

**HIGH IMPACT PROTECTION ORDINANCE
AVERY COUNTY, NORTH CAROLINA**

Article I: Introduction

Section 1. General Purpose

The following regulations of High Impact Industry are adopted for the purpose of promoting the health, safety and general welfare of the citizens of Avery County. The Avery County Commissioners hereby establish certain criteria relating to high impact industries. These industries 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, agricultural and commercial areas in Avery County.

This ordinance does not affect land uses not listed herein.

Section 2. Legal Authority

This ordinance is adopted under the authority granted to counties by the General Assembly of North Carolina in General Statute 153A, Article 18 and other pertinent statutes and amendments thereto.

Section 3. Territorial Coverage

Pursuant to N.C.G.S. 153A-122, this ordinance shall apply to all areas of unincorporated Avery County, which are not within the extra-territorial jurisdiction of any municipalities. All municipalities, their respective corporate limits, and extra-territorial jurisdiction shall be exempted from the ordinance, unless they choose to adopt this ordinance or some form thereof.

Article II: Regulated Industries

Section 1. Regulated Uses

Class 1: (a) Concrete Suppliers (Ready Mix)
(b) Temporary tub grinding operations

Class 2: (a) Chemical Manufacturing
(b) Cement Manufacturers
(c) Chip Mills (enclosed facility)
(d) Junk Yards (vehicular)

- Class 3: (a) Chip Mills (open facility)
 (b) Sawmills
 (c) Local Solid Waste Management Facilities/Convenience Centers
 (d) Tub Grinders (permanent operation)
 (e) Inert debris and land clearing (LCID) land fills
 (f) Propane, gasoline and fuel oil bulk storage facilities
- Class 4: (a) Commercial Incinerators
 (b) Mining and Extraction Operations and Quarries
 (c) Slaughtering and Processing Plants
 (d) Commercial Livestock Auction
 (e) Regional Solid Waste Facilities C & D (construction and demolition debris) landfills
 (f) Sewer Plants – Stream set-backs to be determined by the Army Corp of Engineers & Division of N.C. Water Quality
- Class 5: (a) Pulp and Paper Mills
 (b) Hazardous Waste Facilities
 (c) Asphalt Plant(s)
- Class 6: (a) Explosives Manufacturing
 (b) Regional Solid Waste Landfills. (household waste) (MSW) Municipal Solid waste
 (c) Motor Sports Activities
- Class 7: (a) Agriculture Chemical Storage Facilities and/or Buildings exempt; Exempt regulated compliance by North Carolina Best Management Practices Activities (BMP's) and Integrated Pest Management (IPM's) programs.
 Regulated
 By North
 Carolina
 Dept. of
 Agriculture

Section 2: Definitions

The following definitions shall be used for the purpose of interpreting this ordinance; for terms not defined below, the common usage of the term shall prevail.

1. Airport – Avery County Airport air space and landing flight patterns are protected by The Avery County Airport Ordinance.
2. Area of Operation and/or Point of Operation – The portion of a tract of land on which a high impact industry, including the area occupied by building, structures, equipment and other similar operations. Driveways and internal drives may extend beyond the area of operation.

3. Asphalt Plant – A plant or facility, with all related equipment, for the manufacture and production of a black or brown “tar like” variety of bitumen, which, when mixed with proper amounts of sand or gravel or both, results in material suitable for paving and/or roofing, etc.
4. Board of Commissioners – The Avery County Board of Commissioners
5. Cement Manufacturer- An element, chemical compound, mixture of elements or compounds or both. This definition shall not include pharmaceutical manufacturing.
6. Chemical – An element, chemical compound, mixture of elements or compounds, or both. This definition shall not include pharmaceutical manufacturing.
7. Chemical Manufacturing – A facility primarily involved in the production, synthesis, formation processing, refining, manufacturing, and/or distribution of chemical products in bulk, for other than retail sales on-site.
8. Chemical Storage Facilities – A facility whose primary use is for the storage of chemical compounds in bulk.
9. 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 150,000 tons annually.
 - Open Chip Mill Facility – Operation is less than 80% enclosed by a building structure.
 - Enclosed Chip Mill Facility – Operation is enclosed 80% or more by a building structure.
10. Commercial – Use for an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.
11. Commercial Incinerators – Any enclosed device that burns more than 250 pounds of any material per hour other than the classical boiler fossil fuels, such as natural gas, propane, coal or fuel oil, which is a principal use on any lot or parcel.
12. Commercial Livestock Auction: A facility or area used for the commercial selling or buying of livestock on a set schedule; (may it be weekly or monthly).
13. Concrete Supplier (Ready Mix) – An establishment primarily engaged in manufacturing hydraulic cement, including Portland, natural, and masonry cements to be delivered from the site to a purchaser in a plastic and unhardened state. This industry includes production and sale of central mixed concrete, shrink mixed concrete, and truck mixed concrete. Also included are the manufactures of concrete products from a combination of cement and aggregate.

