Article VII, Section 2 (E).

(F) Procedure.

Applications for an Affordable Housing PUD shall be reviewed by Planning Board or Board of Adjustment in accordance with Article VII, Section 2(F). In addition:

(1) Applications containing Affordable Dwelling Units shall be processed with priority over others.

(2) Highest priority for processing shall be given to applications involving partnerships with a community land trust or other non-profit organization responsible for ensuring long-term retention of affordable housing.

(3) The County shall waive review fees associated with Affordable Housing PUDs meeting the criteria established herein.

(4) If market rate housing units are included within an Affordable Housing PUD constructed in phases or over a time period exceeding 12 months, a proportional amount of Affordable Dwelling Units must be completed concurrently with the market rate housing units.

(5) An agreement in a form approved by the County must be recorded with the Register of Deeds requiring Affordable Dwelling Units which are provided under this section to remain as affordable housing for the life of the project. This agreement shall be a covenant running with the land, binding on the assigns, heirs and successors of the applicant.

Article VIII Installation of Permanent Reference Points and Improvements

Section 1. Permanent Reference Points.

Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with N.C.G.S. 89C and N.C.G.S. 47-30, which provide regulations for surveyors for the mapping of subdivisions. Additionally, the following requirements shall be met:

(A) Block Tie Lines. Each block shall have adequate tie line(s) showing bearing and distance between one established point on each side of the road.

(B) Certificate. A certificate signed by the surveyor meeting the requirements of N.C.G.S. 47-30 et. seq**.** for proof upon oath that the plat is in all respects correct, written as shown in Article V, Section 6(B)(2).

Section 2. Installation of Improvements.

Prior to the approval of the final plat, the subdivider shall have complied with the following requirements.

(A) Streets and Storm Drainage Facilities. All streets and storm drainage facilities in the subdivision shall be constructed in accordance with specifications and standards of the State Department of Transportation, Division of Highways, or the Watauga County Road Standards.

(B) Water Lines. Where public water is reasonably accessible, the subdivider shall connect with the public supply and shall provide water mains and a suitable water connection to each lot. Where a public water supply is not reasonably accessible, the subdivider may provide for connection to a community system, establishment of a new public or community system, or for shared or individual wells. Water source shall be noted on the final plat.

(C) Sanitary Sewers. Where a public sanitary sewer system is reasonably accessible, the subdivider shall connect with the public system and shall provide a connection for each lot. Where a public sanitary sewer

system is not accessible, the subdivider may provide for connection to an existing private system, establishment of a new private system, or for shared or individual septic systems. Sewage disposal method shall be noted on the final plat.

(D) Installation at time of Final Plat. In the event that any public or community utilities are not installed at the time of final plat approval, bond or other security guarantee may be required by the Planning Board as specified in Article VIII, Section 3.

Section 3. Deferment of Improvements.

Where it is in the best interest of all parties concerned to defer the installation or completion of some required improvement, and in accordance with N.C.G.S. 160D-804.1, the Planning Board may approve the final plat if the subdivider posts a bond with surety or other guarantees satisfactory to the County Commissioners in an amount equal to the estimated cost of the deferred improvements plus twenty-five (25) percent. The guaranteed improvements shall be accomplished within one year of the Planning Board approval of the final plat. The Planning Board may, upon proof of difficulty, grant an extension of the completion date set forth in its approval for a maximum period of six (6) additional months. Such guarantees shall assure either the performance of the specified work or payment of the specified sum to the County if such improvements have not been installed within the time specified on the final plat. At least fifty percent (50%) of the required improvements shall be completed prior to submission of a request for approval of a performance guarantee by a subdivider.

ARTICLE IX - Regulation Of Multi-Unit Structures

Section 1. Definition.

A "multi-unit" structure is a building containing three (3) or more separate and independent dwellings, offices, or commercial establishments (excluding hotels/motels). This definition shall apply whether the building and/or individual units contained within are for sale, lease, or rent.

An "Affordable Housing Multi-Unit Structure" is a multi-unit structure containing at least (3) dwelling units, 51% or more of which are offered for sale or rent at a total monthly mortgage or rental price (including utilities) which is no greater than 1/12 of 30% of the Area Median Income as established annually by the United Stated Department of Housing and Urban Development, adjusted for assumed household size based on unit size. The assumed household size shall be (2) persons in a one bedroom unit, (3)

persons in a two bedroom unit, and (4) persons in units containing three or more bedrooms.

Section 2. Purpose.

The purpose of this article is to provide for a site plan review of multi-unit structures in order to regulate density, parking/loading, building setbacks, and other public health, safety, and general welfare concerns.

Section 3. Application of Article.

This Article shall apply to any multi-unit construction which consists of one (1) building only. Any multi-unit development consisting of two (2) or more building sites or any townhouse development regardless of the number of buildings, shall comply with Article VII (Planned Unit Development) of this Ordinance, including phased developments where each phase consists of one (1) building only.

Section 4. Standards of Design.

The developer shall observe the following standards of design.

(A) Density.

The number of units per acre allowed shall depend upon the availability of public/community water and sewer facilities and shall be determined as described in Article VII, Section 2(C) and depicted on Table 1. If no roadway is to be constructed, the same method of calculating density shall be used, except that the gross area will not be required to be reduced by fifteen (15) percent. A minimum of thirty three percent (33%) of the total land area must be permanently dedicated as any combination of common space, open space or green space. Road and parking areas and buildings shall not be included in common land for purposes of this subsection; areas designated for septic drain lines and repair areas and well buffers shall be included. Also included, for example, are outdoor recreation areas and no-wall structures such as picnic shelters.

For Affordable Housing Multi-Unit Structures, the number of units per acre allowed shall depend upon the capacity of proposed water and sewer system(s), provided that the proposed density does not result in the any of the following conditions:

(1) Inconvenient or unsafe access to the development.

(2) Traffic congestion in the streets adjoining the development.

(3) An excessive burden imposed on parks, recreation areas, schools and other public facilities which serve or are proposed to serve the development.

(B) Off-Street Parking/Loading.
The provisions of Article VII, Section 2(A) shall apply. At a minimum, parking areas shall be graveled. For Affordable Multi-Unit Structures, one (1) required off-street parking space may be eliminated for each Affordable Dwelling Unit provided. Additional parking reductions may be allowed when development:

(1) Is an adaptive re-use of previously developed property, or
(2) Is located within 1 mile of Appalachian State University or other major employment center, or
(3) Is located on an established AppalCart Route, or
(4) Has transit service or other acceptable alternative transportation provided by the developer.

(C) Streets and Private Drives.
All multi-unit structures shall front on a state-maintained road or a county standard road as defined in this chapter. A private drive may be used to provide access to one three (3) unit structure.

(D) Height Requirements.
All multi-unit structures shall comply with the Watauga County Height of Structures regulation or the North Carolina Ridge Law, whichever is applicable. Building height will be determined by the Watauga County Building Inspector.

(E) Building Setback Requirements.
Building setbacks shall conform with Table 2 (Article VI, Section 3), unless superseded by Appendix J.

(F) Utilities.
Developers of multi-unit structures are encouraged to provide public/community water and sewer facilities whenever feasible. Developers are also encouraged to provide underground electric and telephone lines where feasible.

(G) Buffers.
It is the intent of this chapter to promote high quality multi-unit developments which do not create a nuisance, aesthetic or otherwise, for existing adjacent residential areas. Therefore, the provisions of Appendix J shall apply.

Section 5. Submission of Site Plans.

Developers of proposed multi-unit structures which will be regulated by this Article shall submit a site plan to the Planning Staff. If the proposed structure contains ten (10) or less units, the Staff shall approve or disapprove said plan. If the proposed structure contains eleven (11) or more units, or the developer is requesting a variance, the Planning Board shall approve or disapprove said plan. Construction may begin upon such approval. Site plans shall show how

the requirements of the preceding Section 4 will be met. Specifically, site plans shall include as applicable:

(A) A sketch vicinity map showing the relationship of the proposed development with the surrounding area.

(B) The location of existing and platted property lines, streets, buildings, water courses, transmission lines, sewers, bridges, culverts, and drain pipes, water mains, city and county line (if adjoining) and any public utility easements.

(C) Boundaries of the tract shown with distances and approximate acreage.

(D) Names of adjoining property owners or subdivisions.

(E) Zoning classification, if any, both on the land to be developed and on adjoining land.

(F) Proposed streets, street names, rights-of-way, roadway widths, approximate grades and proposed drainage facilities.

(G) Other proposed rights-of-way or easements showing locations, widths and purposes.

(H) Proposed building set back lines.

(I) Proposed utility layouts (sewer, water, electricity showing connections to existing systems or plans for central water system or package sewage system, or designation for individual water and sewage.

(J) Proposed parks, open spaces, or any other public areas.

(K) Name of owner, developer, engineer and registered surveyor.

(L) Title, date, north point and graphic scale.

(M) When an area covered by the plan includes or abuts a water area (stream, river or lake) the following additional information is required:

- **(1)** Relationship with floodway and flood plain as delineated by the county floodway boundary and flood insurance rate maps.
- **(2)** Any proposed dock lines beyond which no dock structure may be constructed.
- **(3)** Methods of providing ingress and egress from uplands to water area.
- **(4)** Names of the owners of the water area.

(N) Grading and erosion control shall be undertaken in accordance with Article VI, Section 1(M).

Section 6. Inspections.

Prior to issuance of an Inspection Certificate for a final building inspection, the Planning Staff shall conduct a site inspection to assure that the multi-unit structure meets the requirements of this Article. The developer of a multi-unit structure shall pay an inspection fee (in addition to purchase of a building

permit) in the same amount per structure as is assessed for Planned Unit Developments.

Section 7. Building Permits.

No permits for any building or structures will be issued upon any land requiring approval as a subdivision under the conditions set forth herein, unless a final plat is recorded, except as set forth elsewhere in this chapter.

Should any Federal or State regulation or statute incorporated herein by reference or otherwise referred to herein, be changed or amended, or should either require or mandate a different procedure or change or impose new, different or additional requirements, then, in that event, this ordinance shall be deemed to have been amended without further action to have complied with such new, additional or amended requirements.

Appendix A Guide For Sub-Division Development In Watauga County

1. Evaluate your property for either sub-dividing or planned unit development (resorts, clusters, time-shares, condominiums, townhouses, apartments, etc.) suitability.

2. Evaluate your capital outlay for road(s) and other improvement and environmental protection measures.

3. Consult the Department of Planning and Inspections at (828)265-8043 to ascertain the legal aspects and requirements for any such projects.

4. Consult a licensed surveyor and/or professional engineer for project drawings and layout.

5. Maintain close contact with those persons contracted for the planning phase of the project so as to have a working knowledge of the project.

6. Solicit bids and/or contract a grading contractor to complete all planned construction.

7. The developer will be responsible for environmental protection measures during development and also will be financially responsible for all work on the project.

8. Present a finished development that complies with all local and state ordinances concerning land use and also one that is appealing to the consumer.

9. In working with the Watauga County Ordinance to Govern Subdivisions and Multi-Unit Structures, the Watauga County Soil Erosion and Sedimentation Control Ordinance and the Watauga County Building Inspectors and Fire Marshal, those persons responsible for each area will assist you in the construction stages of development.

10. Obtain copies of the following additional regulations from the Department of Planning and Inspections as needed:

    Flood Damage Prevention.
    N.C. Ridge Law.
    The Height of Structures.
    Mobile Home Parks.
    Subdivision Regulations for Recreational Vehicle Parks.
    Valle Crucis Historic District.
    Foscoe Grandfather Zoning.
    Watershed Protection.

Appendix B Guidelines For Developing Erosion and Sediment Control Plans

Section 1. Introduction.

Extensive amounts of sediment are produced from grading streets and roads in the mountain sections of North Carolina when erosion control measures are not properly designed and installed. Irreversible damage to land, streams and lakes is occurring from acceleration of development in this area. This is offered as a minimal guideline, but the developer must keep in mind that the Sediment and Pollution Control Act and the Watauga County Soil Erosion and Sedimentation Control regulations are performance oriented and s/he must do whatever is necessary to prevent off-site damage.

This guide is developed to assist planners and developers to protect land and streams from sedimentation as required by the Watauga County Soil Erosion and Sedimentation Control regulations.

Said regulations require that an erosion control plan be prepared and its measures installed where one-half acre or more is disturbed by grading. This also applies to all subdivision roads and any land disturbing activity which causes off-site erosion damage regardless of acreage.

The practices in this guide, when properly installed and maintained, are methods used in the past that have minimized erosion and sedimentation and meet the mandatory standards required by the Sedimentation Pollution Control Act of 1973 and the Watauga County Soil Erosion and Sedimentation Control regulations. The mandatory standards are listed on the following page.

Section 2. Mandatory Standards For Land Disturbing Activity

No land disturbing activity subject to this article shall be undertaken except in accordance with the following mandatory requirements:

Buffer Zone

(A) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five (25%) of the buffer

zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the county may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(B) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(C) The 25 foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.

(D) Where a temporary and minimal disturbance is permitted as an exception by Chapter 8 of this Title, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of 10% of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.

(E) No land-disturbing activity shall be undertaken with a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15A NCAC 2B.0211 "Fresh Surface Water Classification and Standards", in these waters.

(1) Graded Slopes and Fills -The grading plan and specifications controlling execution of land disturbing activities shall adhere to the following standards:

a) Maximum cut slopes shall be 2H:1V.

b) Maximum fill slopes shall be 2H:1V.

Innovative designs exceeding the slope standards specified herein may be approved when accompanied by a site-specific subsurface investigation, report and recommendation performed by a registered professional engineer competent in geotechnical engineering. All grades shall be sloped to drain surface water away from buildings, pavements, slopes and structures, as applicable.

Slopes left exposed will, within seven (7) days of ceasing land disturbance for slopes steeper than 3:1 and fourteen (14) days of ceasing land disturbance for slopes less than 3:1 be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

(2) Ground Cover - Whenever land-disturbing activity is undertaken on a tract comprising more than one-half acre, if

more than one-half acre is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in Chapter 8, provisions for a ground cover sufficient to restrain erosion must be accomplished within within 14 days of ceasing land disturbance.

(3) Prior Plan Approval - No person shall initiate any land-disturbing activity on a tract if more than one-half acre is to be uncovered unless, thirty or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with and approved by Watauga County, or unless for land-disturbing activity or more than a half acre but less than an acre the requirement for such plan had been waived as specified in Chapter 8. The County will attempt to review plans as quickly as possible. The initiation of land-disturbing activities shall not be restricted when the plan is approved and permit issued in less than 30 days.

Section 3. Design and Performance Standards

(A) Except as provided in Chapter 8 erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the 10-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices", or other acceptable calculation procedures.

(B) In High Quality Water (HQW) zones the following design standards shall apply:

(1) Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.

(2) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed and constructed to provide protection from the run off of the 25-year storm which produces the maximum peak rate of run off as calculated according to procedures in the United States

Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(3) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.04 mm) size soil particle transported into the basin by the runoff of that 2-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(4) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than 2 horizontal to 1 vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(5) Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within seven (7) days of ceasing land disturbance.

Section 4. Planning and Design Considerations to Control Erosion and Sedimentation

The following list of considerations, activities, and techniques of development within Watauga County should all be taken into account during the planning phase of a development:

A. Reducing the Potential for Off-site Sediment Damage
B. Location of Roads
C. Soil Types and Properties
D. Buffer Zones
E. Construction Techniques
F. Sequence of Construction and Time of Soil Exposure
G. Seasonal Construction Scheduling

H. Clearing and Grubbing
I. Stream Crossings and Stream Protection
J. Road Grades and Side Ditches
K. Road Cut & Fill Slopes
L. Underground Seepage or Wetlands
M. Culvert Placement and Sizing
N. Borrow and Waste Areas
O. Utility Placement
P. Roadbed Stabilization
Q. Floodplain/Floodway
R. Specifications Guide for Application of Temporary Seeding
S. Permanent Vegetation
T. Specifications Guide for Permanent Planting of Vegetation on Road and Right-of-Way

When planning for the considerations listed above, minimum acceptable standards must be adhered to. These standards have been established to control erosion and sedimentation during construction, and also to control erosion during the life-time operation of roads built in Watauga County.

Appendix C Erosion and Sedimentation Plan Checklist

EROSION and SEDIMENTATION CONTROL PLAN PRELIMINARY REVIEW CHECKLIST

The following items shall be incorporated with respect to specific site conditions, in an erosion & sedimentation control plan:

NPDES Construction Stormwater General Permit NCG010000

_____ Designation on the plans where the 7 or 14 day ground stabilization requirements apply per Section II.B.2 of the permit.
_____ Design of basins with one acre or more of drainage area for surface withdrawal as per Section II.B.4 of the permit.

LOCATION INFORMATION

_____ Project location & labeled vicinity map (roads, streets, landmarks)
_____ North arrow and scale
_____ Identify River Basin.
_____ Provide a copy of site located on applicable USGS quadrangle and NRCS Soils maps if it is in a River Basin with Riparian Buffer requirements.

