

**MITCHELL COUNTY
WATERSHED PROTECTION ORDINANCE**

ARTICLE 100: AUTHORITY AND GENERAL REGULATIONS

SECTION 101. AUTHORITY AND ENACTMENT

The Legislature of the State of North Carolina has, in Chapter 153A, Article 6, Section 121, General Ordinance Authority; and in Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Governing Board of Mitchell County does hereby ordain and enact into law the following articles as the Watershed protection Ordinance of Mitchell County.

SECTION 103. EXCEPTIONS TO APPLICABILITY

(A) Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this Ordinance amend, modify, or restrict any provisions of the Code of Ordinances of Mitchell County; however, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in the Mitchell 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 this provisions.

(B) It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provision of these regulations impose greater restrictions or higher standard for the use regulations shall control.

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

(D) A pre-existing lot owned by an individual prior to the effective date of this ordinance, regardless of whether or not a vested right has been established, may be developed for single family residential purposes without being subject to the restrictions of this ordinance. However, this exemption is not applicable to multiple contiguous lots under single ownership. See Section 307 (A) (2) regarding the recombination of existing

lots.

SECTION 105. 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 1404. The maximum fine for each offense shall not exceed \$500.00. Each Day that the violation continues shall constitute a separate offense.

SECTION 106. REMEDIES

(A) If any subdivision development and/or land use is found to be in violation of this Ordinance, the Mitchell 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 \$____, 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 Commissioner may assess civil penalties in accordance with G.S. 143-215. 6(a). Each day that the violation continues shall constitute a separate offense.

(B) 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 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 107. 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 108. EFFECTIVE DATE

This Ordinance shall take effect and be in force on December 31, 1993.

ARTICLE 100: SUBDIVISION REGULATIONS

NOTE: Provisions in this Article are derived in part from statutory authority Chapter 153A, Article 18, Part 2

SECTION 201. GENERAL PROVISIONS

(A) No subdivision plat of land within the Public Water Supply Watershed shall be filed or recorded by the Register of Deeds until it has been

approved in accordance with the provisions of this Article. Like wise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat so would be in conflict with this Article.

(B) The approval of a plat does not constitute or effect the acceptance by the Mitchell County or the public of the dedication of any street or other ground, easement, right of way, public utility line, or other public facility shown on the plat and shall not be construed to do so.

(C) All subdivisions within public water supply watersheds shall conform with the mapping requirements contained in G.S. 47-30.

(D) All subdivisions of land within public water supply watershed falling under the jurisdiction of Mitchell County after the effective date of this ordinance shall require a plat to be prepared, approved and recorded pursuant to this ordinance.

SECTION 202. SUBDIVISION APPLICATION AND REVIEW PROCEDURES

(A) All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting vicinity map to the Watershed

Administrator to determine whether or not the property is located within the designated Public Water Supply Watershed. Subdivisions that are not within the designated Watershed area shall not be subject to the provisions of this ordinance. In addition, subdivisions within a WS-IV

watershed are subject to the provisions of this ordinance only when an erosion and sedimentation plan is required under the provisions of

State law, or approved local program. Subdivisions within the designated watershed area shall comply with the provisions of this Article and all other state and local requirements that may apply.

(B) Subdivision applications shall be filed with the Watershed Administrator. The application shall include a completed application form, two (2)

copies of the plat and supporting documentation deemed necessary by the Watershed Administrator or the Watershed Review Board (see appendix A).

(C) The watershed Administrator shall review the completed application and submit recommendations to the Watershed Review Board for further review and final action. The Board shall conditionally or disapprove each application by a majority vote of the members present and voting. First consideration meeting of the Board after the application is submitted. The Board shall take final action within _____ days of its first consideration. The Watershed Administrator or the Board may provide public agencies and failure of the agencies to submit their comments and recommendations shall not delay the Board's action within the prescribed time limit. Said public agencies may include, but are not limited to the following:

- (1) The district highway engineer with regard to proposed streets and highways.
- (2) The director of the Health Department with regard to proposed private water system or sewer systems normally approved by the Health Department.
- (3) The state Division of Environmental Management with the Division, engineered storm water controls or stormwater management management in general.
- (4) Any other agency or official designated by the Watershed Administrator or Watershed Review Board.

