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AVERY COUNTY
WATERSHED PROTECTION ORDINANCE

ARTICLE 100: AUTHORITY AND GENERAL REGULATIONS

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Section 101. Authority and Enactment.

The General Assembly of the State of North Carolina has, in N.C.G.S. §143-214.5, directed the local government units of North Carolina to enact a Water Supply Watershed Ordinance. The Environmental Management Commission, in 15 NCAC 2B.0104(b) has directed that all local governments with land use authority within designated water supply watersheds will adopt and enforce ordinances that at a minimum meet the requirements of N.C.G.S. §143-214.5 and the following Subchapter. This Ordinance is adopted to fulfill Avery County's obligation under N.C.G.S. §143-214.5(d). The authority is N.C.G.S. §153A-121(a) to the extent that the Ordinance defines, regulates, prohibits, or abates acts, or omissions concerning the "health, safety, or welfare" of the citizens of Avery County. N.C.G.S. §153A-140 is the authority for provisions of this ordinance relating to matters other than the regulation of developmental density by control or by performance based alternatives as more particularly described in N.C.G.S. §143-214.5(b). The Board of County Commissioners for Avery County, in accordance with N.C.G.S. §153A-45, does hereby adopt into law the following articles to be known as the "Watershed Protection Ordinance."

Section 102. Jurisdiction.

The provisions of this Ordinance shall apply only to such areas in Avery County as have been lawfully designated as Water Supply Watersheds by the Environmental Management Commission (EMC). Such areas shall be designated, defined and established on a "Watershed Protection Map" which is adopted as part of this Ordinance together with any explanatory matter explaining the map and included thereon. This Ordinance and Map shall be filed in the Office of the Clerk to the Board of County Commissioners of Avery County.

Section 103. Exceptions to Applicability.

Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this Ordinance amend, modify, or restrict any provisions of the Code of Ordinances of Avery County; however, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in Avery County at the time of the adoption of this Ordinance that may be construed to impair or reduce the effectiveness of this Ordinance or to conflict with any of its provisions.

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 provisions of these regulations shall control.

Existing development, as defined in this ordinance, is not subject to the requirements of this ordinance. Expansions to structures classified as existing development must meet the requirements of this ordinance, however, the built-upon area of the existing development is not required to be included in the density calculations.

A nonconforming lot of record, not contiguous to any other lot owned by the same party, shall not be subject to the development regulations of these rules if it is developed for single family

purposes. Any lot that, when divided, was exempt from or outside the scope of the subdivision ordinance shall not be subject to the development regulations of this ordinance.

Section 104. Criminal Penalties.

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

Section 105. Remedies.

If any subdivision, development and/or land use is found to be in violation of this Ordinance, the Avery County Governing Board may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of $50.00, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

If the Watershed Administrator finds that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board.

Section 106. Severability.

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

Section 107. Repeal of Existing Watershed Ordinance.

This ordinance in part carries forward by re-enactment, some of the "Avery County Watershed Protection Ordinance", adopted by the Avery County Board of Commissioners and made effective on January 1, 1994, and as amended. It is not the intention to repeal but rather to re-enact and continue in force such existing provisions so that all rights and liabilities that have accrued thereunder are preserved and may be enforced. All provisions of the Watershed Ordinance which are not re-enacted herein are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of any ordinance provisions heretofore in effect, which are now pending in any court of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this ordinance, but shall be prosecuted to their finality the same as if this ordinance had not been adopted; and any and all violations of the existing Watershed Protection Ordinance, prosecutions for which have not yet been instituted, may be hereafter filed and prosecuted; and nothing in this ordinance shall be so construed as to abandon, abate or dismiss any litigation or prosecution now pending and/or which may heretofore have been instituted or prosecuted.

Section 108. Effective Date.

This Ordinance shall take effect and be in force on 4-7-97, 1997.

ARTICLE 200: DEVELOPMENT REGULATIONS

Section 201. Establishment of Watershed Areas.

