

**TRANSYLVANIA COUNTY
WATERSHED PROTECTION ORDINANCE**

ARTICLE I

AUTHORITY AND ENACTMENT

The Legislature of the State of North Carolina, in Chapter 153A, Article 6, Section 121, General Ordinance Authority, and in Chapter 143, Article 21, Watershed Protection Rules, delegates the responsibility or directs local governments to adopt regulations designed to promote public health, safety, and general welfare. Transylvania County does hereby ordain and enact into law the following articles as the Transylvania County Watershed Protection Ordinance.

ARTICLE II

JURISDICTION AND ADMINISTRATION

This Ordinance shall apply within the areas designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission and shall be defined and established on the map entitled "Transylvania County Watershed Protection Map." The Watershed Map is hereby made a part of this Ordinance and shall be permanently kept on file in the Transylvania County Clerk's office and Planning and Community Development Department. This Ordinance shall not apply to areas owned by the federal and state governments.

The Transylvania County Planning and Community Development Department shall administer and enforce this Ordinance. The Transylvania County Planning Board shall constitute the Watershed Review Board.

ARTICLE III

DEFINITIONS

SECTION 1: For the purpose of this Ordinance, certain words or terms used herein are defined as follows:

- 1.1 Agricultural Use - The use of waters for stock watering, irrigation, and other farm purposes as defined in NC G.S. 106-581.1.
- 1.2 Animal Unit - A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.
- 1.3 Balance of Watershed - The entire drainage basin upstream of and draining to a water supply watershed critical area where the risk of water supply pollution is greater than in surrounding areas.

- 1.4 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.
- 1.5 Buffer - An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner to filter pollutants and prevent runoff from channelizing. The buffer is measured horizontally from the normal pool elevation of impounded structures or from the top of the stream bank on each side of a stream.
- 1.6 Building - Any structure having a roof supported by columns or walls and intended for shelter, housing or enclosure of persons, animals or property. The connection of two (2) buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one (1) building.
- 1.7 Built-upon Area - Impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a slatted deck; the water area of a swimming pool; a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick, with or without geotextile fabric; a trail as defined in G.S. 113A-85 that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour); or landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, such as the area between sections of pavement that support the weight of a vehicle (N.C.G.S.143-214.7(b2)).
- 1.8 Cluster Development - Buildings grouped together to conserve land resources and provide for innovation in project design, including minimizing stormwater runoff impacts. This term includes non-residential unified development, single-family residential and multi-family developments. For the purpose of this Ordinance, planned unit development and mixed-use development are considered cluster development.
- 1.9 Critical Area - The area extending one-half mile upstream from and draining to the water supply intake located directly in the stream or river (run-of-the-river), or the watershed ridge line (whichever comes first). Major landmarks such as highways or property lines may be used to delineate the outer boundary if these landmarks are immediately adjacent to the one-half mile outer boundary.
- 1.10 Development - Any land-disturbing activity that adds to or changes the amount of impervious or partially impervious cover that decreases the infiltration of precipitation into the soil.
- 1.11 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 or pumped and hauled to a permitted wastewater treatment facility.

- 1.12 Dwelling Unit - A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.
- 1.13 Existing Development - Those projects that are built or those projects that at a minimum have, by the effective date of this Ordinance, met one of the following criteria:
- 1.13.1 Expended substantial resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the proposed project; or
- 1.13.2 Obtained a valid building permit.
- 1.14 Existing Lot (Lot of Record) - A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or for development, or both, that is described by metes and bounds and was recorded in the Register of Deeds office prior to the adoption of this Ordinance. The word "lot" includes "plot", "parcel", "tract", or "camp".
- 1.15 Hazardous Material - Any substance identified in: Superfund Amendment and Reauthorization Act (SARA) section 302, Extremely Hazardous Substances; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); or Section 311 of the Clean Water Act (CWA).
- 1.16 Industrial Development - Any non-residential development that requires a National Pollutant Discharge Elimination System (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.
- 1.17 Landfill - A facility designed to dispose of solid waste on land in a sanitary manner in accordance with Chapter 130A, Article 9 of the N.C. General Statutes.
- 1.18 Lot - A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or for development, or both. The word "lot" includes "plot", "parcel", "tract", or "camp".
- 1.19 Major Variance - A variance from the minimum statewide water supply watershed protection rules that results in either:
- 1.19.1 A variation in the design, maintenance or operation requirements of an approved stormwater system; or
- 1.19.2 The relaxation, by a factor greater than ten (10) percent, of any management requirement under the low-density option.
- 1.20 Minor Variance - A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to ten (10) percent, of any management requirement under the low-density option.