(D) If the Watershed Review Board approves the application such approval shall be indicated on both copies of the plat by the following certificate and signed by the chairman or other authorized member of the Board.

Certificate of Approval for Recording

I certify that the plat shown heron complies with the Watershed protection Ordinance and is approved by the Watershed Review Board for recording in the Register of Deeds Office.

Date: _____ Chairman,
Watershed Review Board

NOTICE: This property is located within a Public Water Supply Watershed – development restrictions may apply.

(E) If the Watershed Review Board disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant and entered in the minutes. The subdivider may make changes and

submit a revised plan which shall constitute a separate request for the purpose of review.

(F) All subdivision plats shall comply with the requirements for recording of the County Register of Deeds.

(G) The Subdivider shall provide the Watershed Administrator with evidence the plat has been recorded with the Register of Deeds within five (5) working days of its being recorded.

SECTION 203. SUBDIVISION STANDARDS AND REQUIRED IMPROVEMENTS

(A) All lots shall provide adequate building space in accordance with the development standards contained in Article 300. Lots which are smaller than the minimum required for residential lots shall be identified on the plat as , “NOT FOR RESIDENTIAL PURPOSES.”

(B) 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.

(C) Storm Water Drainage Facilities. The application shall be accompanied by a description of the proposed method of providing storm water drainage. The subdivider shall provide a drainage system that diverts storm water runoff away from surface waters and incorporates best management practices to minimize water quality impacts.

(D) Erosion and Sedimentation Control. The application shall, where required, be accompanied by a written statement that a Sedimentation and Erosion Control Plan has been submitted to and approved by the [local agency administering the N.C. Division of land Quality].

(E) Roads constructed in critical areas and watershed buffer areas. Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed so to minimize their impact on water quality.

SECTION 204. CONSTRUCTION PROCEDURES

(A) No construction or installation of improvements shall commence in a proposed subdivision until a subdivision plat has been approved by the Watershed Review Board.

(B) No building or other permits shall be issued for erection of a structure on any lot not of record at the time of adoption of this Ordinance until all requirements of this Ordinance have been met. The subdivider, prior to ordinance have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection.

Any person who, being the owner or agent of the owner of any land located within a public water supply watershed falling within the jurisdiction of Mitchell County, Thereafter subdivides his land in violation of this ordinance or transfers or sells showing a subdivision of the land before the plat has been properly approved under this ordinance and recorded in the office of the register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. Mitchell County may bring an action for injunction of any illegal subdivisions, transfer, conveyance, or sale of land, and the court shall make arrangements with the Watershed Administrator to provide for adequate inspection.

SECTION 205. PENALTIES FOR TRANSFERRING LOTS IN UNAPPROVED SUBDIVISIONS

Any person who, being the owner or agent of the owner of any land located within a public water supply watershed falling within the jurisdiction of Mitchell County, thereafter subdivides his land in violation of this ordinance or transfers or sell land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this ordinance and recorded in the office of the register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. Mitchell County may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this ordinance.

ARTICLE 300: EMPLOYMENT REGULATIONS

SECTION 301. ESTABLISHMENT OF WATERSHED AREAS

The purposes 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-I
- WS-III-BW (Balance of Watershed)

SECTION 302. WATERSHED AREAS DESCRIBED

(A) WS-I Watershed Areas. The intent is to provide maximum protection for water supplies within essentially natural and undeveloped watersheds by allowing only low intensity uses. No residential or non-residential uses are allowed except those listed below. Impacts from non-point source pollution shall be minimized.