GENERAL SITE FEATURES (Plan elements)

_____ Property lines & ownership ID for adjoining properties
_____ Existing contours (topographic lines)
_____ Proposed contours
_____ Limits of disturbed area (provide acreage total, delineate limits, and label). Be sure to include all access to measures, lots that will be disturbed, and utilities that may extend offsite.
_____ Planned and existing building locations and elevations
_____ Planned & existing road locations & elevations, including temporary access roads
_____ Lot and/or building numbers
_____ Hydrogeologic features: rock outcrops, seeps, springs, wetland and their limits, streams, lakes, ponds, dams, etc. (include all required local or state buffer zones and any DWQ Riparian Buffer determinations)
_____ Easements and drainageways, particularly required for offsite affected areas. Include copies of any recorded easements and/or agreements with adjoining property owners.
_____ Profiles of streets, utilities, ditch lines, etc.
_____ Stockpiled topsoil or subsoil locations
_____ If the same person conducts the land-disturbing activity & any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land-disturbing activity unless the borrow or waste activity is regulated under the Mining Act of 1971, or is a landfill regulated by the Division of Waste Management. If the land-disturbing activity and any related borrow or waste activity are not conducted by the same person, they shall be considered separate land-disturbing activities and must be permitted either through the Sedimentation Pollution Control Act as a one-use borrow site or through the Mining Act.
_____ Location and details associated with any onsite stone crushing or other processing of material excavated. If the affected area associated with excavation, processing, stockpiles and transport of such materials will comprise 1 or more acres, and materials will be leaving the development tract, a mining permit will be required.
_____ Required Army Corps 404 permit and Water Quality 401 certification (e.g. stream disturbances over 150 linear feet)

EROSION & SEDIMENT CONTROL MEASURES (on plan)

_____ Legend (provide appropriate symbols for all measures and reference them to the construction details)
_____ Location of temporary measures
_____ Location of permanent measures
_____ Construction drawings and details for temporary and permanent measures. Show measures to scale on plan and include proposed contours where necessary. Ensure design storage requirements are maintained through all phases of construction.
_____ Maintenance requirements for measures
_____ Contact person responsible for maintenance

SITE DRAINAGE FEATURES

_____ Existing and planned drainage patterns (include off-site areas that drain through project and address temporary and permanent conveyance of stormwater over graded slopes)
_____ Method used to determine acreage of land being disturbed and drainage areas to all proposed measures (e.g. delineation map)
_____ Size, pipe material and location of culverts and sewers
_____ Soil information: type, special characteristics
_____ Soil information below culvert storm outlets
_____ Name and classification of receiving water course or name of municipal operator (only where stormwater discharges are to occur)

STORMWATER CALCULATIONS

_____ Pre-construction runoff calculations for each outlet from the site (at peak discharge points). Be sure to provide all supporting data for the computation methods used (rainfall data for required storm events, time of concentration/storm duration, and runoff coefficients).
_____ Design calculations for peak discharges of runoff (including the construction phase & the final runoff coefficients for the site)
_____ Design calcs for culverts and storm sewers (include HW, TW and outlet velocities)
_____ Discharge and velocity calculations for open channel and ditch flows (easement & rights-of-way)
_____ Design calcs for cross sections and method of stabilization for existing and planned channels (include temporary linings). Include appropriate permissible velocity and/or shear stress data.
_____ Design calcs and construction details for energy dissipaters below culvert and storm sewer outlets (include stone/material specs & apron dimensions). Avoid discharges on fill slopes.
_____ Design calcs and dimension of sediment basins (note current surface area and dewatering standards as well as diversion of runoff to the basins). Be sure that all surface drains, including ditches and berms, will have positive drainage to the basins.

VEGETATIVE STABILIZATION

_____ Area & acreage to be stabilized with vegetation
_____ Method of soil preparation
_____ Seed type & rates (temporary & permanent)
_____ Fertilizer type and rates
_____ Mulch type and rates (include mulch anchoring methods to be used)

NOTE: Plan should include provisions for groundcover in accordance with NPDES Construction Stormwater General Permit NCG010000 and permanent groundcover for all disturbed areas within 15 working days or 90 calendar days (whichever is shorter) following completion of construction or development.

FINANCIAL RESPONSIBILITY/OWNERSHIP FORM

_____ Completed, signed & notarized FR/O Form
_____ Accurate application fee payable to NCDENR ($65.00 per acre rounded up the next acre with no ceiling amount)
_____ Certificate of assumed name, if the owner is a partnership
_____ Name of Registered Agent (if applicable)
_____ Copy of the most current Deed for the site. Please make sure the deed(s) and ownership information are consistent between the plan sheets, local records and this form.
_____ Provide latitude & longitude (in decimal degrees) at the project entrance.

NOTE: For the Express Permitting Option, inquire at the local Regional Office for availability.

NARRATIVE AND CONSTRUCTION SEQUENCE

_____ Narrative describing the nature & purpose of the construction activity
_____ Construction sequence related to erosion and sediment control (including installation of critical measures prior to the initiation of the land-disturbing activity & removal of measures after areas they serve are permanently stabilized). Address all phases of construction and necessary practices associated with temporary stream bypasses and/or crossings.
_____ Bid specifications related only to erosion control

Appendix D Ownership/Financial Responsibility Form

FINANCIAL RESPONSIBILITY/OWNERSHIP FORM
SEDIMENTATION POLLUTION CONTROL ACT

No person may initiate any land-disturbing activity on one or more acres as covered by the Act before this form and an acceptable erosion and sedimentation control plan have been completed and approved by the Land Quality Section, N.C. Department of Environmental Quality. Submit the completed form to the appropriate Regional Office. (Please type or print and, if the question is not applicable or the e-mail and/or fax information unavailable, place N/A in the blank.)

Part A.

1. Project Name_____

2. Location of land-disturbing activity: County_____ City or Township_____

   Highway/Street_____ Latitude_____ Longitude_____

3. Approximate date land-disturbing activity will commence:_____

4. Purpose of development (residential, commercial, industrial, institutional, etc.):_____

5. Total acreage disturbed or uncovered (including off-site borrow and waste areas):_____

6. Amount of fee enclosed: $_____.

7. Has an erosion and sediment control plan been filed? Yes_____ No_____ Enclosed_____

8. Person to contact should erosion and sediment control issues arise during land-disturbing activity:

   Name_____ E-mail Address_____

   Telephone_____ Cell # _____ Fax # _____

9. Landowner(s) of Record (attach accompanied page to list additional owners):

   _____ _____ _____
   Name Telephone Fax Number

   _____ _____
   Current Mailing Address Current Street Address

   _____ _____
   City State Zip City State Zip

10. Deed Book No._____ Page No._____ Provide a copy of the most current deed.

Part B.

1. Company (ies) or firm(s) who are financially responsible for the land-disturbing activity (Provide a comprehensive list of all responsible parties on an attached sheet.) *If the company or firm is a sole proprietorship the name of the owner or manager may be listed as the financially responsible party.*

   _____ _____
   Name E-mail Address

   _____ _____
   Current Mailing Address Current Street Address

   _____ _____
   City State Zip City State Zip

Telephone_____ Fax Number_____

2. (a) If the Financially Responsible Party is not a resident of North Carolina, give name and street address of the designated North Carolina Agent:

Name	E-mail Address
Current Mailing Address	Current Street Address
City State Zip	City State Zip
Telephone_____	Fax Number_____

(b) If the Financially Responsible Party is a Partnership or other person engaging in business under an assumed name, **attach a copy of the Certificate of Assumed Name.** If the Financially Responsible Party is a Corporation, give name and street address of the Registered Agent:

Name of Registered Agent	E-mail Address
Current Mailing Address	Current Street Address
City State Zip	City State Zip
Telephone_____	Fax Number_____

The above information is true and correct to the best of my knowledge and belief and was provided by me under oath (This form must be signed by the Financially Responsible Person if an individual or his attorney-in-fact, or if not an individual, by an officer, director, partner, or registered agent with the authority to execute instruments for the Financially Responsible Person). I agree to provide corrected information should there be any change in the information provided herein.

Type or print name	Title or Authority
Signature	Date

I, _____, a Notary Public of the County of _____

State of North Carolina, hereby certify that _____ appeared personally before me this day and being duly sworn acknowledged that the above form was executed by him.

Witness my hand and notarial seal, this _____day of _____, 20_____

_____
Notary

Seal

My commission expires_____

Appendix E Preliminary Plat Checklist

FOR SUBDIVISION RECORD _____ DATE SUBMITTED _____

NAME OF SUBDIVISION _____

LOCATION _____

OWNER _____

LAND PLANNER _____ ADDRESS _____

SURVEYOR _____ ADDRESS _____

CHECKLIST

1. Surveyor shall submit CHECKLIST with signed certification stating that plat complies with Subdivision Regulations.

2. Vicinity map embracing subdivision and surrounding area.

3. SCALE: 1" = 100' or larger. In EXTREME cases may be 1" = 200'. One (1) electronic copy of plat**.**

4. Name of subdivision and owner.

5. North point, graphic scale, date.

6. Boundaries of the tract shown with distances and approximate acreage.

7. Names of adjoining property owners or subdivisions.

8. The locations of existing sewers and water facilities and other utilities if any.

9. The locations of existing streets, easements, bridges, culverts, watercourses, etc.

10. Name, location and approximate dimensions of proposed streets, easements, parks and reservations, lot lines, etc.

11. Proposed lot lines, building lines and approximate area.

12. Lot numbers, if any.

13. Types of proposed utilities shown or described.

14. Proposed minimum building setbacks (typical section).

15. Location of existing water areas/floodway/floodplain, if applicable, as delineated by the flood insurance rate maps.

16. This plat conforms to general requirements and minimum design standards.

17. Evidence of access right-of-way.

18. Statement of average cross slope if applicable**.**

COMMENTS:

Appendix F Final Plat Checklist

FOR SUBDIVISION RECORD _____ DATE SUBMITTED_____

PRELIMINARY APPROVAL DATE _____

NAME OF SUBDIVISION _____

LOCATION _____

OWNER _____ ADDRESS _____ TEL. _____

ENGINEER _____ ADDRESS _____ TEL. _____

SURVEYOR _____ ADDRESS _____ TEL. _____

CHECKLIST

1. Submitted to the Planning Staff within 18 months of preliminary approval.
2. Eight (8) copies of final plat. One (1) electronic copy of plat**.**
3. A sketch vicinity map showing location in relation to the surrounding area.
4. SCALE: 1" = 100' or larger.
5. Names, right-of-way, lines and easements of streets and roads.
6. Minimum building setback lines when applicable.
7. Lot lines, numbers, and/or tract numbers.
8. Reservations, easements, public areas, of sites for other than residential use with explanation of purpose.
9. North point, graphic scale, date.
10. Location and description of monuments.
11. Names and location of adjoining subdivisions and streets and the location and ownership of adjoining unsubdivided property.
12. Conforms to general requirements and minimum design standards.
13. Required improvements have been made or $_____bond posted.
14. Required certificate for Recordation.
15. Location of existing water Areas/Floodway/Floodplain, if applicable, as delineated by the Flood Insurance Rate Maps.

16. Types of proposed utilities shown or statement that individual lots have or have not been approved for septic tank use by AppHealthCare.

17. Density in units per acre.

18. Culvert/drainage facility location and size.

19. Variances granted, if any.

ON-SITE FIELD INSPECTION (DATE) _____

PERSONS MAKING INSPECTION _____

COMMENTS:

Appendix G Subdivision Specifications Checklist

1. Plat fee paid.

2. Variance requested in writing.

3. Bond to be submitted.

4. Meets floodplain regulations.

5. Acceptable average cross slope.

6. Roads:

    (a) State

    (b) County. If County then:

    _____Meets criteria permitting county standards.
    _____Meets right-of-way requirements.
    _____Meets road bed requirements.
    _____Sufficient drainage provided.
    _____Meets grade requirements.
    _____Meets curve radius requirements.
    _____Sufficient turnarounds provided.
    _____Meets bridge requirements.

    (c) Access road meets right-of-way requirements.

7. Lots:

    _____Meet frontage requirements.
    _____Meet area requirements.
    _____Panhandles used.
    _____Meet access requirements.
    _____Private drives used.

8. Meets building setback requirements.

9. Sufficient erosion control plan submitted.

10. Property owner's association rules established.

11. Compliance with other applicable local regulations (zoning, etc.).

Appendix H Method of Defining Slope

The chief source of information for determination of slope is a contour map. The contour map supplies the necessary data for using the following formula to determine the average slope of a parcel:

$$S = \frac{.0023 \times I \times L}{A}$$

Where .0023 is a conversion factor, of square feet to acres, "I" is the contour interval (or the distance between adjacent contour lines on the map) in feet, "L" is the total length of the contour lines within the subject parcel, and "A" is the area in acres of the subject parcel.

Step 1. Determine "I", the contour interval, by examining the interval, using the key on the map. For purposes of this example, an interval of five feet is used.
(To achieve accuracy within one percent, the contour interval must be 10 feet or less).

Step 2. Determine "L", the total length of the contour lines within the subject area, by tracing each line with a planimeter or similar device and converting to feet. In this example, "L" is 1,000 feet.

Step 3. Determine "A", area (in acres) from the development plans or permit application. In this example, "A" is 5 acres.

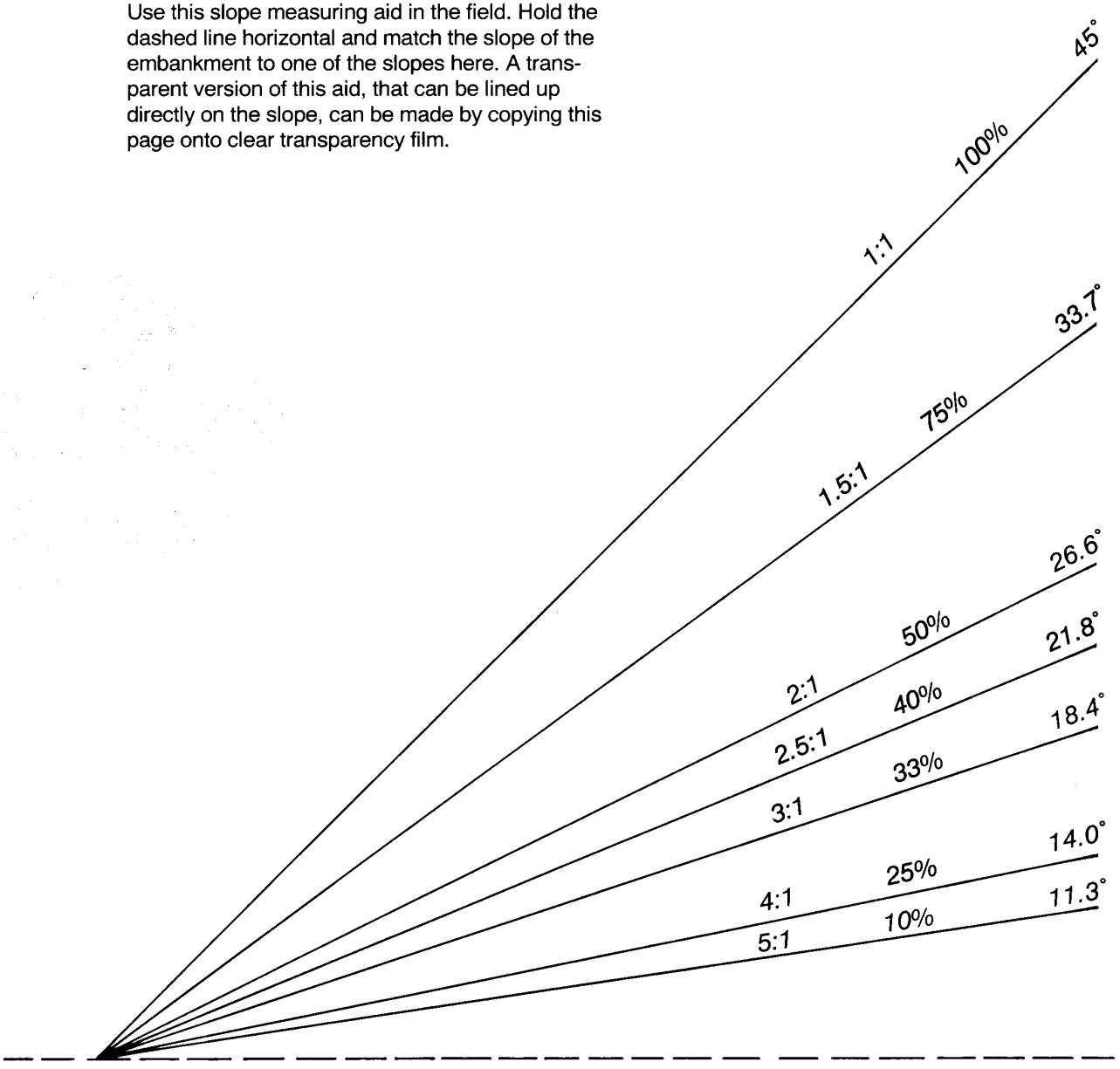
Step 4. Determine "S" by using the equation:

$$S = \frac{.0023 \times 5 \times 1{,}000}{5} = 2.3 \text{ percent average slope}$$

NOTE: Other methods of calculating average cross slope - using computer mapping/GIS technology - may be acceptable.

Slope Measurement

Use this slope measuring aid in the field. Hold the dashed line horizontal and match the slope of the embankment to one of the slopes here. A transparent version of this aid, that can be lined up directly on the slope, can be made by copying this page onto clear transparency film.



Appendix I Minor Bridge Maintenance Checklist

(A) Bridge Approach

(1) Check Signs on both ends of bridge.
Warning and Information Signs (straighten, clean, and cut weeds).
Bridge End Markers (clean and visible).
Check Guard Rails along approach (repair and straighten).

(2) Clear Weed, Brush, and Overhanging Limbs.
Require clear visibility of bridge.
Police and clean area around bridge.
Remove all debris from site.

(B) Side Ditches and Stream Channel

(1) Clear side ditches of all brush, weeds and debris.

(2) Clear debris and obstructions from stream channel through full width of R.O.W.

(3) Eliminate all brush growing under the bridge.

(C) Erosion of Bridge Approach

(1) At gutter line on shoulder - fill any eroded areas.

(2) At gutter line, build (if needed) paved channel to carry water to side ditch at non-erosive velocity.

(3) Check shoulders for erosion signs - fill and tamp erosion channels.

(D) Condition of Approach Road Traffic Lanes

(1) Fill all ruts.

(2) Check transition from road to bridge - must be smooth.

(3) Build short bituminous ramp to provide transition in difficult cases.

(E) Bridge Structure

(1) Cleaning Deck
Clean all dirt, gravel, trash and debris from deck. Clear all gutters and all drainage outlets.
Remove any obstructions causing ponding of water. Direct deck drains away from all structural components.

(2) Deck Maintenance (Wood Decks)
Check transverse planking for breaks, rotting, or any weakness. Replace individual planks if needed. Check longitudinal "tread" planks for damage, excessive wear, breaks, shattering, looseness or rot. Replace damaged planks - re-nail old planks if required. Pull any protruding nails and replace.

(3) Deck Maintenance (Concrete Decks)
Clean, check depth, and flush all open cracks. Dry such cracks and fill totally with liquid asphalt or other such sealing

compound. Make notes on any system of patterned crack and report them to road supervisor. For small shrinkage cracks (those not fully opened) check with road supervisor about a spray coat sealant. Pop-outs, surface deterioration, or chuck holes in deck must be cleaned thoroughly and packed smooth with bituminous road surface mixture. Provide a mechanical "lock" to hold patch in place. Eliminate "low" spots to prevent water ponding.

(F) Expansion Joints

Deck expansion joints should be identified and cleaned. Remove dirt, gravel, debris and other obstructions from expansion joint opening. Do this when bridge is cool so joint is as wide open as possible. For open expansion joint slot, fill the opening with an elastic joint sealer compound or a special compressible composite joint filler. For plate covered joint slot, clean the sliding surface of any obstructions and treat sliding surface if necessary to make it free operating.

(G) Bridge Structural Components

(1) Truss Bridges

Clear debris from truss joints, flanges of truss members, or any pockets that have collected debris, gravel or dirt.