14. Cone of Illumination – The area, as measured on the ground, which is being illuminated by a lighting device.
15. Construction Activities – Any studies, investigations, operations, improvements, or other activities undertaken at the site of a proposed high impact land use pertaining to the construction, placement, erection, or establishment of the same, including but not limited to surveys, soil and other environmental tests, clearing and grading, pouring or pads, placing building materials or equipment at the site, locating or constructing buildings, structures, or other improvements, or any other similar activities.
16. Convenience Center/Transfer Station – A facility used for the collection, temporary storage, and transfer of solid waste to a landfill as defined by this ordinance.
17. County – The County of Avery County
18. Explosives Manufacturing – Manufacturing of a chemical compound, mixture, or device, 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.
19. Hazardous Waste Facility – A facility designed for the collection, storage, processing, recycling, recovery, treatment and/or disposal of hazardous waste. (source: NCGS 130A-290)
20. High Impact Industry – A use listed in Article II, Section 1 of this Ordinance that may by their very nature produce objectionable levels of noise, odors, vibrations, fumes, light, smoke, and/or other impacts upon the lands adjacent to them.
21. Hospital/Medical Clinic – A facility as defined in G.S. 131E-76 (3) or any facility used in the treatment or practice of medical care giving.
22. 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.
23. Industrial Park – A planned industrial area, funded by public or private investments, designed and equipped to accommodate a community of industries, providing them with all necessary facilities and services among compatible uses.
24. Inert debris and land-clearing (LCID) landfills: Operation of a disposal area for land clearing waste, inert debris, untreated wood and yard trash. Operation must be consistent and in compliance with the local government solid waste plan.

1. Type-1 less than 2 (two) acres; the owner (LCID) is required (N.C. General Statutes 130A-294) to file Notification Form for recordation in the Register Of Deed's office. The record notification, affixed with the register's seal and the date, book and page number of recording shall be sent to the Division of Solid Waste Management, Asheville Regional District.
2. Type-2 over 2 (two) acre sites; individual permit is required per Title 15A.13B (0565) of NCGS 130A-294. The seal of a professional engineer is required when submitting plans for a Land Clearing and Inert Debris (LCID) land-fill.

Note: Both Type 1 & Type 2 LCID's must comply with all local and Avery County Ordinances.

25. Junk Yard/Vehicular – Defined as three or more motor vehicles that does not display a current North Carolina License Plate and/or partially dismantled or wrecked, cannot be self-propelled and which are visible from a public roadway.
26. Light Mitigation – A good faith effort to reduce the emission of light or diminish the effects that emitted light has on adjacent parcels or the neighborhood.
27. Manufactures and/or Storage Facility of Bulk Inflammables (Fuel Oil, Propane, Gasoline) - A facility whose primary purpose is one of the following:
 - (1) The production, synthesis, formation, processing refining, manufacturing, distribution, and/or storage of chemical products in bulk of any amount.
 - (2) The storage terminals, distribution, mixing or transfer of flammable or combustible liquids or gasses received by or transferred by pipelines, tank car or tank truck in access of 50,000 gallons are defined as bulk storage facilities
 - (3) The storage of flammable or combustible liquids or gases shall not include filling stations or convenience stores with storage of less than 50,000 gallons used solely for retail distribution to individual customers are exempt from this ordinance.
28. Medical Waste Facility – A facility that stores or treats medical waste as defined by G.S. 130A-309.26a.
29. Mining, Quarrying, or Resource Extraction – An operation for the digging, extraction, mining, or quarrying of minerals, ores, soils, and other solid matter for commercial purposes. This definition shall not include excavation or grading when conducted solely in aid of on-site farming or of on-site construction for purposes other than mining. Removal of overburden and mining of limited amounts of any ores or mineral solids shall not be considered mining when done only for the purpose and to the extent necessary to determine the location, quantity, or quality of any exploratory excavation does not exceed one acre in area. This definition does

not include “gem” or other mining generally operated as a business use for the general public. This definition shall not include the removal of fieldstone for commercial or private use.

