

**ARTICLE XVI
WATERSHED PROTECTION**

Section 160. Authority and Enactment. The Legislature of the State of North Carolina has, in Chapter 160A, Article 19, Planning and Regulation of Development; 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 Town of Hudson, North Carolina ("the Town"), does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of Hudson, North Carolina.

Section 161. Jurisdiction. The provisions of this Ordinance shall apply within the overlay zones designated as a Public Water Supply Watershed as defined and established on the "Official Zoning Map of Hudson, North Carolina" ("the Zoning Map"), such overlay zones being adopted simultaneously herewith. The Zoning Map and all explanatory matter contained thereon accompanies and is hereby made a part of this Article.

Section 162. Exceptions to Applicability.

- (A) Development activities that do not require a Sedimentation/Erosion Control Plan are exempt from the requirements of this Article.
- (B) Existing development, as defined in this Article, is not subject to the requirements of this Article. Existing development is defined as 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) having expended substantial resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;
 - (2) having an outstanding valid building permit as authorized by NCGS 153A-344.1 and NCGS 160A-385.1; or
 - (3) having an approved site specific or phased development plan as authorized by NCGS 153A-344.1 and NCGS 160A-385.1.
- (C) 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) **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 redevelopment, provided:
- (1) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
 - (2) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.
- (E) If a non-conforming lot of record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this ordinance if it is developed for single family purposes.

Section 163. Low Density Development Standards.

Development activities that are subject to the restrictions of this Article must comply with the density and built-upon limitations established herein. **Built-upon area is defined as that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel, recreation facilities, etc., excluding wooden slatted decks and the water area of a swimming pool.**

Only new development activities that require a Sedimentation/Erosion Control Plan under State law or an approved local program are required to meet the provisions of this Article when located in the WS-IV-PA.

- (A) **Density and built-upon Limits:**
- (1) **Residential:** Development shall not exceed two (2) dwelling units per acre or twenty-four percent (24%) built-upon area, as defined on a project by project basis. For projects without a curb and gutter street system, residential development shall be allowed at a maximum of three (3) dwelling units per acre or thirty-six percent (36%) built-upon area. **Where the Zoning Ordinance permits lot sizes smaller than 1/2 acre or 1/3 acre, such smaller lot size will be permitted provided that the built-upon**

area for the project does not exceed the 24% - 36% impervious cover limitations.

- (2) **Non-Residential:** Development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. For projects without a curb and gutter street system, development shall not exceed thirty-six percent (36%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.
- (B) **High density development using engineered stormwater control devices are permitted in the WS-IV-PA only in the underlying General Business and Industrial zoning districts. Where new development requires a Sedimentation/ Erosion Control Plan and exceeds either two dwelling units per acre, twenty-four percent (24%) built-upon area, or three dwelling units per acre or thirty-six percent (36%) built-upon area for projects without a curb and gutter street system, engineered stormwater controls shall be used to control run-off from the first inch of rainfall and development shall not exceed seventy percent (70%) built-upon area. See Section 5 for additional explanations and requirements for High Density Development.**
- (C) **Uses Allowed:**
- (1) **Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.**
 - (2) **Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).**
 - (3) **Residential development.**
 - (4) **Non-residential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.**

Section 164. High Density Development Standards.

- (A) **The Board of Commissioners may approve high density development proposals in the Highway Business, Light Industrial and Heavy Industrial zoning districts as shown on the official Zoning Map, consistent with the following standards:**

WS-IV-PA Watershed Areas - Where new development requires a Sedimentation/Erosion Control Plan and exceeds either 2 dwelling units per acre, 24% built-upon area (or 3 dwelling units per acre or 36% built-upon area for projects without curb and gutter street system), engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 70% built-upon area.

Section 165. High Density Development Permit Application.

