

AN ORDINANCE AMENDING TITLE XV LAND USE OF THE MILLS RIVER CODE OF ORDINANCES, CHAPTER 156 (NATURAL RESOURCES), CHAPTER 154 (ZONING), CHAPTER 153 (SUBDIVISION ORDINANCE) IN ACCORDANCE WITH TXT-21-04

WHEREAS, since 2003 the Town of Mills River had an interlocal agreement with Henderson County for the enforcement of water supply watershed protection and stormwater management regulations.

WHEREAS, beginning in April 2021 Henderson County no longer provided those services to the Town and the Town has been reviewing permits and approvals. The Town must create its own water supply watershed protection program and ordinances to legally continue permitting and enforcement.

WHEREAS, the Town has been informed by the State Water Supply Watershed Protection Coordinator from the Department of Environmental Quality that it needs to develop local programs for watershed management. (N.C.G.S. §143-214.5).

WHEREAS, the Town of Mills River Planning Board considered this text amendment on April 5, 2022, and the Planning Board unanimously found TXT-21-04 consistent with the Making Mills River 2040 comprehensive plan, specifically Objective 3.3, Watershed and Water Quality Protection and recommended for its approval.

WHEREAS, the Mills River Town Council held a public hearing on December 8, 2022 to consider said request, and gave the public an opportunity to be heard.

WHEREAS, the Town Council concurs with the Planning Board's consistency findings, approved a statement of plan consistency, and briefly explained why Council considers the action taken to be reasonable and in the public interest.

WHEREAS, this Ordinance is enacted by the Town Council of Mills River, North Carolina pursuant to Chapter 160D of the North Carolina General Statutes. Town Council does hereby ordain and enact into law the following amendments to the Code of Ordinances for the Town of Mills River.

WHEREAS, the Administration Section of the Code of Ordinances of the Town of Mills River as enacted effective February 26, 2004, and with various amendments, is further amended as to the following articles, chapters, sections and subsections:

The proposed text amendment is comprised of the following: a new Chapter 156 (Natural Resources) in the Town's land use ordinances to address administrative processes and functions of watershed administration; the addition of a watershed overlay district to the existing Town zoning

regulations (Chapter 154) to address the actual regulations and standards of development in a protected watershed area; and modifications to the Town subdivision ordinance (Chapter 153) to address watershed impacts on the subdivision of land and final plat approvals. See Exhibits A, B, C and D for details.

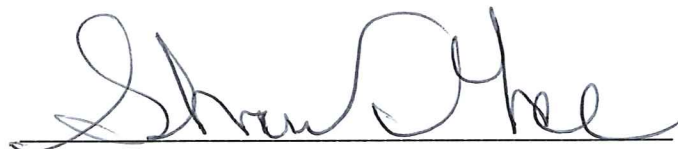
Except as specifically amended herein, Chapters 153,154, and 156 of the Town of Mills River Code of Ordinances shall remain valid and in full force and effect.

WHEREAS, each section and subsection of said ordinance as adopted herein constitutes a separate and distinct provision. Whenever possible, each provision of such Ordinance shall be interpreted in a manner as to be effective and valid under applicable law. In the event that any provision so such Ordinance shall finally be determined by competent court or tribunal to be unlawful or unenforceable, such provision shall be deemed severed from such Ordinance but every other provision of the Ordinance shall remain in full force and effect.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MILLS RIVER:

THAT, text amendment TXT-21-04 is comprised of the following: a new Chapter 156 (Natural Resources) in the Town’s land use ordinances to address administrative processes and functions of watershed administration; the addition of a watershed overlay district to the existing Town zoning regulations (Chapter 154) to address the actual regulations and standards of development in a protected watershed area; and modifications to the Town subdivision ordinance (Chapter 153) to address watershed impacts on the subdivision of land and final plat approvals, and shall take effect and be effective at 12:01 AM on December 9, 2022, and shall be in full force and effect at all times thereafter until duly amended.

ADOPTED AND PASSED by the Town Council of the Town of Mills River, North Carolina, this the 8th day of December 2022.



Shanon Gonce
Mayor

ATTEST By:



Susan L. Powell, MMC, NCCMC
Finance Director/Town Clerk



TITLE XV: LAND USAGE

CHAPTER 156: NATURAL RESOURCES

1 § 156.001 TITLE.

2 This chapter shall be known and may be cited as the "Natural Resources Ordinance of
3 the Town of Mills River, North Carolina."

4 § 156.002 PURPOSE.

5 (A) The purpose of the Natural Resources Ordinance is to mitigate negative impacts
6 of land development on natural resources to include provisions for water supply watershed
7 protection, surface water quality management and erosion control.

8 This Chapter outlines processes and defines standards for Watershed Protection Areas within
9 the Town of Mills River as defined in the Zoning Ordinance.

10 § 156.003 DEFINITIONS

11 **AGRICULTURAL USE.** The use of waters for stock watering, irrigation, and other farm
12 purposes.

13 **BALANCE OF WATERSHED (BW).** The area adjoining and upstream of the critical area
14 in a WS-II and WS-III water supply watershed. The "balance of watershed" is comprised of the
15 entire land area contributing surface drainage to the stream, river, or reservoir where a water
16 supply intake is located.

17 **BEST MANAGEMENT PRACTICES (BMP).** A structural or nonstructural management-
18 based practice used singularly or in combination to reduce nonpoint source inputs to receiving
19 waters in order to achieve water quality protection goals.

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

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

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

33 **CLUSTER DEVELOPMENT.** Cluster development means the grouping of buildings in
34 order to conserve land resources and provide for innovation in the design of the project
35 including minimizing stormwater runoff impacts. This term includes nonresidential development
36 as well as single-family residential and multi-family developments.

37 **COMMON PLAN OF DEVELOPMENT** – A site where multiple separate and distinct
38 development activities may be taking place at different times or different schedules but governed
39 by a single development plan regardless of ownership of parcels.

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

48 **CUSTOMARY HOME OCCUPATIONS.** Any use conducted entirely within a dwelling and
49 carried on by the occupants thereof, which use is clearly incidental and secondary to the use of
50 the dwelling for residential purposes and does not change the character thereof. Provided
51 further that no mechanical equipment is installed or used except as is normally used for
52 domestic or professional purposes, and that not over twenty-five percent (25%) of the total
53 floor space of any structure is used for the occupation. No home occupation shall be
54 conducted in any accessory building except for the storage and service of a vehicle that is driven
55 off site, such as a service repair truck, delivery truck, etc.

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

59 **DWELLING UNIT.** A building, or portion thereof, providing complete and permanent
60 living facilities for one or more persons.

61 **EXISTING DEVELOPMENT.** Those projects that are built or those projects that at a
62 minimum have established a vested right under North Carolina zoning law as of the effective
63 date of this ordinance based on at least one of the following criteria:

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

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68 (2) having an outstanding valid building permit as authorized by the General
69 Statutes (160D-102), or

70 (3) having an approved site specific or phased development plan as authorized by
71 the General Statutes (G.S. 160D-102).

72 **EXISTING LOT (LOT OF RECORD).** A lot which is part of a subdivision, a plat of which
73 has been recorded in the Office of the Register of Deeds prior to the adoption of this ordinance,
74 or a lot described by metes and bounds, the description of which has been so recorded prior to
75 the adoption of this ordinance.

76 **INDUSTRIAL DEVELOPMENT.** Any non-residential development that requires an
77 NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous
78 material for the purpose of manufacturing, assembling, finishing, cleaning or developing any
79 product or commodity.

80 **MAJOR WATERSHED VARIANCE.** A variance from the minimum statewide watershed
81 protection rules that results in any one or more of the following:

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

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

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

88 **MINOR WATERSHED VARIANCE.** A variance from the minimum statewide watershed
89 protection rules that results in a relaxation, by a factor of up to five (5) percent of any buffer,
90 density or built-upon area requirement under the high density option; or that results in a
91 relaxation, by a factor of up to ten (10) percent, of any management requirement under the low
92 density option. For variances to a vegetated setback requirement, the percent variation shall be
93 calculated using the foot print of built-upon area proposed to encroach with the vegetated
94 setback divided by the total area of vegetated setback within the project.

95 **NONCONFORMING LOT OF RECORD.** A lot described by a plat or a deed that was
96 recorded prior to the effective date of local watershed protection regulations that does not
97 meet the minimum lot size or other development requirements of the statewide watershed
98 protection rules.

99 **NON-RESIDENTIAL DEVELOPMENT.** All development other than residential
100 development, agriculture and silviculture.

101 **PROTECTED AREA.** The area adjoining and upstream of the critical area of WS-IV
102 watersheds. The boundaries of the protected area are defined as within five miles of and
103 draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed
104 (whichever is closest to normal pool elevation of reservoir); or within 10 miles upstream and

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105 draining to the intake located directly in the stream or river or to the ridgeline of the watershed
106 (whichever is closest to the intake).

107 **QUALIFIED INDIVIDUAL.** A person certified to perform stream determinations by
108 completing and

109 passing the Surface Water Identification Training and Certification (SWITC) course
110 offered by the N.C. Div. of Water Resources at N.C. State University.

111 **RESIDENTIAL DEVELOPMENT.** Buildings for residence such as attached and detached
112 single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and
113 their associated outbuildings such as garages, storage buildings, gazebos, etc. and customary
114 home occupations.

115 **RESIDUALS.** Any solid or semi-solid waste generated from a wastewater treatment
116 plant, water treatment plant or air pollution control facility.

117 **SINGLE FAMILY RESIDENTIAL.** Any development where: 1) no building contains more
118 than one dwelling unit, 2) every dwelling unit is on a separate lot, and 3) where no lot contains
119 more than one dwelling unit.

120 **STORMWATER CONTROL MEASURE (SCM).** Means a permanent structural device that
121 is designed, constructed, and maintained to remove pollutants from stormwater runoff by
122 promoting settling or filtration; or to mimic the natural hydrologic cycle by promoting
123 infiltration, evapo-transpiration, post-filtration discharge, reuse of stormwater or a combination
124 thereof.

125 **STRUCTURE.** Anything constructed or erected, including but not limited to buildings,
126 which requires location on the land or attachment to something having permanent location on
127 the land.

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

131 **VESTED RIGHT.** The right to undertake and complete the development and use of
132 property under the terms and conditions of an approved site-specific development plan or an
133 approved phased development plan. Refer to the North Carolina General Statutes Section
134 160D- 108 for more information.