(2) Girders and Beams

Clear any debris found on flanges or on any bracing occurring on the structure.

(3) Handrails and Curbs

Repair any bent, broken, or missing parts of the bridge handrail or curbs.

(4) Bearing Devices

Bearing devices are points where bridge structure is attached to the substructure (piers, abutments, or other supports). Identify the "fixed" and movable bearings. Clear all dirt, disintegrated concrete, debris of any kind which collects around the bearings - fixed or movable. Especially clear any obstruction that would prevent movable support from being able to function. Once cleared, spray with oil to prevent rusting and to assist movement.

(H) Substructure

(1) Abutments

Note cracking of main wall or wing wall. Assess serious movement of any part of the abutment. Report out-of-plumb components and any serious deterioration of the abutment. Note any erosion of stream that may undermine the abutment, and eliminate cause. Fill and tamp any rodent holes along base of the abutment and its wing walls.

(2) Piers

Note and correct any water drainage on pier or the pier cap. Note any cracks or deterioration of pier. Repair where possible. Check for undermining of pier foundation and correct cause if possible. Check pier for "plumb-ness" or any signs of movement.

Source: Minor Maintenance Manual For County Bridges, Highway Extension and Research Project for Indiana Counties and Cities, Purdue University,1984.

Appendix J Buffering and Screening

(A) Where a PUD is proposed adjacent to a single family residential use, side and rear yard setback of 30 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer and shall be landscaped as follows. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no more than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one half (1-1/2) inch caliper (trunk diameter 6 inches above grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) at maturity. Where utility easements conflict with this height requirement, the requirement may be lessened at the discretion of the Planning Staff. In addition, plantings of low growing shrubs, and/or trees shall be placed at ten (10) foot intervals. Plantings within buffer zones shall be staggered unless topography is prohibitive. No planting shall be placed in the road right-of-way. Lists of recommended plantings are available from the Planning and Inspections Department.

(B) Where a PUD is proposed adjacent to a commercial or multi-family use side and rear yard setback of 15 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer and shall be landscaped as follows. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no more than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and none half (1-1/2) inch caliper for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet at maturity, unless reduced by staff due to utility easements. In addition, permanent ground cover such as grasses shall be established.

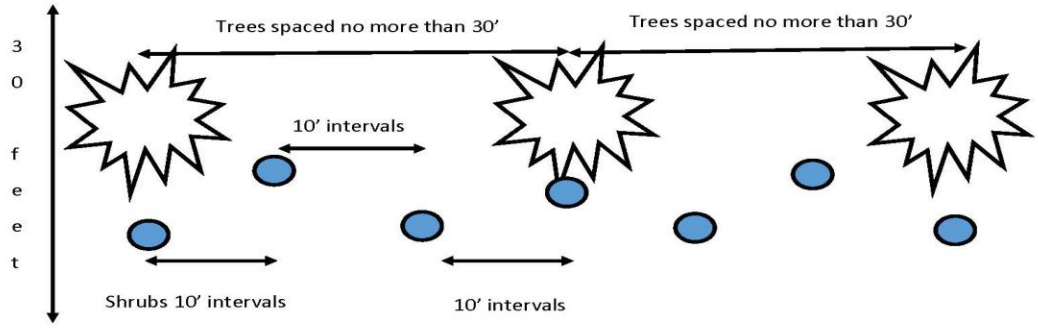
(C) Walls, fences, earthen berms, or other natural features may be used in combination with or in lieu of planted buffers if approved as part of a permit. Considerations include but are not limited to:

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

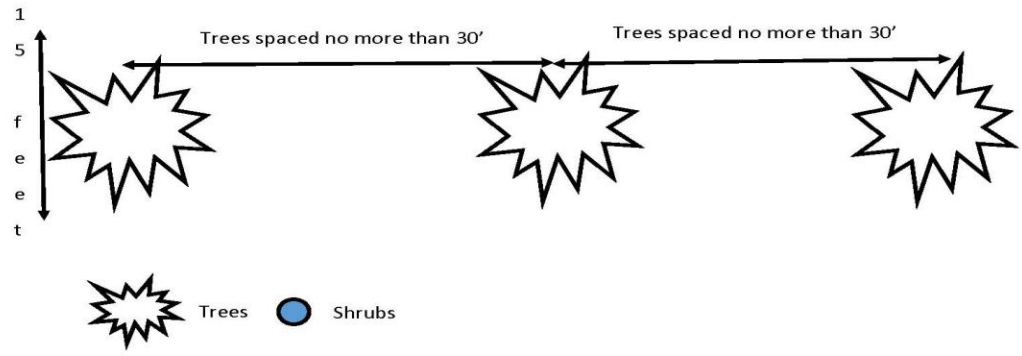
vegetation and/or site features within the buffer do not meet or exceed the requirements of this ordinance.

(D) Open storage areas, exposed machinery and outdoor areas used for the storage and collection of rubbish must be visually screened from roads and surrounding land uses. Suitable types of screening include opaque wood fences and dense evergreen hedges of six (6) feet or more in height. Where evergreen hedges are proposed, a temporary fence should be built to provide screening until the evergreens are of sufficient height.

Required buffer between PUD and Single Family residential use.

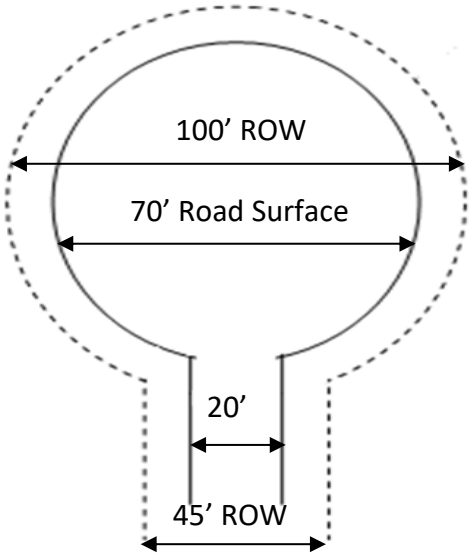


Required buffer between PUD and Commercial or Multi-Family use.

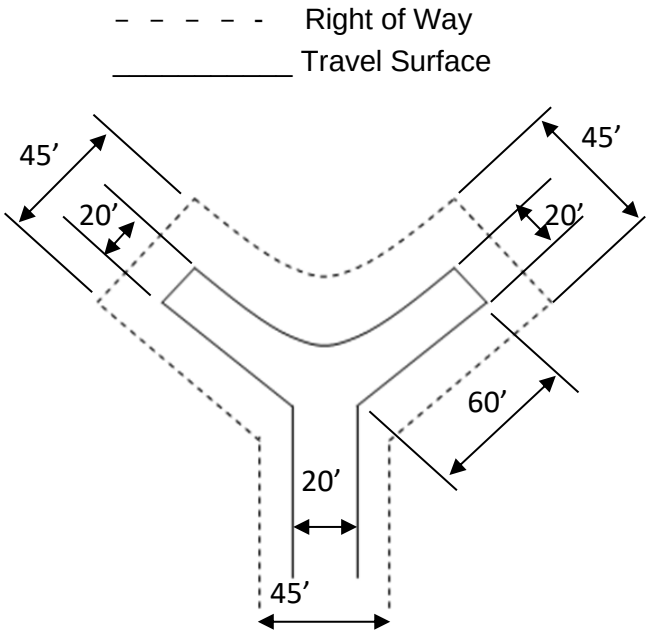


*Required trees must be six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one half (1-1/2) inch caliper (trunk diameter 6 inches above grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) at maturity.

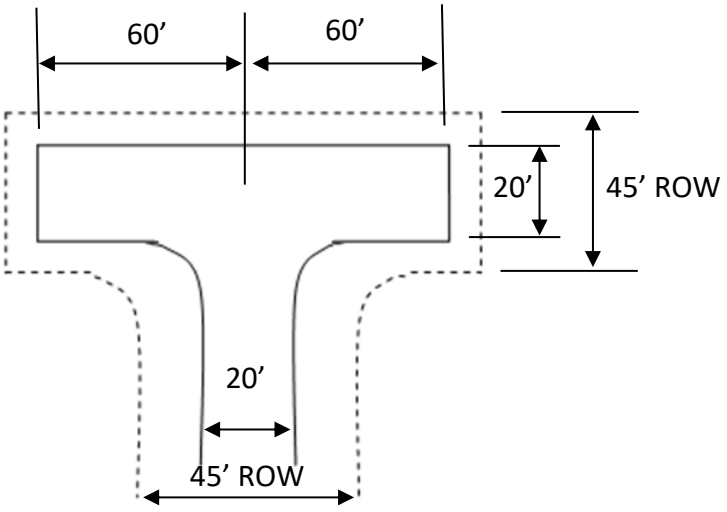
Appendix K Fire Apparatus Access Roads



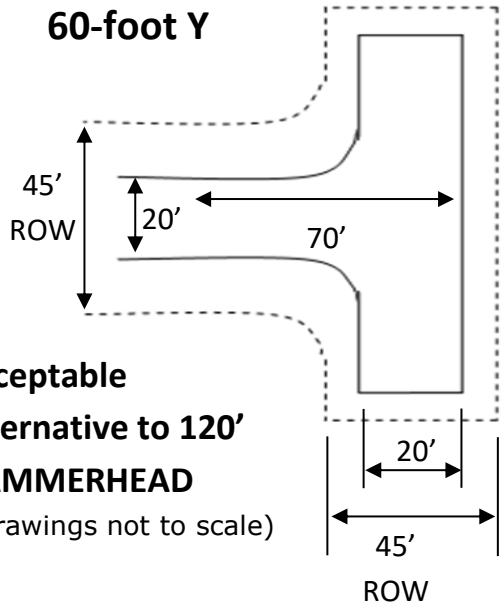
96’ CUL-DE-SAC



60-foot Y



120’ HAMMERHEAD



Acceptable Alternative to 120’ HAMMERHEAD

(Drawings not to scale)

Appendix L Affordable Workforce Housing Policy

Section 1. Background.

The generally accepted definition of affordability is for a household to pay no more than 30 percent of its annual income on housing. An estimated 12 million renter and homeowner households now pay more than 50 percent of their annual income on housing. The lack of affordable housing is a significant hardship for low-income and working households and prevents them from meeting other basic needs, such as food, clothing, transportation and medical care.

Availability of housing for all income levels is critical for balanced and healthy growth of the County. Employers seeking to locate in Watauga County need to first attract and then maintain a workforce. A key component to workforce recruitment and retention is affordable and centrally located housing. Job satisfaction becomes more of a challenge when workers can only find affordable housing by living far from their jobs and enduring long commutes.

Section 2. Policy.

The county will seek to work with the developers and nonprofit housing organizations to provide for affordable units in developments and ensure that such units are compatible with other homes in the development. Affordable units should include both units for sale and units for rent. Developers should promote a design criterion that disperses affordable homes throughout a development and encourages a variety of housing types.

Section 3. Streamlined Permitting Process.

Improved coordination of the permitting process at the state and local levels could result in lower housing costs. The permitting process often involves dealing with city, county and state approval boards, all of which require a variety of permits and approvals (i.e. – fire protection, sewer hookup, plumbing, environmental, road construction, electrical, building, etc.). Often the various levels of governmental authorities do not have effective communication and co-approval systems, which cause can unnecessary delays, increase construction costs and ultimately hinder affordable housing.

Section 4. Density.

Real estate of all types flourishes best in livable communities that offer a high quality of life at a reasonable cost. Livable communities offer a variety of affordable housing choices, good schools, quality public services, open space, and a strong employment base. One of the most challenging aspects to promoting these essential livable community elements is density. Building at higher densities in the appropriate locations is vital to provide greater choice and affordability in housing.

Section 5. Employer-Assisted Housing.

Employer-assisted housing (EAH) refers to benefits that enable employees to purchase homes or secure affordable rental housing, often within designated neighborhoods located near the workplace. Benefits can take a number of forms, including grants or forgivable loans for down payments and closing costs, reduced-cost financing, and matched savings plans. Providing an EAH benefit can help employers reduce turnover, leading to lower training and hiring costs. In addition, EAH can increase loyalty and morale, support bottom-line business goals, and strengthen links with the local community.

Appendix M Developer Authorization Form

For projects being developed by person(s) other than land owner(s)

Name of Project: _____

Land Owner(s) _____

_____

Developer(s) _____

_____

The above-named Developer(s) is/are authorized to submit the subject project to Watauga County for development approval on behalf of the above-named Land Owner(s).

Land Owner(s) Signature Date

_____ _____

_____ _____

_____ _____

STATE of _____, COUNTY of _____

I _____, Notary Public for said County and State, do hereby certify that _____ personally appeared before me this day and acknowledged that the above form was executed by him / her.

This _____ day of _____, 20__.

_____

(notary signature)

My commission expires: _____, 20___. PLACE NOTARY SEAL ABOVE

CHAPTER 19 REGULATION OF RECREATIONAL VEHICLE SUBDIVISIONS

Article I Authority and Enactment Clause

The County Commissioners of the County of Watauga, pursuant to the authority conferred by Chapter 160D-Article 8 and Chapter 130 Section 17 of the General Statutes of the State of North Carolina, enact into law these Articles and Sections.

Article II Jurisdiction and Purpose

Section 1. Jurisdiction.

On and after the date of adoption, these regulations shall govern each and every subdivision of land to be developed and sold for use by recreational vehicles within Watauga County (hereinafter referred to as the "county") and outside the subdivision regulation jurisdiction of any incorporated municipality. As used herein the term "sell", in addition to its standard meaning, shall also mean the rental or lease of any real property, the term of which or any pre-existing renewal thereof shall total twelve months or more.

Section 2. Purpose.

The purpose of these regulations for recreational vehicle subdivisions is to guide and regulate the subdivision of land within the county in order to preserve the public health, safety and welfare. The regulations included herein are designed to insure an adequately planned street system and to avoid sharp curves, hazardous intersections; to secure safety from fire, panic, and other dangers; to provide for adequate water and sewage systems; to facilitate an orderly system for the design, layout, and use of the land; to insure the proper legal description and monumenting of subdivided land; and to provide for the resubdivision of large land parcels.

Section 3. Permits.

(A) No person shall operate a recreational vehicle subdivision within the County of Watauga unless s/he holds a valid certification from the Health Department in the name of such a person for the specific recreational vehicle subdivision. Final plat approval will be made by the Planning Board provided all requirements of this chapter are met.

(B) Recreational Vehicle Permanent Occupancy Prohibited.

(1) No recreational vehicle shall be used as permanent place of abode, dwelling or business.

(2) Any action toward removal of wheels of a recreational vehicle except for temporary purposes of repair is hereby prohibited.

(3) No recreational vehicle shall be anchored or permanently affixed in a flood plain area.

(C) No person shall construct, alter or extend any recreational vehicle subdivision within the County of Watauga until the following has been obtained:

(1) Proper certification from the Health Department,

(2) Final plat approval from the Watauga County Planning Board, and

(3) A building permit from the Building Inspector.

Article III Planning Board Review

No real property within the jurisdiction of this chapter shall be subdivided and offered for sale or a plat thereof recorded until a preliminary and final plan has been reviewed and approved by the Planning Board as provided hereinafter.

Article IV Procedures For Review And Approval Of Subdivisions

Section 1. Submission of Preliminary Plan to Planning Board.

A preliminary plan meeting the requirements of these regulations shall be submitted for review and shall be approved by the Planning Board before any improvements are made in a subdivision.

After receiving approval of the preliminary plan by the Planning Board (and not before that time), the subdivider may proceed to construct improvements in accordance with the requirements of the regulations and as shown on the approved preliminary plan, and to prepare and submit the final plat.

Section 2. What the Preliminary Plat Shall Show.

The preliminary plat shall be drawn at a scale of not less than one hundred (100) feet to the inch on sheets 18 x 24 inches and shall show the following on one (1) or more sheets:

(A) A sketch vicinity map showing the relationship between the proposed subdivision and the surrounding area.

(B) The name of the RV subdivision, the names and addresses of the owner(s) and designer.

(C) Date, approximate north arrow and scale.

(D) The boundary line of the tract with bearings and distances drawn to scale.

(E) The locations of existing and platted property lines, streets, buildings, water courses, railroads, bridges, water mains, sewers, culverts, drain pipes, and utility easements, both in the proposed recreational vehicle park and on land immediately adjoining 100 feet in all directions and the names of adjoining subdivisions or the names of owners of record of adjoining parcels of unsubdivided land.

(F) The names, proposed location and dimension of proposed streets, alleys, driveways, entrances, exits, walkways, easements, recreation areas, and other spaces, reservations, proposed lot lines, lot and block numbers with approximate dimensions, and parking lines within the park. This information should be graphical only, not requiring detailed computations of field work above that required to obtain the above information.

(G) Plans and proposed location of a service building consisting of toilet and shower facilities if required by Health Department.

(H) Plans of proposed utility layouts (sewer lines, septic tank drainfields, water line and storm drainage) showing feasible connections to existing and proposed utility systems.

(I) Where public water or public sewer is not available, a written statement from the Health Department shall be submitted with the recreational vehicle subdivision preliminary plan indicating that the recreational vehicle subdivision has adequate land area and suitable soil characteristics and topography to accommodate the proposed methods of water supply and sewage disposal.

(J) Location and number of garbage receptacles.

(K) Plan for electric lighting.

(L) Plan showing measures to be taken to prevent soil erosion and off-site sedimentation damage.

Section 3. Submission of Final Plat to Planning Board.

Prior to the submission of the final plat all improvements proposed and approved on the preliminary plat shall be completed to meet the requirements

Section 4. What the Final Plat Shall Show.

The final plat shall be drawn upon a reproducible material such as linen or mylar on sheets of 18 x 24 inches in size to a scale of not less than one inch equals one hundred (100) feet. It shall contain the following:

(A) A vicinity map showing the location of the subdivision in relation to the surrounding area.

(B) The name of the recreational vehicle subdivision, the names and addresses of the owner(s) and the engineer or registered surveyor who prepared the plat.

(C) Date, north arrow, and scale.

(D) The boundary line of the tract with bearings and distances drawn to scale.

(E) The names, location and dimensions of streets, alleys, driveways, entrances, exits, walkways, easements, recreation areas, parks and other open spaces, reservations, lot lines, lot and block numbers with accurate bearings and distances, and parking lines within the park. The information shall be drawn accurately with details, computations, and fieldwork completed with all lot corners established on the ground with an iron pin or other permanent marker.

(F) If the RV subdivision is located in a flood plain area, developer shall submit to the Planning Board with the final plat a workable evacuation plan in accordance with the Flood Damage Prevention regulations.