- (A) A High Density Development Permit shall be required for new development exceeding the requirements of the low density option.
- (B) Application for a High Density Development Permit shall be addressed and submitted to the Board of Commissioners through the Watershed Administrator. Application for a High Density Development Permit shall be made on the proper form and shall include the following information:
 - (1) A completed High Density Development Permit Application signed by the owner of the property. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization;
 - (2) Ten (10) reproducible copies of the development plan including detailed information concerning built-upon area;
 - (3) Ten (10) reproducible copies of the plans and specifications of the stormwater control structure consistent with Section 7;
 - (4) When required by law, written verification that a soil erosion and sedimentation control plan has been approved by the appropriate State or local agency;
 - (5) Permit Application Fees consistent with Section 10;
- (C) Prior to taking final action on any application, the Board or the Watershed Administrator may provide an opportunity to public agencies affected by the development proposal to review and make recommendations on the application. However, failure of the agencies to submit their comments and recommendations shall not delay the Board's action within the prescribed time limit.

- (D) **Public Hearing.** Upon receipt of a completed application, the Board of Commissioners shall hold a public hearing. Notice of the hearing shall be published in a newspaper of general circulation at least seven days prior to the date of the hearing. The notice shall state the location of the building, lot or tract in question, the intended use of the property, the need for engineered stormwater controls and the time and place of the hearing. At the hearing, the applicant or designated representative thereof shall appear for the purposes of offering testimony and recommendations concerning the application. The Board shall also allot reasonable time for the expression of views by any member of the public attending the meeting in person or represented by an attorney provided the testimony bears on the findings the Board must make.
- (E) The Board of Commissioners shall issue a High Density Development Permit within sixty-five (65) days of its first consideration upon finding that the proposal is consistent with the applicable standards set forth in the Watershed Protection Ordinance and the following conditions are met:
- (1) The use will not endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;
 - (2) The use minimizes impacts to water quality through the Best Management Practices, cluster development, and/or maximum setbacks from perennial waters;
 - (3) The use is vital to the continued growth and economic development of the Town of Hudson.
 - (4) The use is consistent with the officially adopted land development plans for the Town of Hudson.

If the Board of Commissioners finds that any one of the above conditions is not met, the Board shall deny the application.

- (F) In addition to any other requirements provided by this Ordinance, the Board may designate additional permit conditions and requirements to assure that the use will be harmonious with the area in which it is proposed to be located and with the spirit of this Ordinance. All additional conditions shall be entered in the minutes of the meeting at which the permit is granted, on all plans and on the permit certificate. All conditions so imposed shall run with the land and shall be binding upon the applicant and the applicant's heirs, successors or assigns during the continuation of the permitted use.

- (G) The Board shall issue a written ruling and make copies available at the office of the Watershed Administrator and the Town Clerk. If the Board approves the application based on its findings, such approval shall be indicated on the permit and all copies of the site plan and all copies of the plans and specifications of the stormwater control structure(s). A High Density Development Permit shall be issued after the applicant posts a performance bond or other acceptable security as required in Section 8(B)(1) and executes an Operation and Maintenance Agreement as required in Section 8(C). A copy of the permit and one copy of each set of plans shall be kept on file at the Watershed Administrator's office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or registered mail, return receipt requested.

Section 166. Stormwater Control Structures.

- (A) All stormwater control structures shall be designed by a North Carolina registered professional engineer.
- (B) All stormwater controls shall use wet detention ponds as a primary treatment system unless alternative storm water management measures, as outlined in Section 166 (G), are used. Wet detention ponds shall be designed for specific pollutant removal according to modeling techniques approved by the North Carolina Division of Environmental Management. Specific requirements for these systems shall be in accordance with the following design criteria:
- (1) Wet detention ponds shall be designed to remove 85% of total suspended solids in the permanent pool and storage run-off from a one-inch rainfall from the site above the permanent pool;
 - (2) The designed run-off storage volume shall be above the permanent pool;
 - (3) The discharge rate from these systems following the one-inch rainfall design storm shall be such that the run-off does not draw down to the permanent pool level in less than two (2) days and that the pond is drawn down to the permanent pool level within at least five (5) days;
 - (4) The mean permanent pool depth shall be a minimum of three (3) feet;

