MADISON COUNTY
WATERSHED PROTECTION ORDINANCE

ARTICLE 100: AUTHORITY AND GENERAL REGULATIONS

Section 101. Authority and Enactment.

The Legislature of the State of North Carolina has, in Chapter 153A, Article 6, Section 121, General Ordinance Authority, and in Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Governing Board of Madison County does hereby ordain and enact into law the following articles as Watershed Protection Ordinance of Madison 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 Madison 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 office of the Madison County Clerk. At the request of the Town of Mars Hill, Madison County will be administering the Watershed Protection Ordinance within the town limits.

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 Madison County; however, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and Regulations in effect in Madison 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. A pre-existing lot recorded prior to July 24, 1998 regardless of whether or not a vested right has been established, may be developed for single-family residential purposes without being subject to the density restrictions of this ordinance, however, required buffer strips are still applicable to the maximum extent practicable.

Section 104. Criminal Penalties.

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

Section 105. Remedies.

A. If any subdivision, development and/or land use if found to be in violation of this Ordinance, the Madison County Governing Board may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of $50.00, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may access 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 this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this Ordinance as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

Section 107. Date of Adoption and Effective Date.

This Ordinance was adopted on June 1, 1998 and shall take effect and be in force on July 24, 1998.

ARTICLE 200: SUBDIVISION REGULATIONS.

Note: Provisions in this Article are derived in part from statutory authority Chapter 160D, Article 8.

Section 210. General provisions.

A. No subdivision plat of land within the Public Water Supply Watershed shall be filed or recorded by the Register of Deeds until it has been approved in accordance with the provisions of this Article. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with this Article.

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

C. All subdivisions shall conform with the mapping requirements contained in G.S. 47-30.

D. All subdivisions of land within the watershed protection jurisdiction of Madison County after July 24, 1998 shall require a plat to be prepared, approved, and recorded pursuant to this ordinance.

E. All projects, developments and subdivisions shall be in compliance with applicable rules and regulations adopted by the Madison County Board of Health and be in compliance with the Madison County Subdivision Control Ordinance.

F. The County shall develop, and from time to time revise, forms for the purpose of implementing this Ordinance.

Section 202. Subdivision Application and Review Procedures.

A. All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting a vicinity map to the Watershed Administrator or the Director of Land Records to determine whether or not the property is located within the designated Public Water Supply Watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this ordinance but may need to be reviewed under the Subdivision Control Ordinance of Madison County. Subdivisions within the designated watershed area shall comply with the provisions of this Article and all other state and local requirements that may apply.

B. Subdivision applications shall be filed with the Watershed Administrator. The application shall include a completed application form, the number of copies of the plat consistent with the requirements of the County Subdivision Control Ordinance, and supporting documentation deemed necessary by the Watershed Administrator or the Watershed Review Board. The Watershed Administrator may at any time elect to consult the Watershed Review Board regarding the decision for a subdivision plat.

C. The Watershed Administrator shall review the completed application and final plat for compliance with the requirements set forth in this Section. Failure to comply with these requirements shall constitute grounds for disapproving the final plat.The Watershed Administrator may provide public agencies an opportunity to review and make recommendations. However, failure of the agencies to submit their comments and recommendations shall not delay the Administrator's action within the prescribed time limit. Said public agencies may include, but are not limited to, the following:

1. The district highway engineer with regard to proposed streets and highways.

2. The director of the Health Department with regard to proposed private water system or sewer systems normally approved by the Health Department.

3. The state Division of Water Quality with regard to proposed sewer systems normally approved by the Division, engineered storm water controls or storm water management in general.

4. Any other agency or official designated by the Watershed Administrator or Watershed Review Board.

D. If the Watershed Administrator approves the application, such approval shall be indicated on all copies of the plat by the following certificate and signed by the Administrator:

Certificate of Approval for Recording

I certify that the plat shown hereon complies with the Watershed Protection Ordinance and is approved by the Watershed Administrator for recording in the Register of Deeds Office.

_____ _____

Date **Watershed Administrator**

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

E. The Watershed Administrator shall notify the developer of the decision regarding the final Plat within 25 working days after the plat is submitted for review and deemed to be complete. If the Watershed Administrator disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant. The subdivider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review. Appeals from the decision of the Watershed Administrator regarding plats shall be to the Watershed Review Board. The Watershed Administrator shall inform the Watershed Review Board of action taken regarding subdivision plats and site plans.