- 1.21 Nonconforming Lot of Record - A lot described by a plat or a deed that was recorded prior to the effective date of local watershed protection regulations (or their amendments) that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.
- 1.22 Non-residential Development - All development other than residential development, agriculture, silviculture and trout farming.
- 1.23 Plat - Includes the terms: “map”, “plan”, or “replat”; a map or plan of a parcel of land which is to be, or which has been, developed or subdivided.
- 1.24 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.
- 1.25 Residuals - Any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant, or air pollution control facility, permitted under the authority of the Environmental Management Commission.
- 1.26 Road - A dedicated public or private right-of-way for routine vehicular traffic.
- 1.27 Single- Family Residential - Any development where: no building contains more than one (1) dwelling unit; every dwelling unit is on a separate lot, and where no lot contains more than one (1) dwelling unit.
- 1.28 Stormwater - The flow of water which results from precipitation and which occurs immediately following rainfall or a snowmelt.
- 1.29 Structure - Anything constructed or erected, including, but not limited to, buildings, that requires location on the land or attachment to something having permanent location on the land.
- 1.30 Subdivider - Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision.
- 1.31 Subdivision - A subdivision means all divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new road or a change in existing roads; and includes any unified residential or non-residential development; however, the following are not included within this definition and are not subject to any regulations enacted pursuant to the Transylvania County Subdivision Control Ordinance, as amended.
- 1.31.1 The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;

- 1.31.2 The division of land into parcels greater than 10 acres where no road right-of-way dedication is involved;
- 1.31.3 The public acquisition by purchase of strips of land for widening or opening roads;
- 1.31.4 The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no road right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations;
- 1.31.5 The division of land for the purpose of conveying a single lot or parcel to each tenant in common, all of whom jointly inherited the land by intestacy or by will;
- 1.31.6 The division of land into no more than two (2) parcels for the purpose of conveying at least one (1) of the resulting lots to a grantee(s) who would have been an heir(s) of the grantor if the grantor had died intestate immediately prior to the conveyance;
- 1.31.7 The division of land pursuant to an order of a court of the General Court of Justice;
- 1.31.8 The division of land for cemetery lots or burial plots; and
- 1.31.9 The division of land for the purpose of changing the boundary line(s) between adjoining property owners and no new road right-of-way dedication is involved.
- 1.32 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 chain accumulation, 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.
- 1.33 Variance - Permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission and incorporated into this Ordinance.
- 1.34 Watershed - The entire land area contributing surface drainage to the water supply intake.
- 1.35 Watershed Administrator - The person responsible for administering and enforcing this Ordinance.

ARTICLE IV

EXCEPTIONS

SECTION 2: Exceptions - The following are exceptions to this Ordinance:

- 2.1 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 Transylvania County; however, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in Transylvania County at the time of the adoption of this Ordinance that may be construed to impair or reduce the effectiveness of this Ordinance or to conflict with any of its provisions.
- 2.2 It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.
- 2.3 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.
- 2.4 If a nonconforming 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 residential purposes. Any lot or parcel created as part of a family subdivision, or court ordered survey, after the effective date of these rules shall be exempt from these rules if it is developed for one single-family detached residence and if it is exempt from local subdivision regulation. Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject to the land use requirements (including impervious surface requirements) of these rules, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent practicable.

ARTICLE V

SUBDIVISION REGULATIONS

SECTION 3: General Provisions - No subdivision of land within the Public Water Supply Watershed of Transylvania County shall be approved in accordance with the Transylvania County Subdivision Control Ordinance or recorded by the Register of Deeds until it has been approved in accordance with the provisions of this Ordinance.