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

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

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

148 **WATERSHED ADMINISTRATOR.** An official or designated person of the Town of Mills
 149 River responsible for administration and enforcement of this ordinance.

150 **WATER SUPPLY WATERSHED PROTECTION AREAS**
 151 **§ 156.004 WATERSHED ADMINISTRATOR AND DUTIES**

152 The Mills River Town Council shall appoint a Watershed Administrator, who shall be duly
 153 sworn in. It shall be the duty of the Watershed Administrator to administer and enforce the
 154 provisions of this ordinance and the applicable sections of the Zoning Ordinance as follows:

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

159 (B) The Watershed Administrator shall keep records of all amendments to applicable
 160 sections of the Natural Resources Ordinance and the Zoning Ordinance and shall provide copies
 161 of all amendments upon adoption to the Water Quality Section of the Division of Water Quality.

162 (C) The Watershed Administrator shall keep records of the jurisdiction's use of the
 163 provisions related to maximum densities applied on an areawide basis, including the provision
 164 that a maximum of ten percent (10%) of the non-critical area of WS-II, WS-III, and, WS-IV
 165 watersheds may be developed with new development at a maximum of seventy percent (70%)
 166 built-upon surface area. Records for each watershed shall include the total acres of non-critical
 167 watershed area, total acres eligible to be developed under this option, total acres approved for
 168 this development option, and individual records for each project with the following information:
 169 location, number of developed acres, type of land use and stormwater management plan (if
 170 applicable).

171 (D) The Watershed Administrator is granted the authority to administer and enforce
 172 the provisions of this ordinance, exercising in the fulfillment of his responsibility the full police
 173 power of the Town of Mills River. The Watershed Administrator, or duly authorized
 174 representative, may enter any building, structure, or premises, as provided by law, to perform
 175 any duty authorized or required by this ordinance.

176 (E) The Watershed Administrator shall keep a record of variances to this ordinance
 177 and associated sections of the Zoning Ordinance. This record shall be submitted for each
 178 calendar year to the Water Quality Section of the Division of Environmental Management on or

179 before January 1st of the following year and shall provide a description of each project receiving
180 a variance and the reasons for granting the variance.

181 (F) The Watershed Administrator is responsible for ensuring that Stormwater Control
182 Measures are inspected at least once a year and shall keep a record of SCM inspections.

183 **§ 156.005 RULES GOVERNING THE INTERPRETATION OF**
184 **WATERSHED AREA BOUNDARIES.**

185 Where uncertainty exists as to the boundaries of the watershed areas, as shown on the
186 Watershed Protection Map of the Town of Mills River, North Carolina, the following rules shall
187 apply:

188 (A) Where area boundaries are indicated as approximately following either street,
189 alley, railroad or highway lines or centerlines thereof, such lines shall be construed to be said
190 boundaries.

191 (B) Where area boundaries are indicated as approximately following lot lines, such lot
192 lines shall be construed to be said boundaries. However, a surveyed plat prepared by a
193 registered land surveyor may be submitted to the Town of Mills River as evidence that one or
194 more properties along these boundaries do not lie within the watershed area.

195 (C) Where the watershed area boundaries lie at a scaled distance more than twenty-
196 five (25) feet from any parallel lot line, the location of watershed area boundaries shall be
197 determined by use of the scale appearing on the Watershed Protection Map of the Town of
198 Mills River, North Carolina (the "Watershed Map").

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

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

205 **§ 156.006 WATERSHED PROTECTION PERMIT**

206 (A) Except where a single family residence is constructed on a lot deeded prior to the
207 effective date of this ordinance, no building or built-upon area shall be erected, moved,
208 enlarged or structurally altered, nor shall any building permit be issued nor shall any change in
209 the use of any building or land be made until a Watershed Protection Permit has been issued by
210 the Watershed Administrator. No Watershed Protection Permit shall be issued except in
211 conformity with the provisions of this ordinance.

212 (B) Watershed Protection Permit applications shall be filed with the Watershed
213 Administrator. The application shall include a completed application form and supporting
214 documentation deemed necessary by the Watershed Administrator.

215 (D) A Watershed Protection Permit shall expire if a Building Permit or Watershed
216 Occupancy Permit for such use is not obtained by the applicant within twelve (12) months from
217 the date of issuance.

218 **§ 156.007 BUILDING PERMIT REQUIREMENTS**

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

221 **§ 156.008 WATERSHED PROTECTION OCCUPANCY PERMIT**

222 (A) No building or structure which has been erected, moved, or structurally altered
223 may be occupied until the Watershed Administrator has approved and issued a Watershed
224 Protection Occupancy Permit.

225 (B) When a change in use of land or existing building(s) occurs and no building permit
226 is required, the Watershed Administrator may issue a Watershed Protection Occupancy Permit
227 coincident with the Watershed Protection Permit.

228 (C) If a Watershed Protection Occupancy Permit is denied, the Watershed
229 Administrator shall notify the applicant in writing stating the reasons for denial.

230 **§ 156.009 SUBDIVISION APPLICATION AND REVIEW PROCEDURES.**

231 (A) All proposed subdivisions shall be reviewed by the Watershed Administrator prior
232 to recording. Applicants are required to seek a determination of whether or not the property is
233 located within a Water Supply Watershed Protection Area prior to the commencement of the
234 subdivision review under the provisions of the Subdivision Ordinance. Subdivisions that are not
235 within a Water Supply Watershed Protection Area shall not be subject to the provisions of this
236 subchapter. In addition, subdivisions within a WS-IV watershed are subject to the provisions of
237 this subchapter only when an erosion and sedimentation plan is required under the provisions
238 of State law or approved local program. Subdivisions within a Water Supply Watershed
239 Protection Area shall comply with the provisions of this subchapter and all other state and local
240 requirements that may apply.

241 (B) The Watershed Administrator shall review the completed application and shall
242 either approve, approve conditionally, or disapprove each application. The Watershed
243 Administrator may provide public agencies an opportunity to review and make
244 recommendations.

245 (D) If the Watershed Administrator approves the application, such approval shall be
246 indicated on the plat by the following certificate and signed by the Watershed Administrator:

247

248 Watershed Certificate of Approval for Recording

249

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250 I certify that the plat shown hereon complies with the Watershed and Natural Resources
251 Ordinances for the Town of Mills River for recording in the Register of Deeds office.

252

253 _____

254 Date

Watershed Administrator

255

256 NOTICE: This property is located within a Water Supply Watershed Protection Area and
257 associated development restrictions may apply.

258

259 (E) If the Watershed Administrator disapproves or approves conditionally the
260 application, the reasons for such action shall be stated in writing for the applicant. The
261 subdivider may make changes and submit a revised plan which shall constitute a separate
262 request for the purpose of review.

263 (F) Subdivisions that do not comply with the applicable standards set forth in the
264 Water Supply Watershed Protection Overlay District section of the Zoning Ordinance shall be
265 referred to the Watershed Review Board for review.

266 **§ 156.010 SUBDIVISION STANDARDS AND REQUIRED**
267 **IMPROVEMENTS.**

268 (A) All developments shall provide adequate building space in accordance with the
269 development standards contained in the Water Supply Watershed Protection Overlay District
270 section of the Zoning Ordinance. Lots that are smaller than the minimum required for residential
271 lots may be developed using built-upon area criteria in accordance with the Water Supply
272 Watershed Protection Overlay District section of the Zoning Ordinance.

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

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

279 (D) Erosion and Sedimentation Control. The application shall, where required, be
280 accompanied by a written statement that a Sedimentation and Erosion Control Plan has been
281 submitted to and approved by the N.C. Division of Land Quality.

282 (E) Roads constructed in critical areas and watershed buffer areas. Where
283 possible, roads should be located outside of critical areas and watershed buffer areas. Roads

284 constructed within these areas shall be designed and constructed to minimize their impact on
285 water quality.

286 **§ 156.011 CONSTRUCTION PROCEDURES FOR SUBDIVISIONS.**

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

291 **§ 156.012 PENALTIES FOR TRANSFERRING LOTS IN**
292 **UNAPPROVED SUBDIVISIONS.**

293 Any person who, being the owner or agent of the owner of any land located within the
294 jurisdiction of the Town of Mills River, thereafter subdivides land in violation of this ordinance or
295 transfers or sells land by reference to, exhibition of, or any other use of a plat showing a
296 subdivision of the land before the plat has been properly approved under this ordinance and
297 recorded in the office of the Register of Deeds, shall be guilty of a misdemeanor. The description
298 by metes and bounds in the instrument of transfer or other document used in the process of
299 selling or transferring land shall not exempt the transaction from this penalty. The Town of Mills
300 River may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale
301 of land, and the court shall, upon appropriate findings, issue an injunction and order requiring
302 the offending party to comply with this ordinance.

303 **§ 156.013 PUBLIC HEALTH**

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

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

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

315 (C) Where the Watershed Review Board finds a threat to water quality and the public
316 health, safety and welfare, the Board shall institute any appropriate action or proceeding to
317 restrain, correct or abate the condition and/or violation.

318 **§ 156.014 APPEAL FROM THE WATERSHED ADMINISTRATOR**

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319 (A) Any order, requirement, decision, or determination made by the Watershed
320 Administrator may be appealed to and decided by the Watershed Review Board. An appeal from
321 a decision of the Watershed Administrator must be submitted to the Watershed Review Board
322 within thirty (30) days from the date the order, interpretation, decision, or determination is
323 made. All appeals must be made in writing stating the reasons for appeal. Following submission
324 of an appeal, the Watershed Administrator shall transmit to the Watershed Review Board all
325 papers constituting the record upon which the action appealed from was taken.

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

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

336 **§ 156.015 CHANGES AND AMENDMENTS TO THE WATERSHED**
337 **PROTECTION ORDINANCE**

338 (A) The Mills River Town Council may, on its own motion or on petition, after public
339 notice and hearing, amend, supplement, change or modify this ordinance as described herein.

340 (B) No action shall be taken until the proposal has been submitted to the Watershed
341 Review Board and the Planning Board for review and recommendations.

342 (C) Under no circumstances shall the Mills River Town Council adopt such
343 amendments, supplements or changes that would cause this ordinance to violate the watershed
344 protection rules as adopted by the N.C. Environmental Management Commission. All
345 amendments must be filed with the N.C. Division of Water Quality, N.C. Division of
346 Environmental Health, and the N.C. Division of Community Assistance.