(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 US.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Animal operations greater than 100 animal units shall employ Best management practices by July 1, 1994 recommended by the Soil and Water Conservation Commission.

(b) Silviculture, subject to the provisions of the Forest practices Guidelines Related to Water quality (15 NCAC II .6101-.0209).

(c) Water withdrawal, treatment and distribution facilities.

(d) Restricted road access.

(e) Power transmission lines.

(2) Density and built-upon limits do not apply.

(B) Ws-III Watershed Areas-Balance of Watershed (WS-III-BW). In order to maintain a low to moderate land use intensity pattern, single family detached uses shall develop at a maximum of one (1) dwelling unit per one-half (1/2) acre. All other residential and non-residential development shall be allowed a maximum of twenty-four percent (24%) built-upon area. 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, Agricultural Conservation and Trade Act of 1990.

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

(c) Residential development.

(d) Non-residential development excluding discharging landfills and the storage of toxic and hazardous materials unless a spill containment plan is implemented.

(2) Density and Built-Upon Limits:

(a) Single Family Residential—development shall not exceed one (1) dwelling unit per one-half (1/2) acre, as defined on a project by project basis. No residential lot shall be less than one-half (1/2) acre, except within an approved cluster development.

(b) All other Residential and Non-Residential—development shall not exceed twenty-four percent (24%) built-upon area on project by project basis. For the purpose of calculating Built-Upon area, total project area shall include total acreage in the tract on which the project is to be developed.

SECTION 303. Cluster Development

Clustering of development is allowed in all Watershed Areas [except Ws-I] under the following conditions:

(A) Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots allowed for single family detached developments in Section 302. Built-upon area or stormwater control requirements of the project shall not exceed that allowed for the critical area or balance or watershed, whichever applies.

(B) All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.

(C) The remainder of the tract shall remain in a vegetated or natural state. Where the development has an incorporated property owners association, the title of the open space area shall be conveyed to the association for management. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

SECTION 304. BUFFER AREAS REQUIRED

(A) A minimum one hundred (100) foot vegetative buffer is required for all new development activities that exceed the low density option; otherwise, a minimum thirty (30) foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:23,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures and public projects such as road crossing and greenways where no practical alternative exist. 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 305. RULES GOVERNING THE INTERPRETATION OR 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:

- (A) 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.
- (B) 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 Mitchell County as evidence that one or more properties along these boundaries do not lie within the watershed area.
- (C) 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.
- (D) 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.
- (E) 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 306. APPLICATION OF REGULATIONS

- (A) No building or land shall hereafter be used and no development shall take place except in conformity with the regulations herein specified for the watershed area in which it is located.
- (B) No area required for the purpose of complying with the provisions of this ordinance shall be included in the area required for another building.
- (C) Every residential building hereafter erected, moved or structurally altered shall be located on a lot which conforms to the regulation herein specified, except as permitted in Section 307.
- (D) If a use or class of use is not specifically indicated as being allowed in a watershed area, such use or class of use is prohibited.

SECTION 309. BUILDING PERMIT REQUIRED

Except for a single family residence constructed on a lot deeded prior to the effective date of

this ordinance, no permit required under the North Carolina State Building Code shall be issued for any activity for which a Watershed protection permit is required until that permit has been issued.

SECTION 310. WATERSHED PROTECTION OCCUPANCY PERMIT

- (A) 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.
- (B) A Watershed Protection Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with application for a Watershed Protection Permit and shall be issued or denied within ten (10) days after the erection or structural alterations of the building.
- (C) When only a change in use of land or existing building occurs, the Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this ordinance have been met coincident with the Watershed Protection Permit.
- (D) If the Watershed protection Occupancy Permit is denied the Watershed Administrator shall notify the applicant in writing stating the reasons for denial.
- (E) No building or structure which has been erected, moved, or structurally altered may be occupied until the Watershed Administrator has approved and issued a Watershed Protection Occupancy permit.