30. Motor Sports Activities – The use of any parcel by an establishment or business for the operation, for more than two hours during any eight hour time period, of more than three motor propelled conveyances powered by internal combustion engines including but not limited to automobiles, motorcycles, and All Terrain Vehicles.
31. Non-Conforming Use – Any use which legally existed on the effective date of this Ordinance, and which does not conform to the regulations of this ordinance.
32. Noise Mitigation – A good faith effort to reduce the emission of noise or diminish the effects that emitted noise has on adjacent parcels or the neighborhood.
33. Objectionable – Undesirable, offensive (from Webster’s Dictionary).
34. Ordinance Administrator – The Avery County Planning Department
35. Paper Mill – An establishment primarily engaged in manufacturing paper from pulp. These establishments may manufacture or purchase pulp.
36. Perennial Stream – A constantly flowing, drought-resistant stream that is typically depicted by a thin continuous blue line on the most recent version of the USGS 1:24,000 (7.5 minute) scale topographic maps (or as determined by local Government studies), unless other provisions have been made.
37. Person – A firm, corporation, general partnership, limited partnership, limited liability company, sole proprietor, individual, individual action on behalf or another, or any other entity of any type whatsoever.
38. Pharmaceutical Manufacturing – Establishments primarily engaged in one or more of the following: (1) manufacturing biological and medicinal products; (2) the processing (i.e., grading, Grinding and milling) botanical drugs and herbs; (3) isolating active medicinal principals from botanical drugs and herbs; and (4) manufacturing pharmaceutical products intended for internal and external consumption in such forms as ampoules, tablets, capsules, vials, ointments, powders, solutions, and suspensions.
39. Planning Commission – The Avery County Planning Commission
40. Planning Department – The Avery County Department of Planning & Inspections.

41. Point of Operation/Area of Operation – The portion of a tract of land on which a High Impact Industry is situated that is actually under use for operations by the High Impact Industry, including areas occupied by buildings, structures, equipment, excavation activities related to ore or mineral extraction and other similar operations. Driveways and internal drives may extend beyond the point of operation.
42. Principal Use – A primary purpose for which land, buildings or other improvements is arranged, designed, intended or used, including the storage or use of supplies, inventory, materials, equipment or products associated therewith.
43. Propane – A heavy flammable gaseous alkane C₃H₈, found in crude petroleum and Natural gas, also known as LP gas.
44. Pulp Mill – This industry comprises establishments primarily engaged in manufacturing paper or paperboard. The pulp is made by separating the cellulose fibers from the other impurities in wood or other materials, such as used or recycled rags, lintens, scrap paper, and straw.
45. Sawmill – Any commercial operation employing three or more fulltime employees established for a period of six months or more where timber is customarily processed into raw lumber, finished wood products or other wood products, regardless of whether the wood products are sold on premises or transferred to another facility or storage and sale. This definition includes the reprocessing of lumber and wood planing operations.
 - Portable Sawmills exempt less than 45 days
 - Portable Sawmills set-up for more than 45 days at the same location will fall under the High Impact Classification of Class #3.
46. Scrap Metal Salvage Yards – An establishment engaged in the wholesale distribution of automotive scrap, industrial scrap and other recyclable materials. This definition also includes auto wreckers primarily engaged in dismantling motor vehicles for the purpose of whole selling scrap.
47. Screening – A continuous area of planted or existing vegetation, which at all times of the year has trees, shrubbery, and/or other natural vegetation sufficient in height, density, and foliage to screen a high impact land use from the view of persons and motorist not on the property and to reasonably prevent airborne particulate matter from escaping there-from. For the purpose of this ordinance, screening shall be broken into the following two categories:
 - Broken Screen* – A screening device, as defined above, that is at least 75% opaque at maturity.
 - Opaque Screen* – A screening device, as defined above, that is at least 95% Opaque at maturity.

48. Setback Required – A continuous strip of land, measured from Point A (protected facility) to Point B (nearest point of operation) in a straight line. The “set back” will be **traversing** the property lines in which no principal use shall be permitted. The distance of the set-back will be regulated by Article III, Section 3 of this Ordinance.
49. Slaughtering and Processing Plant – An establishment primarily engaged in slaughtering, dressing, packing, freezing, canning, cooking and/or curing animals or poultry or their by-products or processing or manufacturing products from such animals or poultry or their by-products; and establishments primarily engaged in the collection and/or processing of the inedible portion(s) of animals or poultry or their carcasses. This definition specifically excludes; slaughtering and processing activities performed for personal use only and those slaughtering and processing plants processing less than 100 animals per month for other than personal use.
50. Solid Waste Management Facility/Landfill – Land and equipment, other than Incinerators, used in the management of solid waste, including landfills and excluding convenience and transfer stations. These facilities shall be broken into the following two categories:
- Local Solid Waste Management Facility/(C&D) Construction and Demolition Land Fill: The disposal of waste resulting from construction, remodeling, repair and demolition of structures. Such waste includes but are not limited to bricks, concrete and other masonry materials, soil, rock, lumber, road spoils waste, rebar and paving materials.
 - Local/Regional Solid Waste Management Facility (MSW) Municipal Solid Waste Disposal: The disposal of “solid waste” resulting from means of garbage, trash, refuse, abandoned material, spent material, by products, scrap, ash, sludge, and all discarded material including solid, liquid, semi-solid, or contained gaseous material resulting from residential, commercial, industrial or agricultural activities.
51. Temporary: A “temporary” activity is an activity that will be set up for a temporary time span not to exceed 30 days of operation; and then has to be removed.