- (5) The inlet structure shall be designed to minimize turbulence using baffles or other appropriate design features;
 - (6) Vegetative filters shall be constructed for the overflow and discharge of all stormwater wet detention ponds and shall be at least thirty feet in length. The slope and width of the vegetative filter shall be determined so as to provide a non-erosive velocity of flow through the filter for a ten-year, 24-hour storm with a ten-year, one-hour intensity with a slope of 5% or less. Vegetation in the filter shall be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics; and
 - (7) All stormwater control structures shall be enclosed by a fence with a minimum height of six (6) feet.
- (D) In addition to the vegetative filters required in Section 7(B)(6), all land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within thirty (30) days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the maintenance agreement described in Section 8(C).
- (E) A description of the area containing the stormwater control structure shall be prepared and filed consistent with Section 11(A and B), as a separate deed with the County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include the detention pond, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs and reconstruction.
- (F) Qualifying areas of the stormwater control structure may be considered pervious when computing total built-upon area. However, if the structure is used to compute the percentage built-upon area for one site, it shall not be used to compute the built-upon area for any other site or area.
- (G) Alternative stormwater management systems, consisting of one treatment option or a combination of treatment options, may be used. The design criteria for approval shall be 85 percent average annual removal of Total Suspended Solids. Also, the discharge rate shall meet one of the following criteria:

- (1) The discharge rate following the 1-inch design storm shall be such that the runoff draws down to the pre-storm design stage within five days, but not less than two days; or
- (2) The post development peak discharge rate shall equal the predevelopment rate for the 1-year, 24 hour storm.

Section 167. Posting of Financial Security Required.

- (A) All new stormwater control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, reconstruction, or repairs necessary for adequate performance of the stormwater control structures.
- (B) Financial assurance shall be in the form of the following:
 - (1) Security Performance Bond or other security. The permit applicant shall obtain either a performance bond from a surety bonding company authorized to do business in North Carolina, an irrevocable letter of credit or other instrument readily convertible into cash at face value payable to the Town of Hudson or placed in escrow with a financial institution designated as an official depository of the Town of Hudson. The bond or other instrument shall be in an amount equal to 1.25 times the total cost of the stormwater control structure, as estimated by the applicant and approved by the Town. The total cost of the stormwater control structure shall include the value of all materials such as piping and other structures; seeding and soil stabilization; design and engineering; and, grading, excavation, fill, etc. The costs shall not be prorated as part of a larger project, but rather under the assumption of an independent mobilization.
 - (2) Cash or Equivalent Security Deposited After the Release of the Performance Bond. Consistent with Section 11(C)(1), the permit applicant shall deposit with the Town of Hudson either cash or other instrument approved by the Town Attorney that is readily convertible into cash at face value. The cash or security shall be in an amount equal to fifteen percent (15%) of the total cost of the stormwater control structure or the estimated cost of maintaining the stormwater control structure over a ten (10) year period, whichever is greater. The estimated cost of maintaining the stormwater control structure shall be consistent with the approved operation and maintenance plan or manual provided by the developer under Section 9(A). The amount shall be computed

by estimating the maintenance cost for twenty-five (25) years and multiplying this amount by two fifths or 0.4.

- (C) Consistent with Section 6(G), the permit applicant shall enter into a binding Operation and Maintenance Agreement between the Town of Hudson and all interests in the development. Said Agreement shall require the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the operation and management plan or manual provided by the developer. The Operation and Maintenance Agreement shall be filed with the County Register of Deeds by the Watershed Administrator.
- (D) Default under the performance bond or other security. Upon default of the permit applicant to complete and/or maintain the stormwater control structure as specifically provided in the performance bond or other security, the Town of Hudson may obtain and use all or any portion of the funds necessary to complete the improvements based on an engineering estimate. The Town of Hudson shall return any funds not spent in completing the improvements to the owning entity.
- (E) Default under the cash security. Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the Operation and Maintenance Agreement, the Town of Hudson shall obtain and use all or any portion of the cash security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the Operation and Maintenance Agreement. The Town of Hudson shall not return any of the deposited cash funds.

Section 168. Maintenance and Upkeep.

- (A) An operation and maintenance plan or manual shall be provided by the developer for each stormwater control structure, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken and, consistent with the Operation and Maintenance Agreement, who is responsible for those actions. The plan shall clearly indicate the steps that will be taken for restoring a stormwater control structure to design specifications if a failure occurs.
- (B) Landscaping and grounds management shall be the responsibility of the owning entity. However, vegetation shall not be established or allowed to mature to the extent that the integrity of the control structure is

diminished or threatened, or to the extent of interfering with any easement to the stormwater control structure.