Section 5. Approval of Final Plat by Planning Board and Recording Thereof.

Upon receipt of the final plat, the Planning Board shall review it for compliance with the provisions of this ordinance. The Planning Board may approve the plat in whole or in part, or subject to modifications.

Section 6. The Following Certificates Shall Be Shown On The Final Plat.

(A) Certificate of Ownership and Dedication

I (we) hereby certify that I am (we are) the owner(s) of the property shown and described hereon that I (we) hereby adopt this plan of subdivision with my (our) free consent, establish all lots, and dedicate all streets, alleys, walks parks, easements, right-of-ways, and other open spaces to public or private use as the same shown herein.

_____ _____

DATE OWNER

(B) Certificate of the Approval of Water and Sewage System

I hereby certify that the water supply and sewage disposal systems installed to serve the subdivision entitled _____ fully meets the requirements of the AppHealthCare, and are hereby approved as shown.

_____ _____

DATE AppHealthCare Authorized Official

(C) Certificate of Approval of Recording

I hereby certify that the subdivision plat shown hereon has been found to comply with the Recreational Vehicle Subdivision Regulations of Watauga County, North Carolina, with the exception of such variances, if any, as noted in the minutes of the Planning Board and recorded on the plat and that it has been approved by the Watauga County Planning Board at their regular meeting of _____ for recording in the Office of the County Register of Deeds.

_____ _____

DATE Watauga County Authorized Representative

(D) Surveyors Certificate

NORTH CAROLINA
WATAUGA COUNTY

_____ being duly sworn says the plat shown hereon is in all respects correct to the best of his knowledge and belief and was prepared from an actual field survey supervised by him and completed _____.

_____ _____

REGISTERED LAND SURVEYOR NO.

Subscribed and sworn to before me this the _____ day of _____, 20___.

_____

Notary Public

My commission expires:

Section 7. Appeal by Developer.

If either a preliminary or final plat is not approved by the Planning Board the subdivider may appeal his case to the Superior Court of Watauga County within 30 days.

Section 8. Feasibility Plan.

A subdivider may submit a sketch to the Ordinance Administrator prior to submission of a preliminary plan if s/he wishes to ascertain the feasibility of development of his/her property.

Section 9. Minor Subdivisions.

(A) Procedures set forth herein for handling applications for approval of minor subdivisions are intended to simplify processing of routine small subdivision with due regard to protection of the public interest.

(B) For the purpose of these regulations, a minor subdivision is defined as any subdivision requiring no variances and consisting of not more than ten (10) lots.

(C) In lieu of the procedures set forth in this ordinance, the subdivider may receive preliminary approval for any minor subdivision through procedures set forth as follows:

- **(1)** The Ordinance Administrator shall review the preliminary plat of each minor subdivision and shall find that it either is or is not a minor subdivision and that it either does or does not meet the requirements of these regulations. Said findings shall be stated in writing and recorded in the records of the Planning Board. Based upon said findings the Department shall either approve, not approve, or approve conditionally the proposed minor subdivision.
- **(2)** The decision of the administrator is subject to appeal in writing by the subdivider to the Planning Board.

(D) A final plat shall be submitted to the Watauga County Planning Board for their consideration and approval before the conveyance of any of the property or the recordation of the plat.

(E) After approval, the Subdivision Plat shall be recorded with the Watauga County Register of Deeds within thirty (30) days.

Article V Environmental, Open Space and Access Requirements

Section 1. Environmental, Open Space and Access Requirements.

(A) General Requirements. Conditions of soil, groundwater level, drainage and topography shall not create hazards to the property or the health or safety of the occupants.

(B) Floodplain Development. Recreational Vehicle Subdivisions may be permitted to develop in designated floodplain areas but not permitted in the floodway. Developer shall indicate the floodplain and floodway on the plat and evacuation plans shall be established and submitted

to the Planning Board for approval consideration prior to approval of final plat. Any improvements shall meet the applicable requirements of the Watauga County Flood Damage Prevention Regulations.

(C) Soil and Ground Cover Requirements. All ground areas in all parts of every Recreational Vehicle Subdivision shall be paved or covered with stone screenings or other solid material or protected with a vegetative growth that is capable of preventing soil erosion and of eliminating objectionable dust.

(D) Required Separation Between Recreational Vehicles. Recreational vehicles shall be separated from each other and from other structures by at least 20 feet. Any accessory structure such as attached awnings or individual storage facilities shall, for the purposes of this separation requirement, be considered to be part of the recreational vehicle.

(E) Required Recreation Area. In all Recreational Vehicle Subdivisions there shall be at least one recreation area which shall be easily accessible from all recreational vehicle spaces. A minimum of twenty percent (20%) of the total lot area of the park shall be dedicated for open, undeveloped recreational use.

(F) Required Setbacks from Public Streets. All recreational vehicles shall be located at least 30 feet from the right-of-way of a public street or highway.

(G) RV Subdivision Street System

(1) General Requirements. All parking areas shall be provided with safe and convenient vehicular access form abutting public streets or roads to each recreational vehicle space. All roads shall be constructed to meet the requirements of the county standard roads as specified in the Watauga County Subdivision Regulations, with the exception of the road right-of-way which may be 30 feet.

(2) Access. Access to recreational vehicle subdivisions shall be designed to minimize congestion and hazards at their entrance and exit and to allow free movement of traffic on adjacent streets. All traffic into and out of the parking areas shall be through such entrances and exits.

(3) Off-Street Parking and Maneuvering Space. Each lot in a recreational vehicle subdivision shall provide one vehicle parking space in addition to the space occupied by the towing vehicle (if any). Sufficient maneuvering space shall be provided so that parking, loading or maneuvering of recreational vehicles incidental to parking shall not necessitate the use of any public street, sidewalk, or right-of-way or any private grounds not part of the recreational vehicle subdivision.

(4) Traffic Signs. For safety purposes, traffic signs shall be erected designating traffic flow and speed limits. Such signs shall be constructed of permanent material and shall conform substantially to acceptable traffic speeds and sign applications in semi-congested areas.

Section 2. Miscellaneous Requirements.

(A) Supervision and Continued Maintenance. The person to whom a permit is issued shall be the responsible party for operation and maintenance of the recreational vehicle subdivision in compliance with these regulations and shall further provide adequate supervision to maintain the recreational vehicle subdivision, its facilities and equipment in good repair and in a clean and sanitary condition at all time until at such time an Owners Association shall assume responsibilities as designated by the Developer.

(B) Owners Association Agreement and Declaration of Restrictions for Recreational Vehicle Subdivisions. Prior to approval of the final plat the subdivider/developer shall submit to the County Planning Board copies of an Owners Association Agreement and Declaration of Restrictions, Conditions, Easements, Covenants, Liens and Charges. Said Agreement shall provide that membership in the Owners Association shall be appurtenant to ownership of land in the subdivision and that the Association is empowered to assess the members for their respective portion of costs of continued maintenance, including but not restricted to road and all utilities, grounds and other improvements and property owned by the Association and the payment of taxes.

Article VI Effective Date.

These regulations shall be in full force and effect from and after June 7, 1982.

The foregoing regulations were initially adopted at meetings of Watauga County Board of Commissioners at Boone, North Carolina, on May 18 and June 7, 1982.

CHAPTER 20 VALLE CRUCIS HISTORIC DISTRICT

Article I General Provisions

Section 1. Purposes.

The Watauga County Board of County Commissioners, mindful of the historic significance of the Valle Crucis community and in furtherance of the protection of the public health, safety, morals and general welfare, enacts this chapter for the following purposes:

(A) To preserve and protect the heritage of the Valle Crucis community in Watauga County.

(B) To protect and conserve individual properties within the Valle Crucis community that embody important elements of Valle Crucis' and Watauga County's social, economic, cultural, political or architectural history.

(C) To promote the conservation of the Valle Crucis Historic District for the education, pleasure and enrichment of the Valle Crucis community, Watauga County and the State of North Carolina.

(D) To foster civic beauty and amenity within the Valle Crucis Historic District.

(E) Contribute to the improvement of the general health and welfare of the residents of the Valle Crucis Historic District and Watauga County.

Section 2. Legislative Authority.

This chapter is enacted pursuant to Chapter 160D, Article 9, Part 4 as amended, North Carolina General Statutes, for the purposes enunciated therein.

The regulations contained in this chapter are made with reasonable consideration, among other things, as to the character of the District and its peculiar suitability for particular uses and with a view to conserving the value and integrity of buildings and encouraging the most appropriate use of land throughout the District.

Article II Historic District

Section 1. Historic District Established.

The Valle Crucis Historic District is hereby established.

The boundaries of the Historic District are as shown on the map entitled "Map of the Valle Crucis Historic District". This map, together with all lawfully adopted explanatory matters shown thereon or therewith, is hereby adopted by reference and declared to be a part of this chapter.

Section 2. Application of Regulations.

No building, structure, or land shall hereafter be used or occupied and no building, structure or part hereof shall be hereafter erected, reconstructed, moved, demolished, located or the exterior structurally altered except in conformity with regulations set out herein for the District.

Section 3. Exemption of Bonafide Farms and Public Schools.

This ordinance shall not be applicable to bonafide farms, as set forth in NCGS 160D-903, but any use of farm property for non-farm purposes is subject to the regulation. Bona fide farm purposes include production of crops, fruits, vegetables, ornamental and flowering plants, dairy, poultry, and all other forms of agricultural products having a domestic or foreign market. Sections 4 and 5 shall not be applicable to public schools.

Section 4. Area, Height and Placement Standards.

Standards governing minimum lot area and width, required yards and maximum height shall be as shown below:

	Residential Uses	All Other Uses
Minimum Lot Size	21,780 Sq. Ft.	21,780 Sq. Ft.
Minimum Lot Width	75'	75'
Minimum Required Yards:		
Front (Edge of Pavement)	50'	50'
Side	15'	30'
Rear	20'	20'
Maximum Building Height	30'	30'

Additional requirements may also be applicable for some development (e.g. development consisting of more than one unit)

Section 5. Performance Standards.

All land uses subject to this ordinance shall comply with the performance standards defined herein.

(A) Buffer Zones

Where a commercial or multi-family use is proposed adjacent to a single-family residential use, a side yard setback of 30 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer zone and shall be landscaped as follows. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no more than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one half (1-1/2) inch caliper (trunk measured six (6) inches above grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet at maturity. In addition, plantings of low growing shrubs, and/or trees shall be placed at ten (10) foot intervals. Plantings within buffer zones shall be staggered unless topography is prohibitive. No planting shall be placed in the road right-of-way. Lists of recommended plantings are available from the Planning and Inspections Department. Where commercial or multi-family use is proposed adjacent to commercial or multi-family use the same requirements apply with the exception of the low growing shrubs.

The recipient of any permit, or his successor, shall be responsible for maintaining all common areas, improvements of facilities required by this ordinance or any permit issued in accordance with its provisions, except those areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

(B) Parking

All development shall be provided with adequate parking facilities to handle the expected number of automobiles for that site. Spaces

shall be provided as follows; use and occupancy classifications for buildings are the same as those definitions used in the N.C. Building Code.

(1) Assembly, business, educational, storage and mercantile uses and occupancies shall be provided with parking spaces as follows:

(i.) one (1) off-street parking space for each two hundred (200) square feet of gross floor area for operations designed to attract and serve customers and clients on the premises;

(ii.) one (1) off-street parking space for each four hundred (400) square feet of gross floor area for operations designed to attract little or no customer or client traffic other than employees of the operation;

(iii.) one (1) off-street parking space for each one thousand (1000) square feet of gross floor area for mini-warehouse uses.

(2) Factory Industrial uses and occupancies shall be provided with 1.5 spaces per three employees, computed on the total employment.

(3) Institutional uses and occupancies shall be provided with one space per five persons identified in the building's occupant load figures.

(4) Residential uses and occupancies, primarily permanent, shall be provided with 2 spaces per dwelling unit.

(5) Residential uses and occupancies, primarily transient(motels, hotels and inns), shall be provided with one and one-half (1.5) spaces per bedroom.

(C) Screening of Parking

Parking and loading/unloading areas shall be located at the rear or side of buildings. ("Front" is defined as the face of the building that is parallel to a public road. By this definition, buildings or multiple public road frontage lots would have multiple "front yards" thereby limiting the location of parking areas to the remaining side or rear yards.) Side-yard parking areas that are exposed to a public road shall be screened so as to eliminate visual contact from the road(s). Such screening shall consist of a ten (10) foot wide planting of evergreen trees at ten (10) foot intervals. The trees shall be at least four (4) feet high at planting (2" caliper) and shall reach a height of no less than twenty (20) feet at maturity.

(D) Density

Any proposed development consisting of more than one unit shall comply with the Watauga County Subdivisions and Multi-Unit

Structures regulations, Articles VIII and X as applicable as well as any additional or stricter requirements imposed by this ordinance. However, the maximum overall density shall not exceed one (1) unit per acre. The goal sought by this standard is the reservation of perpetual open (green) space. To that end, an impervious surface ratio of twelve (12) percent is established. Impervious surface is defined as surfaces that do not absorb water. They consist of all buildings, parking areas, driveways, road, sidewalks, and any areas of concrete, gravel or asphalt. The impervious surface ratio is applicable to any new commercial building regardless of the number of units.

(E) Signage

In order to maintain the rural historic character of the District, signs must be limited in size and number. Therefore, off-premises advertising signs are prohibited.

On-premises signs are limited as follows:

(1) Signs shall not be placed within a public road right-of-way.

(2) Signs located fifteen (15) feet to twenty five (25) feet from the centerline of a road shall be limited to ten (10) square feet in size.

(3) Signs located twenty five (25) to thirty five (35) feet from the centerline of a road shall be limited to twenty (20) square feet in size.

(4) Signs located thirty five (35) feet or more from the centerline of a road shall have a maximum size of thirty two (32) square feet.

(5) Each establishment is limited to a maximum of two signs (one (1) detached and one (1) attached). However, in a situation where a detached sign is not visible from both directions due to topography or other obstruction, two (2) detached signs may be permitted and shall have a maximum size of ten (10) square feet each.

(6) The maximum height of detached signs is ten (10) feet measured from the ground.

(7) Signs shall not be internally illuminated – i.e. translucent plastic signs prohibited.

(8) Where street or site lighting does not provide sufficient illumination, signs may be externally illuminated by low level, shielded stationary bulbs installed in compliance with North Carolina Statutes §136-32.2. Sign lighting shall be turned off by 11 pm.

(F) Lighting

Lighting of nonresidential land uses must be controlled in both height and intensity to maintain rural character. Under no circumstances may the light level at the lot line exceed 0.2 foot candles, measured at ground level. To achieve this, luminaries shall be shielded to prevent light shining beyond the lot lines onto neighboring properties or public roads. Where there is a mix of residential and commercial uses, light standards are restricted to a maximum of twenty (20) feet in height. In addition, all lighting (except for security purposes) should be turned off between 11 pm and 6 am. Exceptions will be granted for those businesses that are operating during these hours.

(G) Placement of Buildings

Buildings should be sited so that obstruction of views from the public roads will be minimized. This can be achieved by taking advantage of topographic changes or existing vegetation.

(H) Facades

It is particularly important that new construction meet minimum design criteria in order that it may blend with the surroundings. New construction throughout the District should be compatible with surrounding properties, in terms of formal characteristics such as height, massing, roof shapes and window proportions.

Where new construction is contiguous with or within 100' of existing historic buildings, building height and exterior materials shall be harmonious with those of adjacent properties. In the interests of maintaining a sense of history, vertical siding shall be discouraged, and synthetic siding should imitate the character and dimensions of traditional clapboards. Masonry block buildings should be faced in an appropriate material, such as horizontal wooden siding or brick of a consistent traditional red color (not "used" brick or any varieties doctored to appear old), and have pitched roofs.

Section 6. Certificate of Appropriateness.

(A) Required

No exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement or other appurtenant features) nor above ground utility structure shall be erected, altered, restored, moved or demolished within the Valle Crucis Historic District until after an application for a Certificate of

Appropriateness as to exterior features has been submitted to and approved by the Valle Crucis Historic Preservation Commission.

For purposes of this chapter, "exterior features" include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" mean the style, material, size, and location of all such signs. Such "exterior features" may include important landscape and natural features of the District. Such a Certificate of Appropriateness must be issued by the Commission prior to the issuance of a building permit intended for the purposes of constructing, altering, moving or demolishing structures.

The Certificate of Appropriateness may be issued subject to reasonable conditions necessary to carry out the purposes of this chapter.

A Certificate of Appropriateness shall be required whether or not a building permit is required.

Any building permit or other such permit not issued in conformity with this chapter shall be invalid.

(B) Required Procedures

The following procedures shall be observed in the submission, review, action and administration of applications for approval of Certificates of Appropriateness:

(1) Applications Submitted to Department of Planning and Inspections

An application for a Certificate of Appropriateness shall be obtained from and, when completed, filed with the County Department of Planning & Inspections.

(2) Minor Works

The Planning and Inspections Director or his designee may issue a Certificate of Appropriateness on behalf of the Commission for the following Minor Works when they are in conformance with the adopted guidelines from new construction and rehabilitation in the Valle Crucis Historic District:

(a) Removal of carports;
(b) Removal of accessory buildings which are not architecturally or historically significant;
(c) Repair or replacement of exposed foundation walls including installation of vents, infill panels between piers, access doors;
(d) Repair or replacement of asphalt or fiber-glass shingle roofs;
(e) Repair or replacement of flat roofs;
(f) Construction, alteration or removal of temporary features that are necessary to ease difficulties associated with a medical condition but do not permanently alter exterior features;
(g) Construction or replacement of storage and accessory buildings;
(h) Construction or replacement of patios and decks (ground floor only);
(i) Installation or replacement of storm windows and doors that feature one of the following treatments:
  (i.) baked-on finish on the metal surrounds.
  (ii.) mill-finish aluminum painted with zinc chromate primer and top coated with a color to match the window sash or window trim, as appropriate;
  (iii.) painted wood;
(j) Installation or replacement of shutters or blinds original to the building;
(k) Installation of mechanical equipment such as heating and air conditioning units.
(l) Installation of identification signs;
(m) Replacement of missing architectural details, provided that at least one of the following conditions are met:
  (i.) At least one example of detail to be replaced exists on the house; or
  (ii.) Physical documentary evidence exists which illustrates or describes the missing detail or details; or
  (iii.) The proposed detail is very similar to original details found on at least one building or structure within Watauga County that is comparable in terms of style, size and age;

(3) Submission of New Applications

If the Commission determines that a Certificate of Appropriateness should not be issued, a new application affecting the same property may be submitted only if substantial changes are made in plans for the proposed construction, reconstruction, alteration, restoration or moving.