Article III. Regulations and Standards (New High Impact Industries Regulated)

No high impact use of a parcel or parcels of land shall be permitted, constructed, operated, or maintained except in accordance with the following standards.

Section 1. Screening and Fencing: Screening shall be required for all High Impact Industries along all sides and rear property lines based on the following types:

- A. Broken Screen, which includes:
 - 1. Deciduous and/or evergreen trees placed a maximum of 25 feet apart on center and 2 or 3.
 - 2. Shrubs placed a maximum of ten feet apart on center **or**
 - 3. Opaque wooden fences, masonry walls or landscaped earth berms a minimum of six feet in height may be used to replace the requirement of shrubs.
- B. Opaque Screen, which includes:
 - 1. Deciduous trees placed a maximum of 20 feet apart on center, and 3 or 4
 - 2. Evergreen trees placed a maximum of ten feet apart on center in two staggered rows or five feet apart in a single row, and 3 or 4
 - 3. Shrubs placed a maximum of ten feet apart on center **or**
 - 4. Opaque wooden fences, masonry walls or landscaped earth berms a minimum of eight feet in height may be used to replace the requirements of shrubs, and to decrease the required number of evergreen trees by one-half.
- C. Security Fence:
 - 1. Security fencing in a form that acts to prohibit access to the site shall be required around the area of operation/point of operation for Class 4 through 6 as defined in Article II, Regulated Industries with chain link or acceptable alternate fencing shall be at least eight feet in height.

The following standards shall apply for trees and shrubs planted to meet the aforementioned screening requirements:

- A. Trees shall be setback at a distance equal to $\frac{1}{4}$ the canopy spread at maturity from the property line.
- B. Trees shall be a minimum of six feet tall and have a 1 and $\frac{1}{2}$ inch trunk caliper measured six inches above grade upon planting.
- C. Trees shall be of a type that will reach a height of at least 25 feet at maturity.
- D. Shrubs shall be a minimum of one foot tall upon planting.
- E. Shrubs shall be evergreen and of a type that will reach a height of at least five feet at maturing or within five years, whichever is shorter?

Existing vegetation may be used in lieu of the required screens. The existing vegetation must be mature, at least ten feet in height at ground level, and meet the intent of the definition of **screening** listed in Section 2. .

Section 2. Landscaping Plans:

A landscaping plan illustrating the required setbacks, screening and other site separation requirements shall be submitted through the Development Permit Process for any use regulated by this ordinance. The Ordinance Administrator may reasonably require adjustments and alterations to any proposed landscaping plan as is necessary to comply with the provisions of this ordinance.

Section 3. Set Backs:

The following table details the required minimum distance/setback requirements for each Industry Classification of land use from “**point of operation**” to the nearest “**protected facility**”.

HIGH IMPACT PROTECTION ORDINANCE
(HIPO) SETBACK TABLE

INDUSTRY CLASSIFICATION (1)	LAND USE SETBACK (2)	STREAM SETBACK (3)	SCREENING TYPE (4)
Class 1	50’	100’	A
Class 2	200’	100’	A
Class 3	400’	100’	B
Class 4	600’	100’	B
Class 5	1000’	100’	B
Class 6	2000’	100’	B

- a. High Impact Classes are defined in Article II, Section 1.
- b. The land use setback is the distance required between the “**area of operation**” of any High Impact Industry and any protected facility. However, employee and visitor parking may occur up to 25 feet from any property line and parking lot areas not required to meet the overall land use setback. Any High Impact Industry that has frontage on a State or Federal numbered highway may utilize the recorded right-of-way of that road in the determination of the area of operation setback. The following is an **Example** of this provision:

Required setback	200’
<u>Recorded right-of-way</u>	<u>60’</u>
Adjusted Setback	140’

- c. The stream setback is the distance required between the “**areas of operation**” of any High Impact Industry and the top of the bank of any perennial streams as shown on the most recent version of the USGS 7.5 minute quadrangle topographic maps. But under no conditions shall grading activities be allowed in North Carolina Division of Water Quality designated “undisturbed buffer areas” under the surface fresh water classifications.