The purpose of this Article is to list and describe the watershed areas herein adopted. For purposes of this ordinance the county is hereby divided into the following areas, as appropriate:

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

Section 202. Watershed Areas Described.

WS-II Watershed Areas - Critical Area (WS-II-CA). In order to maintain a predominately undeveloped land use intensity pattern, single family residential uses shall be allowed at a maximum of one single family detached dwelling unit per two acres (or an 80,000 square foot lot excluding road frontage). All other residential and non-residential development shall be allowed at a maximum six percent (6%) built-upon area. Stormwater runoff from the development shall be transported primarily by vegetated conveyances. New sites for land application of residuals or petroleum contaminated soils and new sites for landfills are specifically prohibited.

(1) Allowed Uses:

(a) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten (10) foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Animal operation deemed permitted under 15A NCAC 2H .0217 are allowed in all classified water supply watersheds.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 1I.6101-.0209).

(c) Residential development.

(d) Non-residential development, excluding: 1) landfills and 2) sites for land application of residuals or petroleum contaminated soils.

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed one single family detached dwelling unit per two acres (or an 80,000 square foot lot excluding road frontage) on a project by project basis, except within an approved cluster development.

(b) All Other Residential and Non-Residential--development shall not exceed six percent (6%) built-upon area on a project by project basis. Stormwater runoff from the development shall be transported primarily by vegetated conveyances. 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.

WS-II Watershed Areas - Balance of Watershed (WS-II-BW). In order to maintain a predominantly undeveloped land use intensity, single family detached residential uses shall be allowed at a maximum of one single family detached dwelling unit per acre (or a 40,000 square foot lot excluding road frontage) on a project by project basis. All other residential and non residential development outside the critical area shall be allowed a maximum of twelve percent (12%) built-upon area. Stormwater runoff from the development shall be transported primarily by vegetated conveyances. In addition, new development and expansions of existing development may occupy ten percent (10%) of the watershed which is outside the critical area, with up to seventy percent (70%) built-upon area. For expansions to existing development, the existing built-upon surface area is not counted toward the allowed 70% built-upon surface area. Each project must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate best management practices to minimize water quality impacts. Non-discharging landfills and residuals application sites are allowed.

(1) Allowed Uses:

(a) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Animal operations deemed permitted under 15A NCAC 2H .0217 are allowed in all classified water supply watersheds.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 1I.6101-.0209).

(c) Residential development.

(d) Non-residential development, excluding discharging landfills.

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed one single family dwelling unit per acre (or a 40,000 square foot lot excluding road frontage) on a project by project basis. No residential lot shall be less than one acre, except within an approved cluster development.

(b) All Other Residential and Non-Residential--development shall not exceed twelve percent (12%) built-upon area on a project by project basis. Stormwater runoff from the development shall be transported primarily by

vegetated conveyances. 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. In addition, new residential and non-residential development and expansions of existing development may occupy ten percent (10%) of the balance of the watershed which is outside the critical area, with up to a seventy percent (70%) built-upon area. For expansions to existing development, the existing built-upon surface area is not counted toward the allowed 70% built-upon surface area. Projects must minimize built-upon surface area, direct stormwater away from surface waters and incorporate best management practices to minimize water quality impacts. Non-discharging landfills and residual application sites are allowed. Public lands within the watershed may be counted in calculating acreage available under the 10%/70% option.

WS-IV Watershed Areas - Critical Area (WS-IV-CA). In order to maintain a moderate land use intensity pattern, development activities which require a Sedimentation and Erosion Control Plan must be limited to single family detached uses developed at a maximum of two (2) single family detached dwelling units per acre (or a 20,000 square foot lot excluding road frontage) on a project by project basis. No residential lot shall be less than one-half acre, except within an approved cluster development. All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area. Stormwater runoff from the development shall be transported primarily by vegetated conveyances. New sites for land application of residuals or petroleum contaminated soils and new sites for landfills are specifically prohibited.

(1) Allowed Uses:

(a) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten (10) foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Animal operations deemed permitted under 15A NCAC 2H .0217 are allowed in all classified water supply watersheds.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).