(4) Interior Arrangement Not Considered

The Commission shall not consider interior arrangement, except as set forth in N.C.G.S. 160D-947(b).

(5) Certain Changes Not Prohibited

Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the Valle Crucis Historic District which does not involve a substantial change in design, material, or outer appearance thereof nor to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which the Watauga County Building Inspector shall certify in writing to the Commission as required by his/her duty to protect the public safety because of its unsafe or dangerous condition.

(6) Delay in Demolition of Buildings Within the District

(a) An application for a certificate of appropriateness authorizing the relocation, demolition, or destruction of a designated landmark or a building, structure, or site within the district may not be denied, except as provided in subsection (b) of this section. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the preservation commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period, the preservation commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the preservation commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part

of such period and authorize earlier demolition or removal. If the preservation commission or planning board has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the governing board, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the preservation commission or planning board for a period of up to 180 days or until the governing board takes final action on the designation, whichever occurs first.

(b) An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the preservation commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

(7) Appeal of Decision

An appeal may be taken to the Superior Court of Watauga County, pursuant to N.C.G.S. 160D-1402.

(8) Compliance

Compliance with the terms of the Certificate of Appropriateness shall be enforced by the Watauga County Department of Planning and Inspections.

Failure to comply with a Certificate of Appropriateness shall be a violation of this chapter.

To ensure continued compliance with the provisions of this chapter, each approved Certificate of Appropriateness shall expire 12 months from the date on which final action was taken to approve the application, unless otherwise identified in the certificate, if the alteration, construction, demolition, relocation, or removal has not been initiated. Time extensions may be granted in accordance with the Commission's Rules of Procedure.

Nothing contained in this chapter shall prohibit, impair or limit in any way the power of Watauga County to prevent the construction, reconstruction, alteration, or removal of building structures, appurtenant fixtures or outdoor signs in the Historic District in violation of the provisions of this chapter.

(9) Review Criteria

(a) Intent

It is the intention of these regulations to insure, in so far as possible, that buildings or structures in the Valle Crucis Historic District shall be in harmony with other buildings or structures located therein. However, it is not the intention of the regulations to require the reconstruction or restoration of individual or original buildings or prohibit demolition or removal of the same or to impose architectural styles of particular historic periods. In considering new construction, the Commission shall encourage contemporary design that is harmonious with the character of the District.

In granting a Certificate of Appropriateness, the Commission shall take into account the historic or architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure, as well as the effect of such changes or additions upon other structures in the vicinity.

(b) Exterior Form and Appearance

The following criteria should be considered, when relevant, by the Commission in reviewing applications for Certificates of Appropriateness:

(i.) New construction and alteration should reflect the atmosphere, existing landscape characteristics and appearance of the District.

(ii.) New buildings should have a definite relationship to existing buildings; that is, they should be compatible but not imitative.

(iii.) Wood, brick and stone are traditional building materials in the District and should be employed whenever possible, as should metal roofs.

(iv.) Remodeling and alterations to buildings should be in the style of the existing building and be compatible in size, scale, color and material.

(v.) Double-wide mobile homes are preferred. All mobile homes should be placed on permanent solid masonry foundations, un-pierced except for required access and ventilation openings. The chassis and towing bar should be removed.

(vi.) If cinder blocks are used in the foundations, the surface should be treated with masonry paint or other suitable material.

(vii.) Outbuildings should be compatible with the main building and with the rural atmosphere of the District.

(viii.) Native plant materials should be used in landscaping around buildings.

(ix.) Signs should reflect good taste in size and materials.

Article III Nonconformities

Section 1. Classification.

Any building, structure or use of land existing at the time of enactment of this ordinance or any amendment thereto which was lawful but would be prohibited, regulated or restricted by such enactment or amendment is a nonconformity.

Section 2. Repair, Reconstruction, Expansion, Reinstatement.

It is the intent of this chapter to permit nonconformities to continue until they are removed or cease. Such continuance shall include routine maintenance and repair, reconstruction in case of total or partial destruction, and expansion, provided that such expansion meets all other requirements of this chapter (yard requirements, Certificate of Appropriateness, etc.). A nonconforming use shall not be reinstated after discontinuance for a period of one (1) year unless the Historic Preservation Commission finds that such reinstatement will not have a detrimental effect upon the District.

Section 3. Nonconforming Lots.

In the District, structures may be erected, occupied and used on separate, nonconforming lots of record, in accord with all other requirements applying in the District.

Article IV Public Buildings

As set forth in N.C.G.S 160D-947(f), all of the provisions of Article 2, Section 8 are hereby made applicable to construction, alteration, moving, and demolition by the State of North Carolina, its political subdivisions, agencies, and instrumentalities, provided, however, they shall not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under N.C.G.S. 121-12(a) from any decision of a local preservation commission.

CHAPTER 21 WATERSHED PROTECTION (WINKLERS 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 Water Supply 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.

(D) Expansions to existing development must meet the requirements of this ordinance, except single family residential development or unless expansion is part of common plan of development. In an expansion, the built-upon area of the existing development is not required to be included in the density calculations. Where there is a net increase of built upon area, only the area of net increase is subject to this ordinance. Where existing development is being replaces with new built upon area, and there is a net increase of built upon area, on area areas of net increase shall be subject to this ordinance.

(E) If a Non-Conforming Existing Lot 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.

(H) An applicant may exceed the density limits in Article IV if all of the following circumstances apply:

a. The property was developed prior to the effective date of the local water supply watershed program.
b. The property has not been combined with additional lots after January 1, 2021.
c. The property has not been a participant in a density averaging transaction under G.S. 143- 214.5(d2).
d. The current use of the property is nonresidential.
e. In the sole discretion, and at the voluntary election, of the property owner, the stormwater from all of the existing and new built-upon area on the property is treated in accordance with all applicable local government, state, and federal laws and regulations.

f. The remaining vegetated buffers on the property are preserved in accordance with the requirements of this Ordinance.

Article II Subdivision Regulations

Section 1. General Provisions.

(A) No subdivision plat of land within the Public Water Supply Watershed shall be filed or recorded by the Register of Deeds until it has been approved in accordance with the provisions of this Article. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with this Article.

(B) All subdivisions of land within Watauga County are subject to the provisions of the Watauga County Subdivisions and Multi-Unit Structures regulation and shall be reviewed pursuant to that chapter. Subdivisions within Public Water Supply Watersheds shall comply with the provisions of both chapters except where the two (2) conflict. In that case, the more restrictive provisions shall apply.

(C) Compliance with this chapter shall be indicated on both copies of the plat by the following certificate and signed by the authorized representative:

Certificate of Approval for Recording

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

_____ _____

Date Watauga County Authorized Representative

NOTICE: This property is located within a Public Water Supply Watershed – development restrictions may apply.

Or, for minor subdivisions as defined by the Watauga County Subdivisions and Multi-Unit Structures regulations, the following certificate shall be used:

Certificate of Approval for Recording

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

_____ _____

Date Watauga County Authorized Representative

NOTICE: This property is located within a Public Water Supply Watershed – development restrictions may apply.

*NOTE: Those certificates may be combined with similar certificates required by the subdivision regulations.

(D) Roads constructed in critical areas and watershed buffer areas. Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed so to minimize their impact on water quality.

(E) All lots shall provide adequate building space in accordance with the development standards contained in Article III. Lots which are smaller than the minimum required for residential lots may be developed using built-upon area criteria in accordance with Article III or cluster development criteria in accordance with Section 3.

(F) For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(G) Storm Water Drainage Facilities. The application shall be accompanied by a description of the proposed method of providing storm water drainage. The subdivider shall provide a drainage system that diverts stormwater runoff away from surface waters and incorporates best management practices to minimize water quality impacts.

(H) Erosion and Sedimentation Control. The application shall, where required, be accompanied by a written statement that a sedimentation and erosion control plan will be submitted to and approved by Watauga County.

Article III Development Regulations

Section 1. Establishment of Watershed Areas.

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

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

Section 2. Watershed Areas – 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[fg]	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 Supple Watershed Protection Ordinance published by NCDEMLR, Stormwater program.

Section 3. Watershed Areas- Density and Built-Upon Limits

(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 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 density and built-upon area limits.

(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 is 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. However, 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) 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 homeowner’s 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) Cluster developments that meet the applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable

Section 6. Vegetated Setbacks Required.

(A) A minimum one hundred (100) foot vegetative buffer is required for all new development activities that exceed the low density option; 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 diminimal increases in impervious area, 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.

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:

- **(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.

(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:

(1) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.

(2) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

Section 10. Watershed Protection Permit.

(A) Except for a single-family residential redevelopment, 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.

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. The applicant should notify the Watershed Administrator and request the issued Watershed Protection Occupancy Permit when building is complete.

(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.

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. The Watershed Administrator may also coordinate with local inspections department, since local governments can abate most threatening nuisances.

(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 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.

(D) 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 Stormwater Branch of the Division of Energy, Mineral and Land Resources.

(E) The Watershed Administrator shall keep records of the jurisdiction's use of the provision that a maximum of ten percent (10%) of the non-critical area of WS-II, WS-III, and, WS-IV watersheds may be developed with new development at a maximum of seventy percent (70%) built-upon surface area. Records for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, number of developed acres, type of land use and stormwater management plan (if applicable).

(F) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Regulations.

(G) The Watershed Administrator is responsible for ensuring that Stormwater Control Measures are inspected at least once a year and shall keep a record of SCM inspections.

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. Where evergreen hedges are proposed, a temporary fence should be built to provide screening until the evergreens are of sufficient height.

(E) The recipient of a Watershed Occupancy Permit, or his successor, shall be responsible for maintaining all common areas, improvements, or facilities required by the ordinance or any permit issued in accordance with its provisions, except those areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be property maintained so that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

Section 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.

Article VIII Variances

The Board of Adjustment shall have the power to authorize, in specific cases, minor variances from the terms of this chapter and may review major variance requests and make recommendations to the Environmental Management Commission regarding the same. In addition, the county shall notify and allow a 30 days for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

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

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

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

(3) Evidence or proposed witness testimony that tends to support a finding that each of the factors listed in subsection (C), below, are met.

(B) The Watershed Administrator shall notify in writing each local

government having jurisdiction in the watershed and the entity using the water supply for consumption. 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 Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.

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

(1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:

(a) If he complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of his property.

(b) The hardship results from the application of the Ordinance to the property rather than from other factors such as deed restrictions or other hardship.

(c) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(d) The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the Ordinance, or who purchases the property after the effective date of the Ordinance, and then comes to the Board for relief.

(e) The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created

in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.

(2) The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.

(3) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

(D) In granting the variance, the Board may attach thereto conditions regarding the location, character, and other features of the proposed building, structure, or use that relate to the purpose and standards of this ordinance. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

(E) The Board of Adjustment shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

(F) A variance issued in accordance with this Section shall be considered a Watershed Protection Permit and shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within six (6) months from the date of the decision.

(G) 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.

CHAPTER 22 WIND ENERGY SYSTEMS

Article I Authority and Purpose.

Inasmuch as Watauga County has determined that single wind power turbines are exempt from the North Carolina Mountain Ridge Protection Act, and pursuant to the authority granted to counties by NC General Statute 153A-121 et seq. and other pertinent statutes and amendments thereto, it is the purpose of this ordinance to regulate the use of wind energy systems and to describe the conditions by which a permit for installing a system could be obtained.

Article II Findings.

Wind power is a clean, inexhaustible, reliable, and economical source of energy that can help us reduce our dependence on fossil fuels, help to preserve and protect the environment, and help to create new jobs and sustainable forms of development. As a result of these benefits, wind power has become the fastest growing energy source in the world and is helping to satisfy the growing demand for electricity cleanly and affordably.

The State of North Carolina has enacted a number of laws and programs to encourage the use of small-scale renewable energy systems including a state tax credit, net metering law, property tax exemptions, and a state wide green power program.

Article III Small Wind Energy Systems.

Small wind energy systems shall be a permitted use by right subject to the requirements set forth in this section:

Section 1. Wind Turbine Height.

Height shall be limited to 135 feet.

Section 2. Setback.

The base of the wind turbine shall not be closer to surrounding property lines than the height of the wind turbine unless a NC Registered Professional Engineer certifies the fall zone of the wind turbine and appurtenances will be within the setback area proposed. In addition, no wind turbine shall be located closer to an inhabited structure on adjacent property than 1.5 times the height

of the wind turbine. Relief from this section may be granted if the applicant can secure a permanent easement from the adjoining property owner(s) providing for a fall zone.

Section 3. Building Permit Requirements.

A building permit shall be required and building permit applications for small wind energy systems shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower certified by a licensed professional engineer including standards for ice/wind loading shall also be submitted. This analysis may be supplied by the manufacturer. Wet stamps shall not be required.

Section 4. Compliance with FAA Regulations.

Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports. Evidence of compliance or non-applicability shall be submitted with the application.

Section 5. Utility Notification.

No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

Section 6. Appearance.

Small wind energy towers shall maintain a galvanized finish or be painted to conform the tower color to the surrounding environment to reduce visual obtrusiveness. No wind tower should have any signage, or writing or pictures that may be construed as advertising placed on it at any time. In addition, no flags, streamers or decorative items may be attached to the wind energy system tower or turbine.

Section 7. Removal of Defective or Abandoned Wind Energy Systems.

Any wind energy system that is not functional shall be repaired by the owner or removed. In the event that the County becomes aware of any wind energy system that is not operated for a continuous period of 6 months, the County will notify the landowner by registered mail and provide 45 days for a written response. In such a response, the landowner shall set forth reasons for the

operational difficulty and provide a reasonable timetable for corrective action. If the County deems the timetable for corrective action as unreasonable, the County shall notify the landowner and such landowner shall remove the turbine with 120 days of receipt of said notice.

Article IV Large Wind Energy Systems

Large wind energy systems shall be a use permitted by review subject to the requirements of this Article IV as well as Article III, except that the height limits in Article III Section 1 may be increased if approved as necessary by the Board of Adjustment.

Section 1. Permit Application.

(A) A person seeking a site permit for a wind turbine over 20 KW shall file an application with the County for review. The application must provide the following background information regarding the applicant:

- **(1)** A letter of transmittal signed by an authorized representative or agent of the applicant.
- **(2)** The complete name, address, telephone number, and e-mail address of the applicant and any authorized representative.
- **(3)** The signature of the person who prepared the application, if prepared by an agent or consultant of the applicant.
- **(4)** The role of the permit applicant in the construction and operation of the wind power project.
- **(5)** The identity of any other wind power project located in the State in which the applicant, or a principal of the applicant, has an ownership or other financial interest; the operator of the wind power project if different from the applicant; and the name of the person or persons to be the permittee if a site permit is issued.

(B) The applicant shall state in the application whether a certificate of public convenience and necessity for the system is required from the North Carolina Utilities Commission and, if so, the anticipated schedule for obtaining the certificate. The County may ask the Utilities Commission to determine whether a certificate of public convenience and necessity is required for a particular wind power project for which the County has received a site permit application. The County shall not approve a project requiring a certificate unless and until such certificate is issued by the Utilities Commission. If a certificate is not required from the Utilities Commission, the permit applicant shall include with the application a discussion of what the applicant intends to do with the power that is generated.

(C) The applicant shall describe in the application how the proposed wind power project furthers State policy to site such projects in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.

(D) The permit applicant shall include the following information about the site proposed for the wind power project and any associated facilities:

(1) The surveyed boundaries of the site proposed for the wind power project.

(2) The location of other wind turbines in the general area of the proposed wind power project.

(3) The applicant's land rights within the boundaries of the proposed site.

(E) The permit applicant shall provide the following information regarding the design of the proposed wind power project:

(1) A project layout, prepared by a design professional, including a map showing the proposed location of the turbine(s).

(2) A description of the turbine(s) and tower(s) and other equipment proposed to be used in the wind power project, including the name of the manufacturers of the equipment.

(3) A description of the project electrical system, including transformers at both low voltage and medium voltage.

(4) A description and location of associated facilities.

(F) An applicant for a site permit shall include with the application an analysis of the potential impacts of the wind power project, proposed mitigative measures, and any adverse environmental effects that cannot be avoided, in the following areas:

(1) Demographics, including people, homes, and businesses.

(2) Noise.

(3) Visual impacts.

(4) Public services and infrastructure

(5) Cultural and archaeological impacts.

(6) Recreational resources.

(7) Public health and safety, including air traffic, electromagnetic fields, and security and traffic.

(8) Hazardous materials.

(9) Land-based economics, including agriculture, forestry, and mining.

(10) Tourism and community benefits.

(11) Topography.

(12) Soils.

(13) Geologic and groundwater resources.

(14) Surface water and floodplain resources.

(15) Wetlands.

(16) Vegetation.

(17) Avian, impact assessment that includes an indication of the type and number of birds that are known or suspected to use a project site and the area surrounding that site.

(18) Wildlife.

(19) Rare and unique natural resources.

(G) The permit applicant shall describe all of the following:

(1) The manner in which the wind power project, including associated facilities, will be constructed.

(2) How the wind power project will be operated and maintained after construction, including a maintenance schedule.

(3) The anticipated schedule for completion of the wind power project, and shall identify the expected date of commercial operation.

(4) The energy expected to be generated by the wind power project.

(H) The permit applicant shall include the following information regarding decommissioning of the wind power project and restoring the site:

(1) The anticipated life of the wind power project.

(2) The estimated decommissioning costs in current dollars.

(3) The method and schedule for updating the costs of decommissioning and restoration.

(4) The method of ensuring that funds will be available for decommissioning and restoration.

(5) The anticipated manner in which the wind power project will be decommissioned and the site restored.

(I) The permit applicant shall include in the application a list of all known federal, state, and local agencies or authorities, and titles of the permits they issue that are required for the proposed wind power project.

(J) Blue Ridge Parkway: If a proposed wind energy site is within the Blue Ridge Parkway viewshed the applicant shall inform the National Park Service of the proposed wind turbine sitting. Park Service recommendations shall be given reasonable consideration and documentation of this consideration shall be provided to the County. The Park Service shall be afforded 30 days to respond to the applicant's written intention to erect a wind turbine. No answer to the notification within the 30 days shall be considered as an affirmation of the site as proposed. Viewshed shall be determined by the County using maps and documents prepared for that purpose by the Design Research Laboratory at NC State University and the Blue Ridge Parkway Division of Resource Planning and Professional Services.

Section 2. Special Use Permit Required.