N.C .DWQ – PRIMARY CLASSIFICATIONS

BUFFER

Water Supply I (WSI)	100 Ft.
Water Supply II (WSII)	100 Ft.
Water Supply III (WSIII)	100 Ft.
Water Supply IV (WSIV)	100 Ft.
Water Supply V (WSV)	50 Ft.

N.C. DWQ – SUPPLEMENTAL CLASSIFICATIONS

BUFFER

Trout Waters B	50 Ft.
Trout Waters C	50 Ft.
High Quality Waters (HQW)	100 Ft.
Outstanding Resource Waters (ORW)	100 Ft.

Federal Wild & Scenic Rivers	100 Foot Buffer
N.C. Natural & Scenic Rivers	100 Foot Buffer

d. Protected Facilities:

The Spacing requirement “set-back” as determined by Article III, Section 3, Column (2) of the (HIPO) the Set-Back Table will apply from the nearest *point of operation* to the following listed “Protected Facility”.

Protected Facilities are:

1. An educational facility
2. A North Carolina licensed child care facility
3. A North Carolina licensed assisted living facility
4. A North Carolina licensed nursing home
5. A public or privately owned hospital
6. A rural medical center
7. A church or place of worship
8. A dwelling unit (single family or multi-family)

e. Screening methods defined in Article II, Section 1

Section 4. Lighting

All lighting shall be pointed downward with the primary cone of illumination being entirely contained on the subject property.

Section 5. Noise/Noise Mitigation Plan

A Noise Mitigation Plan shall be submitted, prior to obtaining an Avery County Development Permit designed and sealed by a N.C. Design Professional to the following standards.

dB (decibel) - A unit of sound pressure

A- Weighted Sound Level – A decibel value denotes either a sound level at a given instant, a maximum level, or a steady-state level.

- a. These definitions shall apply in this section and all definitions shall be in conformance with those contained in ANSI 5.1.1-1960, R 1971, Acoustical Terminology.
- b. With respect to the standards established in the table of maximum permitted sound level (paragraph c., below), dB(A) are expressed in terms of the tenth percentile sound level (L10), which must be calculated by taking 100 instantaneous A-weighted sound levels at ten second intervals and computing the (L10) in accordance with the community noise measurement data sheet set forth in Section C.
- c. No person may operate or cause or permit the operation of any stationary source of sound that exceeds the limits set forth herein for the following receiving land use districts when measured at the property line boundary or at any point within the property of an educational facility.

Table of Maximum Permitted Sound Level [dB(A)]

Receiving Use Districts	Day (7:00 a.m. – 10:00 p.m.)	Night (10:00 p.m. – 7:00 a.m.)
Educational	55	60
Residential	60	45
Commercial/Business	60	55
Industrial	70	70

- d. When a noise source can be identified and its noise measured in more than one land use category, the limits of the most restrictive use shall apply at the boundaries between different land use categories.
- e. For any stationary source of sound which emits a pure tone, cyclically varying sound or repetitive impulsive sound, the standards defined herein shall be reduced by five dB(A).
- f. The standards set forth in this section shall not apply to the following sources:
 - (1) Emergency warning devices;
 - (2) Lawn care equipment used during daytime hours;
 - (3) Equipment being used for construction and permissible for 3 months maximum..
- g. Notwithstanding any other provision of Article IV (Nonconforming situations), any person who operates or permits to be operated any new stationary noise source after the effective date of this section shall comply with the standards defined herein.

- h. Measurement techniques to determine compliance with this section shall be set forth in the Noise Mitigation Plan which is required to be sealed by a N.C. Design Professional
- i. Noise Mitigation Plan shall apply also to traffic noise within the High Impact Industry site in relationship to:
 - Vehicular speed
 - Vehicular compliance to N.C. Muffler Laws and Vehicle Manufacture's Specifications.
 - Jake brake usage
 - Vehicular use within the site used on a regular basis.