(c) Residential development.

(d) Non-residential development, excluding: 1) landfills and 2) sites for land application of residuals or petroleum contaminated soils.

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed two (2) single family detached dwelling units per acre (or a 20,000 square foot lot excluding road frontage) on a project by project basis. No residential lot shall be less than one-half (1/2) acres, except within an approved cluster development.

(b) All Other Residential and Non-Residential--all other residential and non-residential development shall not exceed a maximum of twenty-four percent (24%) built-upon area. Stormwater runoff from the development shall be transported primarily by vegetated conveyances. New sites for land application of residuals or petroleum contaminated soils and new sites for landfills are specifically prohibited. 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.

WS-IV Watershed Areas - Balance of Watershed (WS-IV-BW). In order to maintain a moderate land use intensity pattern, development activities which require a Sedimentation and Erosion Control Plan must be limited to single family detached uses developed at a maximum of two (2) single family detached dwelling units per acre (or a 20,000 square foot lot excluding road frontage) on a project by project basis. No residential lot shall be less than one-half (1/2) acre, except within an approved cluster development. All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area or thirty-six percent (36) built-upon area for projects without curb and gutter street systems. Stormwater runoff from the development shall be transported primarily by vegetated conveyances. In addition, new residential and non-residential development and expansions of existing development may occupy ten percent (10%) of the balance of the watershed which is outside the critical area, with a seventy percent (70%) built-upon area. For expansions to existing development, the existing built-upon surface area is not counted toward the allowed 70% built-upon surface area. Projects must minimize built-upon surface area, direct stormwater away from surface waters and incorporate best management practices to minimize water quality impacts. Non-discharging landfills and sludge application sites are allowed.

(1) Allowed Uses:

(a) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Animal operations deemed permitted under 15A NCAC 2H .0217 are allowed in all classified water supply watersheds.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).

(c) Residential development.

(d) Non-residential development.

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed two (2) single family detached dwelling units per acre (or a 20,000 square foot lot excluding road frontage) on a project by project basis. No residential lot shall be less than one-half (1/2) acre, except within an approved cluster development.

(b) All Other Residential and Non-Residential--all other residential and non-residential development shall not exceed a maximum of twenty-four percent (24%) built-upon area or thirty-six percent (36%) built-upon area for projects without curb and gutter street systems. Stormwater runoff from the

development shall be transported primarily by vegetated conveyances. In addition, new residential and non-residential development and expansions of existing development may occupy ten percent (10%) of the balance of the watershed which is outside the critical area, with a seventy percent (70%) built-upon area. For expansions to existing development, the existing built-upon surface area is not counted toward the allowed 70% built-upon surface area. Projects must minimize built-upon surface area, direct stormwater away from surface waters and incorporate best management practices to minimize water quality impacts. Non-discharging landfills and sludge application sites are allowed. Public lands within the watershed may be counted in calculating acreage available under the 10%/70% option.

WS-V Watershed Areas. There are no categorical restrictions on watershed development or treated wastewater discharges; however, the Commission or its designee may apply appropriate management requirements as deemed necessary for the protection of downstream receiving waters (15A NCAC 2B .0203); suitable for all Class C uses.

Section 203. Cluster Development.

(1) Cluster development for single family development is allowed on a project by project basis 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 202. The overall density or built-upon area for the project shall not exceed that allowed for the critical area or the balance of watershed, whichever applies:

(b) Buffers meet the minimum statewide water supply watershed protection requirements:

(c) Built-upon areas are designed and sited 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:

(d) Areas of concentrated density development are located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways:

(e) The remainder of the tract is to remain in a vegetated or natural state:

(f) The title to the open space area shall be conveyed to a property owners association; a local government for preservation as a park, greenway or open space; a conservation organization; or placed in a permanent conservation or farmland preservation easement. Where a property owners association is not incorporated, a maintenance agreement shall be filled with the property deeds:

(2) Planned Unit Developments (PUDs) and mixed use developments that do not exceed the applicable low density requirements shall meet the following criteria:

(a) Buffers meet the minimum statewide water supply watershed protection requirements;

(b) Stormwater runoff shall be transported primarily by vegetated conveyances.