SECTION 4: Subdivision Application and Review Procedures

- 4.1 All proposed subdivisions shall be reviewed by submitting a plat with a vicinity map to the Watershed Administrator to determine whether the property is located within the designated Public Water Supply Watershed. **Subdivisions not within the designated watershed are not subject to the remainder of this Ordinance.**
- 4.2 A person subdividing land within the Public Water Supply Watershed shall file an application with the Watershed Administrator. The application shall include a completed application form, two (2) copies of the plat and any supporting documentation deemed necessary by the Watershed Administrator.
- 4.3 The Watershed Administrator shall review the completed application and either approve, approve conditionally, or disapprove the application. The Watershed Administrator shall take final action within 45 forty-five working days from the submission date of the full and complete application.
- 4.4 The Watershed Administrator may provide public agencies an opportunity to review and make recommendations. Failure of the agencies to submit their comments and recommendations shall not delay final action. Said public agencies may include, but are not limited to, the following:
 - 4.4.1 The Health Department Director with regard to proposed water or sewer systems normally approved by the Health Department.
 - 4.4.2 The NC Division of Environmental Quality with regard to proposed water or sewer systems and engineered stormwater controls.
 - 4.4.3 The City of Brevard Water Treatment Plant Operator and City Manager.
- 4.5 If the Watershed Administrator approves the application, such approval shall be indicated on both copies of the plat by the following certificate:

Certificate of Approval

I certify that the plat shown hereon complies with the Transylvania
County Watershed Protection Ordinance

Date, _____ Watershed Administrator _____

NOTICE: This property is located within a Public Water Supply Watershed. Development restrictions apply.

- 4.6 If the Watershed Administrator disapproves or conditionally approves the application, the reason(s) for such action shall be stated in writing. The subdivider may make changes and submit a revised plan, which shall constitute a separate and new request for review.

- 4.7 All subdivision plats shall comply with the requirements for recording of the County Register of Deeds.
- 4.8 The plat shall be recorded within thirty (30) days of approval. The Subdivider shall provide the Watershed Administrator with evidence the plat has been recorded with the Register of Deeds within five (5) working days.

SECTION 5: Subdivision Standards and Required Improvements

- 5.1 Lot Space - All lots shall provide adequate building space in accordance with the development standards contained in Article VI. Lots that are smaller than the minimum required for residential lots may be developed using the built-upon area criteria in Sections 7 and 8.
- 5.2 Calculation of Area - For the purpose of calculating built-upon area, the total project area shall include the tract's total acreage on which the project is to be developed.
- 5.3 Stormwater Drainage - The application shall be accompanied by a proposed stormwater drainage control plan. The subdivider shall provide a drainage system that diverts stormwater runoff away from all surface waters and incorporates best management practices to minimize water quality impacts.
- 5.4 Erosion and Sedimentation Control - If required, the application shall be accompanied by an approved erosion control plan and a written statement from the NC Department of Environmental Quality stating that an erosion control plan has been submitted and approved for the project, if applicable.
- 5.5 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 to minimize their impact on water quality.
- 5.6 Spill Containment Plan - The application shall be accompanied by a spill containment plan for the storing of hazardous materials or toxic substances, if applicable.
- 5.7 Any person who, being the owner or agent of the owner of any land located within the water supply watershed in the jurisdiction of Transylvania County, thereafter subdivides their land in violation of this Ordinance or transfers or sells 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. Transylvania 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 VI

DEVELOPMENT REGULATIONS

SECTION 6: Establishment of Watershed Areas - Transylvania County has one Water Supply II (WS-II) watershed divided into two (2) areas, as defined by the N.C. Environmental Management Commission:
WS-II -CA (Critical Area),
WS-II -BW (Balance of Watershed).

SECTION 7: WS-II Watershed Areas - Critical Area (WS-II-CA)

7.1 Allowed Uses:

- 7.1.1 Agriculture activities subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and defined in NC GS 106-735. Agricultural activities conducted after January 1, 1993 shall maintain a minimum 25 foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Animal operations greater than one hundred (100) animal units shall employ best management practices by July 1, 1994, as recommended by the Soil and Water Conservation Commission.
- 7.1.2 Silviculture, and other forestry activities are subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).
- 7.1.3 Residential development.
- 7.1.4 Non-residential development, **excluding**: the use, storage, or manufacturing of toxic substances and hazardous materials; landfills; and sites for land application of sludge/residuals or petroleum contaminated soils.

7.2 Density and Built-upon Limits:

- 7.2.1 Single-family residential development shall not exceed one (1) dwelling unit per two (2) acres on a project-by-project basis. No residential lot shall be less than two (2) acres, except within an approved cluster development.
- 7.2.2 All other residential and non-residential development shall not exceed six (6) percent built-upon area on a project-by-project basis.