Prior to granting or denying a permit for a large wind energy system, the Board of Adjustment shall conduct a hearing as set forth in Chapter 3.

CHAPTER 23 WIRELESS TELECOMMUNICATIONS

Article I Purpose and Legislative Intent

The purpose of this Wireless Telecommunications chapter is to provide for the public health, safety and welfare by ensuring that residents, businesses and public safety operations in Watauga County have reliable access to telecommunications networks and state of the art mobile broadband communications services while also minimizing adverse impacts created by wireless facilities and structures. To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless telecommunications facilities complies with all applicable federal and state laws, including without limitation Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. 1455(a), and NCGS §160D, Article 9, Part 3, Watauga County enacts these single comprehensive wireless telecommunications regulations. This chapter is enacted pursuant to the general police powers granted by NCGS §153A-121. By enacting this chapter, it is the County's intent to:

(A) Minimize external impacts (i.e. visual impacts and generator noise) on surrounding areas;
(B) Encourage cooperation among carriers and joint use of new and existing wireless structures in an effort to minimize the necessity for new structures;
(C) Encourage use of existing buildings and suitable alternative structures for wireless facility use in an effort to minimize the number of new structures;
(D) Encourage concealed wireless structures;
(E) Encourage concealed antenna designs;
(F) Encourage concealed cables and feed lines;
(G) Minimize visual impacts on Major Mountain Ridges to the greatest extent possible.

Article II Approvals Required for Wireless Facilities and Wireless Support Structures

Section 1. Administrative Review and Approval.

The following types of applications are subject to the review process as provided in Article III. No other type of site plan review is necessary:

(A) New wireless support structures that are 60 feet or less in height.
(B) New wireless support structures that are 100 feet or less in height and separated from residential dwellings by a distance of 300 feet or more.

(C) New wireless support structures that are 140 feet or less in height located within commercial or industrial areas and separated from residential dwellings by a distance of 300 feet or more.
(D) Concealed wireless facilities that are 140 feet or less in height and separated from residential dwellings by a distance of 300 feet or more.
(E) Monopoles or replacement poles located on public property or within utility easements or rights-of-way.
(F) COWs, if the use of the COW is either not in response to a declaration of an emergency or disaster by the Governor, or will last in excess of one hundred-twenty (120) days.
(G) Substantial modifications.
(H) Collocations.

Section 2. Board Review and Approval.

Any application for wireless facilities and/or wireless support structures not subject to administrative review and approval pursuant to this chapter shall be permitted upon the granting of a Special Use Permit by the Watauga County Board of Adjustment.

Section 3. Exempt from Review and Approval.

The following are exempt from all County approval processes and requirements:

(A) Removal or replacement of transmission equipment on an existing wireless tower or base station that does not result in a substantial modification as defined in this ordinance.
(B) Ordinary maintenance of existing wireless facilities and wireless support structures, as defined in this Article.
(C) Wireless facilities placed on utility poles.
(D) COWs placed for a period of not more than one hundred twenty (120) days at any location within the County or after a declaration of an emergency or a disaster by the Governor.
(E) Antennas or antenna support structures of amateur radio operators 90 feet or less in height.
(F) New and existing wireless support structures and facilities owned by governmental agencies and designed for non-commercial emergency communications.

Article III Administrative Review and Approval Process

Section 1. Content of Application Package for New Sites.

All administrative review application packages must contain the following:

- **(A)** Administrative review application form signed by the owner, or the applicant in accordance with item (B) below;
- **(B)** Non-owner applicants must provide a copy of a lease or letter of authorization from the property owner evidencing applicant's authority to pursue the application. Such submissions need not disclose financial lease terms; and
- **(C)** Site plans detailing proposed improvements which comply with this ordinance. Drawings must depict improvements related to the applicable requirements including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.
- **(D)** Documentation from a North Carolina licensed professional engineer including calculation of the fall zone and certification that the wireless support structure has sufficient structural integrity to accommodate the required number of additional users as provided in this ordinance. Design of the support structure shall be in accordance with the latest ANSI/EIA/TIA-222 standards. Tower foundation design shall be in accordance with Chapter 18 of the NC Building Code. Grounding and electrical service equipment shall be in accordance with the National Electric Code. Watauga County is located within a *Special Wind Region* that will impact structural design of wireless structures and foundations.

Section 2. Content of Application Package for Other Sites/Facilities.

All administrative review application packages must contain the following:

- **(A)** Administrative review application form signed by the owner, or the applicant in accordance with item Section 1 (B) above;
- **(B)** For collocations and substantial modifications, written verification from a North Carolina licensed professional engineer certifying that the host support structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennas. Watauga County is located within a *Special Wind Region* that will impact structural design of wireless structures and foundations.
- **(C)** For substantial modifications, drawings depicting the improvements along with their dimensions.
- **(D)** A Building Inspector shall issue a building permit following approval of the application under administrative review in accordance with the

process and standards of this chapter and the North Carolina State Building Code.

Article IV Special Use Permit Process.

Section 1. Special Use Permit.

Any wireless facility or wireless support structures not meeting the requirements of Article II Section 1 or 3 may be permitted upon the granting of a Special Use permit, subject to:

(A) The submission requirements of Section IV.B below; and
(B) The applicable standards of Section V below; and
(C) The requirements of the Special Use permit approval.

Section 2. Content of Special Use Permit Application Package.

All Special Use permit application packages must contain the following:

(A) Special Use Permit application form signed by the owner, or the applicant in accordance with (B) below;
(B) Non-owner applicants must provide a copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue the application. Such submissions need not disclose financial lease terms;
(C) Written description and scaled drawings of the proposed wireless support structure or wireless facility, including structure height, ground and structure design, and proposed materials;
(D) Number of proposed antennas and their height above ground level, including the proposed placement of antennas on the wireless support structure;
(E) Line-of-sight diagram or photo simulation, showing the proposed wireless support structure set against the skyline and viewed from at least four (4) directions within the surrounding areas;
(F) A statement that the proposed wireless support structure will be made available for collocation to other service providers at commercially reasonable rates, provided space is available and consistent with Article V Section 1 (A) of this chapter.

Article V General Standards and Design Requirements.

Section 1. Design.

(A) Wireless support structures:

(1) Shall be engineered and constructed to accommodate a minimum number of collocations based upon their height as follows:

(a) Support structures 60 to 100 feet in height shall support at least two (2) telecommunications providers;

(b) Support structures greater than 100 feet shall support at least three (3) telecommunications providers;

(2) The equipment compound area surrounding the wireless support structure must be of sufficient size to accommodate accessory equipment for the appropriate number of telecommunications providers in accordance with Article V Section 1(A)(1).

(B) Concealed wireless facilities are required on Major Mountain Ridges. Concealed wireless facilities shall be designed to accommodate the collocation of other antennas whenever economically and technically feasible. Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.

(C) Upon request of the applicant, the Board or Administrator may waive the requirement that new wireless support structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer antennas will promote community compatibility.

(D) A monopole or replacement pole shall be permitted within utility easements or rights-of-way, in accordance with the following requirements:

(1) The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.

(2) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.

(3) The height of the monopole or replacement pole may not exceed by more than thirty (30) feet the height of existing utility support structures.

(4) Monopoles and the accessory equipment shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.

(5) Single carrier monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (3) above.

(6) Poles that use the structure of a utility tower for support are permitted. Such poles may extend up to twenty (20) feet above the height of the utility tower.

(E) Generators shall be located within equipment shelters or enclosed to limit noise levels.

Section 2. Setbacks.

Unless otherwise stated herein, each wireless support structure shall be set back from all property lines a distance equal to its engineered fall zone.

Section 3. Height.

Substantial Modifications and newly erected Wireless Support Structures shall not exceed the permitted height except by Special Use Permit granted by the Board of Adjustment.

Section 4. Aesthetics.

(A) Lighting and Marking. Wireless facilities or wireless support structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).

(B) Signage. Signs located at the wireless facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited. Notwithstanding the foregoing, nothing in this chapter shall prohibit signage that is approved for other uses on property on which wireless facilities are located (*e.g.*, approved signage at locations on which concealed facilities are located).

Section 5. Accessory Equipment.

Accessory equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the wireless facility or wireless support structure. Any equipment not used in direct support of such operation shall not be stored on the site.

Section 6. Fencing.

(A) Ground mounted accessory equipment and wireless support structures shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the Board or Administrator.

(B) The Board or Administrator may waive the requirement of Article V Section 6 (A) if it is deemed that a fence is not appropriate or needed at the proposed location.

Section 7. Landscaping.

The equipment compound shall be screened with landscaping native to the area and suitable for planting in USDA Hardiness Zone 6a. All plants, including the root ball dimensions or container size to trunk caliper ratio, shall conform to ANSI Z60.1 "American Standard for Nursery Stock" latest edition. Quantity, ratio and minimum sizes of trees and shrubs shall be as follows:

(A) Deciduous and/or Evergreen trees – twenty (20) feet maximum spacing. Trees shall have a minimum height of six (6) feet upon planting. Deciduous trees shall have a minimum two (2) inch caliper.

(B) Shrubs – six (6) feet maximum spacing. Shrubs shall be a minimum height of eighteen (18) inches upon planting.

(C) The recipient of any wireless communication or special-use permit, or their 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. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

Article VI Miscellaneous Provisions.

Section 1. Abandonment and Removal.

If a wireless support structure is abandoned, and it remains abandoned for a period in excess of twelve (12) consecutive months, the County may require that such wireless support structure be removed only after first providing written notice to the owner of the wireless support structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the wireless support structure within sixty (60) days of receipt of said written notice. In the event the owner of the wireless support structure fails to reclaim the wireless support structure within the sixty (60) day period, the owner of the wireless support structure shall be required to remove the same within six (6) months thereafter. The County shall ensure and enforce removal by means of its existing regulatory authority, with costs of removal charged to the owner.

Section 2. Multiple Uses on a Single Parcel or Lot.

Wireless facilities and wireless support structures may be located on a parcel containing another principal use on the same site or may be the principal use itself.

Article VII Wireless Facilities and Wireless Support Structures in Existence on the Date of Adoption of this Ordinance.

Section 1. Existing Wireless Facilities.

Wireless facilities and wireless support structures that were legally permitted on or before the date this chapter was enacted shall be considered a permitted and lawful use as long as they remain compliant with the permit issued.

Section 2. Activities at Non-Conforming Wireless Support Structures.

Notwithstanding any provision of this chapter:

- **(A)** Ordinary maintenance may be performed on a non-conforming wireless support structure or wireless facility.
- **(B)** Collocation of wireless facilities on an existing non-conforming wireless support structure shall not be construed as an expansion, enlargement or increase in intensity of a non-conforming structure and/or use and shall be permitted through the administrative approval process defined in Article II; provided that the collocation does not substantially modify the size of the equipment compound at that location or otherwise substantially modify the existing non-conformity.
- **(C)** Substantial modifications may be made to non-conforming wireless support structures utilizing the Special Use permit process defined in Article IV of this chapter.

Article VIII Jurisdiction

The provisions of this chapter shall be applicable only to unincorporated areas of Watauga County which are not included in the extraterritorial jurisdiction of a municipality.

Article IX National Park Service Review

When new wireless support structures or substantial modifications are proposed within one mile of the Blue Ridge Parkway centerline and within the Parkway viewshed, the applicant shall inform the National Park Service and seek recommendations. Park Service recommendations shall be given reasonable consideration and documentation of this consideration shall be provided to the Administrator. The Park Service shall be afforded thirty (30) days to respond to the applicant’s initial request.

Article X Valle Crucis Historic District

Wireless support structures shall be prohibited within the Valle Crucis Historic District.

CHAPTER 24 ADMINISTRATIVE PROCEDURES

Article I Purpose and Intent

This Chapter establishes the procedures used by Watauga County's Planning and Inspection Department for the processing of applications for development permits or approvals. It is the intent of this Chapter to establish a uniform set of processes to foster greater efficiency and predictability for applicants, County residents, County staff, and elected and appointed officials during the review of development applications.

Article II Application Submittal, Acceptance, and Withdrawal

Section 1. Authority to File Applications

(A) Unless expressly stated otherwise in this Ordinance, development applications associated with a particular lot or site reviewed under this Ordinance shall be filed by the landowner, contract purchaser, or other person having a recognized property interest in the land on which development is proposed.

(B) Applications for amendments to the text of this Ordinance may only be initiated by the Ordinance Administrator, the Planning Board, the Board of County Commissioners, or a landowner.

Section 2. Application Content

The County shall establish development application content and forms, which shall be maintained by the Ordinance Administrator. The presumption shall be that all of the information required in the application forms is necessary to satisfy the requirements of this section. However, it is recognized that each application is unique, and therefore more or less information may be required according to the needs of the particular case. The applicant may rely on the recommendations of the Ordinance Administrator as to whether more or less information should be submitted.

Section 3. Application Fees

(A) The Board of Commissioners shall establish application fees and may amend and update those fees as necessary. Fees shall cover the costs of review, including public notification, as required.

(B) No action shall be taken on an application and no application approval shall be issued until all required application fees are paid in full.

Section 4. Application Filing

(A) Applications shall be filed with the County in the form established by the County, along with the appropriate application fee.

(B) An application shall not be considered to be submitted until determined to be complete in accordance with Section 6, Determination of Application Completeness.

(C) No application shall be reviewed or decided until after it is determined to be complete.

Section 5. Application Deadline

Applications sufficient for processing shall be submitted in accordance with the published calendar schedule. Schedules indicating submittal dates shall be developed each year and made available to the public.

Section 6. Burden of Presenting Complete Application

The burden of presenting and maintaining a complete application shall be solely upon the applicant.

Section 7. Determination of Application Completeness

Upon development application filing, the Ordinance Administrator shall determine, within ten (10) business days, whether the application is complete or incomplete. A complete application is one that:

(A) Contains all information and materials identified in this Ordinance and all supporting documentation, as required for submittal of the particular type of application;

(B) Is in the form and number of copies required by the County;

(C) Is legible and printed to scale, where appropriate;

(D) Is signed by the person(s) with the authority to file the application;

(E) Includes information in sufficient detail to evaluate whether or not the application complies with the applicable review standards in this Ordinance;

(F) Is accompanied by the fee established for the particular type of application.

However, it is recognized that each application is unique, and therefore more or less information may be required according to the needs of the particular case. In general, an application shall be complete and sufficient for processing when it contains all of the information necessary to decide whether or not the development as proposed will comply with all of the requirements of this ordinance.

Section 8. Application Incomplete

If the application is incomplete, the Ordinance Administrator shall notify the applicant of the deficiencies in writing. The applicant may correct the deficiencies and resubmit the application for completeness determination in accordance with Article II Application Filing and Acceptance.

Section 9. Application Complete

(A) On determining that the application is complete, it shall be considered as submitted, and the Ordinance Administrator shall notify the applicant and commence review in accordance with the procedures and standards of this Ordinance.

(B) Nothing shall preclude the Ordinance Administrator or a review authority from re-evaluating an application for completeness in the event application inadequacies are revealed at a date subsequent to an application being declared complete.

Section 10. Application Withdrawal

(A) After an application has been accepted for review, the applicant may withdraw the application at any time by submitting a letter of withdrawal to the Ordinance Administrator. No application fee shall be refunded.

(B) If the applicant fails to resubmit a complete application within forty-five (45) calendar days after being first notified of submittal deficiencies, the application shall be considered withdrawn and applicable fees shall not be refunded.

Article III Staff Review and Action

Section 1. Initial Staff Review

(A) Following application completeness determination, development application materials shall be distributed by the Ordinance

Administrator to all appropriate staff and review agencies for review and comment.

(B) Applications shall be reviewed during the review cycle in place when the application is determined to be complete.

(C) In considering the application, the Ordinance Administrator or other County staff (as appropriate), shall review the application, relevant support material, and any comments from other staff and review agencies to which the application was referred.

(D) If deficiencies in complying with applicable standards of this Ordinance are identified, the Ordinance Administrator shall notify the applicant of such deficiencies in writing and provide the applicant a reasonable opportunity to discuss them and revise the application accordingly.

Section 2. Staff Report and Recommendation

(A) The Ordinance Administrator shall prepare a written staff report on any application to be reviewed or decided by the Planning Board, Board of County Commissioners, Board of Adjustment., or the Valle Crucis Historic Preservation Commission

(B) The staff report shall conclude whether the application complies with all applicable review standards of this Ordinance.

(C) In cases where the Ordinance Administrator finds an application does not comply with the provisions of this Ordinance the staff report shall cite the specific code section(s) in question and the reasons why the application fails to comply.

(D) A staff report is not required for applications decided by the Ordinance Administrator, though one may be prepared.

Section 3. Distribution of Application and Staff Report

In cases where a staff report is prepared, the Ordinance Administrator shall take the following actions within a reasonable time period before the application is scheduled for review:

(A) Schedule and ensure any required public notice of the application (if appropriate) is prepared in accordance with Article IV, Public Notification;

(B) Transmit the application, related materials, and staff report to the appropriate review authority(ies);

(C) Transmit a copy of the staff report and any related materials to the applicant, the appellant, and the landowner (if the landowner is different from the appellant or the applicant) at the same time they are transmitted to the appropriate review authority(ies); and

(D) Make the application, related materials, and staff report available for examination by the public.

Section 4 Applications Subject to Decision by Staff

(A) In cases where a development application is decided by the Ordinance Administrator or other designated County staff member, the appropriate County staff member shall make one of the following decisions, based on the review standards set forth for the application type:

(1) Approve the application;

(2) Disapprove the application; or

(3) Delay decision making for a specified time to allow the applicant to revise the application for compliance with the requirements in this Ordinance.

(B) In some instances, The Ordinance Administrator or other designated County staff may decide an application contingent upon further revision by the applicant in accordance with the direction provided in the decision.

Article IV Public Notification

The following procedures have been established for development applications/petitions that require notification of the public prior to consideration and/or approval.

Section 1. Quasi-judicial Hearing Level 1

(A) Mailed Notice: Notice of evidentiary hearings conducted pursuant to Chapter 3 shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. The notice must be deposited in the mail at

least 10 days, but not more than 25 days, prior to the date of the hearing.

(B) Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

Section 2. Quasi-Judicial Hearing Level 2

(A) Mailed Notice: Notice of evidentiary hearings conducted pursuant to Chapter 3 shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land within 100 feet on all sides of the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing.

(B) Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

Section 3. Quasi-Judicial Hearing Level 3

(A) Mailed Notice. Notice of evidentiary hearing conducted pursuance to Chapter 3 shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing to all owners of property abutting and to the owners of all parcels of land within 500 feet of the subject parcel twenty five (25) days in advance of the hearing.