Section 6. Right of Way Requirements and Traffic Impact Analysis

- Roads and streets serving High Impact Industry: All roads and streets proposed for Public use by the developer of a High Impact Industry, including those proposed roads and streets which are not eligible to be placed on the State Highway system shall be designed and constructed in accordance with Article III, Section 6 of the Avery County High Impact Protection Ordinance.
 - (a) Minimum right-of-way for streets and roads
 - 50' right-of-way for streets and roads shall be required for all classes of High Impact Industries (utility easements shall be provided, and where practical and necessary be incorporated with the street and road right-of-ways).
 - (b) Minimum travel surface width for access roads and streets
 - 18' of improved travel surface shall be provided for all classes (1 thru 6) of High Impact Industries. (Improved travel surface means; to be paved or provide a minimum of 8" compacted gravel surface).
 - (c) North Carolina Department of Transportation Drive Way Permit Required:
 - All High Impact Industries (classes 1 thru 6) are required to obtain a North Carolina Department of Transportation Driveway Permit.
 - Traffic Impact Analysis may be requested by the Avery County Board of Adjustments. When a High Impact Industry is proposed to be located on a road that is not designated as a State or Federal numbered thoroughfare, or would be at least ½ mile from any such thoroughfare, and would create an amount of traffic in terms of vehicular trips per day, that would push the road in which the industry is gaining access over its practical carrying capacity as defined by the North Carolina Department of Transportation (NCDOT), a traffic impact analysis (TIA) shall be performed by a NC licensed engineer or transportation planner and shall be provided by the applicant. The most updated version of the Institute of Transportation Engineers, *Trip Generation Manual* shall be used to determine the average number of daily trips generated by the proposed industry. These numbers will be compared to the most recent traffic counts performed by NCDOT for the surrounding road net work. As part of the TIA, specific recommendations for the mitigation of the impacts from the proposed traffic must be provided.

Section 7. Stormwater and Erosion Control Permits Required:

- General Permit No. NCG010000 (NPDES) is required: This is a National Pollutant Discharge Elimination System (NPDES) requirements of the North Carolina Division of Water Quality.
- Avery County Erosion and Sedimentation Site Grading Permit is required when the activity exceeds one acre or poses potential for off-site sediment or erosion to surface freshwater tributaries or adjoining property owners.
- Avery County Watershed Protection Permit is required when the proposed development/industry is located within an Avery County Protected Water Supply Watershed.
- Avery County Floodplain Development Applications, Permits and Certification Requirements: Application for a Floodplain Development Permit shall be made to the Avery County Floodplain Administrator prior to any development activities within a *Special Flood Hazard Area* located in Avery County.

(a) Standards:

- Temporary Sediment and Erosion Control Measures shall be designed to a minimum of a 10 year rain event.
- Permanent storm water measures shall be designed to a 25 year rain event.
- All High Impact Industries shall be periodically inspected for compliance during the developmental phase and must call for and receive a “Letter of Final Compliance” from the Avery County Ordinance Administrator.

Section 8: Reporting

At any time a report is required, or in the event that a citation is issued, by the State of North Carolina concerning noise, dust, odor, or other environmental issues, the County shall receive a copy of the report and/or citation, in addition to the resulting action taken by the affected industry. The responsibility for this reporting will be that of the industry.

Article IV: Pre-existing High Impact Industries

Section 1. Application to Existing Non-Conforming High Impact Industries

1. Any high impact industry existing upon the effective date of this ordinance which does not conform to the requirements of this may continue so long as the use is not discontinued for more than ten (10) consecutive years.
2. A legal nonconforming high impact industry may be altered, added to, expanded, or enlarged at the site of its operations if the same industry is undertaken solely on the property owned or leased to the High Impact Industry as of the effective date of this ordinance. This expansion will be subject to a 25 foot setback for Class 1,

2 and 3 industries and a 100 foot setback for Class 4 & 5 industries; with a 1000 foot setback for Class 6 Industries.

3. In the event that a non-conforming building is damaged or destroyed by fire, flood, or other hazard, repairs may be made, or reconstruction may take place, provided the original foundation footprint is maintained.

Article V: Permit Procedures

Section 1. Development Permit Required

No building or other structure subject to this ordinance shall be erected, moved, added to, or structurally altered without a development permit having been issued by the Ordinance Administrator. All development permits are valid for one year. If a building permit is not obtained during that time, the development permit will be considered null and void. No building permit shall be issued except in conformity with the provisions of this ordinance or as duly authorized by the Planning Commission upon timely appeal pursuant to Article VI of this ordinance.

1. Application for Development Permits

All applications for development permits shall be accompanied by three sets of plans, drawn to scale, showing the actual dimensions and shape of the lot or parcel to be built upon; the exact sizes and locations on the parcel of any buildings already existing; the location and dimensions of the proposed building or alteration; and compliance with the standards of Article III, Section 3. All plans must be prepared by a N.C. Design Professional.

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 the parcel; conditions existing on the parcel; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this ordinance.

One copy of the plans shall be returned to the applicant by the Ordinance Administrator, marked either as approved or disapproved and attested to by his signature on such copy. The second copy of the plans, also so marked shall be retained by the Ordinance Administrator. The third set shall be marked as the general contractor's set and retained at job site until project is completed. High Impact Industries applications shall be reviewed for approval and issued or disapproved within 45 days of date of application. All unapproved applications will be returned with the ordinance administrator's check list as reference to what items need to be addressed.