347 (D) Before adopting or amending this ordinance, the Mills River Town Council shall
348 hold a public hearing on the proposed changes. A notice of the public hearing shall be given
349 once a week for two successive calendar weeks in a newspaper having general circulation in the
350 area. The notice shall be published for the first time not less than ten (10) nor more than
351 twenty-five (25) days before the date for the hearing.

352 **§ 156.016 POWERS AND DUTIES OF THE WATERSHED REVIEW BOARD**

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

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356 (B) Variances. The Watershed Review Board shall have the power to authorize, in
357 specific cases, minor variances from the terms of this ordinance and the applicable sections of
358 the Zoning Ordinance as would not be contrary to the public interests where, owing to special
359 conditions, a literal enforcement of this ordinance would result in practical difficulties or
360 unnecessary hardship, so that the spirit of this ordinance shall be observed, public safety and
361 welfare secured, and substantial justice done. In addition, the Town of Mills River shall notify
362 and allow a reasonable comment period for all other local governments having jurisdiction in
363 the designated watershed where the variance is being considered.

364 (C) Applications for a variance shall be made on the proper form obtainable from the
365 Watershed Administrator and shall include the following information:

366 (1) A site plan, drawn to a scale of at least one (1) inch to forty (40)
367 feet, indicating the property lines of the parcel upon which the use is proposed; any
368 existing or proposed structures; parking areas and other built-upon areas; surface
369 water drainage. The site plan shall be neatly drawn and indicate north point, name
370 and address of person who prepared the plan, date of the original drawing, and an
371 accurate record of any later revisions.

372 (2) A complete and detailed description of the proposed variance,
373 together with any other pertinent information which the applicant feels would be
374 helpful to the Watershed Review Board in considering the application.

375 (D) The Watershed Administrator shall notify in writing each local government having
376 jurisdiction in the watershed and the entity using the water supply for consumption. Such notice
377 shall include a description of the variance being requested. Local governments receiving notice
378 of the variance request may submit comments to the Watershed Administrator prior to a
379 decision by the Watershed Review Board. Such comments shall become a part of the record of
380 proceedings of the Watershed Review Board.

381 (E) Before the Watershed Review Board may grant a variance, it shall make the
382 following three findings, which shall be recorded in the permanent record of the case, and shall
383 include the factual reasons on which they are based:

384 (1) There are practical difficulties or unnecessary hardships in the way of
385 carrying out the strict letter of the ordinance. In order to determine that there are
386 practical difficulties or unnecessary hardships, the Watershed Review Board must
387 find that the five following conditions exist:

388 (a) If the application complies with the provisions of the ordinance
389 and the applicant can secure no reasonable return from, nor make reasonable
390 use of, the property. Merely proving that the variance would permit a greater
391 profit to be made from the property will not be considered adequate to justify
392 the Watershed Review Board in granting a variance. Moreover, the Watershed
393 Review Board shall consider whether the variance is the minimum possible
394 deviation from the terms of the ordinance that will make possible the
395 reasonable use of the property.

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396 (b) The hardship results from the application of the ordinance to the
397 property rather than from other factors such as deed restrictions or other
398 hardship.

399 (c) The hardship is due to the physical nature of the applicant's
400 property, such as its size, shape, or topography, which is different from that of
401 neighboring property.

402 (d) The hardship is not the result of the actions of an applicant who
403 knowingly or unknowingly violates the ordinance, or who purchases the
404 property after the effective date of the ordinance, and then comes to the
405 Watershed Review Board for relief.

406 (e) The hardship is peculiar to the applicant's property, rather than
407 the result of conditions that are widespread. If other properties are equally
408 subject to the hardship created in the restriction, then granting a variance
409 would be a special privilege denied to others and would not promote equal
410 justice.

411 (2) The variance is in harmony with the general purpose and intent of the
412 ordinance and preserves its spirit.

413 (3) In the granting of the variance, the public safety and welfare have been
414 assured and substantial justice has been done. The Watershed Review Board shall
415 not grant a variance if it finds that doing so would in any respect impair the public
416 health, safety, or general welfare.

417 (F) In granting the variance, the Watershed Review Board may attach thereto such
418 conditions regarding the location, character, and other features of the proposed building,
419 structure, or use as it may deem advisable in furtherance of the purpose of this ordinance. If a
420 variance for the construction, alteration or use of property is granted, such construction,
421 alteration or use shall be in accordance with the approved site plan.

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

425 (H) A variance issued in accordance with this section shall be considered a Watershed
426 Protection Permit and shall expire if a Building Permit or Watershed Occupancy Permit for such
427 use is not obtained by the applicant within twelve (12) months from the date of the decision.

428 (I) If the application calls for the granting of a major variance, and if the Watershed
429 Review Board decides in favor of granting the variance, the Watershed Review Board shall
430 prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of
431 the hearing shall include:

432 (1) The variance application;

433 (2) The hearing notices;

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- 434 (3) The evidence presented;
- 435 (4) Motions, offers of proof, objections to evidence, and rulings on them;
- 436 (5) Proposed findings and exceptions; and
- 437 (6) The proposed decision, including all conditions proposed to be added to the
- 438 permit.

439 (J) The preliminary record shall be sent to the Environmental Management
 440 Commission for its review as follows:

441 (1) If the Commission concludes from the preliminary record that the
 442 variance qualifies as a major variance and that (1) the property owner can secure no
 443 reasonable return from, nor make any practical use of the property unless the
 444 proposed variance is granted, and (2) the variance, if granted, will not result in a
 445 serious threat to the water supply, then the Commission shall approve the variance
 446 as proposed or approve the proposed variance with conditions and stipulations. The
 447 Commission shall prepare a Commission decision and send it to the Watershed
 448 Review Board. If the Commission approves the variance as proposed, the Board shall
 449 prepare a final decision granting the proposed variance. If the Commission approves
 450 the variance with conditions and stipulations, the Board shall prepare a final
 451 decision, including such conditions and stipulations, granting the proposed variance.

452 (2) If the Commission concludes from the preliminary record that the
 453 variance qualifies as a major variance and that (1) the property owner can secure a
 454 reasonable return from or make a practical use of the property without the variance
 455 or (2) the variance, if granted, will result in a serious threat to the water supply,
 456 then the Commission shall deny approval of the variance as proposed. The
 457 Commission shall prepare a Commission decision and send it to the Watershed
 458 Review Board. The Board shall prepare a final decision denying the variance as
 459 proposed.

460 **§ 156.017 CRIMINAL PENALTIES.**

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

465 **§ 156.018 REMEDIES.**

466 (A) If any subdivision, development and/or land use is found to be in violation of this
 467 ordinance, the Mills River Town Council may, in addition to all other remedies available either in
 468 law or in equity, institute a civil penalty in the amount of \$50, action or proceedings to restrain,
 469 correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to

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470 prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C.
471 Environmental Management Commission may assess civil penalties in accordance with G.S. 143-
472 215.6(a). Each day that the violation continues shall constitute a separate offense.

473 (B) If any of the provisions of this ordinance are being violated, the Watershed
474 Administrator shall notify in writing the person responsible for such violation, indicating the
475 nature of the violation, and ordering the action necessary to correct it. The Watershed
476 Administrator shall order discontinuance of the illegal use of land, buildings or structures;
477 removal of illegal buildings or structures, or of additions, alterations or structural changes
478 thereto; discontinuance of any illegal work being done; or shall take any action authorized by
479 this ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of
480 the Watershed Administrator is questioned, the aggrieved party or parties may appeal such
481 ruling to the Watershed Review Board.

TITLE XV: LAND USAGE

CHAPTER 154: ZONING

1 ~~§ 154.006 WATERSHED BUFFER REQUIREMENTS.~~

2 ~~———— All uses within watersheds, as designated by Chapter 192, Article I of the Henderson~~
3 ~~County Code, Water Supply Watershed Protection, shall be required to maintain a minimum 30-~~
4 ~~foot vegetated buffer from perennial stream banks; provided, however, that where-~~
5 ~~development is proposed as a high-density development as allowed by Chapter 192, Article I of~~
6 ~~the Henderson County Code, Water Supply Watershed Protection, the setback from perennial-~~
7 ~~streams shall be 100 feet. Water dependent structures and public projects, such as road-~~
8 ~~crossings and greenways, may be allowed where no practical alternative exists. The activities-~~
9 ~~shall minimize built-upon surface area and maximize the use of stormwater best management-~~
10 ~~practices. Where provisions contained in this Chapter 154, Zoning, conflict with those provisions~~
11 ~~contained in Chapter 192, Article I of the Henderson County Code, Water Supply Watershed-~~
12 ~~Protection, the most restrictive provisions shall be deemed to govern.~~

13 **USE DISTRICTS**

14 **§ 154.048 WATER SUPPLY WATERSHED PROTECTION OVERLAY**
15 **DISTRICT.**

16 (A) *Purpose.* The purpose of the Water Supply Watershed Protection Overlay
17 District (the "Watershed Protection District") is to define the Water Supply
18 Watershed Protection Areas within the Town of Mills River and regulate the use of land, average
19 lot size and development density and intensity in order to maintain a high quality of surface
20 water and limit the impact from existing or potential sources of contamination in the Public
21 Water Supply Watershed as designated by the N.C. Environmental Management Commission.

22 (B) *Establishment of Areas.* Water Supply Watershed Protection Areas ("Watershed
23 Protection Areas") shall be defined and established on the map entitled, "Watershed Protection
24 Map of the Town of Mills River, North Carolina" (the "Watershed Map"). The Watershed Map
25 and all explanatory matter contained thereon accompanies and is hereby adopted as part of the
26 Mills River Town Code. For purposes of this section, areas of the Town may be divided into the
27 following areas as depicted on the Watershed Map and amendments thereto:

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

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- 31 WS-III-CA (Critical Area)
32 WS-III-BW (Balance of Watershed)
33 WS-IV-CA (Critical Area)
34 WS-IV-PA (Protected Area)

35 (C) *Application of Regulations.* No structure or land shall hereafter be used and no
36 development shall take place in the Watershed Protection District except in conformity with this
37 section for the Watershed Protection Area in which it is located. The following exceptions shall
38 be made in the application of the Watershed Protection District regulations.