- (C) Except for general landscaping and grounds management, the owning entity shall notify the Watershed Administrator prior to any repair or reconstruction of the stormwater control structure. All improvements shall be made consistent with the approved plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Town Engineer shall inspect the completed improvements and shall inform the owning entity of any required additions, changes or modifications and of the time period to complete said improvements.
- (D) Amendments to the plans and specifications of the stormwater control structure and/or the operation and maintenance plan or manual shall be approved by the Board of Commissioners. Proposed changes shall be prepared by a North Carolina registered professional engineer and submitted to and reviewed by the Watershed Administrator prior to consideration by the Board of Commissioners.
 - (1) If the Board of Commissioners approve the proposed changes, the owning entity of the stormwater control structure shall file sealed copies of the revisions with the Office of the Watershed Administrator.
 - (2) If the Board of Commissioners disapprove the changes, the proposal may be revised and resubmitted to the Board of Commissioners as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.
- (E) If the Board of Commissioners finds that the operation and maintenance plan or manual is inadequate for any reason, the Board shall notify the owning entity of any required changes and shall prepare and file copies of the revised agreement with the County Register of Deeds, the Office of the Watershed Administrator and the owning entity.

Section 169. Application and Inspection Fees.

- (A) Processing and inspection fees shall be submitted in the form of a check or money order made payable to the Town of Hudson. Applications shall be returned if not accompanied by the required fee.
- (B) A permit and inspection fee schedule, as approved by the Town of Hudson, shall be posted in the Office of the Watershed Administrator.

- (C) Inspection fees shall be valid for sixty (60) days. An inspection fee shall be required when improvements are made to the stormwater control structure consistent with Section 9(C), except in the case when a similar fee has been paid within the last sixty (60) days.

Section 1610. Inspections and Release of the Performance Bond.

- (A) The stormwater control structure shall be inspected by the Town, after the owning entity notifies the Watershed Administrator that all work has been completed. At this inspection, the owning entity shall provide:
 - (1) The signed deed, related easements and survey plat for the stormwater control structure ready for filing with the Register of Deeds;
 - (2) A certification sealed by an engineer or landscape architect (to the extent that General Statutes allow) stating that the stormwater control structure is complete and consistent with the approved plans and specifications.
- (B) The Watershed Administrator shall present the materials submitted by the developer and the inspection report and recommendations to the Hudson Board of Commissioners at its next regularly scheduled meeting.
 - (1) If the Board of Commissioners approve the inspection report and accepts the certification, deed and easements, the Town shall file the deed and easements with the County Register of Deeds, release up to seventy-five percent (75%) of the value of the performance bond or other security and issue a Certificate of Occupancy for the stormwater control structure.
 - (2) If deficiencies are found, the Town shall direct that improvements and inspections be made and documents corrected and submitted to the Town.
- (C) No sooner than one year after the filing date of the deed, easements, and maintenance agreement, the developer may petition the Town to release the remaining value of the performance bond or other security. Upon receipt of said petition, the Town shall inspect the stormwater control structure to determine whether the controls are performing as designed and intended. The Watershed Administrator shall present the petition and findings to the Board of Commissioners.

- (1) If the Board of Commissioners approve the report and accepts the petition, the developer shall deposit with the Town of Hudson a cash amount equal to that described in Section 8(B)(2), after which the Board of Commissioners shall release the performance bond or other security.
 - (2) If the Board of Commissioners does not accept the report and rejects the petition, the Town shall provide the developer with instructions to correct any deficiencies and all steps necessary for the release of the performance bond or other security.
- (D) A Certificate of Occupancy shall not be issued for any building within the permitted development until the Board of Commissioners has approved the stormwater control structure, as provided in Section 11(B).
 - (E) All stormwater control structures shall be inspected at least on an annual basis to determine whether the controls are performing as designed and intended. Records of inspection shall be maintained on forms approved or supplied by the North Carolina Division of Environmental Management. Annual inspections shall begin within one year of filing date of the deed for the stormwater control structure.
 - (F) In the event the Watershed Administrator discovers the need for corrective action or improvements, the Watershed Administrator shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements shall be made consistent with the plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Town shall inspect and approve the completed improvements.