(B) Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

(C) In addition, notice shall be published in a newspaper of general circulation in the area sixty (60) days and again two (2) weeks in advance of the hearing.

(D) An announcement of the hearing shall be placed on the County's web site sixty (60) days in advance of the hearing, and remain there continuously until the hearing.

Section 4 Legislative Hearing

(A) Text Amendment: A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(B) Rezoning:

(1) Mailed Notice. –The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing.

(2) Optional Notice for Large-Scale Zoning Map Amendments. – The first-class mail notice required under subsection (1) of this section is not required if the zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the ordinance administrator elects to use the expanded published notice provided for in this subsection. In this instance, a local government may elect to make the mailed notice provided for in subsection (1) of this section or, as an alternative, elect to publish notice of the hearing as required by G.S. 160D-601, provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement is only effective only for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (1) of this section.

(3) Posted Notice. – When a zoning map amendment is proposed, the County shall prominently post a notice of the hearing on

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

ARTICLE V Special Use Reviews

Section 1. High Impact Land Use (HILU)

(A) Applicability: A special use permit shall be required for all High Impact Land Uses as set forth in Chapter 13 Article II.

(B) Process Type: Quasi-Judicial – Board of Adjustment

(C) Required Application Information: An application for a High Impact Land Special Use review shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) High Impact Land Use Review Application

(2) 2 copies of a site plan, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of any buildings already existing; the location and dimensions of the proposed building or alteration; and compliance with the standards of Chapter 13 Article II. The application shall include such other information as may reasonably be required by the Ordinance Administrator, including a description of all existing or proposed buildings or alterations; existing and proposed uses of the buildings and land; conditions existing on the land parcel; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this chapter.

(3) Developer Authorization Form if being developed by person(s) other than land owner(s).

(D) Public Notice: Quasi-Judicial Hearing Level 3

(E) Appeals: Appeals of decisions of the Board of Adjustment shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice.

(F) Permit Validity: A HILU Special Use Permit shall expire if a Building Permit or High Impact Land Use Occupancy Permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

Section 2. Wireless Communication Towers

(A) Applicability: Any wireless facility or wireless support structures not meeting the requirements of Chapter 23 Article II Section 1 or 3 may be permitted upon the granting of a Special Use permit.

(B) Process Type: Quasi-Judicial - Board of Adjustment

(C) Required Application Information: An application for a Wireless Communication Towers review shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

- **(1)** Wireless Communication Towers Review Application
- **(2)** Special Use Permit application form signed by the owner, or the applicant in accordance with (3) below;
- **(3)** Non-owner applicants must provide a copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue the application. Such submissions need not disclose financial lease terms;
- **(4)** Written description and scaled drawings of the proposed wireless support structure or wireless facility, including structure height, ground and structure design, and proposed materials;
- **(5)** Number of proposed antennas and their height above ground level, including the proposed placement of antennas on the wireless support structure;
- **(6)** Line-of-sight diagram or photo simulation, showing the proposed wireless support structure set against the skyline and viewed from at least four (4) directions within the surrounding areas;
- **(7)** A statement that the proposed wireless support structure will be made available for collocation to other service providers at commercially reasonable rates, provided space is available and consistent with Chapter 23 Article V Section 1 (A) of this chapter.

(D) Public Notice: Quasi-Judicial Hearing Level 1

(E) Appeals: Appeals of decisions of the Board of Adjustment shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice.

(F) Permit Validity: A Wireless Communication Towers development approval issued pursuant to this ordinance expires one year after the date of issuance if the work authorized by the development approval has not been substantially commenced.

Section 3. Large Wind Energy System Review

(A) Applicability: Large wind energy systems shall be subject to the requirements of Chapter 22 Article IV as well as Chapter 22 Article III, except that the height limits in Chapter 22 Article III Section 1 may be increased if approved as necessary by the Board of Adjustment.

(B) Process Type: Quasi-Judicial - Board of Adjustment

(C) Required Application Information: An application for a Large Wind Energy System Review shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

- **(1)** Wind Energy System Review Application
- **(2)** Documentation as required by Chapter 22 Article IV Section 1.
- **(3)** Developer Authorization Form if being developed by person(s) other than land owner(s).

(D) Public Notice: Quasi-Judicial Level 1

(E) Appeals: Appeals of decisions of the Board of Adjustment shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice.

(F) Permit Validity: A Large Wind Energy System development approval issued pursuant to this ordinance expires one year after the date of issuance if the work authorized by the development approval has not been substantially commenced.

Section 4. Foscoe Grandfather Special Use Review

(A) Applicability: The regulations set forth in Chapter10 shall apply to all land, every building and every use of land and/or building except bona fide farms as defined in N.C.G.S. 160D-903 within the boundaries of the Foscoe-Grandfather Community.

(B) Process Type: Quasi-Judicial - Board of Adjustment

(C) Required Application Information: An application for a Special Use Permit Review shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Foscoe/Grandfather Special Use Permit Application

(2) A site plan as defined in Chapter 7 showing compliance with standards in Chapter 10 Article VI.

(3) Developer Authorization Form if being developed by person(s) other than land owner(s).

(4) Planned Unit Developments will also need the following:

a. Preliminary Plat meeting the specifications in Chapter 18 Article V Section 3
b. Preliminary Plat Checklist (Chapter 18 Appendix E)
c. Adequate assurance of public or community water and sanitary sewer service.

(D) Public Notice: Quasi-Judicial Hearing Level 1

(E) Appeals: Appeals of decisions of the Board of Adjustment shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice.

(F) Permit Validity: A Foscoe Grandfather Special Use development approval issued pursuant to this ordinance expires one year after the date of issuance if the work authorized by the development approval has not been substantially commenced.

Article VI Administrative Permit Reviews

Section 1 Foscoe Grandfather Zoning

(A) Applicability. The regulations set forth in Chapter 10 shall apply to all land, every building and every use of land and/or building except

bona fide farms as defined in N.C.G.S. 160D-903 within the boundaries of the Foscoe-Grandfather Community.

(B) Process Type. Administrative- Ordinance Administrator

(C) Required Application Information. An application for a Zoning Permit shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Zoning Permit Application

(2) Plans, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Zoning Official including a description of all existing or proposed buildings or alterations; existing or proposed uses of the buildings and land; the number of families, housekeeping units, or rental units the buildings are designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with Chapter 10.

(D) Public Notice. None Required.

(E) Appeals: Appeals of decisions of the Ordinance Administrator shall be heard by the Board of Adjustment in accordance with Chapter 3.

(F) Permit Validity: Zoning Permits shall be valid for 1 year following the date of issuance. Failure to initiate construction, or otherwise begin the permitted use, within this time period shall render the permit void.

Section 2 Electronic Access Gates for Gated Communities

(A) Applicability: Applies to the installation of electronic access gates for gated communities.

(B) Process Type. Administrative – Ordinance Administrator

(C) Required Application Information. An application for an Electronic Access Gate Permit shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Electronic Gate Permit Application

(2) A detailed plan, including but not limited to, scaled drawings showing the location of the gates, turn radius, dimensions of

the gates, pavement, sidewalks, curbs, etc. Information such as topography lines, vegetation, site triangles, etc.

(3) Documentation of means of emergency access.

(D) Public Notice. None Required.

(E) Appeals: Appeals of decisions of the Ordinance Administrator shall be heard by the Board of Adjustment in accordance with Chapter 3.

(F) Permit Validity: Electronic Gate Permits shall be valid for six (6) months following the date of issuance. Failure to initiate construction, or otherwise begin the permitted use, within this time period shall render the permit void.

Section 3. Signs

(A) Applicability. Except as otherwise provided in Chapter 16 Article III Section 1, no sign may be erected, located, or altered in any manner until a sign permit, and building permit if necessary, has been secured from the Planning and Inspections Department.

(B) Process Type. Administrative – Ordinance Administrator

(C) Required Application Information. An application for a Sign Permit shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Sign Permit Application

(2) Walls Signs: Drawings showing sign and building dimensions.

(3) Freestanding Signs: Site plan showing proposed location and drawings showing sign dimensions.

(4) Billboards: Survey verifying spacing and setbacks requirements.

(D) Public Notice. None Required.

(E) Appeals: Appeals of decisions of the Ordinance Administrator shall be heard by the Board of Adjustment in accordance with

(F) Permit Validity: Sign Permits shall be valid for six (6) months following the date of issuance. Failure to initiate construction, or otherwise begin the permitted use, within this time period shall render the permit void.

Section 4. Small Wind Energy Systems

(A) Applicability. Applies to a single wind turbine which has a rated capacity of not more than 20 kW.

(B) Process Type. Administrative- Ordinance Administrator

(C) Required Application Information. An application for a Wind Energy System Permit shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Wind Energy System Permit Application

(2) A scaled drawing including tower, base and footing.

(3) Details on exterior finish/paint color.

(4) A site plan as defined in Chapter 7.

(D) Public Notice. None Required.

(E) Appeals: Appeals of decisions of the Ordinance Administrator shall be heard by the Board of Adjustment in accordance with Chapter 3.

(F) Permit Validity: Small Wind Energy Systems Permit shall be valid for six (6) months following the date of issuance. Failure to initiate construction, or otherwise begin the permitted use, within this time period shall render the permit void.

Section 5. Wireless Communication Towers

(A) Applicability. Wireless Communication Towers that can be approved administrative are the following:

(1) New wireless support structures that are 60 feet or less in height.

(2) New wireless support structures that are 100 feet or less in height and separated from residential dwellings by a distance of 300 feet or more.

(3) New wireless support structures that are 140 feet or less in height located within commercial or industrial areas and separated from residential dwellings by a distance of 300 feet or more.

(4) Concealed wireless facilities that are 140 feet or less in height and separated from residential dwellings by a distance of 300 feet or more.

(5) Monopoles or replacement poles located on public property or within utility easements or rights-of-way.

(6) COWs, if the use of the COW is either not in response to a declaration of an emergency or disaster by the Governor, or will last in excess of one hundred-twenty (120) days.

(7) Substantial modifications.

(8) Collocations.

(B) Process Type. Administrative – Ordinance Administrator

(C) Required Application Information.

(1) An application for a New Wireless Communication Tower Permit shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

a) Wireless Communication Towers application form signed by the owner, or the applicant in accordance with item (2) below;

b) Non-owner applicants must provide a copy of a lease or letter of authorization from the property owner evidencing applicant's authority to pursue the application. Such submissions need not disclose financial lease terms; and

c) Site plans detailing proposed improvements which comply with this ordinance. Drawings must depict improvements related to the applicable requirements including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.

d) Documentation from a North Carolina licensed professional engineer including calculation of the fall zone and certification that the wireless support structure has sufficient structural integrity to accommodate the required number of additional users as provided in this ordinance. Design of the support structure shall be in accordance with the latest ANSI/EIA/TIA-222 standards. Tower foundation design shall be in accordance with Chapter 18 of the NC Building Code. Grounding and electrical service equipment shall be in accordance with the National Electric Code. Watauga County is located within a Special Wind Region that will impact structural design of wireless structures and foundations.

(2) An application for Other Sites/Facilities Wireless Communication Tower Permit shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

a) Wireless Communication Towers application form signed by the owner, or the applicant in accordance with Chapter 23 Section 4 (C) (1) (b);

b) For collocations and substantial modifications, written verification from a North Carolina licensed professional engineer certifying that the host support structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennas. Watauga County is located within a Special Wind Region that will impact structural design of wireless structures and foundations.

c) For substantial modifications, drawings depicting the improvements along with their dimensions.

(D) Public Notice. None Required.

(E) Appeals: Appeals of decisions of the Ordinance Administrator shall be heard by the Board of Adjustment in accordance with Chapter 3

(F) Permit Validity: Sign Permits shall be valid for six (6) months following the date of issuance. Failure to initiate construction, or otherwise begin the permitted use, within this time period shall render the permit void.

Article VII Historic Preservation Reviews

Section 1. Certificate of Appropriateness – Major Works

(A) Applicability: No building, structure, or land shall hereafter be used or occupied and no building, structure or part hereof shall be hereafter erected, reconstructed, moved, demolished, located or the exterior structurally altered except in conformity with regulations set out herein for the Valle Crucis Historic District.

(B) Process Type: Quasi-Judicial – Valle Crucis Historic Preservation Commission

(C) Required Application Information: An application for a Certificate of Appropriateness shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Certificate of Appropriateness application

(2) Drawings, plans, photos and/or other sufficient to determine compliance with standards

(D) Public Notice: Quasi-Judicial Hearing Level 2

(E) Appeals: Appeals of decisions of the Valle Crucis Historic Preservation Commission shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30

days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice.

(F) Permit Validity: A Certificate of Appropriateness development approval issued pursuant to this ordinance expires one year after the date of issuance if the work authorized by the development approval has not been substantially commenced.

Section 2. Certificate of Appropriateness – Minor Works

(A) Applicability: No building, structure, or land shall hereafter be used or occupied and no building, structure or part hereof shall be hereafter erected, reconstructed, moved, demolished, located or the exterior structurally altered except in conformity with regulations set out herein for the Valle Crucis Historic District. Minor works are defined in Chapter 20 Article II Section 8(B).

(B) Process Type: Administration- Ordinance Administrator

(C) Required Application Information: An application for a Certificate of Appropriateness shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Certificate of Appropriateness application

(2) Drawings, plans, photos sufficient to determine compliance with standards

(D) Public Notice: None

(E) Appeals: Appeals of decisions of the Ordinance Administrator shall be heard by the Board of Adjustment in accordance with Chapter 3.

(F) Permit Validity: A Certificate of Appropriateness development approval issued pursuant to this ordinance expires one year after the date of issuance if the work authorized by the development approval has not been substantially commenced.

Article VIII Natural Resource Protection Reviews

Section 1. Sedimentation and Erosion Control Plan

(A) Applicability: To assure that land-disturbing activity undertaken in Watauga County does not result in accelerated erosion and sedimentation, no such land- disturbing activity on development 1 acre or greater in area shall take place until plans for controlling erosion associated with the activity have been reviewed and approved in accordance with the procedures set forth below.

(B) Process Type. Administrative – Ordinance Administrator

(C) Required Application Information. A Sedimentation and Erosion Control Plan shall be presented to the Ordinance Administrator according to the following provisions:

(1) Sedimentation and Erosion Control Plan Submission Application

(2) Plan Submission: Two copies of the plan shall be filed with the Ordinance Administrator and 1 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.

(3) Financial Responsibility and Ownership Form

(4) Environmental Policy Act Document (If needed)

(5) Content: The plan required by this section shall contain architectural and 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 article. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the city on request.

(6) Watauga County Soil and Water Conservation District comments.

(E) Public Notification: None required.

(F) Appeals: Except as provided in (6) of this subsection, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

(1) 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.

(2) 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.

(3) The Planning Board shall make recommendations to the Board of Commissioners within seven (7) days after the date of the hearing on any plan.

(4) 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.

(5) 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).

(6) In the event that a plan is disapproved pursuant to Chapter 8 Article V Section 9, the applicant may appeal the County's disapproval of the plan directly to the Commission.

(G) Permit Validity: When work under an approved Sedimentation and Erosion Control Plan is not initiated within 3 years following the date of approval, the plan shall be deemed expired.

Section 2. Grading Permit

(A) Applicability: To assure that land-disturbing activity undertaken in Watauga County does not result in accelerated erosion and sedimentation, no such land- disturbing activity on development 1 acre or greater in area shall take place until plans for controlling erosion associated with the activity have been reviewed and approved in accordance with the procedures set forth below.

(B) Process Type. Administrative.

(C) Required Application Information. An application for a Grading Permit shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Grading Permit Application

(2) Approved Sedimentation and Erosion Control Plan

(3) NCDOT driveway connection permit

(4) General Contractors Affidavit as to Status of Workman's Compensation.

(5) NC Lien Appointment

(D) Public Notification: None Required.

(E) Appeals: Appeals of decisions of the Ordinance Administrator shall be heard by the Board of Adjustment in accordance with Chapter 3.

(F) Permit Validity: When work under an approved Grading Permit is not initiated within one (1) years following the date of approval, the permit shall be deemed expired.

Section 3 Floodplain Development Permit

(A) Applicability. This section 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. No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this section and other applicable regulations.

(B) Process Type. Administrative – Ordinance Administrator

(C) Required Application Information:

(1) Floodplain Development Application

(2) 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 Chapter 9 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 Chapter 9 Article II, Section 2;

d) the boundary of the floodway(s) or non-encroachment area(s) as determined in Chapter 9Article II, Section 2;

e) the Base Flood Elevation (BFE) where provided as set forth in Chapter 9 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.

(3) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:

a) Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;

b) Elevation in relation to NAVD 1988 to which any non-residential structure in Zone AE or A will be floodproofed; and

c) Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.

(4) If floodproofing, a Floodproofing Certificate (FEMA Form 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,

(5) 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 Chapter 9 Article IV, Section 2(D)(4) when solid foundation perimeter walls are used in Zones A, AE, and A l-30.

(6) Usage details of any enclosed areas below the lowest floor.

(7) 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.

(8) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.

(9) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Chapter 9 Article IV, Section 2, (F) and (G) of this chapter are met.

(10) 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.

(D) Certification Requirements.

(1) An Elevation Certificate (FEMA Form 086-0-33) is required prior to the actual start of any new construction.

(2) An Elevation Certificate (FEMA Form 086-0-33) is required after the reference level is established.

(3) A final as-built Elevation Certificate (FEMA Form 086-0-33) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance.

(4) Floodproofing Certificates. If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 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. 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

(5) If a manufactured home is placed within Zone A, AE, or Al-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 Chapter 9 Article IV, Section 2(C)(2).

(6) 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.

(E) Public Notification. None Required.

(F) Appeals: Appeals of decisions of the Ordinance Administrator shall be heard by the Board of Adjustment in accordance with Chapter 3.

(G) Permit Validity: Floodplain Development Permits shall be valid for one (1) year following the date of issuance. Failure to initiate construction, or otherwise begin the permitted use, within this time period shall render the permit void.

Section 4. Watershed Development Permits

(A) Applicability: This 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".

(B) Process Type: Administrative – Ordinance Administrator

(C) Required Application Information:

(1) Watershed Protection Permit Application

(2) Two sets of a Site Plan as defined in Chapter 7 for Commercial or Multi-Family Projects.

(D) Public Notification. None Required.

(E) Appeals: Appeals of decisions of the Ordinance Administrator shall be heard by the Board of Adjustment in accordance with Chapter 3.