39 (1) Expansions to structures classified as existing development must meet
40 the requirements of this section. However, the built-upon area of the existing
41 development is not required to be included in density calculations.

42 (2) It is not intended that these regulations interfere with any easement,
43 covenants or other agreements between parties. However, if the provisions of these
44 regulations impose greater restrictions or higher standards for the use of a building or
45 land, then the provisions of these regulations shall control.

46 (3) If a nonconforming lot of record is not contiguous to any other lot
47 owned by the same party, then that lot of record shall not be subject to the
48 development restrictions of this section if it is developed for single-family residential
49 purposes.

50 (4) Any lot or parcel created as part of a family subdivision after the
51 effective date of this section shall be exempt from this section if it is developed for one
52 single-family detached residence. Any lot or parcel created as part of any other type of
53 subdivision that is exempt from the Subdivision Ordinance shall be subject to the
54 requirements of this section.

55 (5) Any lot created for a cemetery plot shall be exempt from this section.

56 (D) Watershed Protection Areas Requirements

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

62 (a) Allowed uses:

63 1. Agriculture subject to the provisions of the Food
64 Security Act of 1985 and the Food, Agriculture, Conservation and Trade
65 Act of 1990 and all rules and regulations of the Soil and Water
66 Conservation Commission.

67

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- 68 2. Silviculture, subject to the provisions of the Forest
69 Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- 70 3. Water withdrawal, treatment and distribution facilities.
- 71 4. Restricted road access.
- 72 5. Power transmission lines.

73 (b) Density and built-upon area limits do not apply.

74 (2) *WS-II Watershed Protection Areas - Critical Area (WS-II-CA)*. In order to
75 maintain a predominately undeveloped land use intensity pattern, single family
76 residential uses shall be allowed at a maximum of one dwelling unit per 80,000 square
77 foot lot. All other residential and non-residential development shall be allowed at a
78 maximum six percent (6%) built-upon area. New residuals application sites and landfills
79 are specifically prohibited.

80 (a) Allowed uses:

81 1. Agriculture subject to the provisions of the Food
82 Security Act of 1985 and the Food, Agriculture, Conservation and Trade
83 Act of 1990 and the rules and regulations of the Soil and Water
84 Conservation Commission.

85 2. Silviculture, subject to the provisions of the Forest
86 Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).

87 3. Residential development.

88

89 4. Non-residential development, excluding landfills and
90 sites for land application of residuals or petroleum contaminated soils.

91 (b) Density and built-upon limits:

92 1. No single family residential lot shall be less than 80,000
93 square feet excluding roadway right-of-way, except within an approved
94 cluster development.

95 2. All other residential and non-residential development
96 shall not exceed six percent (6%) built-upon area on a project by project
97 basis. For the purpose of calculating built-upon area, total project area
98 shall include total acreage in the tract on which the project is to be
99 developed.

100 (3) *WS-II Watershed Areas - Balance of Watershed (WS-II-BW)*. In order to
101 maintain predominantly undeveloped land use intensity, single family residential uses
102 shall be allowed at a maximum of one dwelling unit per 40,000 square foot lot. All other
103 residential and non-residential development shall be allowed a maximum of twelve

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104 percent (12%) built-upon area. Non-discharging landfills and residuals application sites
105 are allowed.

106 (a) Allowed uses:

107 1. Agriculture, subject to the provisions of the Food
108 Security Act of 1985 and the Food, Agricultural, Conservation and Trade
109 Act of 1990.

110 2. Silviculture, subject to the provisions of the Forest
111 Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

112 3. Residential development.

113 4. Non-residential development excluding discharging
114 landfills.

115 (b) Density and built-upon limits:

116 1. No single family residential lot shall be less than 40,000
117 square feet excluding roadway right-of-way, except within an approved
118 cluster development.

119 2. All other residential and non-residential development
120 shall not exceed twelve percent (12%) built-upon area on a project by
121 project basis. For the purpose calculating built-upon area, total project
122 area shall include total acreage in the tract on which the project is to be
123 developed.

124 (4) *WS-III Watershed Areas - Critical Area (WS-III-CA)*. In order to maintain
125 low to moderate land use intensity, single family residential uses are allowed at a
126 maximum of one (1) dwelling unit per 40,000 square foot lot. All other residential and
127 non-residential development shall be allowed to at a maximum of twelve percent (12%)
128 built-upon area. New residuals application sites and landfills are specifically prohibited.

129 (a) Allowed uses:

130 1. Agriculture, subject to the provisions of the Food
131 Security Act of 1985 and the Food, Agriculture, Conservation and Trade
132 Act of 1990 and the rules and regulations of the Soil and Water
133 Conservation Commission.

134 2. Silviculture, subject to the provisions of the Forest
135 Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

136 3. Residential.

137 4. Non-residential development, excluding landfills and
138 sites for land application of residuals or petroleum contaminated soils.

139 (b) Density and built-upon limits:

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140 1. No single family residential lot shall be less than 40,000
141 square feet excluding roadway right-of-way, except within an approved
142 cluster development.

143 2. All other residential and non-residential development
144 shall not exceed twelve percent (12%) built-upon area on a project by
145 project basis. For the purpose of calculating built-upon area, the total
146 project area shall include total acreage in the tract on which the project
147 is to be developed.

148 (5) *WS-III Watershed Areas - Balance of Watershed (WS-III-BW)*. In order
149 to maintain a low to moderate land use intensity, single family detached uses shall
150 develop at a maximum of one (1) dwelling unit per 20,000 square foot lot. All other
151 residential and non-residential development shall be allowed at a maximum of twenty-
152 four percent (24%) built-upon area. Non-discharging landfills and residuals application
153 sites are allowed.

154 (a) Allowed uses:

155 1. Agriculture, subject to the provisions of the Food
156 Security Act of 1985 and the Food, Agricultural, Conservation and Trade
157 Act of 1990.

158 2. Silviculture, subject to the provisions of the Forest
159 Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

160 3. Residential development.

161 4. Non-residential development excluding discharging
162 landfills.

163 (b) Density and built-upon limits:

164 1. No single family residential lot shall be less than 20,000
165 square feet excluding roadway right-of-way, except within an approved
166 cluster development.

167 2. All other residential and non-residential development
168 shall not exceed twenty-four percent (24%) built-upon area on a project
169 by project basis. For the purpose of calculating built-upon area, total
170 project area shall include total acreage in the tract on which the project
171 is to be developed.

172 (6) *WS-IV Watershed Areas - Critical Area (WS-IV-CA)*. Only new
173 development activities that require an erosion/sedimentation control plan under State
174 law or approved local program are required to meet the provisions of this ordinance
175 when located in a WS-IV watershed. In order to address a moderate to high land use
176 intensity pattern, single family residential uses are allowed at a maximum of one (1)
177 dwelling unit per 20,000 square foot lot. All other residential and non-residential

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178 development shall be allowed at a maximum of twenty-four percent (24%) built-upon
179 area. New residuals application sites and landfills are specifically prohibited.

180 (a) Allowed uses:

181 1. Agriculture subject to the provisions of the Food
182 Security Act of 1985 and the Food, Agriculture, Conservation and Trade
183 Act of 1990 and the rules and regulations of the Soil and Water
184 Conservation Commission.

185 2. Silviculture, subject to the provisions of the Forest
186 Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

187 3. Residential.

188 4. Non-residential development, excluding landfills and
189 sites for land application of residuals or petroleum contaminated soils.

190 (a) Density and built-upon limits:

191 1. No single family residential lot shall be less than 20,000
192 square feet excluding roadway right-of-way, except within an approved
193 cluster development.

194 2. All other residential and non-residential development
195 shall not exceed twenty-four percent (24%) built-upon area on a project
196 by project basis. For the purpose of calculating the built-upon area,
197 total project area shall include total acreage in the tract on which the
198 project is to be developed.

199 (7) *WS-IV Watershed Areas - Protected Area (WS-IV-PA)*. Only new
200 development activities that require an erosion/sedimentation control plan under State
201 law or approved local government program are required to meet the provisions of this
202 ordinance when located in a WS-IV watershed. In order to accommodate moderate to
203 high land use intensity, single family residential uses shall develop at a maximum of one
204 (1) dwelling unit per 20,000 square foot lot. All other residential and non-residential
205 development shall be allowed at a maximum of twenty-four percent (24%) built-upon
206 area. A maximum of three (3) dwelling units per acre (3 du/ac) or thirty-six (36%)
207 percent built-upon area is allowed for projects without a curb and gutter street system.

208 (a) Uses allowed:

209 1. Agriculture, subject to the provisions of the Food
210 Security Act of 1985 and the Food, Agricultural, Conservation and Trade
211 Act of 1990.

212 2. Silviculture, subject to the provisions of the Forest
213 Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

214 3. Residential development.

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- 215 4. Non-residential development.
- 216 (b) Density and built-upon limits:
- 217 1. No single family residential lot shall be less than 20,000
218 square feet excluding roadway right-of-way, except within an approved
219 cluster development.
- 220 2. All other residential and non-residential development
221 shall not exceed twenty-four percent (24%) built-upon area on a project
222 by project basis. For residential projects without a curb and gutter
223 street system and with natural drainage and filtering design elements,
224 development shall not exceed thirty-six percent (36%) built-upon area
225 on a project by project basis. For the purpose of calculating built-upon
226 area, total project area shall include acreage in the tract on which the
227 project is to be developed.
- 228 (E) The Watershed Administrator may approve high density development proposals
229 consistent with the following standards. High density development shall meet the requirements
230 of the Mills River Town Code.
- 231 (1) *WS-II Watershed Areas - Critical Area (WS-II-CA)*. Where new development
232 exceeds either 1 dwelling unit per 2 acres or 6% built-upon area, engineered stormwater
233 controls shall be used to control runoff from the first inch of rainfall and development
234 shall not exceed 24% built-upon area.
- 235 (2) *WS-II Watershed Areas - Balance of Watershed (WS-II-BW)*. Where new
236 development exceeds either 1 dwelling unit per acre or 12% built-upon area,
237 engineered stormwater controls shall be used to control runoff from the first inch of
238 rainfall and development shall not exceed 30% built-upon area.
- 239 (3) *WS-III Watershed Areas - Critical Area (WS-III-CA)*. Where new
240 development exceeds either 1 dwelling unit per acre or 12% built-upon area,
241 engineered stormwater controls shall be used to control runoff from the first inch of
242 rainfall and development shall not exceed 30% built-upon area.
- 243 (4) *WS-III Watershed Areas - Balance of Watershed (WS-III-BW)*. Where new
244 development exceeds either 2 dwelling units per acre or 24% built-upon area,
245 engineered stormwater controls shall be used to control runoff from the first inch of
246 rainfall and development shall not exceed 50% built-upon area.
- 247 (5) *WS-IV Watershed Areas - Critical Area (WS-IV-CA)*. Where new
248 development exceeds either 2 dwelling units per acre or 24% built-upon area,
249 engineered stormwater controls shall be used to control runoff from the first inch of
250 rainfall and development shall not exceed 50% built-upon area.
- 251 (6) *WS-IV Watershed Areas - Protected Area (WS-IV-PA)*. Where new
252 development requires a sedimentation/erosion control plan and exceeds either 2
253 dwelling units per acre or 24% built-upon area or 3 dwelling units per area or 36% built-

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254 upon area for projects without curb and gutter street systems, engineered stormwater
255 controls shall be used to control runoff from the first inch of rainfall and development
256 shall not exceed 70% built-upon area.