(c) In reviewing and approving a development plan for a Planned Unit Development (PUD) or mixed use development, the local government shall have the option of determining built-upon area for the entire development or for each type of land use within the development. A local government may require additional stormwater controls on a case-by-case basis, if it determines that areas of concentrated development are located such that stormwater flows and stormwater impacts to receiving waters are not minimized; that sheet flow through vegetated areas is not maximized; that the flow length through vegetated areas is not maximized; or that areas of concentrated development are not located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways.

Section 204. Buffer Areas Required.

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.

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 minimum 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 205. Rules Governing the Interpretation of Watershed Area Boundaries.

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

(1) 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.

(2) 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 Avery County as evidence that one or more properties along these boundaries do not lie within the watershed area.

(3) 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.

(4) 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.

(5) 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 Watershed Review Board.

Section 206. Application of Regulations.

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. No area required for the purpose of complying with the provisions of this ordinance shall be included in the area required for another building. 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 207. Existing Development.

Existing development as defined in this ordinance, may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this ordinance, however, the built-upon area of the existing development is not required to be included in the built-upon area calculations.

(1) Vacant Lots. This category consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds of Avery County. Lots may be used for any of the uses allowed in the watershed area in which it is located. Where the lot area is below the minimum specified in this ordinance, the Watershed Administrator shall issue a watershed protection permit, provided all other applicable provisions of this ordinance are met.

(2) 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:

(a) When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.

(b) Such use of land shall be changed only to an allowed use.

(c) When such use ceases for a period of at least five years, it shall not be reestablished.

(3) Reconstruction of Buildings or Built-upon Areas. Any existing building or built-upon area not in conformance with the restrictions of this ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single family residential development, provided:

(a) Repair or reconstruction is initiated within two years and completed within five years of such damage.

(b) 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 208. Watershed Protection Permit.

Except where a single-family residence is to be constructed on an existing lot of record, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a Watershed Protection Permit has been issued by the Watershed Administrator. No Watershed Protection Permit shall be issued except in conformity with the provisions of this ordinance.

Watershed Protection Permit applications shall be filed with the Watershed Administrator. The application shall include a completed application and supporting documentation deemed necessary by the Watershed Administrator. Upon satisfactory completion of the application and submission of the supporting documentation, the Watershed Administrator shall review and either issue or deny the permit within 15 days of submission of all materials.

Prior to issuance of a Watershed Protection Permit, the Watershed Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance. A Watershed Protection Permit shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

Section 209. 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 210. Watershed Protection Occupancy Permit.

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

(2) 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.

(3) When only a change in use of land or existing building occurs, the Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this ordinance have been met coincident with the Watershed Protection Permit.

(4) If the Watershed Protection Occupancy Permit is denied, the Watershed Administrator shall notify the applicant in writing stating the reasons for denial.

(5) 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 300: PUBLIC HEALTH REGULATIONS

Section 301. Public Health, in general.

No activity, situation, structure or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

Section 302. Abatement.

The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality and shall report all findings to the Watershed Review Board. The Watershed Administrator may consult with any public agency or official and request recommendations. Where the Watershed Review Board 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 400: ADMINISTRATION, ENFORCEMENT AND APPEALS

Section 401. Watershed Administrator and Duties thereof.

Avery County shall appoint a Watershed Administrator, who shall be duly sworn in. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this ordinance as follows:

(1) 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.

(2) The Watershed Administrator shall serve as clerk to the Watershed Review Board.

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

(4) The Watershed Administrator shall keep records of the jurisdiction's use of the 10%/70% option as provided in this ordinance. 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).

(5) The Watershed Administrator is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of his responsibility the full police power of Avery County. The Watershed Administrator, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this Ordinance

(6) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted for each calendar year to the Water Quality Section of the Division of Environmental Management on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

Section 402. Appeal from the Watershed Administrator.