SECTION 8: WS-II Watershed Areas - Balance of Watershed (WS-II-BA)

8.1 Allowed Uses:

- 8.1.1 Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
- 8.1.2 Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).
- 8.1.3 Trout farming.
- 8.1.4 Residential development.
- 8.1.5 Non-residential development, excluding landfills and the use, storage, or manufacture of toxic substances and hazardous materials unless a spill containment plan is implemented.
- 8.2 Density and Built-upon Limits:
 - 8.2.1 Single-family residential development shall not exceed one (1) dwelling unit per acre on a project-by-project basis. No residential lot shall be less than one (1) acre, except within an approved cluster development.
 - 8.2.2 All other residential and non-residential development shall not exceed twelve (12) percent built-upon area on a project-by-project basis on any one (1) parcel, except that up to ten (10) percent of each of the original tracts located in the balance of the watershed, at the time the Ordinance was adopted, may be developed with new development or expansions to existing development to a maximum of seventy (70) percent built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, total project area includes total acreage in the tract on which the project is to be developed.

SECTION 9: Cluster Development - Cluster development is allowed in all watershed areas under the following conditions:

- 9.1 Minimum lot sizes are not applicable to single-family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single-family detached developments in Sections 7 and 8. The project's built-upon area shall not exceed that allowed for the critical area or balance of watershed, whichever applies.
- 9.2 All built-upon area(s) shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- 9.3 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 homeowner's association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with all property deeds. A copy of the recorded deed shall be presented to the Watershed Administrator.

SECTION 10: Buffer Areas Required

- 10.1 A minimum thirty (30) foot undisturbed, horizontal vegetative buffer is required for development activities along all perennial waters indicated on the most recent U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Artificial stream bank stabilization is permitted.
- 10.2 No new development is allowed in the buffer except for projects such as road crossings and greenways where no practical alternative exists, and as approved by the Watershed Review Board. 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 11: Rules Governing the Interpretation of Watershed Boundaries - Where uncertainty exists as to the boundaries of the watershed, as shown on the Watershed Map, the following shall apply:

- 11.1 Where boundaries are indicated as approximately following either road or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.
- 11.2 Where boundaries are indicated as approximately following property lines, such lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the county as evidence that one or more properties along these boundaries do not lie within the watershed.
- 11.3 Where uncertainty exists, the Watershed Administrator shall interpret the Watershed Map as to boundary location(s). This decision may be appealed to the Watershed Review Board.

SECTION 12: Regulation Applications

- 12.1 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.
- 12.2 No area required for the purpose of complying with the provisions of this Ordinance shall be included in the area required for another building.
- 12.3 Every residential building hereafter erected, moved or structurally altered, shall be located on a lot that conforms to the regulations herein specified, except as permitted in Section 13.
- 12.4 If a use is not specifically indicated as being allowed in a watershed area, such use is prohibited.

SECTION 13: Existing Development - Existing development may be continued and maintained subject to the following provisions. Expansions to existing structures shall meet the requirements of this Ordinance; however, an existing structure's built-upon area is not required to be included in the density calculations.

13.1 Uses of Land - This category consists of existing land uses at the time the Ordinance is adopted and where such use of the land is not permitted to be established hereafter in the designated watershed. Such uses may be continued except as follows:

13.1.1 When such use of land is changed to an allowed use, it shall not thereafter revert to any prohibited use.

13.1.2 Such use of land shall be changed only to an allowed use.

13.1.3 When such use ceases for a period of at least one (1) year, it shall not be reestablished.

13.2 Reconstruction of Buildings or Built-upon Areas - Any existing building or built-upon area, not in conformance with the restrictions of this Ordinance, that is damaged or removed may be repaired and/or reconstructed, provided:

13.2.1 Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.

13.2.2 The total amount of impermeable surface area devoted to built-upon area is not increased.

SECTION 14: Watershed Protection Permit

14.1 Except where a single-family residence is constructed on a lot deeded prior to the effective date of this Ordinance, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until the Watershed Administrator provides the Transylvania County Building Permits and Inspections Department with an approved Watershed Protection Permit. No Watershed Protection Permit shall be issued that is not in conformance with this Ordinance.

14.2 Watershed Protection Permit applications shall be filed with the Watershed Administrator and shall contain the completed application form and supporting documentation deemed necessary by the Watershed Administrator.

14.3 A Watershed Protection Permit shall expire if a Building Permit is not obtained by the applicant within twelve (12) months from the date of issuance.