257 (F) *Mixed-use development.* In cases where both residential and non-residential
258 uses are proposed for one (1) lot in single ownership, such mixed-use developments may be
259 permitted without further subdivision of the lot. However, each use must adhere to its
260 respective density/built-upon area requirements. For purposes of this section, home
261 occupations shall, be considered as residential uses.

262 (G) *Existing development.* Existing development as defined in this Chapter, may be
263 continued and maintained subject to the provisions provided herein. Expansions to structures
264 classified as existing development must meet the requirements of this ordinance. However, the
265 built-upon area of the existing development is not required to be included in the built-upon area
266 calculations.

267 (1) *Uses of land.* This category consists of uses existing as of the effective
268 date of this section where such use of the land is not permitted to be established
269 hereafter in the watershed area in which it is located. Such uses may be continued
270 except as follows:

271 (a) When such use of land has been changed to an allowed use, it
272 shall not thereafter revert to any prohibited use.

273 (b) Such use of land shall be changed only to an allowed use.

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

276 (2) *Reconstruction of buildings or built-upon areas.* Any existing building or built-
277 upon area not in conformance with the requirements of this section that has been
278 damaged or removed may be repaired and/or reconstructed, except that there are no
279 restrictions on single family residential development, provided:

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

282 (b) The total amount of space devoted to built-upon area may not be
283 increased unless stormwater control measures that equal or exceed the
284 previous development are provided.

285 (3) *Existing vacant lots.* Existing vacant lots are lots for which plats or deeds
286 have been recorded as of May 23, 1994 in the office of the Register of Deeds of
287 Henderson County. An existing lot may be used for any of the uses allowed in the
288 Watershed Protection Area in which it is located provided that where the lot size is less
289 than the minimum specified in this section, the project requires the issuance of a permit
290 or permits as required by the Mills River Town Code.

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291 (H) Buffer requirements. All uses within Watershed Protection Areas shall be
292 required to maintain a minimum thirty (30) foot vegetated buffer from perennial stream banks;
293 provided, however, that where development is approved as a high-density development, the
294 setback from perennial streams shall be one hundred (100) feet. Perennial streams shall be
295 identified as indicated on the most recent version of the USGS 1:24,000 (7.5 minute) scale
296 topographic maps or as determined by local government studies. Where USGS topographical
297 maps do not distinguish between perennial and intermittent streams, an on-site stream
298 determination may be performed by an individual qualified to perform such stream
299 determinations. Water-dependent structures and public projects, such as road crossings and
300 greenways, may be allowed where no practical alternative exists. The activities shall minimize
301 built-upon surface area and maximize the use of stormwater best management practices.

302 (I) Cluster development. Cluster development is allowed in designated Watershed
303 Protection Areas in accordance with section 154.080 of this Chapter, and under the following
304 conditions.

305 (1) Minimum lot sizes are not applicable to single family cluster development
306 projects; however, the total number of lots shall not exceed the number of lots allowed
307 for single family detached developments in Section 303. Density or built-upon area for
308 the project shall not exceed that allowed for the critical area, balance of watershed or
309 protected area, whichever applies.

310 (2) All built-upon area shall be designed and located to minimize stormwater
311 runoff impact to the receiving waters and minimize concentrated stormwater flow,
312 maximize the use of sheet flow through vegetated areas, and maximize the flow length
313 through vegetated areas.

314 (3) Areas of concentrated density development shall be located in upland area
315 and away, to the maximum extent practicable, from surface waters and drainageways.

316 (4) The remainder of the tract shall remain in a vegetated or natural state. The
317 title to the open space area shall be conveyed to an incorporated homeowners
318 association for management; to a local government for preservation as a park or open
319 space; or to a conservation organization for preservation in a permanent easement.
320 Where a property association is not incorporated, a maintenance agreement shall be
321 filed with the property deeds.

322 (5) Cluster developments that meet the applicable low density requirements
323 shall transport stormwater runoff by vegetated conveyances to the maximum extent
324 practicable.

325

326 (J) Density averaging. An applicant may average development density on up to two
327 noncontiguous properties for purposes of achieving compliance with the water supply
328 watershed development standards if all of the following circumstances exist:

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329 (1) The properties are within the same water supply watershed. If one of the
330 properties is located in the critical area of the watershed, the critical area property shall not be
331 developed beyond the applicable density requirements for its classification.

332 (2) Overall project density meets applicable density or stormwater control
333 requirements under 15A NCAC 2B .0200.

334 (3) Vegetated setbacks on both properties meet the minimum statewide water
335 supply watershed protection requirements.

336 (4) Built upon areas are designed and located to minimize stormwater runoff
337 impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of
338 sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

339 (5) Areas of concentrated density development are located in upland areas and,
340 to the maximum extent practicable, away from surface waters and drainageways.

341 (6) The property or portions of the properties that are not being developed will
342 remain in a vegetated or natural state and will be managed by a homeowners' association as
343 common area, conveyed to a local government as a park or greenway, or placed under a
344 permanent conservation or farmland preservation easement unless it can be demonstrated that
345 the local government can ensure long-term compliance through deed restrictions and an
346 electronic permitting mechanism. A metes and bounds description of the areas to remain
347 vegetated and limits on use shall be recorded on the subdivision plat, in homeowners'
348 covenants, and on individual deed and shall be irrevocable.

349 (7) Development permitted under density averaging and meeting applicable low
350 density requirements shall transport stormwater runoff by vegetated conveyances to the
351 maximum extent practicable.

352 (8) A special use permit or other such permit or certificate shall be obtained
353 from the local Watershed Review Board or Board of Adjustment to ensure that both properties
354 considered together meet the standards of the watershed ordinance and that potential owners
355 have record of how the watershed regulations were applied to the properties.

356 (K) Calculation of project density. The following requirements shall apply to the
357 calculation of project density:

358 (1) Project density shall be calculated as the total built-upon area divided by the
359 total project area;

360 (2) A project with "existing development," as that term is defined in 15A NCAC
361 02B .0621, may use the calculation method in Sub-Item (1) of this Item or may calculate
362 project density as the difference of total built-upon area minus existing built-upon area
363 divided by the difference of total project area minus existing built-upon area.

364 (3) Expansions to existing development shall be subject to 15A NCAC 02B .0624
365 except as excluded in Rule 15A NCAC 02B .0622 (1)(d).

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366 (4) Where there is a net increase of built-upon area, only the area of net
367 increase shall be subject to 15A NCAC 02B. .0624.

368 (5) Where existing development is being replaced with new built-upon area, and
369 there is a net increase of built-upon area, only the area of net increase shall be subject
370 to 15A NCAC 02B .0624;

371 (6) Total project area shall exclude the following:

372 (a) areas below the Normal High Water Line (NHWL); and

373 (b) areas defined as "coastal wetlands" pursuant to 15A NCAC 07H
374 .0205.

375 (7) Projects under a common plan of development shall be considered as a
376 single project for purposes of density calculation except that on a case-by-case basis,
377 local governments may allow projects to be considered to have both high and low
378 density areas based on one or more of the following criteria:

379 (a) natural drainage area boundaries;

380 (b) variations in land use throughout the project; or

381 (c) construction phasing.

382 (L) Low density projects. In addition to complying with the project density requirements
383 of the Mills River Watershed Protection Ordinance, low density projects shall comply with the
384 following:

385 (1) Vegetated conveyances. Stormwater runoff from the project shall be
386 released to vegetated areas as dispersed flow or transported by vegetated conveyances
387 to the maximum extent practicable. In determining whether this criteria has been met,
388 the local government shall take into account site-specific factors such as topography and
389 site layout as well as protection of water quality. Vegetated conveyances shall be
390 maintained in perpetuity to ensure that they function as designed. Vegetated
391 conveyances that meet the following criteria shall be deemed to satisfy the
392 requirements of this Sub-Item:

393 (a) Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless
394 it is demonstrated to the local government that the soils and vegetation will
395 remain stable in perpetuity based on engineering calculations and on-site soil
396 investigation; and

397 (b) The conveyance shall be designed so that it does not erode during
398 the peak flow from the 10-year storm event as demonstrated by engineering
399 calculations.

400 (2) Curb outlet systems. In lieu of vegetated conveyances, low density projects
401 shall have the option to use curb and gutter with outlets to convey stormwater to

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402 grassed swales or vegetated areas. Requirements for these curb outlet systems shall be
403 as follows:

404 (a) The curb outlets shall be located such that the swale or vegetated
405 area can carry the peak flow from the 10-year storm and at a non-erosive
406 velocity;

407 (b) The longitudinal slope of the swale or vegetated area shall not
408 exceed five percent except where not practical due to physical constraints. In
409 these cases, devices to slow the rate of runoff and encourage infiltration to
410 reduce pollutant delivery shall be provided;

411 (c) The swale's cross section shall be trapezoidal with a minimum
412 bottom width of two feet;

413 (d) The side slopes of the swale or vegetated area shall be no steeper
414 than 3:1 (horizontal to vertical);

415 (e) The minimum length of the swale or vegetated area shall be 100
416 feet; and

417 (f) Low density projects may use treatment swales designed in
418 accordance with 15A NCAC 02H .1061 in lieu of the requirements specified in
419 Sub-Items (a) through (e) of this Sub-Item.