ARTICLE 400: PUBLIC HEALTH REGULATIONS

SECTION 401. PUBLIC HEALTH, IN GENERAL

No activity, situation, structure or land use shall be allowed within the watershed which poses a treat to water quality and the public health, safety and welfare.

SECTION 402. ABATEMENT

- (A) The watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a treat to water quality.
- (B) The watershed Administrator shall report all findings to the Watershed review Board. The Watershed Administrator may consult with any public agency or official and request recommendations.
- (C) Where the Watershed Review Board finds a treat to water quality and the health, safety and welfare, the Board shall institute and any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

ARTICLE 500: AMINISTRATION, ENFORCEMENT AND APPEALS

SECTION 501. WATERSHED ADMINISTRATOR AND DUTIES THEREOF

Mitchell 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:

- (A) The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.
- (B) The Watershed Administrator shall serve as clerk to the Watershed Review Board.
- (C) 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 Supervisor or the Classification and Standards Group, Water Quality Section, Division of Environmental Management.
- (D) 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 Mitchell 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.
- (E) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management on an annual basis and shall provide a description of each project receiving a variance and the reasons for granting the variance.

SECTION 502. 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 state 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 503. CHANGES AND AMENDMENTS TO THE WATERSHED PROTECTION ORDINANCE

- (A) The Mitchell County Governing Board 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.
- (B) No action shall be taken until the proposal has been submitted to the Watershed Review Board for review and recommendations. If no recommendations has been received from the Watershed Review Board within _____ days after submission of the proposal to the Chairman of the Watershed Review Board, the Mitchell County Governing Board may proceed as though a favorable report had been received.
- (C) Under no circumstances shall the Mitchell County Board adopt such amendments, supplements or changes that would cause this ordinance to violated the watershed protection 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 504. PUBLIC NOTICE AND HEARING REQUIRED

Before adopting or amending this ordinance, the Mitchell County Governing Board shall hold a 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 having general circulation in the area. The notice shall published for the first time not less than then (10) nor more than twenty-five (25) days before the date fixed for the hearing.

SECTION 505. ESTABLISHMENT OF WATERSHED REVIEW BOARD

- (A) There shall be and hereby is created the Watershed Review Board consisting of _____ members appointed by the Mitchell County Governing Board.

Three (3) residents of Mitchell County shall be appointed for three year terms. Two (2) residents of Mitchell County shall be appointed for two (2) year terms. Thereafter, all new terms shall be for three (3) years, and members may be reappointed.
- (B) Two (2) alternate members shall be appointed to serve on the Watershed Review Board in the absence of any regular member and shall be appointed for three (3) year terms. While attending in the capacity of a regular member, the alternate shall have and exercise all the

powers and duties of the absent regular member.

The County shall appoint two (2) alternate members.

SECTION 506. RULES OF CONDUCT FOR MEMBERS

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

- (A) 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.
- (B) 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 percent 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).
- (C) 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.
- (D) Members of the Board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.
- (E) 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.
- (F) 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 507. POWERS AND DUTIES OF THE WATERSHED REVIEW BOARD

- (A) 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.
- (B) 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 as will not be contrary to the public interests where, owing to special conditions, a practical difficulty or unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done. In

addition, Mitchell 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.

- (1) Applications for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:
 - (a) A sit plan, drawn to a scale of at least one (1) inch to forty (40) feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; 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.
 - (b) 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.
 - (c) 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.

- (2) 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:
 - (a) 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:
 - (1) If he complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of his power.
 - (2) The hardship results from the application of the Ordinance to the property rather than from other factors such as deed restrictions or other hardship.

(3) 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.

(4) 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.

(5) 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.

(b) The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.

(c) 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.

(3) In granting the variance, the Board may attach thereto such condition 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.

(4) 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.

(5) 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.