2. Administrator to Maintain Permit Records

The Ordinance Administrator shall maintain a record of all development permits.

3. Remedies for Noncompliance

The failure to obtain any other required development permit shall be a violation of this ordinance. Further, The High Impact Industry Development Permits shall issue on the basis of applications approved by the Board of Adjustments and authorize only that use, arrangement, and construction applied for and approved. Any use, arrangement or construction not in compliance with that authorized shall be a violation of this ordinance, and shall be subject to penalties and remedies provided by Article VII of this ordinance.

4. Application Fee:

All applications for a High Impact Industry Development Permit/Commercial Site Plan application shall be accompanied by such fee as established by the Avery County Board of Commissioners. Said fee is non-refundable.

5. Permit Submission Procedure: Conditional Use

The developer shall submit the High Impact Industry Development Permit to the Avery County Ordinance Administrator a minimum of 7 days before the regularly scheduled Planning Board Meeting to allow the permit to be listed as an Agenda Item.

The Planning Board/Board of Adjustment will receive the Development Permit at the regularly scheduled meeting and developer will present the scope of the project and related activities to said High Impact Industry.

The Planning Board/Board of Adjustment will then accept the permit for consideration and will act on the permit at the next regularly scheduled meeting of the following month. (This allows the Board to visit the proposed site and time to review the scope of the project).

6. Development Permit Final Review

The developer will submit the final High Impact Industry Development Application with all necessary state and federal permits required for said High Impact Industry at the next regularly scheduled meeting. The application will be signed by the Board of Adjustment's Chairman.

If the Board of Adjustments recommends conditional approval of the final application with modifications to bring the project into compliance; it shall withhold the chairman's signature until conditional modifications are met and approved by the ordinance administrator.

Certificate of Approval for Recording

I certify that the final plat shown here complies with the Avery County High Impact Protection Ordinance and is approved by the Avery County Board of Adjustments for recording in the Avery County Register of Deed's Office.

Date

Chairman, Avery County Board of Adjustments

If the final application is disapproved by the Board of Adjustments, the reason for such disapproval shall be stated in writing, specifying the provisions of the ordinance with which the final High Impact Ordinance application does not comply. The developer shall be notified by writing and a "Letter of Disapproval" retained in the Board of Adjustments minutes.

Article VI: Appeals and Variances

Section 1. Board of Adjustments

The Avery County Planning Board shall be designated as the Board of Adjustment pursuant to GS 153A-345, and shall hear appeals, requests for variances, and all challenges to the decision or interpretation of the Ordinance Administrator.

Section 2. Powers of Board of Adjustment

The Board of Adjustments shall have the following powers in reference to this ordinance:

1. To hold public hearings to hear, decide and review appeals from any order, Requirement, decision, or determination (including permit denial) made by the Ordinance Administrator in the performance of its duties; and
2. To hold public hearings to hear and decide applications for variances from the requirements of this Ordinance in accordance with Article VI, Section 5. Nothing in this section shall be construed to broaden the power of the Board of Adjustments to permit a use by variance beyond that power given in Article VI, Section 5..

Section 3. Administration

Application for variances, requests for interpretations and appeals for review of decisions of the Ordinance Administrator shall be filed with the Department of Planning and Inspections, as agent for the Board of Adjustments, on forms provided by the Planning Department. It shall be the responsibility of the Ordinance Administrator to notify by **certified mail** the applicant or appellant of the disposition which the Board of

Adjustments makes of any matter before it. It shall be the responsibility of the Ordinance Administrator to issue a permit in accord with the Board of Adjustments action on an appeal or variance.

Section 4. Application of the Variance Power

A variance shall only be allowed by the Board of Adjustments in cases involving practical difficulties or unnecessary hardships. Any authorizing of a variance shall not destroy the intent of the ordinance. Any authorized variance, including the affirmative findings of fact that substantiate such authorization, shall be recorded in the minutes of the meeting of the Avery County Board of Adjustments. A hardship, as used in the context of this section, shall be considered to be some unique or unusual character of the proposed site, including but not limited to unique size, shape, contour, or distance requirement. An economic hardship to the applicant is not to be considered for a variance.

Section 5. The Board of Adjustments may grant a variance upon finding that the following conditions exist:

1. Extraordinary and exceptional conditions exist pertaining to the particular place or property in question because of its size, shape, or topography.
2. The variance will not confer upon the applicant any special privileges that are, or would be, denied to other similarly situated individuals.
3. This ordinance would deprive the applicant of rights commonly enjoyed by other similarly situated individuals.
4. The variance would not seriously deter from the purpose and intent of this ordinance and will not be injurious to **neighborhood** or to the general welfare.
5. The special circumstances causing the need for a variances(s) are not the fault of the applicant.