420 (M) High density projects. In addition to complying with the project density
421 requirements of the Mills River Watershed Protection Ordinance, high density projects shall
422 comply with the following:

423 (1) Stormwater Control Measures (SCMs) shall be designed, constructed, and
424 maintained so that the project achieves either "runoff treatment" or "runoff volume
425 match" as those terms are defined in 15A NCAC 02B .0621;

426 (2) For high density projects designed to achieve runoff treatment, the required
427 storm depth shall be one inch. Applicants shall have the option to design projects to
428 achieve runoff volume match in lieu of runoff treatment;

429 (3) Stormwater runoff from off-site areas and "existing development," as that
430 term is defined in 15A NCAC 02B .0621, shall not be required to be treated in the SCM.
431 Runoff from off-site areas or existing development that is not bypassed shall be included
432 in sizing of on-site SCMs;

433 (4) SCMs shall meet the relevant MDC set forth in 15A NCAC 02H .1050 through
434 .1062; and

435 (5) Stormwater outlets shall be designed so that they do not cause erosion
436 downslope of the discharge point during the peak flow from the 10-year storm event as
437 shown by engineering calculations.

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438 (N) Options for implementing project density. The Town of Mills River has the following
439 options in addition to those enumerated in items (D) and (E) above, as appropriate.

440 (1) The Town of Mills River may allow only low density development in its water
441 supply watershed areas in accordance with this Section.

442 (2) The Town of Mills River may regulate low density single-family detached
443 residential development using the minimum lot size requirements, dwelling unit per
444 acre requirements, built-upon area percentages, or some combination of these.

445 (3) 10/70 OPTION. Outside of WS-I watersheds and the critical areas of WS-II,
446 WS-III, and WS-IV watersheds, the Town of Mills River may regulate new development
447 under the "10/70 option" in accordance with the following requirements:

448 (a) A maximum of 10 percent of the land area of a water supply
449 watershed outside of the critical area and within the Town of Mills River's
450 planning jurisdiction may be developed with new development projects and
451 expansions of existing development of up to 70 percent built-upon area.

452 (b) In water supply watersheds classified on or before August 3, 1992,
453 the beginning amount of acreage available under this option shall be based on
454 the Town of Mills River's jurisdiction as delineated on July 1, 1993. In water
455 supply watersheds classified after August 3, 1992, the beginning amount of
456 acreage available under this option shall be based on the Town of Mills River's
457 jurisdiction as delineated on the date the water supply watershed classification
458 became effective. The acreage within the critical area shall not be counted
459 towards the allowable 10/70 option acreage;

460 (c) Projects that are covered under the 10/70 option shall comply with
461 the low density requirements set forth in Item (C) above unless the Town of
462 Mills River allows high density development, in which case the Town may
463 require these projects to comply with high density requirements;

464 (d) The maximum built-upon area allowed on any given new
465 development project shall be 70 percent;

466 (e) The Town of Mills River may transfer, in whole or in part, its right to
467 the 10/70 land area to another local government within the same water supply
468 watershed upon submittal of a joint resolution and approval by the Commission;
469 and

470 (f) When the water supply watershed is composed of public lands, such
471 as National Forest land, the Town of Mills River may count the public
472 land acreage within the watershed outside of the critical area in
473 calculating the acreage allowed under this provision.

474 (4) New development shall meet the development requirements on a project-
475 by-project basis except the Town of Mills River may submit ordinances that use density
476 or built-upon area criteria averaged throughout the Mills River watershed jurisdiction

477 instead of on a project-by-project basis within the watershed. Prior to approval of the
478 ordinance, the Town of Mills River shall demonstrate to the Commission that the
479 provisions as averaged meet or exceed the statewide minimum requirements and that a
480 mechanism exists to ensure the planned distribution of development potential
481 throughout the local government's jurisdiction within the watershed.

482 (5) The Town of Mills River may administer oversight of future development
483 activities in single-family detached residential developments that exceed the applicable
484 low density requirements by tracking dwelling units rather than percentage built-upon
485 area, as long as the SCM is sized to capture and treat runoff from 1) all pervious and
486 built-upon surfaces shown on the development plan and 2) any off-site drainage from
487 pervious and built-upon surfaces, and when an additional safety factor of 15 percent of
488 built-upon area of the project site is figured in.

489

490 **ZONING BOARD OF ADJUSTMENT AND TOWN COUNCIL**

491 **§ 154.179 POWERS AND DUTIES OF ZONING BOARD OF**
492 **ADJUSTMENT.**

493 The Zoning Board of Adjustment shall have the following powers and duties:

494 (E) *Watershed Review Board.* Unless Watershed Review Board functions are
495 otherwise designated by the Mills River Town Council, the Henderson County Mills River Zoning
496 Board of Adjustment shall hear and decide cases which arise from appeals or may perform
497 other proper administrative functions pursuant to the provisions set forth in ~~Chapter 192,~~
498 ~~General Provisions, Henderson County Water Supply Watershed Protection~~ the Mills River Town
499 Code.

500

AMENDMENTS

501 **§ 154.196 INITIATION.**

502 (B) Proposed changes or amendments to this chapter or to the Official Zoning Map
503 of the Town of Mills River may be initiated by the Mills River Town Council, the Planning Board,
504 the Zoning Board of Adjustment, the Town Manager, the ~~Henderson County~~ Watershed Review
505 Board, or 1 or more owners of property within the area proposed to be changed or affected, as
506 applicable.

507 **§ 154.198 PLANNING BOARD ACTION.**

508 Before taking any action on a proposed amendment to this chapter or the Official
509 Zoning Map, the Mills River Town Council shall consider the Planning Board's recommendation
510 on each proposed amendment. The Planning Board shall have 30 days after the first
511 consideration of an application for re- zoning at a regular meeting to submit its
512 recommendations to the Mills River Town Council. Failure of the Planning Board to submit
513 recommendations within the 30 day period shall constitute a favorable recommendation, except
514 that, if by agreement of the Planning Board and the applicant 30 days is insufficient due to the
515 size of the area, the complexity of the request or similar circumstances, the Planning Board shall
516 have 60 days to submit the recommendation. Time limitations, however, shall not be applied to
517 applications for areas not previously zoned, to text amendments or to zoning amendments
518 initiated by the Planning Board, the Board of Adjustment, the Town Manager, the Town Council,
519 or the ~~Henderson County~~ Watershed Review Board.

TITLE XV: LAND USAGE

CHAPTER 153: SUBDIVISIONS

1 § 153.008 COMPLIANCE WITH OTHER PROVISIONS.

2 All proposed subdivisions of land, including all those defined in § 153.045, shall comply,
3 where applicable, with the requirements of the Zoning Ordinance of The Town of Mills River, the
4 ~~Water Supply Watershed Protection~~[Natural Resources Ordinance of the Town of Mills River](#) ~~for~~
5 ~~Henderson County~~, the Property Address Ordinance for Henderson County and any other
6 officially adopted plans, maps or ordinances approved by any governmental body or agency
7 having proper jurisdiction.

8 DEFINITIONS AND WORD USAGE

9 § 153.025 SUBDIVISION DEFINED.

10 DESIGNATED PUBLIC WATER SUPPLY WATERSHED. An area designated by the North
11 Carolina Environmental Management Commission, delineated on the official map entitled "
12 [Watershed Protection Map of the Town of Mills River, North Carolina](#) ~~Henderson County Water~~
13 ~~Supply Watershed Protection Map~~," and regulated by the ~~Water Supply Watershed~~
14 ~~Protection~~[Mills River Natural Resources Ordinance](#) ~~and Mills River Zoning Ordinance~~ ~~for~~
15 ~~Henderson County~~.

16 REVIEW AGENCY. Any local, or federal government agency qualified to review and
17 comment on development plans; the agencies include but not be limited to: the NCDOT,
18 Henderson County Permits & Inspection Department, Fire Marshal's Office, Health Department,
19 County Engineer, Mills River Zoning Board of Adjustment, ~~Henderson County~~[Mills River](#)
20 Watershed Review Board and Mills River Planning Board.

21 WATERSHED ADMINISTRATOR. An official or designated person ~~of Henderson County~~
22 responsible for the administration and enforcement of the ~~Water Supply Watershed Protection~~
23 ~~Ordinance for Henderson County~~[Natural Resources Ordinance for the Town of Mills River](#).

24 MINIMUM DESIGN AND CONSTRUCTION STANDARDS FOR 25 MAJOR SUBDIVISIONS

26 § 153.067 SEDIMENTATION AND EROSION CONTROL PLAN.

27 Any subdivision of land regulated by the terms of this chapter shall submit to the
28 Subdivision Administrator a written notice from the NCDENR, Land Quality Section, verifying

29 that a soil erosion and sedimentation control plan has been received or a written notice from a
30 professional land surveyor, engineer, landscape architect, architect, or professional planner
31 certifying that no plan is required. The plans are required anytime one (1) acre or more of land is
32 disturbed.