14.4 Any permit application not containing all information and not meeting specifications set forth in this Ordinance shall be rejected and returned to the applicant together with the reason(s) for rejection. The Watershed Administrator may allow the applicant thirty (30) calendar days or a reasonable time period agreed upon by both parties in writing, to cure any deficiencies in the application, which if cured, would make the application complete.

ARTICLE VII

PUBLIC HEALTH REGULATIONS

SECTION 15: General - No activity, situation, structure or land use that poses a threat to water quality and public health, safety and welfare shall be allowed within the watershed. Such conditions may arise from inadequate on-site sewage systems utilizing ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the absence or improper implementation of a spill containment plan for toxic substances and hazardous materials; improper stormwater runoff management; or any other situation found to pose a threat to water quality.

SECTION 16: Abatement

- 16.1 The Watershed Administrator shall monitor land use activities within the watershed to identify situations that may pose a threat to water quality.
- 16.2 The Watershed Administrator shall report all findings to the Watershed Review Board.
- 16.3 Where the Watershed Review Board finds a threat to water quality and the public health, safety and welfare, the Board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

ARTICLE VIII

LEGAL PROVISIONS

SECTION 17: Watershed Administrator and Duties - Transylvania County shall appoint a Watershed Administrator to administer and enforce this Ordinance. The Watershed Administrator, or their duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon them by this Ordinance.

- 17.1 The Watershed Administrator shall issue Watershed Protection Permits. All permits shall be kept on file and shall be available for public inspection during regular office hours.
- 17.2 The Watershed Administrator shall serve as staff to the Watershed Review Board.
- 17.3 The Watershed Administrator shall maintain the following records and furnish a copy of these records to the Division upon request:
 - (a) A copy of all variance requests and associated documents;
 - (b) Findings of fact on all variance requests;
 - (c) A description of all projects for which the local government has granted a variance to the requirements;
 - (d) An accounting of projects approved under the local government's 10/70 option, as applicable; and

(e) Records of inspections of stormwater control measures.

- 17.4 When a variance is being considered, the Watershed Administrator shall notify in writing the entity using the water supply for consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Watershed Administrator prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.
- 17.5 The Watershed Administrator shall keep records of the county's utilization of the provision that a maximum of ten (10) percent of the non-critical area of **WS-II-BW** watersheds may be developed to a maximum of seventy (70) percent built-upon surface area. Records shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, acres, site plan, use, stormwater management plan as applicable, and inventory of hazardous materials, as applicable.

SECTION 18: Appeal from the Watershed Administrator - Any order, requirement, decision or determination made by the Watershed Administrator may be appealed in writing to the Watershed Review Board within thirty (30) working days from the date which the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following appeal submission, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed was taken.

The Watershed Review Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and public and shall decide the same within twenty (20) working days. At the hearing, any party may appear in person, by agent or by attorney.

If an appeal is filed, the County will take no action unless the Watershed Administrator certifies to the Watershed Review Board after the notice of appeal is filed, that by reason of facts, no corrective action would cause imminent danger to water quality and public health. In such case, corrective action shall not be stayed other than by a restraining order that may be granted by the Watershed Review Board or by a court of record.

SECTION 19: Changes and Amendments to the Watershed Protection Ordinance

- 19.1 The Board of Commissioners may from time to time amend the terms of this Ordinance, but no amendment shall become effective unless it shall have been proposed by, or shall have been submitted to, the Watershed Review Board for review and recommendation. The Watershed Review Board shall have twenty (20) working days from the time the proposed amendment is submitted to it to issue its recommendation to the County Commissioners. If the Watershed Review Board fails to submit a report, it shall be deemed to have recommended approval of the amendment(s).
- 19.2 Under no circumstances shall the Transylvania County Board of Commissioners adopt such

amendments, supplements or changes that would cause this Ordinance to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the N.C. Division of Environmental Management, N.C. Division of Environmental Health, and the N.C. Department of Commerce.

- 19.3 No amendment shall be adopted by the Board of Commissioners until a public hearing is held on the proposed amendments. Public hearing notice shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10), nor more than twenty-five (25) days before the date scheduled for the hearing.

SECTION 20: Establishment of Watershed Review Board - The Transylvania County Planning Board is designated as the Watershed Review Board.