(6) 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:

- (a) The variance application;
- (b) The hearing notices;
- (c) The evidence presented;
- (d) Motions, offers of proof, objections to evidence,
- (e) Proposed findings and exceptions;
- (f) The proposed decision, including all conditions proposed to be added to the permit.

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

- (a) If the commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The commission shall prepare a commission decision and send it to the Watershed review Board. If the commission approves the variance as proposed, the Board shall prepare a final decision granting the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.
- (b) If the commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance 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 for 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.
- (c) Subdivision approval. See Article 200.
- (d) Public Health. See Article 400.

SECTION 508. 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. The decisions by the Superior Court will be in the manner of certiorari.

ARTICLE 600: DEFINITIONS

SECTION 601. GENERAL DEFINITIONS.

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

Animal Unit. A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

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 structure, with or without a roof, shall not be deemed to make them on 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 roads, 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. This term includes non-residential development of the project. This term includes non-residential development as well as single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.

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

Critical Area. The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Since WS-I watersheds are essentially undeveloped, establishment of a critical area is not required. Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

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.

Discharging Landfill. A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.

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 expended substantial resources (time, labor, money) and 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).

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.

Hazardous Material. Any substance listed as such in: SARA Section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 or CWA (oil and hazardous substances).

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 that results in any one or more of the following:
 - (1) the complete waiver of a management requirement;
 - (2) the relaxation, by a factor of more than ten (10) percent, of any management requirement that takes the form of a numerical standard;
 - (3) The relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option

Minor Variance. A variance that does not qualify as a major variance.

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.

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.

Single Family Residential. Any development where: 1) no building contains more than 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 by no 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 not 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 are equal to or exceed the standards of 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 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 boar 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 Mitchell County responsible for administration and enforcement of this ordinance.

SECTION 602. WORD INTERPRETATION

For the purpose of this ordinance, certain works 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.

APPENDIX A
APPLICATION FORMS

Appendix A: Application Forms

Part I: Watershed Subdivisions

APPLICATION FOR A WATERSHED SUBDIVISION APPROVAL

Date of Application

Application Number

On a separate sheet of paper, list the Deed Book and page number, the parcel size and the Tax map and lot number for each parcel of land (if one parcel, list here). _____

Watershed name: _____ Critical area:

Y/N

Name of
Owner/Applicant: _____

Corporation
Name/State: _____

Mailing Address:

Street Address:

City, State and Zip:

Telephone Number: _____ Alternate:

General Description of work under this application:

Name of Proposed Subdivision:

Type of Subdivision: _____ Residential _____ Commercial _____ Industrial _____
Other _____

Number of parcels/Lots: _____ (Smallest Lot:
_____ acres

Largest Lot: _____ acres)

I certify that the information shown above is true and accurate, and is in compliance with the conditions for a subdivision of land as defined in the Watershed Protection Ordinance.

_____(SEAL)

Owner/Attorney in Fact

OFFICIAL USE

Date Received: _____ Date referred to
Board: _____

Notes:

Subdivision Plat Checklist

The plat shall be clearly and legibly drawn at a scale of not less than one inch to one hundred feet (1" =100') (1"=200' in extreme cases). The plat shall be prepared by a registered surveyor and shall include the following information prior to consideration by the Watershed Review Board:

Name of
Subdivision _____

Date
Submitted _____

Location _____

Owner _____

Address _____
Telephone _____

Surveyor _____

Address _____
Telephone _____

Engineer _____

Address _____
_Telephone _____

Checklist:

(a) Title Block:

_____ Subdivision name, subdivider's name, North Arrow, scale (denoted graphically and numerically), date of plat preparation, location or subdivision (township, county and state), name and seal of registered surveyor preparing plat, deed book reference.

(b) Vicinity Map:

_____ a sketch vicinity map showing the location of the subdivision in relation to the surrounding area. If the subdivision is a portion of a larger tract, the map is to show the relation of the subdivision to the larger tract.