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

Section 203. Subdivision standards and required improvements.

A. All lots shall provide adequate building space in accordance with the development standards contained in Article 300. Lots which are smaller than the minimum required for residential may be developed using build-upon criteria in accordance with Article 300.

B. For the purpose of calculating build-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

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

D. Erosion and Sedimentation Control. The application shall, where required, be accompanied by a written statement that a Sedimentation and Erosion Control Plan has been submitted to and approved by the local or state agency responsible for administering the sedimentation and erosion control laws of the state.

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

Section 204. Construction Procedures.

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

B. No building or other permits shall be issued for erection of a structure on any lot not of record on July 24, 1998 until all requirements of this Ordinance have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection.

Section 205. Penalties for Transferring Lots in Unapproved Subdivisions.

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of Madison County, thereafter subdivides his 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. Madison County may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this ordinance.

ARTICLE 300: DEVELOPMENT REGULATIONS

Section 301: Establishment of Watershed Areas.

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

For purposes of this ordinance the county is hereby divided into the following areas, as appropriate:

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

Section 302. Watershed Areas Described.

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

1. Allowed Uses:

   A. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and all rules and regulations of the
   Soil and Water Conservation Commission.

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

   C. Residential development.

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

2. Density and Build-upon Limits:

   A. Single Family Residential - development shall not exceed one dwelling unit per two (2) acres on a project by project basis. No residential lot shall be less than two (2) acres (80,000 square feet excluding roadway right-of-way), except within an approved cluster development.

   B. In the alternative, single-family residential development is allowed on lots less than two (2) acres provided that the impervious surface coverage of all

structures does not exceed six percent. A note shall be added to the deed to reflect this provision. As noted in Section 103D, pre-existing lots being developed for single-family residential purposes are not subject to the impervious surface restriction.

C. All other Residential and Non-Residential, Including Manufactured/Mobile Home Parks-development shall not exceed six percent (6%) build-upon area on a project by project basis. For the purpose of calculating build-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

WS-II Watershed Areas - Critical Area (WS-II-CA). In order to maintain a predominately undeveloped land use intensity pattern, single family residential uses shall be' allowed at a maximum of one dwelling unit per two acres. All other residential and non-residential development shall be allowed at a maximum six percent (6%) built-upon area. New residuals 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 and all rules and regulations of the Soil and Water Conservation Commission.

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

C. Residential development.

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

2. Density and Built-upon Limits:

A. Single Family Residential-development shall not exceed one dwelling unit per two (2) acres on a project by project basis. No residential lot shall be less than two (2) acres (80,000 square feet excluding roadway right-of-way), except within an approved cluster development.

B. In the alternative, single-family residential development is allowed on lots less than two acres provided that the impervious surface coverage of all structures does not exceed six percent. A note shall be added to the deed to reflect this provision. As noted in Section 103 D, pre-existing lots being

developed for single-family residential purposes are not subject to the impervious surface restriction.

C. All Other Residential and Non-Residential, Including Manufactured/Mobile Home Parks—development shall not exceed six percent (6%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

WS-II Watershed Areas - Balance of Watershed (WS-II-BW). In order to maintain a predominantly undeveloped land use intensity, single family residential uses shall be allowed at a maximum of one dwelling unit per acre. All other residential and non-residential development shall be allowed a maximum of 12 percent built-upon area. In addition, new development may occupy ten percent (10 percent) of the watershed area which is outside the critical area, with seventy percent (70 percent) built-upon area when approved as a special intensity allocation (SIA). The Watershed Administrator is authorized to approve SIAs consistent with the provisions of this ordinance. Allocation of this development privilege shall be made by the Board of County Commissioners in accordance with rules and procedures to be established. Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and residuals application sites are allowed.

1. Allowed Uses:

   A. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.

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

   C. Residential development.

   D. Non-residential development excluding discharging landfills.

2. Density and Built-Upon Limits:

   A. Single Family Residential - development shall not exceed one dwelling unit per acre on a project by project basis. No residential lot shall be less than one acre (or 40,000 square feet excluding roadway right-of-way), except within an approved cluster development.