The commission may impose reasonable conditions upon the granting of any variance in order to protect the public interest or neighboring property owners. Violations of any such conditions shall be a violation of this ordinance and subject to the penalties set forth in Article VII of this ordinance.

Section 6. Application of Interpretation Power

An appeal from an order, requirement, or decision of the Board of Adjustments shall be decided by the Commission duly supported by competent evidence. Such appeal shall be taken within thirty (30) days of the written decision by filing with the Ordinance Administrator a *Notice of Appeal* specifying the grounds thereof. In exercising this power, the Commission shall act in a prudent manner so that the purposes and intent of the ordinance shall be served. No decision of an appeal shall have the effect of varying

the terms of the Ordinance or permitting as a matter or right any use otherwise limited or prohibited hereunder.

Section 7: Appeal Stays Further Proceedings

An appeal to the Superior Court from a decision or determination of the Board of Adjustments stays all proceedings in the furtherance of the decision or determination appealed from, except as provided in Section 8 (below), during the pendency of the appeal.

Section 8. Appeals of Board of Adjustments

Every decision of the Board of Adjustments shall be subject to review at the instance of any aggrieved party in the Board of Adjustments by proceedings in the nature of a petition for writ of certiorari. Such proceedings initiated against the Board of Adjustments shall be initiated within 30 days of the recorded minutes of the decision in the office of the Board of Adjustments or the delivery of the notice required in Article VI, Section 3, whichever is later. Appeals not received within this 30 day period are not timely. The Board of Adjustments is authorized to stay enforcement of this Ordinance during the pendency of an appeal from the decision of the Board of Adjustments upon a hearing and the posting of a bond sufficient to the Court which will adequately protect the interest of the County.

Article VII. Enforcement and Penalties

Section 1. Administration and Enforcement

The Ordinance Administrator shall be responsible for the administration and enforcement of this Ordinance. If the Ordinance Administrator shall determine that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to within ten (10) working days to correct the violation. He may order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; the discontinuance of any illegal work being done; and may take any other action authorized by this Ordinance to insure compliance with, or to prevent violation of, its provisions.

Section 2. Conflict with Other Laws:

Whenever the provisions or application of this Ordinance impose higher standards than are required in any other local ordinance or regulation, the provisions of this Ordinance shall govern. Wherever the provision of any other statute or local ordinance impose higher standards than are required by the provisions or application of this Ordinance, the provisions of such other statute or local ordinance shall govern.

Section 3. Penalties

Any person, firm or corporation who violates any provision of any article; or who shall continue to work upon any structure after having received written notice from the Ordinance Administrator to cease work, shall, upon conviction, be guilty of a Class 3 Misdemeanor as provided by N.C.G.S. 14-4 and shall be punishable by a fine not to exceed \$50.00, or imprisonment not to exceed 20 days. Each day such violation shall be permitted to exist shall constitute a separate offense. Notice of Violation shall be sufficient if directed/delivered to the owner, the agent of the owner and the General Contractor.

In lieu of or in addition to the criminal penalties outlined above, each person violating this ordinance shall be subject to a civil penalty, under N.C.G.S. 153A-123(c), in the amount of \$500.00 per day. No penalty shall be assessed prior to notice to the violator. For every day a violator is in violation of this ordinance, it shall 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 and any subsequently accruing penalty may be recovered by the County in a civil action in the nature of the debt. Any contest of said penalty shall be by the appropriate action taken in the General Court of Justice for Avery County.

Section 4. Severability Clause

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

Section 5. Ordinance Amendments

This Ordinance may be amended by the Board of Commissioners following a public hearing on the proposed changes. The Board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than ten (10) days no more than 25 days before the date fixed 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 VIII: Effective Date

Section 1. Effective Date

This Ordinance shall become effective upon adoption by the Avery County Board of Commissioners.

Section 2. New High Impact Industries Regulated

After the effective date of this ordinance, all new High Impact Industries as well as any pre-existing High Impact Industries which are moved, altered or enlarged shall conform to the regulations contained in this ordinance except as set forth in Article III, Section 1, 2, and 3.

Article IX: Adoption

This ordinance shall be in full force and in effect from and after the _____ day of _____, 20_____.

Kenny Poteat, Chairman
Avery Board of Commissioners

Attest:

Nancy Cook, Clerk to Board

Sworn to and before me this _____ day of _____, 20_____

Notary _____ (Signature)

_____ (Print Name)

My Commission Expires: _____