(c) Tract Boundaries:

_____ The boundaries of the tract or portion thereof to be subdivided, with all bearing and distance shown.

(d) Property Lines:

_____ property lines and owners' names of abutting properties and/or abutting subdivisions of record.

(e) Natural Features:

_____ significant natural features including marshes, lakes or streams, or other natural features affecting the site.

(f) Existing Features:

_____ Existing features including structures and built-upon area and Mitchell County limit lines both on or adjacent to the land to be subdivided.

(g) Topographic Lines (if required by Watershed Administrator or Watershed Review Board):

_____ Topographic contour lines not to exceed ten (10) foot intervals when the area to be subdivided exceeds four (4) acres.

(h) Lot and Street Lines;

_____ All proposed lot and street right-of-way lines with approximate area and dimensions, lot numbers and proposed use of land.

(i) Drainage System:

_____ Proposed drainage facilities, including approximate location and dimensions of open drainageways, storm sewers, culverts, retaining ponds, or areas where water is to be diverted through grading.

(j) Site Data:

_____ Total acreage in tract to be subdivided, smallest lot size (square feet) and total number of lots.

(k) The following documentation is to accompany the application:

_____ Written evidence acknowledging the submission and approval of the required soil erosion and sedimentation control plan.

Part II: Water Protection Permit

APPLICATION FOR A WATERSHED PROTECTION PERMIT

Date of Application
Number

Application

On a separate sheet of paper, list the Deed Book and page number, the parcel size and the TAX Map and lot number for each parcel of land (if one parcel, list here).

Watershed name: _____ Critical
area: Y/N

Name of Owner/Applicant :

Corporation Name/State:

City, State and Zip:

Telephone Number: _____ Alternate:

General description of work under this application:

I Certify that the information shown above is true and accurate, and is in compliance with the conditions for a subdivision of land as defined in the Watershed Protection ordinance.

_____ (SEAL)

Owner/Attorney in Fact

OFFICIAL USE

Date Received: _____

Date referred to Board:

Notes:

Watershed Protection Permit Plan Checklist

Application for Watershed Protection Permits shall be accompanied by plans in duplicate and drawn to scale showing the following:

(a) Location of Project.

_____ Identify the appropriate classification, WS-II-CA, WS-II-BW, WS-III-CA, WS-III-BW, WS-IV-CA, WS-IV-PA.

(b) Lot Dimensions.

_____ Actual dimensions and acreage of the lot to be built upon and the location of any right of ways that may affect development on the lot.

(c) Built Upon Area.

_____ The accurate location and use of all existing and proposed buildings and other structures, and for non-residential development the location and size, in square feet, of all built-upon areas including parking and loading facilities.

_____ The percent of the project that will be covered with an impervious surface.

_____ The area, in acres, to be left natural.

(d) Dwelling Units.

_____ The total number of dwelling units proposed on the lot or tract.

(e) Streams/Rivers.

_____ The accurate location of all perennial streams and natural drainage areas on the property.

(f) Adjacent Property Owners.

_____ The name of adjoining property owners.

(g) Buffers.

_____ The location of all required buffer areas.

Appendix B

Watershed Review Board

Rules of Procedure-Appeals, Variances

APPENDIX B: RULES OF PROCEDURE FOR THE WATERSHED REVIEW BOARD REGARDING APPEALS AND VARIANCES

SECTION 101. GENERAL PROCEEDING OF THE WATERSHED REVIEW BOARD

The Board shall annually elect a chairman and vice-chairman from among its members. The chairman in turn shall appoint a secretary, who may be an employee of Mitchell Count, Mitchell County Officer or a member of the Watershed Review Board. The chairman, or in his absence the vice-chairman, may administer oaths and request the attendance of witnesses. The Board shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question or abstention from voting, if any together with records of its examinations and other official actions.