Section 1611. Cluster or Planned Unit Development. Cluster or Planned Unit Development is allowed in all Watershed Areas under the following conditions:

- (A) Development activities shall comply with the requirements of Sections 105 and 106 of this Article.
- (B) All built-upon areas 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. The title to the open space area shall be conveyed to an incorporated homeowners association for management; to a local government for preservation as a park or open space; or to a conservation organization

for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the deeds.

Section 1612. 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 in the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. 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 crossings and greenways and their appurtenances 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, defined as a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs receiving waters in order to achieve water quality goals.

Section 1613. Watershed Administrator and Duties thereof. The Hudson Town Council 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 staff to the Planning Board, Board of Adjustment, and Board of Commissioners.
- (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 to the local Water Supply Watershed Protection Ordinance to the Division of Water Quality.
- (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 zoning and police power of the Town of

Hudson. 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 each calendar year to the Division of Water Quality on or before January 1st of the following calendar year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

Section 1614. Appeal from the Watershed Administrator.

- (A) Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Board of Adjustment.
- (B) An appeal from a decision of the Watershed Administrator must be submitted to the Board of Adjustment 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.
- (C) 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.
- (D) 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 1615. Establishment of a Watershed Review Board. There shall be and hereby is created the Watershed Review Board consisting of the same membership as the Hudson Town Board of Commissioners. Terms for members of the Watershed Review Board shall coincide with the membership terms for the Board of Commissioners.

Section 1616. Powers and Duties of the Watershed Review Board and Board of Adjustment.

- (A) The Board of Adjustment shall be responsible for reviewing and hearing all major and minor watershed variance cases, and shall proceed as provided in Article XIII of the Zoning Ordinance for zoning variances when reviewing minor watershed variance cases.

- (B) If the application calls for the granting of a major watershed variance, and if the Board of Adjustment decides in favor of granting the major watershed 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 applications;
 - (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.

- (C) The preliminary record shall be sent to the Environmental Management Commission (EMC) for its review as follows:
 - (1) If the EMC 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 EMC shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The EMC shall prepare a decision and send it to the Board of Adjustment. If the EMC approves the variance as proposed, the Board of Adjustment shall prepare a final decision granting the proposed variance. If the EMC approves the variance with conditions and stipulations, the Board

of Adjustment shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

- (2) If the EMC 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 EMC shall deny approval of the variance as proposed. The EMC shall prepare a commission decision and send it to the Board of Adjustment. The Board of Adjustment shall prepare a final decision denying the variance as proposed.
- (D) Approval of all development greater than the low density option shall be the authority of the Board of Commissioners/Watershed Review Board.
- (E) The Watershed Administrator shall notify in writing the following local governments having jurisdiction in the watershed and the entity using the water supply for consumption, Burke County, Caldwell County, and the Towns of Cahah's Mountain, Drexel, Gamewell, Glen Alpine, Granite Falls, Rhodhiss, Rutherford College, Sawmills, Valdese, and the City of Lenoir. 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.

Section 1617. Appeals from the Board of Commissioners or Board of Adjustment. Appeals from the Board of Commissioners or Board of Adjustment 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.

Section 1618. Remedies.

- (A) If any subdivision, development and/or land use is found to be in violation of this Article, the Town may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$50, institute actions or proceedings to restrain, correct, or abate the violations; 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 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 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 Board of Adjustment.

Section 1619. Sanctions. In addition to the remedies described in Section 19 of this Ordinance and consistent with G.S. 160A-175, the Hudson Board of Commissioners may seek enforcement of this Ordinance by assessing a civil penalty to be recovered by the Town in a civil action in the nature of debt if the offender does not pay the penalty in a prescribed period of time after being cited for violation of the Ordinance. Such violation may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. The court may issue an injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the rules of Civil Procedure in general and Rule 65 in particular. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith. Enforcement of this Ordinance may be by any one, all or a combination of the remedies authorized in this Ordinance. Each day's continuing violation shall be a separate and distinct offense.