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

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

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

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

Section 403. Changes and Amendments to the Watershed Protection Ordinance.

The Avery 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.

No action to amend, supplement or change the watershed regulations shall be taken until the proposal has been submitted to the Watershed Review Board for review and recommendations. If no recommendation has been received from the Watershed Review Board within forty-five (45) days after submission of the proposal to the Watershed Review Board, the Avery County Board of Commissioners may proceed as though a favorable report had been received.

Under no circumstances shall the Avery County Board of Commissioners adopt such amendments, supplements or changes that would cause this ordinance to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the N.C. Division of Environmental Management, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

Section 404. Public Notice and Hearing Required.

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

Section 405. Establishment of Watershed Review Board.

There shall be and hereby is created the Watershed Review Board by the Avery County Board of Commissioners. The Avery County Planning Board shall serve as the Watershed Review Board.

Section 406. Rules of Conduct for Members.

Members of the Board may be removed by the Avery County Board of Commissioners for cause, including violation of the rules stated below:

(1) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.

(2) No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested. A Board member shall have a "financial interest" in a case when a decision in the case will: 1) cause him or his spouse to experience a direct financial benefit or loss, or 2) will cause a business in which he or his spouse owns a 10 per cent or greater interest, or is involved in a decision-making role, to experience a direct financial benefit or loss. A Board member shall have a "personal interest" in a case when it involves a member of his immediate family (i.e., parent, spouse, or child).

(3) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the Watershed Administrator or any other member of the Board, its secretary or clerk prior to the hearing.

(4) Members of the Board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(5) Members of the Board shall give notice to the chairman at least forty-eight (48) hours prior to the hearing of any potential conflict of interest which he has in a particular case before the Board.

(6) No Board member shall vote on any matter that decides an application or appeal unless he had attended the public hearing on that application or appeal.

Section 407. Powers and Duties of the Watershed Review Board.

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

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

(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 fifty (50) feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(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) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Watershed Administrator prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.

(b) 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 an 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.

(c) In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose 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.

(d) The Watershed Review Board 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.

(e) 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.

(f) If the application calls for the granting of a major variance, and if the Watershed Review Board 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:

(1) The variance application;
(2) The hearing notices;
(3) The evidence presented;
(4) Motions, offers of proof, objections to evidence, and rulings on them;
(5) Proposed findings and exceptions;
(6) The proposed decision, including all conditions proposed to be added to the permit.

The preliminary record shall be sent to the Environmental Management Commission for its review as follows:

(1) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

(2) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.

(3) Public Health. See Article 400.

Section 408. Administrative Procedures.

The board shall adopt rules of procedure for the conduct of its business. A quorum shall consist of four (4) members of the board, but the board shall not grant a minor variance or recommend to the N.C. Environmental Management Commission that a major variance be granted or pass upon any questions relating to an appeal from a decision or determination of the watershed administrator when there are fewer than four-fifths (4/5) of the members present. The concurring vote of four-fifths (4/5) of the members of the board shall be necessary to reverse any decision or determination of the watershed administrator or to grant a minor variance or to recommend to the Environmental Management Commission that a major variance be granted. Any decision or determination of the Board for an appeal or to grant or recommend a variance, the Board shall render a decision within 45 days of its first consideration of the issue.

Section 409. Appeals from the Watershed Review Board.

Appeals from the Watershed Review Board must be filed with the Superior Court within 30 days from the date of the decision. Decisions by the Superior Court will be in the manner of certiorari.

ARTICLE 500: DEFINITIONS

Section 501. General Definitions.

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

Best Management Practices (BMP). A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

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

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

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

Cluster Development. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater impacts. This term includes non-residential development as well as single-family residential and multi-family developments. For the purposeof this ordinance, planned unit developments and mixed use development are considered as cluster development.

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.

Curb Outlet System. Curb and gutter installed in a development which meets the low density criteria of this ordinance with breaks in the curb used to direct stormwater runoff to grassed swales or other natural or vegetated areas.

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.