SECTION 21: Powers and Duties of the Watershed Review Board

- 21.1 Administrative Review - The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator.
- 21.2 Variances - The Watershed Review Board shall have the power to authorize, in specific cases, minor variances where, owing to special conditions, a literal enforcement of this Ordinance will result in practical difficulties or unnecessary hardship. Prior to the issuance of any major variance from the minimum statewide water supply watershed management requirements, approval has to be granted by the N.C. Environmental Management Commission.
- 21.3 Applications for a variance shall be made to the Watershed Administrator and shall include the following information:
- 21.3.1 A site plan, drawn to a scale of at least one (1) inch to forty (40) feet, indicating the property lines of the parcel upon which the use is proposed, any existing or proposed structures, parking areas and other built-upon areas, and surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.
- 21.3.2 A written detailed description of the proposed variance request, together with any other pertinent information that the applicant determines would be helpful to the Watershed Review Board in considering the application.
- 21.3.3 When a variance is being considered, the Watershed Administrator shall notify in writing the entity using the water supply for consumption.
- 21.4 Before the Watershed Review Board grants a variance, it shall make the following findings that shall be recorded in the permanent record, and shall include the factual reasons on which they are based:

- 21.4.1 There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Watershed Review Board must find that all four of the following conditions exist:
 - 21.4.1.1 The applicant, complying with the Ordinance, can secure no reasonable return from, nor make reasonable use of, 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 Watershed Review Board in granting a variance. Moreover, the Watershed Review 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 the applicant's property.
 - 21.4.1.2 The hardship results from the application of the Ordinance to the property rather than from other factors, such as deed restrictions or other hardship.
 - 21.4.1.3 The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography.
 - 21.4.1.4 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.
- 21.4.2 The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.
- 21.4.3 In the granting of the variance, the public safety and welfare are assured and substantial justice is done. The Watershed Review Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.
- 21.5 In granting the variance, the Watershed Review Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this Ordinance. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.
- 21.6 The Watershed Review Board may refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in condition or circumstances bearing on the appeal or application.
- 21.7 A variance issued in accordance with this section shall be considered a Watershed Protection Permit and shall expire if a Building Permit for such use is not obtained by the applicant within twelve (12) months from the date of the decision.

- 21.8 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 hearing record. The preliminary hearing record shall include:
- 21.8.1 The variance application;
 - 21.8.2 The hearing notices;
 - 21.8.3 The evidence presented;
 - 21.8.4 Motions, offers of proof, objections to evidence, and rulings on them;
 - 21.8.5 Proposed findings and exceptions;
 - 21.8.6 The proposed decision, including all conditions proposed to be added to the permit; and
 - 21.8.7 Comments from the local government utilizing the water supply.
- 21.9 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 preliminary hearing record shall be sent to the Environmental Management Commission for its review and final decision.

SECTION 22: Criminal Penalties - Any person violating this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. 14-4. The maximum fine for each offense shall not exceed five hundred dollars (\$500.00). Each day that the violation continues shall constitute a separate offense.

SECTION 23: Remedies

- 23.1 If any subdivision, development and/or land use is found to be in violation of this Ordinance, the Transylvania County Board of Commissioners may, in addition to all other remedies available in law or in equity, impose a civil penalty in the amount of one hundred dollars (\$100.00), and/or institute an action or proceedings to:
- 23.1.1 Restrain, correct, or abate the violation;
 - 23.1.2 Prevent occupancy of the building, structure, or land; or
 - 23.1.3 Prevent any illegal act, conduct, business, or use in or about the premises. Each day that the violation continues shall constitute a separate offense.
- 23.2 If the Watershed Administrator finds that any provision of this Ordinance is violated, they shall notify in writing the person responsible for such violation, indicate the violation, and order the necessary corrective action. They shall order discontinuance of the illegal land use, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this Ordinance to ensure compliance with, or to prevent violation of, its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board.

SECTION 24: Appeals - Appeals to the decision(s) from the Watershed Review Board or the N.C. Environmental Management Commission must be filed with the Superior Court within thirty (30) working days from the date of the final decision. The decisions by the Superior Court shall be in the manner of certiorari.

SECTION 25: 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 26: Effective Date - This Ordinance shall take effect and be in force on January 1, 1994, as adopted by the Board of Commissioners of Transylvania County, this 13th day of December, 1993. Amended November 24, 1997 and May 28, 2019.

Mike Hawkins, Chairman, Transylvania
County Board of Commissioners

Attest: _____ Trisha Hogan, Clerk to Board of Commissioners