(F) Permit Validity: An issued permit shall become null and void if the applicant fails to secure a building permit, record a final plat or initiate construction on the site within one (1) year after the date of approval. In addition, when a Watershed Development Permit is issued in association with a Preliminary Plan or Final Plat, the Watershed Development Permit shall expire if said plan expires, is significantly modified, or is revoked.

Article IX Subdivision Reviews

Applicability: Subdivision approval shall be required before the division of land (for any purpose) into two or more parcels, except as expressly exempted below.

Section 1. Actions Exempt from Subdivision Requirements.

The following shall not be considered a "subdivision" subject to review under this section:

(A) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resulting lots are equal to or exceed the standards of this UDO;

(B) The division of land into parcels greater than ten acres where no road right-of-way dedication is involved;

(C) The public acquisition by purchase of strips of land for water or sewer infrastructure or the widening or opening of roads; and

(D) The division of a site in single ownership whose entire area is no greater than two acres into not more than three lots, where no road right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this UDO.

(E) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

Section 2. Type of Subdivision

(A) Minor Subdivision is a subdivision:

- **(1)** that requires no variances and consist of not more than ten (10) lots. One phase of a phased development cannot be considered a minor subdivision unless the entire development is not more than 10 lots.
- **(2)** Minor subdivisions require minor plat review and final plat approval.

(B) Major Subdivision

- **(1)** All other divisions of land not exempted by Section 1 or Section 2 (A).
- **(2)** Major subdivisions require preliminary plat approval and final plat approval.

(C) Planned Unit Development

- **(1)** A "planned unit development" (PUD) is a tract of land under single, corporate, firm, partnership, or association ownership which is planned and developed as an integral unit. It is established in a single development operation or a definitely

programmed series of development operations according to an approved master development plan and a preliminary site plan.

(2) Planned Unit Developments require preliminary plat approval and final plat approval.

(D) Multi-Phased Development

(1) Development containing at least 25 acres;

(2) Subject to a master development plan with committed elements showing type and intensity of use for each phase; and

(3) Development permitting to occur in more than one phase.

(E) Family Subdivision

(1) The division of land solely among members of the same family, which shall include all lineal descendants or ancestors plus brothers, sisters, aunts, uncles, fathers-in-law, mothers-in-law, brothers-in-law, sisters-in-law, nieces, nephews and stepchildren by any method of transfer except where the parties contemplate development for resale, and where the resultant lots are equal to or exceed the standards of the county as shown in this chapter.

(2) Family subdivisions require final plat approval.

(F) Manufactured Home/Recreational Park Trailer Park

(1) The rental of any site or tract of land upon which three (3) or more manufactured homes or recreational park trailers occupied for dwelling or sleeping purposes are located.

(2) Leases of a term longer than ten (10) years shall be constructed as a sale of property.

Section 3. Minor Subdivision Plat Review

(A) Applicability: The procedure for approval of a minor subdivision plat is intended to simplify processing of routine small subdivisions with due regard to protection of the public interest.

(B) Process Type: Administrative – Ordinance Administrator

(C) Required Application Information: An application for a minor subdivision plat review shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Plat Submission Application

(2) 2 copies of Plat meeting the specifications in Chapter 18 Article V Section 6.

(D) Public Notice: None Required.

(E) Appeals: Appeals of decisions of the Ordinance Administrator shall be heard by the Planning Board in accordance with Chapter 3.

(F) Permit Validity: The approval of the final plat by the Ordinance Administrator shall be on the condition that such plat be recorded in the office of the Register of Deeds within six (6 months) after such approval.

Section 4. Family Subdivision Review

(A) Applicability: A final plat shall be required for all subdivisions that do not meet the definition of a minor subdivision as set forth in Article VI (A)(2).

(B) Process Type: Administrative – Ordinance Administrator

(C) Required Application Information: An application for a Family Subdivision Review shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Final Plat meeting the specifications in Chapter 18 Article V Section 3.

(2) Family Subdivision Document.

(D) Public Notice: None Required.

(E) Appeals: Appeals of decisions of the Ordinance Administrator shall be heard by the Planning Board in accordance with Chapter 3.

(F) Permit Validity: The approval of the plat by the Ordinance Administrator shall be on the condition that such plat be recorded in the office of the Register of Deeds within six (6) months after such approval.

Section 5. Planning Board General Submission Requirements

All submissions to the Watauga County Planning Board are required to:

(A) Submit two (2) paper copies of plat/plan along with other requirements as outlined in applicable Sections 6 – 11 by submission deadline.

(B) Two weeks prior to meeting and subsequent to staff review an electronic copy will be provided to staff.

(C) Eight (8) full size copies of plat will be submitted no later than 5:00 p.m. the Friday before the scheduled meeting.

Section 6. Major Subdivision Preliminary Plat Approval

(A) Applicability: A preliminary plat shall be required for all subdivisions that do not meet the definition of a minor subdivision as set forth in Article IX Section 2.

(B) Process Type: Administrative - Planning Board

(C) Required Application Information: An application for a preliminary plat review shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

- **(1)** Plat Submission Application
- **(2)** Master Plan (if applicable)
- **(3)** Preliminary Plat meeting the specifications in Chapter 18 Article V Section 3
- **(4)** Preliminary Plat Checklist (Chapter 18 Appendix E)
- **(5)** Developer Authorization Form if being developed by person(s) other than land owner(s).

(D) Public Notice: None Required.

(E) Appeals: Appeals of decisions of the Planning Board shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice.

(F) Permit Validity: Unless a final plat is submitted to the Planning Board within eighteen (18) months from the date on which the preliminary plat was approved, such action on the preliminary plat shall become void and of no effect, and will necessitate the resubmission of the preliminary plat to the Planning Board for consideration. Multi-Phased development as defined in Article IX Section 2 shall be vested for seven (7) years from the time of initial Master Plan approval.

Section 7. Major Subdivision Final Plat Approval

(A) Applicability: A final plat shall be required for all subdivisions that do not meet the definition of a minor subdivision as set forth in Article IX Section 2.

(B) Process Type: Administrative - Planning Board

(C) Required Application Information: An application for a final plat review shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Plat Submission Application

(2) Final Plat meeting the specifications in Chapter 18 Article V Section 3.

(3) Final Plat Checklist (Chapter 18 Appendix F)

(4) Road Grade Certification by NC Licensed Surveyor.

(5) NCDOT approval of driveway connection. (if applicable)

(D) Public Notice: None Required.

(E) Appeals: Appeals of decisions of the Planning Board shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice.

(F) Permit Validity: The approval of the final plat by the Planning Board shall be on the condition that such plat be recorded in the office of the Register of Deeds within ninety (90) days after such approval.

Section 8. Planned Unit Developments (PUD) Preliminary Plat Review

(A) Applicability: A preliminary plat shall be required for all subdivisions that do not meet the definition of a minor subdivision as set forth in Article IX Section 2.

(B) Process Type: Administrative - Planning Board

(C) Required Application Information: An application for a PUD preliminary plat review shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Plat Submission Application

(2) Master Plan (if applicable)

(3) Preliminary Plat meeting the specifications in Chapter 18 Article V Section 3

(4) Preliminary Plat Checklist (Chapter 18 Appendix E)

(5) Developer Authorization Form if being developed by person(s) other than land owner(s).

(6) Adequate assurance that public or community water and sanitary sewer service.

(D) Public Notice: None Required.

(E) Appeals: Appeals of decisions of the Planning Board shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice.

(F) Permit Validity: Unless a final plat is submitted to the Planning Board within eighteen (18) months from the date on which the preliminary plat was approved, such action on the preliminary plat shall become void and of no effect, and will necessitate the resubmission of the preliminary plat to the Planning Board for consideration. Multi-Phased development as defined in Article IX Section 2 shall be vested for seven (7) years from the time of initial Master Plan approval.

Section 9. Planned Unit Developments (PUD) Final Plat Review

(A) Applicability: A final plat shall be required for all subdivisions that do not meet the definition of a minor subdivision as set forth in Article IX Section 2.

(B) Process Type: Administrative - Planning Board or Ordinance Administrator

(C) Required Application Information: An application for a PUD final plat review shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

- **(1)** Plat Submission Application
- **(2)** Final Plat meeting the specifications in Chapter 18 Article V Section 3.
- **(3)** Final Plat Checklist (Chapter 18 Appendix F)
- **(4)** Road Grade Certification by NC Licensed Surveyor
- **(5)** NCDOT approval of driveway connection (if applicable).

(D) Public Notice: None Required.

(E) Appeals: Appeals of decisions of the Ordinance Administrator shall be heard by the Planning Board in accordance with Chapter 3. Appeals of decisions of the Planning Board shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice.

(F) Permit Validity: The approval of the final plat by the Planning Board or Ordinance Administrator shall be on the condition that such plat be recorded in the office of the Register of Deeds within ninety (90) days after such approval.

Section 10. Manufactured Home/Recreational Park Trailer Parks Preliminary Plat Review

(A) Applicability: No person, firm, or corporation shall commence construction or alteration of a manufactured home/recreational park trailer park within Watauga County without first securing the approval of a preliminary site plan from the Watauga County Planning Board.

(B) Process Type: Administrative - Planning Board

(C) Required Application Information: An application for a Manufactured Home/Recreation Park Trailer Park preliminary site plan review shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

- **(1)** Plat Submission Application
- **(2)** Site Plan drawn to scale including the following:
  - **a)** Items specified by AppHealthCare.
  - **b)** Sketch vicinity map of the park's location.
  - **c)** Proposed streets, street names, rights-of-way, roadway widths, approximate grades, curve radiuses, and proposed drainage facilities.
  - **d)** Landscaping, buffering, open space plans.
  - **e)** Designated parking areas.
  - **f)** AppHealthCare certificate indicating approval of the plan.

(D) Public Notice: None Required.

(E) Appeals: Appeals of decisions of the Planning Board shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice.

(F) Permit Validity: Unless a final plat is submitted to the Planning Board within eighteen (18) months from the date on which the preliminary plat was approved, such action on the preliminary plat shall become void and of no effect, and will necessitate the resubmission of the

preliminary plat to the Planning Board for consideration. Multi-Phased development as defined in Article IX Section 2 shall be vested for seven (7) years from the time of initial Master Plan approval.

Section 11. Manufactured Home/Recreational Park Trailer Parks Final Plat Review

(A) Applicability: No person, firm, or corporation shall commence construction or alteration of a manufactured home/recreational park trailer park within Watauga County without first securing the approval of a preliminary site plan from the Watauga County Planning Board.

(B) Process Type: Administrative - Planning Board

(C) Required Application Information: An application for a Manufactured Home/Recreation Park Trailer Park final site plan review shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

- **(1)** Plat Submission Application
- **(2)** Site Plan drawn to scale including the following:
  - **a)** Sketch vicinity map of the park's location.
  - **b)** As-built streets, street names, rights-of-way, and drainage facilities.
  - **c)** Designated parking areas.
- **(3)** NCDOT approval of driveway connection (if applicable).

(D) Public Notice: None Required.

(E) Appeals: Appeals of decisions of the Planning Board shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice.

Article X Variances

(A) Applicability: The appropriate Board may vary certain requirements of this Ordinance that will not be contrary to the public interest, where, owing to special conditions, a strict application of the provisions of these regulations, will, in an individual case, result in unnecessary hardship. The appropriate Board shall ensure that the

spirit of these regulations shall be observed, public safety secured, and substantial justice done.

(1) No change in permitted uses may be authorized by variance.

(2) It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this ordinance may impose on property owners in general or to increase the profitability of a proposed development.

(3) In no event shall any Board grant a variance which would conflict with the North Carolina State Building Code or any other state code unless otherwise authorized by duly enacted applicable laws and regulations.

(B) Process Type: Quasi-Judicial

(C) Required Application Information: An application for a variance shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Variance Application

(2) Survey required for setback variance requests.

(3) Site Plan or other documentation relevant to describing applicant's request.

(D) Public Notice: Quasi-Judicial Hearing Level 1, 2, or 3 depending on applicable Board and Chapter variance is being requested from

(E) Appeals: Appeals of decisions by Quasi-Judicial Boards shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice.

Article XI Appeals of Administrative Decisions

(A) Applicability: This process is hereby established to provide an appeal process for parties aggrieved by any administrative order, requirement, decision or determination, made by an administrative officer charged with enforcing the provisions of this ordinance. An appeal of an administrative decision may be taken by any person aggrieved (or by their authorized agent) or may be taken by any officer, department, board or bureau of the county. Such an appeal

shall be made to the county within 30 days of the receipt of the written notice of decision from the county.

(B) Process Type: Quasi-Judicial

(C) Required Application Information: An application for an Appeal of Administrative Decision shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Application for Appeal of Determination

(2) Any other documentation relevant to applicant's request.

(D) Public Notice: Quasi-Judicial Hearing Level 1 or 2 depending on applicable Board and regulations variance is being requested.

(E) Appeals: Appeals of decisions by Quasi-Judicial Boards shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice.

Article XII Text Amendments

(A) Applicability: The County may from time to time amend any part of the text of this ordinance. A request to amend the text of this ordinance may be initiated by the Board of Commissioners, Board of Adjustment, Planning Board, Director, or the general public.

(B) Process Type: Legislative – Board of Commissioners

(C) Required Application Information: An application for a Text Amendment shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Application for Text Amendment

(2) Any other documentation relevant to applicant's request.

(D) Public Notice: A distinctive advertisement shall be placed by the County in a local newspaper of general circulation once a week for two successive calendar weeks, the first notice being published not less than ten days nor more than 25 days before the date fixed for the public hearing.

(E) Appeals: A legislative decision of the Board of Commissioners with regard to a text amendment may be challenged by the filing of a declaratory judgement action in the Superior Court of Watauga County.

Article XIII Rezoning

(A) Applicability: Amendments to the Foscoe Grandfather Zoning Map shall be made in accordance with the provisions of this section. A request for a rezoning may be initiated by the Board of Commissioners, Board of Adjustment, Planning Board, Ordinance Administrator, or owner of land within the jurisdiction of the County.

(B) Process Type: Legislative - Board of Commissioners

(C) Required Application Information: An application for a Zoning Map Amendment shall be submitted in accordance with Article II Application Filing and Acceptance and the following provisions:

(1) Application for Zoning Map Amendments

(2) Any other documentation relevant to applicant's request.

(D) Public Notice: Mailed Notice. –The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing.

(E) Appeals: A legislative decision of the Board of Commissioners with regard to a text amendment may be challenged by the filing of a declaratory judgement action in the Superior Court of Watauga County.

Article XIV Vested Rights

(A) Applicability: A vested right establishes the right to undertake and complete the development and use of a property on substantial expenditures as set forth in G.S. § 160D-108.

(B) Vested Right Runs with Property. A zoning vested right is not a personal right but shall attach to and run with the applicable property. After approval of a Site-Specific Vesting Plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

(C) Types of Vested Rights. Vested Rights may be granted for the following development activities:

(1) Site-Specific Vesting Plans

(2) Building Permits

(3) Multi-phased Developments

(4) Development Agreements

(D) Establishment:

(1) A vested right is established upon the valid approval, or conditional approval of a site-specific vesting plan. Such a vested right confers upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the site-specific development plan, including any amendments thereto.

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

(3) Notwithstanding paragraphs 1 and 2 above, approval of a site-specific vesting plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.

(4) A site-specific vesting plan shall be deemed approved upon the effective date of the approval authority's decision approving the plan or another date determined upon approval.

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

(6) A vested right obtained under this section is not a personal right, but attaches to and runs with the applicable property. After approval of a site-specific vesting plan, all successors to

the original landowner shall be entitled to exercise such right while applicable.

(E) Application Requirements: An application shall be submitted in accordance with §9.2.2, Application Requirements. In order for a vested right to be established upon approval of a site-specific vesting plan, the applicant must indicate, at the time of application, that a vested right is being sought.

(F) Notice and Public Hearings: The County shall hold all required public hearings and give notice in accordance with Article IV Public Notification.

(G) Amendment of Plans: An approved site-specific vesting plan may be amended with the approval of the owner and the approval authority as follows: Any substantial modification must be reviewed and approved in the same manner as the original approval. Minor modifications as defined by Ordinance may be approved by the Ordinance Administrator.

(H) Continuing Review: Following approval or conditional approval of a statutory vested right, the Ordinance Administrator may make subsequent reviews and require approvals by the County to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval. The County may revoke the original approval for failure to comply with applicable terms and conditions of the original approval or the applicable development regulations.

(I) Duration and Termination of Vested Right:

(1) A. A vested right for a site-specific vesting plan remains vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to paragraph B below. This vesting shall not be extended to any amendments or modifications to a site-specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.

(2) Notwithstanding the provisions of paragraph 1 above, the approval authority may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in accordance with all relevant circumstances, including, but not limited to, the size of the development, density and intensity of the development, economic cycles and market conditions. These determinations shall be in the sound

discretion of the approval authority at the time the site-specific vesting plan is approved.

(3) A multi-phased development plan as defined in §12.2.3 is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multiple-phased development.

(4) Upon issuance of a building permit, the expiration provisions of this section and the revocation provisions of G.S. § 160D-1115 and 160-1115 shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.

(5) A right vested as provided in this section terminates at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(J) Subsequent Changes Prohibited; Exceptions

A vested right, once established as provided for in this section, precludes any zoning action by the County that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific development plan, except under one or more of the following conditions:

(1) With the written consent of the affected landowner;

(2) Upon findings, by ordinance after notice and an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as was contemplated in the site-specific vesting plan;

(3) To the extent that the affected landowner received compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in considerations of financing, and all architectural, planning, marketing, legal, and other consulting fees incurred after approval by the County, together with interest as provided in the G.S. §160D-106;

(4) Upon findings, by ordinance after notice and a evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Board of Commissioners of the site specific vesting plan; or

(5) Upon the enactment or promulgation of a State or Federal Law or regulation that precludes development as contemplated in the site-specific vesting plan, in which case the County may modify the affected provisions, upon a finding that the change in State or Federal Law has a fundamental effect on the plan, by ordinance after notice and an evidentiary hearing.

(K) Process to Claim Common Law Vested Right: A person claiming a common law vested right may submit information to substantiate that claim to the Ordinance Administrator, who shall make an initial determination as to the existence of the vested right. The decision of the Ordinance Administrator may be appealed to the Board of Adjustment. In lieu of seeking a determination or pursuing an appeal to the Board of Adjustment, a person claiming a vested right may bring an original civil action as provided in G.S. §160D-1403.1.