   B. In the alternative, single-family residential development is allowed on lots less than one acre provided that the impervious surface coverage of all structures does not exceed twelve percent. A note shall be added to the deed to reflect this provision. As noted in Section 103D, pre-existing lots being

developed for single-family residential purposes are not subject to the impervious surface restriction.

C. All other residential and non-residential, including manufactured/mobile home parks-development shall not exceed twelve percent (12%) built-upon area on a project by project basis except that up to ten percent (10%) of the balance of the watershed may be developed at up to seventy percent (70%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

Section 303. Regulations for Manufactured/Mobile Home Parks and Recreational Vehicles.

For the purpose of this Ordinance, the number of manufactured/mobile homes allowed in a manufactured/mobile home park shall be determined based on the amount of built-upon area. Manufactured/mobile homes shall be considered as part of the built-upon area, as shall "Park model" or other recreational vehicles that are permanently anchored to the ground as part of a development or project. Recreational vehicles that are road-ready, with wheels attached and towing apparatus in place, shall not be considered in the built-upon area calculation.

Section 304. Cluster Development.

Clustering of development is allowed in all Watershed Areas under the following conditions:

A. Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in Section 302. Density or built-upon area for 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 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 property deeds.

Section 305. Buffer Areas Required.

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 Madison County as evidence that one or more properties along these boundaries do not lie within the watershed area.

Section 306. Rules Governing the Interpretation of Watershed Area Boundaries.

Where uncertainty exist 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 Madison County as evidence that one or more properties along these boundaries do not lie within the watershed area.

C. Where the watershed area boundaries lie at a scaled distance more than twenty-five (25) feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.

D. Where the watershed area boundaries lie at a scaled distance of twenty-five (25) feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.

E. Where other uncertainty exists, the Watershed Administrator shall interpret the Watershed Map as to location of such boundaries. This decision may be appealed to the Watershed Review Board.

Section 307. 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. 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 308. Existing Development.

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

A. 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 ceases for a period of at least one year, it shall not be reestablished.

B. 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 since July 24, 1998 may be repaired and/or reconstructed, provided:

1. Repair or reconstruction is initiated within twelve (12) months and completed within (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.

There are no restrictions on single-family residential development.

Section 309. 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 building permit be issued nor shall any change in the use of any building or land be made until a Watershed Protection Permit has been issued by the Watershed Administrator. No Watershed Protection Permit shall be issued except in conformity with the provisions of this ordinance.

B. Watershed Protection Permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form 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 in 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.

E. The County shall develop, and from time to time revise, forms for the purpose of implementing this Ordinance.

Section 310. Building Permit Required.

No permit required under the North Carolina State Building Code shall be issued for any activity for which a Watershed Protection Permit is required until that permit has been issued.

Section 311. 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 of land or existing building occurs, the Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this ordinance have been met coincident with the Watershed Protection Plan.

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

E. No building or structure which has been erected, moved, or structurally altered may be occupied until the Watershed Administrator has approved and issued a Watershed Protection Occupancy Permit.

ARTICLE 400: PUBLIC HEALTH REGULATIONS

Section 401. Public Health, in general.

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

Section 402. Abatement.

A. The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.

B. The Watershed Administrator shall report all findings to the Watershed Review Board. The Watershed Administrator may consult with any public agency or official and request recommendations.

C. Where the Watershed Review Board finds a 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 500: ADMINISTRATION, ENFORCEMENT AND APPEALS

Section 501. Watershed Administrator and Duties thereof.

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

A. The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.

B. The Watershed Administrator shall serve as clerk to the Watershed Review Board.

C. The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Ordinance and shall provide copies of all amendments upon adoption to the Division of Water Quality.

D. The Watershed Administrator shall keep records of the jurisdiction's use of the provision that a maximum of ten percent (10%) of the non-critical area of WS-II-BW watersheds may be developed with new development at a maximum of seventy percent (70%) built-upon surface area. Records for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, number of developed acres, type of land use, and stormwater management plan if applicable.

E. The Watershed Administrator is granted the authority to administer and enforce the provisions of this ordinance, exercising in the fulfillment of his responsibilities the full police power of Madison 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 for each calendar year to the Division of Water Quality on or before January 1, of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

Section 502. Appeal from the Watershed

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

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

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

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

Section 503. Changes and Amendments to the Watershed Protection Ordinance.

