

# **CALDWELL COUNTY**

## **WATERSHED PROTECTION ORDINANCE**



**Effective September 16, 1996**

## **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 County Commissioners of Caldwell does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of Caldwell County.

#### Section 102: Jurisdiction.

The provisions of 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, "Watershed Protection Map of Caldwell County, North Carolina" ("the Watershed Map"), which is adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this Ordinance. This Ordinance shall be permanently kept on file in the County Planning Department.

#### 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 Caldwell County; however, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in the 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.
- B) 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.
- 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) 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 104: Criminal Penalties.

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

#### Section 105: Remedies.

- A) If any subdivision, development and/or land use is found to be in violation of this Ordinance, the Board of Commissioners may in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$500.00, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. 143-215.6(a). Each day that the violation continues shall constitute a separate offense.
- 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 Watershed Review Board.

#### Section 106: Severability

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

Section 107: Effective Date.

This Ordinance shall take effect and be in force on the 1<sup>st</sup> day of January, 1994.

**ARTICLE 200: DEVELOPMENT REGULATIONS**

Section 201: Establishment of Watershed Areas.

The purpose of this Article is to list and describe the watershed areas herein adopted.

For purposes of this ordinance the (county is) hereby divided into the following area (s), as appropriate:

WS-IV-CA (Critical Area) - ½ mile from point of intake

WS-IV-PA (Protected Area) - 5 miles from point of intake

Section 202. Watershed Areas Described.

A) WS-IV Watershed Areas - Critical Area (WS-IV-CA). Only new development activities that require an erosion/sedimentation control plan under State law are required to meet the provisions of this Ordinance when located in the WS-IV watershed. In order to address a moderate high land use intensity pattern, single family residential uses are allowed at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed twenty-four percent (24%) built-upon area. New sludge application sites and landfills are specifically prohibited.

(1) Allowed Uses:

- a) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten (10) foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent version 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 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 provision of the Forest Practices

Guidelines Related to Water Quality (15 NCAC II.611 .0209).

- c) Residential.
  - d) Non-residential development, excluding: 1) the storage of toxic and hazardous materials unless a spill containment plan is implemented, 2) landfills and 3) sites for land application of sludge/residuals or petroleum contaminated soils.
- (2) Density and Built-upon Limits:
- a) Single-Family Residential—development shall not exceed two dwelling units per acre on a project by project basis. No residential lot shall be less than one-half (1/2) acre (21, 780 sq. ft.), except within an approved Planned Unit development.
  - b) All other residential and non-residential-development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.
- B. WS-IV Watershed - Protected Area (WS-IV-PA). Only new development activities that require an erosion/sedimentation control plan under State law or approved local government program are required to meet the provisions of this ordinance when located in a WS-IV Watershed. In order to address a moderate to high land use intensity pattern, single family residential uses shall develop at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area. A maximum of three (3) dwelling units per acre or thirty-six percent (36%) built-upon area is allowed for projects without a curb and gutter street system. In addition, non-residential uses may occupy ten percent (10%) of the balance of the watershed which is outside the critical area, with seventy percent (70%) built-upon area when approved as a SIA (special intensity allocation). Projects must minimize built-upon surface, direct storm-water away from surface waters and incorporate Best Management Practices to minimize water quality impacts.
- 1. Uses Allowed:
    - 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 provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC II.6101-.0209).
- c) Residential development.
- d) Non-residential development, excluding 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 two (2) dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than one-half (1/2) acre (21,780 sq. ft.), or one-third (1/3) acre (15,000 sq. ft.) for projects without a curb and gutter system, except within an approved planned unit/cluster development.
- b) All other Residential and 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.

Section 203. Planned Unit/Cluster:

Subject to Zoning, 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 shall not exceed the number of lots allowed for single family detached developments in Section 202. Built-upon area or storm-water control requirements of the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.
- B. All built-upon area shall be designed and located to minimize storm-water runoff impact to the receiving waters and minimize concentrated storm-water flow.

- C. The title to the open space area may 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.

Section 204: 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. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial stream-bank 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 green-ways 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 storm-water Best Management Practices.

Section 205: Rules Governing the Interpretation of Watershed Area Boundaries.

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

- 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 the county as evidence that one or more properties along these boundaries do not lie within the watershed area.
- C. Where the watershed boundaries lie at a scaled distance more than twenty-five (25) feet or less from any parallel lot line, the location of watershed area boundaries shall be determined by the 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 of the Watershed Review Board.

Section 206: 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 regulations herein specified, except as permitted in Section 207.
- 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 207: Existing Development.

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

- A. Vacant Lots. This category consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds of Caldwell County. Lots may be used for any of the uses allowed in the watershed area in which it is located, provided the following:
  - 1. Where the lot area is below the minimum specified in this ordinance the Watershed Administrator is authorized to issue a watershed protection permit.
  - 2. Notwithstanding the foregoing, whenever two or more contiguous residential vacant lots of record are in single ownership at any time after the adoption of this ordinance and such lots individually has less area than the minimum

requirements for residential purposes for the watershed area in which such lots are located, such lots shall be combined to create one or more lots that meet the standards of this ordinance, or if this is impossible, reduce to the extent possible the nonconformity of the lots.