33 **§ 153.079 LOT DESIGNS.**

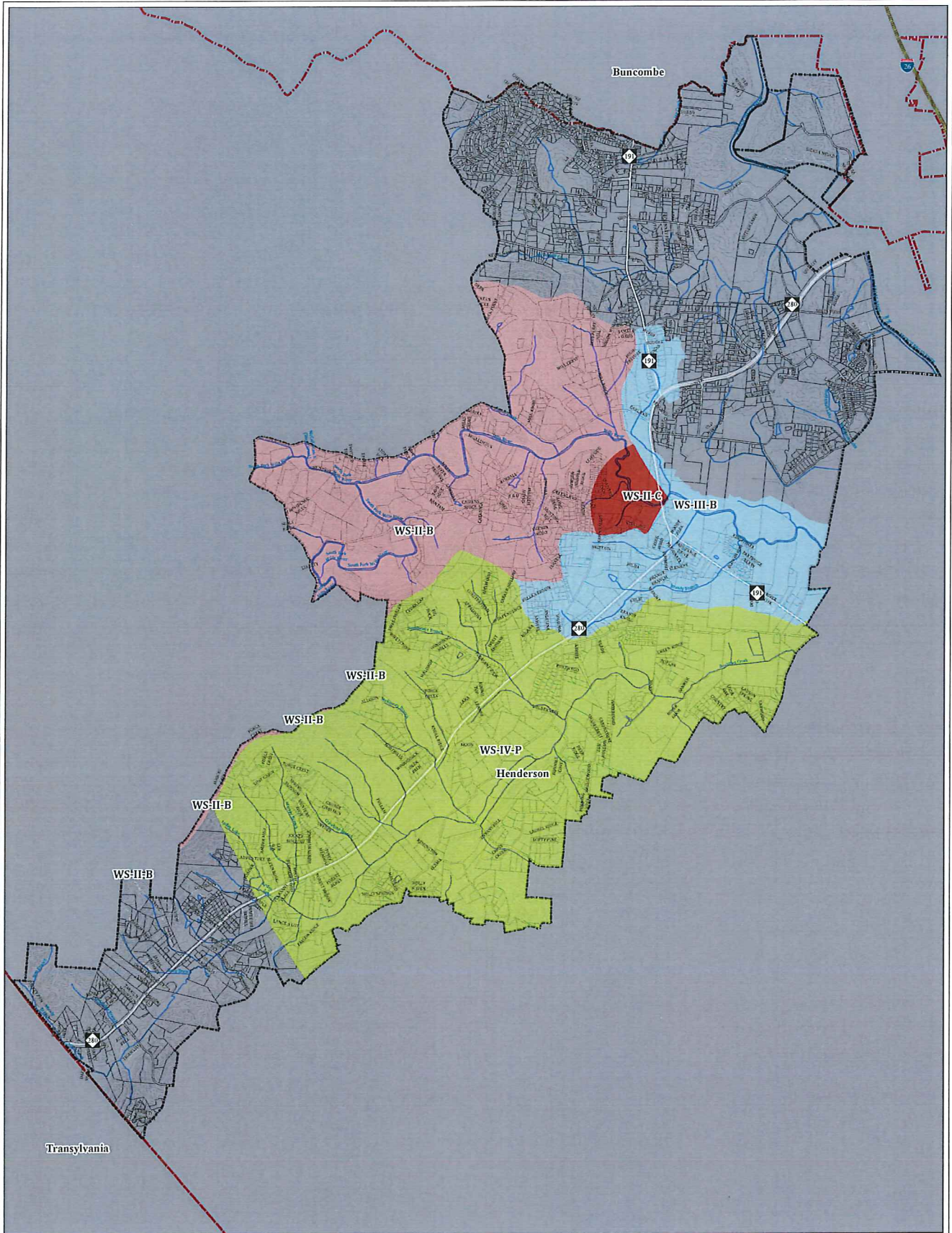
34 (A) Lot dimensions. The lot area, width, depth, shape, orientation and building
35 setback lines shall be reasonable for the location of the subdivision and for the type of
36 development and use contemplated and shall be sufficient to accommodate proposed utilities.
37 The minimum lot area, depth, width and setbacks shall comply with the district requirements of
38 the Town of Mills River Zoning Ordinance and ~~for the requirements of the Henderson County~~
39 ~~Water Supply Watershed Protection~~ Mills River Natural Resources Ordinance, where applicable.
40 Lot area shall be calculated excluding road right-of-way .

41 **§ 153.117 APPROVAL PREREQUISITE TO PLAT RECORDATION.**

42 Pursuant to G.S. § 160D-804, and except where otherwise provided in this chapter,
43 no final plat of a subdivision within the jurisdiction of this chapter shall be recorded by the
44 Register of Deeds of Henderson County until it has been approved by the Subdivision
45 Administrator, the Mills River Planning Board or as provided herein. The Register of Deeds shall
46 not file or record a plat of the subdivision of land, any part of which is located within the
47 jurisdiction of this chapter that has not been approved in accordance with these provisions. In
48 addition to meeting the requirements of this chapter, subdivisions proposed within designated
49 watershed areas shall be subject to the provisions of the ~~Water Supply Watershed Protection~~
50 ~~Ordinance for Henderson County~~ Natural Resources Ordinance, and the Watershed
51 Administrator or his or her designee shall certify on the plats that the subdivision complies with
52 the provisions of the ~~Water Supply Watershed Protection Ordinance~~ Natural Resources
53 Ordinance of Mills River. Subdivisions proposed within zoned areas of Mills River shall be subject
54 to the appropriate zoning ordinance, and the Administrator of the ordinance shall certify that
55 the subdivision complies with the applicable zoning regulations.

56 **§ 153.118 CERTIFICATION OF EXEMPTIONS.**

57 (A) Any plat of property exempted from the regulations of this chapter shall be
58 certified by the Subdivision Administrator or a professional land surveyor as exempt, prior to the
59 plat being recorded. The plat is not exempt from the Zoning Ordinance, ~~Water Supply~~
60 ~~Watershed~~ Natural Resources Ordinance or any other local ordinances. Pursuant to G.S. § 47-
61 30(f)11 (Duty of the Surveyor), a professional land surveyor may certify that the plat represents
62 an exception to the definition of subdivision and is not subject to the provisions of the
63 Subdivision Ordinance. The plat may be recorded without being certified by the Subdivision
64 Administrator. Any exemption from the regulations of this chapter shall not be deemed an
65 exemption from any other applicable ordinance.



	Roads		Parcels
	Contours - 20'		Mills River Boundary
	Streams		County Boundaries
	WS-II-C		
	WS-II-B		
	WS-III-B		
	WS-IV-P		

Town of Mills River Watershed District Map



Town of Mills River
Watershed District Map
Adopted ___
Ordinance No. ___



TITLE XV: LAND USAGE

CHAPTER 154: ZONING

1 ~~§ 154.006 WATERSHED BUFFER REQUIREMENTS.~~

2 ~~——— All uses within watersheds, as designated by Chapter 192, Article I of the Henderson~~
3 ~~County Code, Water Supply Watershed Protection, shall be required to maintain a minimum 30-~~
4 ~~foot vegetated buffer from perennial stream banks; provided, however, that where~~
5 ~~development is proposed as a high-density development as allowed by Chapter 192, Article I of~~
6 ~~the Henderson County Code, Water Supply Watershed Protection, the setback from perennial-~~
7 ~~streams shall be 100 feet. Water dependent structures and public projects, such as road-~~
8 ~~crossings and greenways, may be allowed where no practical alternative exists. The activities~~
9 ~~shall minimize built-upon surface area and maximize the use of stormwater best management~~
10 ~~practices. Where provisions contained in this Chapter 154, Zoning, conflict with those provisions~~
11 ~~contained in Chapter 192, Article I of the Henderson County Code, Water Supply Watershed-~~
12 ~~Protection, the most restrictive provisions shall be deemed to govern.~~

13 **USE DISTRICTS**

14 **§ 154.048 WATER SUPPLY WATERSHED PROTECTION OVERLAY**
15 **DISTRICT.**

16 (A) *Purpose.* The purpose of the Water Supply Watershed Protection Overlay
17 District (the "Watershed Protection District") is to define the Water Supply

18 Watershed Protection Areas within the Town of Mills River and regulate the use of land, average
19 lot size and development density and intensity in order to maintain a high quality of surface
20 water and limit the impact from existing or potential sources of contamination in the Public
21 Water Supply Watershed as designated by the N.C. Environmental Management Commission.

22 (B) *Establishment of Areas.* Water Supply Watershed Protection Areas ("Watershed
23 Protection Areas") shall be defined and established on the map entitled, "Watershed Protection
24 Map of the Town of Mills River, North Carolina" (the "Watershed Map"). The Watershed Map
25 and all explanatory matter contained thereon accompanies and is hereby adopted as part of the
26 Mills River Town Code. For purposes of this section, areas of the Town may be divided into the
27 following areas as depicted on the Watershed Map and amendments thereto:

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

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- 31 WS-III-CA (Critical Area)
32 WS-III-BW (Balance of Watershed)
33 WS-IV-CA (Critical Area)
34 WS-IV-PA (Protected Area)

35 (C) *Application of Regulations.* No structure or land shall hereafter be used and no
36 development shall take place in the Watershed Protection District except in conformity with this
37 section for the Watershed Protection Area in which it is located. The following exceptions shall
38 be made in the application of the Watershed Protection District regulations.

39 (1) Expansions to structures classified as existing development must meet
40 the requirements of this section. However, the built-upon area of the existing
41 development is not required to be included in density calculations.

42 (2) It is not intended that these regulations interfere with any easement,
43 covenants or other agreements between parties. However, if the provisions of these
44 regulations impose greater restrictions or higher standards for the use of a building or
45 land, then the provisions of these regulations shall control.

46 (3) If a nonconforming lot of record is not contiguous to any other lot
47 owned by the same party, then that lot of record shall not be subject to the
48 development restrictions of this section if it is developed for single-family residential
49 purposes.

50 (4) Any lot or parcel created as part of a family subdivision after the
51 effective date of this section shall be exempt from this section if it is developed for one
52 single-family detached residence. Any lot or parcel created as part of any other type of
53 subdivision that is exempt from the Subdivision Ordinance shall be subject to the
54 requirements of this section.

55 (5) Any lot created for a cemetery plot shall be exempt from this section.

56 (D) Watershed Protection Areas Requirements

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

62 (a) Allowed uses:

63 1. Agriculture subject to the provisions of the Food
64 Security Act of 1985 and the Food, Agriculture, Conservation and Trade
65 Act of 1990 and all rules and regulations of the Soil and Water
66 Conservation Commission.

67

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- 68 2. Silviculture, subject to the provisions of the Forest
- 69 Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- 70 3. Water withdrawal, treatment and distribution facilities.
- 71 4. Restricted road access.
- 72 5. Power transmission lines.

73 (b) Density and built-upon area limits do not apply.

74 (2) *WS-II Watershed Protection Areas - Critical Area (WS-II-CA)*. In order to
75 maintain a predominately undeveloped land use intensity pattern, single family
76 residential uses shall be allowed at a maximum of one dwelling unit per 80,000 square
77 foot lot. All other residential and non-residential development shall be allowed at a
78 maximum six percent (6%) built-upon area. New residuals application sites and landfills
79 are specifically prohibited.

80 (a) Allowed uses:

- 81 1. Agriculture subject to the provisions of the Food
- 82 Security Act of 1985 and the Food, Agriculture, Conservation and Trade
- 83 Act of 1990 and the rules and regulations of the Soil and Water
- 84 Conservation Commission.
- 85 2. Silviculture, subject to the provisions of the Forest
- 86 Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- 87 3. Residential development.
- 88
- 89 4. Non-residential development, excluding landfills and
- 90 sites for land application of residuals or petroleum contaminated soils.