A. The Madison County Board of Commissioners may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.

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

C. Under no circumstances shall the Madison 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 Water Quality, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

Section 504. Public Notice and Hearing Required.

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

Section 505. Establishment of Watershed Review Board.

A. There shall be and hereby is created the Watershed Review Board consisting of seven members as follows: One shall be the Madison County Manager; one shall be the Chair of the Madison County Planning Board; one shall be the Town Manager of Mars Hill; one shall be the Chair of the Mars Hill Planning Board; two shall be appointed by the Madison County Board of Commissioners and shall be residents or property owners in the Ivy River water supply watershed; and one shall be appointed by the Mars Hill Board of Alderman and shall be a resident or property owner in the Ivy River water supply watershed. The two members appointed by the Board of Commissioners and the member appointed by the Mars Hill Board of Alderman shall serve for three year terms and may be reappointed. The initial terms shall be as follows: one member shall serve for one year, one member shall serve for two years, and one member shall serve for three years.

Section 506. Rules for Conduct for Members.

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

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

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

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

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

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

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

Section 507. Powers and Duties of the Watershed Review Board.

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

B. Variances. The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this Ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this Ordinance 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, Madison County shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

1. 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 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 arrow 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 and the entity using the water supply for consumption whenever a variance request is filed. 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 this Ordinance. In order to determine that

there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:

1. If he complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting an variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of this property.

2. The hardship results from the application of the Ordinance to the property rather than from other factors such as deed restrictions or other hardship.

3. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

4. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the Ordinance 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 as it may deem advisable in furtherance of the purpose of this ordinance. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

4. The Watershed Review Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

5. A major or minor 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 ualifies as a major variance and that 1) the property owner can secure no reasonable return from, or make any practical use of the property unless the purposed variance is granted and 2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. If the Commission approved 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, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.

C. Subdivision approval. See Article 200.

D. Public Health. See Article 400.

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

ARTICLE 600: DEFINITIONS

Section 601. General Definitions.

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

Balance of Watershed. All land area within a watershed but outside of the critical area.

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

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

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

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

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

Critical Area. The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

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 flood space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, etc.

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

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

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

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

2. having an outstanding valid building permit as authorized by the General Statutes (G.S. 160D-108).

3. having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 160D-108).

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, a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

Industrial Development. Any con-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.

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

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

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

2. the relaxation, by a factor greater than five (5) percent of any buffer, density or built-upon area requirement under the high density option;

3. any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system.

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

Nonconforming Lot of Record. A lot described by a plat or 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.

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

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

Protected Area. The area adjoining and upstream of the critical area of WS-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 10 miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

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

Residuals. Any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.

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

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

Structure. Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

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

Subdivision. All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets; but

the following shall not be included within this definition nor be subject to the regulations authorized by this ordinance:

1. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this ordinance;

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

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

4. The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this ordinance;

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

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 conveyor.

7. The division of land pursuant to an order of a court of the General Court of Justice.

8. 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.

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

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

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

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

Watershed Administrator. An official or designated person of Madison 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 the present tense include the future tense.

Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicated otherwise.

The word "person" includes a firm, association, corporation, trust, and company as well as an individual.

The word "structure" shall include the word "building".

The word "lot" shall include the words, "plot," "parcel," or "tract."
The word "shall" is always mandatory and not merely directory.

The word "will" is always mandatory and not merely directory.

APPENDIX A

Existing Development

It is possible to expand an existing business in a water supply watershed. "Existing development" is not required to be included in the density calculations. For example, in the balance of WS-II watersheds, you may expand your business to cover up to 12 percent of the lot area not already covered by impervious surfaces. In the critical area, the limit is six percent.

In the balance of a WS-II watershed, assume you have a lot of 15,000 square feet, with an existing business and associated parking lot of 5,000 square feet. You want to find out how much of an addition is allowed under the rules. Subtract the 5,000 of "existing development" from the lot, which leaves 10,000. Multiply 10,000 by 12 percent, which gives 1,200 square feet. Your addition can be 1,200 square feet of building, parking area, driveways, etc.

If this lot were in the critical area, your addition could be 600 square feet. New businesses can only cover a total of 12 percent of their property if they are in the balance of the watershed, and six percent if they are in the critical area. The buffer requirement must be met with both expansions and new developments.