- B. **Occupied Lots.** This category consists of lots, occupied for residential purposes at the time of the adoption of this ordinance. These lots may continue to be used provided that whenever two or more adjoining lots of record, one of which is occupied, are in single ownership at any time after the adoption of this ordinance, and such lots individually or together have less area than the minimum requirements for residential purposes for the watershed area in which they are located, such lots shall be combined to create lots which meet the minimum size requirements or which minimize the degree of nonconformity.
  
- C. **Uses of Land.** This category consists of uses existing at the time of adoption of this ordinance where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:
  - 1. When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
  - 2. Such use of land shall be changed only to an allowed use.
  - 3. When such use cease for a period of at least one year, it shall not be reestablished.
  
- D. **Reconstruction of Building or Built-upon Areas.** Any existing building or built-upon area not in conformance with the restrictions of this ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single family residential development, provided:
  - 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 storm-water control that equals or exceeds the previous development is provided.

**Section 208. Watershed Protection Permit.**

- A. 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 change in the use of any building or land be made until a Watershed Protection Permit has been issued by the Watershed Administrator. No Watershed Protection Permit shall be issued except in conformity with the provisions of this ordinance.

- B. Watershed Protection Permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form (see Appendix A) and supporting documentation deemed necessary by the Watershed Administrator.
- C. Prior to issuance of a Watershed Protection Permit, the Watershed Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance.
- D. A Watershed Protection Permit shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

Section 209: Building Permit Required.

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 210: 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 the application for a Watershed Protection Permit and shall be issued or denied within ten (10) days after the erection or structural alterations of the building.
- C. When only a change in use 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 300: ADMINISTRATION, ENFORCEMENT AND APPEALS**

### Section 301: Watershed Administrator and Duties thereof.

The County Planning Director shall serve as the Watershed Administrator. 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 Division of Water Quality.
- D) The Watershed Administrator shall keep records for each watershed that includes the total acres of non-critical watershed area, total acres eligible to be developed under this development option, and individual records for each project with the following information: location, acres, site plan, use, storm-water management plan as applicable and inventory of hazardous materials as applicable.
- E) 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 the 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.
- F) 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 Section on or before January 1<sup>st</sup> of the following calendar year and shall provide a

description of each project receiving a variance and the reasons for granting the variance.

Section 302: Appeal from the Watershed Administrator.

Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Caldwell County Planning Board, who will serve as 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 records upon which the action appealed from was taken.

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

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

Section 303: Changes and Amendments to the Watershed Protection Ordinance.

- A) The Board of Commissioners may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.
- B) No action shall be taken until the proposed has been submitted to the Watershed Review board for review and recommendations. If no recommendation has been received from the Watershed Review Board within forty-five (45) days after submission of the proposal to the Chairman of the Watershed Review Board, the County Commissioners may proceed as though a favorable report has been received.
- C) Under no circumstances shall the County 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

Community Assistance.

Section 304: Public Notice and Hearing Required.

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

Section 305: Establishment of Watershed Review Board.

The County Commissioners shall delegate the Caldwell County Planning Board to serve as the Watershed Review Board. Rules for conduct and procedures are prescribed in the Caldwell County Zoning Ordinance.

Section 306: 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 will result in practical difficulties or unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done. In addition, the County shall notify and allow a reasonable comment period for all local governments having jurisdiction in the designated watershed where the variance is being considered.
  - (1) Application for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:
    - a. 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; 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 providing 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 property.
    2. The hardship results from the application of the application of the Ordinance to the property rather than from other factors such as deed restriction 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 conditions regarding the location, character, and other features of the proposed building, structure, or use it may deem advisable in furtherance of the purpose of this ordinance. If a variance for the 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, and rulings on them;
- 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 variance as proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.
- 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 or (2) the variance, if granted, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.

Section 307: Appeals from the Watershed Review Board.

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

#### **ARTICLE 400: DEFINITIONS**

Section 401: 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 non-point source input to receiving waters in order to achieve water quality protection goals.

**Buffer.** An area of natural or planted vegetation through which storm-water 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 stream or rivers.

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

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

**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). 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 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 of 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 from the minimum statewide water supply watershed protection criteria that results in any one 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 of more 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.

**Minor Variance.** A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor up to five (5) percent of any buffer, density, or built-upon requirement under the high density option; or that results in a relaxation, by a factor up to ten (10) percent of any management requirement under the low density option.

**Non-conforming Lot of Record.** A lot described by a plat or a deed that was recorded prior to the effective date of the Chapter that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.

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

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

**Planned Unit Development (PUD) or Cluster Subdivision.** A form of development characterized by a unified site design for a number of housing units, clustering of buildings and providing common open space, density increases, and a mix of building types. It permits the planning of a project and a calculation of densities over the entire development rather than on an individual lot-by-lot basis. The site must be at least five (5) acres and include two or more principle buildings.

**Protected Area.** The area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed, or within ten miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

**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 subject to the regulations authorized by this ordinance:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this ordinance;
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets;
- (4) The division of a tract in single ownership whose entire area is no longer greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this ordinance;
- (5) The division of a tract into plots or lots used as a cemetery.

**Toxic Substance.** Any substance or combination of substance (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

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

**Water Dependent Structure.** Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

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

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

Section 602: Word Interpretation.

For the purpose of this ordinance, certain words shall be interpreted as follows:

Words in 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.

This ordinance shall become effective immediately upon adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 1993.

\_\_\_\_\_  
CHAIRPERSON  
CALDWELL COUNTY  
BOARD OF COMMISSIONERS

\_\_\_\_\_  
CLERK TO THE BOARD