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

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

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

(1) substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or

(2) having an outstanding valid building permit as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1), or

(3) having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1), or

(4) having a subdivision plat recorded in the office of the Register of Deeds prior to the adoption of this ordinance.

Existing Lot (Lot of Record). A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

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

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

Landfill. A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the N.C. General Statutes. For the purpose of this ordinance this term does not include composting facilities.

Lot. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

Major Variance. A variance from the minimum statewide watershed protection rules that results in any one or more of the following:

(1) The relaxation, by a factor greater than ten (10%) percent, of any management requirement under the low density option;

(2) Any variation in the design, maintenance or operation requirements of an approved stormwater management system.

Minor Variance. A variance from the minimum statewide watershed protection rules that results in the relaxation, by a factor of up to ten (10%) percent of any management requirement under the low density option.

Nonconforming Lot of Record. A lot described by a plat or by a deed that was recorded prior to the effective date of this ordinance or amendments thereto, that does not meet the minimum lot size or other development requirements of this ordinance or the statewide watershed protection rules.

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

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

Protected Area. The area adjoining and upstream of the critical area of WS-II and 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 ten miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

Residential Development. Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. and customary home occupations.

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.

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

Street (Road). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

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.

Subdivider. Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

Subdivision. All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this ordinance:

(1) 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 this ordinance;

(2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for the widening or opening of streets;

(4) The division of a tract in single ownership whose entire area is no greater than two 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 this ordinance;

(5) The division of a tract into plots or lots used as a cemetery.

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.

Variance. A permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this ordinance.

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.

Watershed. The entire land area contributing surface drainage to a specific point (e.g. the water supply intake).

Watershed Administrator. An official or designated person of Avery County responsible for administration and enforcement of this ordinance.

Section 502. 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.

ARTICLE 600: ADOPTION

Adopted this 7th day of April, 1997.

Dan G. Vance
Chairman
Avery County Board of Commissioners

SEAL

ATTEST:

Nancy H. Cook
Nancy H. Cook, Clerk to the Board

NOTARY:

Sworn to and before me this 7 day of April, 1997.

Viola D. Buchanan
Notary

Sept. 2, 2001
My Commission Expires:

STATE OF NORTH CAROLINA
COUNTY OF AVERY

Before me, the undersigned, a Notary Public in and for said County and State, on this 7 day of April, 1997, personally appeared Dan G. Vance, being and to me known to be the Chairman of the Board of Commissioners of the County of Avery, North Carolina, who, being by me duly sworn, says that by authority duly given by the Board of County Commissioners of said County, and as the act and deed of said Board of County Commissioners, the foregoing Avery County Watershed Protection Ordinance, dated as of April 7, 1997, 1997, was signed by him as said Chairman of the Board of Commissioners on behalf and in the name of said County, and personally appeared, Nancy H. Cook, being and to me known to be the Clerk to the Board of County Commissioners who, being by me duly sworn, says that by authority duly given by said Board of County Commissioners she impressed the corporate seal of said County upon the foregoing Ordinance in execution thereof for and on behalf of said County and that she attested the same as said Clerk to the Board of County Commissioners by affixing her signature thereon in attestation thereof, and said Dan G. Vance and Nancy H. Cook further acknowledge that said Ordinance is the act and deed of said Board of County Commissioners.

Witness my hand and notarial seal this the 7 day of April, 1997.

Carla D. Buchanan
Notary Public

My Commission Expires: Sept. 2, 2001

SEAL

NORTH CAROLINA
AVERY COUNTY } OFFICE OF REGISTER OF DEEDS

THE FOREGOING CERT. OR ANNEXED CERT. OF Carla D. Buchanan N.P.
OF SAID CO., & STATE IS CERTIFIED TO BE CORRECT.
FILED FOR REGISTRATION AT 10:40 O'CLOCK A M.
ON THE 16th DAY OF February 20 00
AND REGISTERED IN THIS OFFICE IN BOOK 327
AT PAGE 614

Janet O. Webb
REGISTER OF DEEDS

BY Rhonda Hollifield
ASSISTANT/DEPUTY