Section 1620. Amendments. Amendments to this Article shall follow the procedures provided in Article XIV of this Ordinance. Under no circumstances shall the Board of Aldermen adopt such amendments that would cause this Ordinance to violate the watershed protection rules as adopted by the North Carolina Environmental Management Commission. Amendments affecting the watershed protection

portions of this Ordinance shall be filed with the North Carolina Division of Environmental Management, the North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.

Section 1621. Definitions. The following definitions apply only to Article XVI of this Ordinance.

- (A) 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.
- (B) Buffer Watershed. 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 waters and from the bank of each side of free-flowing streams.
- (C) Built-Upon Area. That portion of a development that is covered by impervious or partially impervious cover including buildings, pavement, gravel, recreation facilities, etc., excluding wooden slatted decks and the water area of swimming pools.
- (D) Cluster Development. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes non-residential development as well as single-family residential and multi-family developments. For the purpose of this Article, planned unit development and mixed use development are considered as cluster development.
- (E) Development. The use or occupancy of any land or structure, or the construction, erection, alteration, or moving of any structure; 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.
- (F) 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) having expended substantial 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 building permit as authorized by North Carolina General Statutes (NCGS 153A-344.1 and 160A-385.1); or
 - (3) having an approved site specific or phased development plan as authorized by North Carolina General Statutes (NCGS 153A-344.1 and 160A-385.1).

- (G) **Hazardous Material.** Any substance listed as such in: SARA Section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).
- (H) **Industrial Development.** Any non-residential development that requires a 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.
- (I) **Landfill.** A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the North Carolina General Statutes. For the purpose of this ordinance, this term does not include composting facilities.
- (J) **Lot Coverage.** The percentage of a lot which may be covered with buildings or structures, excluding walks, drives, and other similar uses and recreational facilities which are accessory to a permitted use. For properties located within the WS-4 Protected Area, lot coverage shall include all built-upon areas as defined in Section 22(C) of this Ordinance.
- (K) **Major Watershed Variance.** A variance from the minimum statewide water supply watershed protection criteria that results in any one or more of the following:
- (1) any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater system;
 - (2) the relaxation, by a factor greater than ten (10) percent, of any management requirement under the low density option;
 - (3) the relaxation by a factor greater than five (5) percent, of any buffer or built-upon area requirement under the high density option.
- (L) **Minor Watershed Variance.** A variance that does not qualify as a major watershed variance.
- (M) **Non-conforming Lot of Record.** A lot described by a plat or a deed that was recorded prior to the effective date of this Chapter that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.
- (N) **Protected Area.** Area five miles upstream and draining to a water supply reservoir, or to the ridge line of the watershed, whichever comes first; or ten miles upstream and draining to a water intake located in a stream or river, or to the ridge line of the watershed, whichever comes first.

- (O) 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.
- (P) Single Family Development. 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.
- (Q) Site Specific Development Plan. A plan of land development submitted to the Town of Hudson for purposes of obtaining one of the following zoning or land use permits or approvals:
- a. Zoning Permit, as provided by this Ordinance;
 - b. Conditional Use Permit, as provided by this Ordinance;
 - c. Variance, as provided by this Ordinance;
 - d. Minor Subdivision Approval;
 - e. Major Subdivision Approval.

Notwithstanding the foregoing, neither a variance, a sketch plan, nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

- (R) 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 boating supplies, parking lots and commercial boat storage areas are not water dependent structures.
- (S) Watershed. The entire land area contributing surface drainage to a specific point.
- (T) Watershed Administrator. See "Zoning Enforcement Officer".
- (U) Watershed Protection Occupancy Permit. See "Zoning Certificate of Occupancy Permit".
- (V) Watershed Protection Permit. See "Zoning Permit".

(V) Watershed Variance. A permission to develop or use property granted by the Board of Adjustment or Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the EMC that is incorporated into this Ordinance.

Section 23. Effective Date. This Section shall take effect and be in force on October 1, 1993.

Section 24. Adoption Date.

This Article is adopted this 14th day of September, 1993.

SEAL

ATTEST:

Diego
Mayor

Rebecca M. Bailey
Clerk

Approved as to form:

H. H. ...
Town Attorney

Amended January 21, 1997