SECTION 102. MEETINGS

- (A) Board Meetings. The Board shall hold regular monthly meetings at a specified time and place. Special meeting of the Board may be called at any time by the chairman or by request of three (3) or more members of the Board. At least of meetings shall be given, by the chairman, to each member of the Board. All Board meeting are to be held in accordance with Article 33B of Chapter 142 of the General Statutes of North Carolina, commonly referred to as the Open Meetings Law.
- (B) Cancellation of Meetings. Whenever there are no appeals or other business for the Board, or whenever so may members so notify the secretary of inability to attend that a quorum will not be available, the chairman may dispense with a meeting by giving written or oral notice to all members.
- (C) Quorum. A quorum shall consist of three (3) members the Board, but the Board shall not 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.
- (D) Voting. All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section 506 of this ordinance. The required vote to

decide applications for appeals and variances shall not be reduced by any disqualification. In all other matters, the vote of a majority of the members present and voting shall decide issues before the Board.

SECTION 13. APPEALS AND VARIATIONS:

(A) Types of Appeals and Variances:

- (1) Appeals. The Board shall hear and decide all appeals from any decision of determination made by the Watershed Administrator.
- (2) Variances. All applications for variances shall first be presented to the Watershed Administrator, who in turn shall refer the applications to the Watershed Review Board for review and decision in accordance with the procedures outlined in Section 507 of this ordinance.

(B) Procedure for Filing Applications for Appeals and Variances. No hearing shall be held by the Board unless notice thereof is filed within thirty (30) days after the interested party or parties receive the decision or determination by the Watershed Administrator or the aggrieved party or parties receive constructive notice of the decision. Applications shall be filed with the Watershed Administrator, who shall act as clerk for the Board in receiving this notice. All applications shall be made upon the form specified for that purpose and all information required on the form shall be complete before and application shall be considered as having been filed. Once applications have been filed, the Watershed Administrator shall immediately notify the chairman of the Board that such applications have been received.

(C) Hearings:

- (1) Time. After receipt of an application for an appeal or variance, the Board chairman shall schedule a time for a hearing which shall be within forty-five (45) days from the filing of such notice of the application.
- (2) Notice of Hearing. For all applications, notice of the hearing shall be mailed to the adjoining property owners and to such other persons as the Watershed Administrator shall direct at least five (5) days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the questions involved and the time and place of the hearing.
- (3) Conduct of Hearing. The hearing shall be a quasijudicial proceeding. Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows: a) the chairman, or such person as he shall direct, shall give a preliminary statement of the case; b) the applicant shall present the argument in support of the application; c) persons opposed to granting the application shall present their argument against the application; d) both sides will be permitted to present rebuttals to opposing testimony; e) the chairman shall summarize the evidence which has been presented, giving the parties opportunity to make objection or corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board may view the premises before arriving at a decision all witnesses before the Board shall be placed under oath and the opposing party may cross-examine them.

- (4) With an application for a major variance, the Watershed Review Board shall provide a recommendation to the N.C. Environmental Management Commission. The N.C. Environmental Management Commission shall have the authority to approve or deny the issuance of a variance. If the N.C. Environmental Management Commission approves the variance, the Watershed Review Board may direct the Watershed Administrator to issue a Watershed Protection Permit.
- (5) Expiration of Permits. Unless otherwise specified, any order or decision of the Board in granting 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 the decision.
- (6) Voting. 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. A majority vote of the members present and voting is required to provide a recommendation to the N.C. Environmental Management Commission on an application for a major Variance.
- (7) Public Record of Decisions. The decisions of the Board, as filed in its minutes, shall be a public record and available for inspection at all reasonable times. Every Decision of the Watershed Review Board Administrator and a written copy thereof shall be delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later.
- (8) Decisions and Appeals. Every decision by the Board regarding appeals from decisions of the Watershed Administrator shall be subject to review by superior court. All appeals shall be taken to superior court within thirty (30) after the decision to the Board is filed in the office of the Watershed Administrator, or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later.