91 (b) Density and built-upon limits:

- 92 1. No single family residential lot shall be less than 80,000
- 93 square feet excluding roadway right-of-way, except within an approved
- 94 cluster development.
- 95 2. All other residential and non-residential development
- 96 shall not exceed six percent (6%) built-upon area on a project by project
- 97 basis. For the purpose of calculating built-upon area, total project area
- 98 shall include total acreage in the tract on which the project is to be
- 99 developed.

100 (3) *WS-II Watershed Areas - Balance of Watershed (WS-II-BW)*. In order to
101 maintain predominantly undeveloped land use intensity, single family residential uses
102 shall be allowed at a maximum of one dwelling unit per 40,000 square foot lot. All other
103 residential and non-residential development shall be allowed a maximum of twelve

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104 percent (12%) built-upon area. Non-discharging landfills and residuals application sites
105 are allowed.

106 (a) Allowed uses:

107 1. Agriculture, subject to the provisions of the Food
108 Security Act of 1985 and the Food, Agricultural, Conservation and Trade
109 Act of 1990.

110 2. Silviculture, subject to the provisions of the Forest
111 Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

112 3. Residential development.

113 4. Non-residential development excluding discharging
114 landfills.

115 (b) Density and built-upon limits:

116 1. No single family residential lot shall be less than 40,000
117 square feet excluding roadway right-of-way, except within an approved
118 cluster development.

119 2. All other residential and non-residential development
120 shall not exceed twelve percent (12%) built-upon area on a project by
121 project basis. For the purpose calculating built-upon area, total project
122 area shall include total acreage in the tract on which the project is to be
123 developed.

124 (4) *WS-III Watershed Areas - Critical Area (WS-III-CA)*. In order to maintain
125 low to moderate land use intensity, single family residential uses are allowed at a
126 maximum of one (1) dwelling unit per 40,000 square foot lot. All other residential and
127 non-residential development shall be allowed to at a maximum of twelve percent (12%)
128 built-upon area. New residuals application sites and landfills are specifically prohibited.

129 (a) Allowed uses:

130 1. Agriculture, subject to the provisions of the Food
131 Security Act of 1985 and the Food, Agriculture, Conservation and Trade
132 Act of 1990 and the rules and regulations of the Soil and Water
133 Conservation Commission.

134 2. Silviculture, subject to the provisions of the Forest
135 Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

136 3. Residential.

137 4. Non-residential development, excluding landfills and
138 sites for land application of residuals or petroleum contaminated soils.

139 (b) Density and built-upon limits:

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140 1. No single family residential lot shall be less than 40,000
 141 square feet excluding roadway right-of-way, except within an approved
 142 cluster development.

143 2. All other residential and non-residential development
 144 shall not exceed twelve percent (12%) built-upon area on a project by
 145 project basis. For the purpose of calculating built-upon area, the total
 146 project area shall include total acreage in the tract on which the project
 147 is to be developed.

148 (5) *WS-III Watershed Areas - Balance of Watershed (WS-III-BW).* In order
 149 to maintain a low to moderate land use intensity, single family detached uses shall
 150 develop at a maximum of one (1) dwelling unit per 20,000 square foot lot. All other
 151 residential and non-residential development shall be allowed at a maximum of twenty-
 152 four percent (24%) built-upon area. Non-discharging landfills and residuals application
 153 sites are allowed.

154 (a) Allowed uses:

155 1. Agriculture, subject to the provisions of the Food
 156 Security Act of 1985 and the Food, Agricultural, Conservation and Trade
 157 Act of 1990.

158 2. Silviculture, subject to the provisions of the Forest
 159 Practices Guidelines Related to Water Quality (15 NCAC 1I.0101-.0209).

160 3. Residential development.

161 4. Non-residential development excluding discharging
 162 landfills.

163 (b) Density and built-upon limits:

164 1. No single family residential lot shall be less than 20,000
 165 square feet excluding roadway right-of-way, except within an approved
 166 cluster development.

167 2. All other residential and non-residential development
 168 shall not exceed twenty-four percent (24%) built-upon area on a project
 169 by project basis. For the purpose of calculating built-upon area, total
 170 project area shall include total acreage in the tract on which the project
 171 is to be developed.

172 (6) *WS-IV Watershed Areas - Critical Area (WS-IV-CA).* Only new
 173 development activities that require an erosion/sedimentation control plan under State
 174 law or approved local program are required to meet the provisions of this ordinance
 175 when located in a WS-IV watershed. In order to address a moderate to high land use
 176 intensity pattern, single family residential uses are allowed at a maximum of one (1)
 177 dwelling unit per 20,000 square foot lot. All other residential and non-residential

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178 development shall be allowed at a maximum of twenty-four percent (24%) built-upon
179 area. New residuals application sites and landfills are specifically prohibited.

180 (a) Allowed uses:

181 1. Agriculture subject to the provisions of the Food
182 Security Act of 1985 and the Food, Agriculture, Conservation and Trade
183 Act of 1990 and the rules and regulations of the Soil and Water
184 Conservation Commission.

185 2. Silviculture, subject to the provisions of the Forest
186 Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

187 3. Residential.

188 4. Non-residential development, excluding landfills and
189 sites for land application of residuals or petroleum contaminated soils.

190 (a) Density and built-upon limits:

191 1. No single family residential lot shall be less than 20,000
192 square feet excluding roadway right-of-way, except within an approved
193 cluster development.

194 2. All other residential and non-residential development
195 shall not exceed twenty-four percent (24%) built-upon area on a project
196 by project basis. For the purpose of calculating the built-upon area,
197 total project area shall include total acreage in the tract on which the
198 project is to be developed.

199 (7) *WS-IV Watershed Areas - Protected Area (WS-IV-PA)*. Only new
200 development activities that require an erosion/sedimentation control plan under State
201 law or approved local government program are required to meet the provisions of this
202 ordinance when located in a WS-IV watershed. In order to accommodate moderate to
203 high land use intensity, single family residential uses shall develop at a maximum of one
204 (1) dwelling unit per 20,000 square foot lot. All other residential and non-residential
205 development shall be allowed at a maximum of twenty-four percent (24%) built-upon
206 area. A maximum of three (3) dwelling units per acre (3 du/ac) or thirty-six (36%)
207 percent built-upon area is allowed for projects without a curb and gutter street system.

208 (a) Uses allowed:

209 1. Agriculture, subject to the provisions of the Food
210 Security Act of 1985 and the Food, Agricultural, Conservation and Trade
211 Act of 1990.

212 2. Silviculture, subject to the provisions of the Forest
213 Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

214 3. Residential development.

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215 4. Non-residential development.

216 (b) Density and built-upon limits:

217 1. No single family residential lot shall be less than 20,000
218 square feet excluding roadway right-of-way, except within an approved
219 cluster development.

220 2. All other residential and non-residential development
221 shall not exceed twenty-four percent (24%) built-upon area on a project
222 by project basis. For residential projects without a curb and gutter
223 street system and with natural drainage and filtering design elements,
224 development shall not exceed thirty-six percent (36%) built-upon area
225 on a project by project basis. For the purpose of calculating built-upon
226 area, total project area shall include acreage in the tract on which the
227 project is to be developed.

228 (E) The Watershed Administrator may approve high density development proposals
229 consistent with the following standards. High density development shall meet the requirements
230 of the Mills River Town Code.

231 (1) *WS-II Watershed Areas - Critical Area (WS-II-CA)*. Where new development
232 exceeds either 1 dwelling unit per 2 acres or 6% built-upon area, engineered stormwater
233 controls shall be used to control runoff from the first inch of rainfall and development
234 shall not exceed 24% built-upon area.

235 (2) *WS-II Watershed Areas - Balance of Watershed (WS-II-BW)*. Where new
236 development exceeds either 1 dwelling unit per acre or 12% built-upon area,
237 engineered stormwater controls shall be used to control runoff from the first inch of
238 rainfall and development shall not exceed 30% built-upon area.

239 (3) *WS-III Watershed Areas - Critical Area (WS-III-CA)*. Where new
240 development exceeds either 1 dwelling unit per acre or 12% built-upon area,
241 engineered stormwater controls shall be used to control runoff from the first inch of
242 rainfall and development shall not exceed 30% built-upon area.

243 (4) *WS-III Watershed Areas - Balance of Watershed (WS-III-BW)*. Where new
244 development exceeds either 2 dwelling units per acre or 24% built-upon area,
245 engineered stormwater controls shall be used to control runoff from the first inch of
246 rainfall and development shall not exceed 50% built-upon area.

247 (5) *WS-IV Watershed Areas - Critical Area (WS-IV-CA)*. Where new
248 development exceeds either 2 dwelling units per acre or 24% built-upon area,
249 engineered stormwater controls shall be used to control runoff from the first inch of
250 rainfall and development shall not exceed 50% built-upon area.

251 (6) *WS-IV Watershed Areas - Protected Area (WS-IV-PA)*. Where new
252 development requires a sedimentation/erosion control plan and exceeds either 2
253 dwelling units per acre or 24% built-upon area or 3 dwelling units per area or 36% built-

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254 upon area for projects without curb and gutter street systems, engineered stormwater
255 controls shall be used to control runoff from the first inch of rainfall and development
256 shall not exceed 70% built-upon area.

257 (F) *Mixed-use development.* In cases where both residential and non-residential
258 uses are proposed for one (1) lot in single ownership, such mixed-use developments may be
259 permitted without further subdivision of the lot. However, each use must adhere to its
260 respective density/built-upon area requirements. For purposes of this section, home
261 occupations shall, be considered as residential uses.

262 (G) *Existing development.* Existing development as defined in this Chapter, may be
263 continued and maintained subject to the provisions provided herein. Expansions to structures
264 classified as existing development must meet the requirements of this ordinance. However, the
265 built-upon area of the existing development is not required to be included in the built-upon area
266 calculations.

267 (1) *Uses of land.* This category consists of uses existing as of the effective
268 date of this section where such use of the land is not permitted to be established
269 hereafter in the watershed area in which it is located. Such uses may be continued
270 except as follows:

271 (a) When such use of land has been changed to an allowed use, it
272 shall not thereafter revert to any prohibited use.

273 (b) Such use of land shall be changed only to an allowed use.

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

276 (2) *Reconstruction of buildings or built-upon areas.* Any existing building or built-
277 upon area not in conformance with the requirements of this section that has been
278 damaged or removed may be repaired and/or reconstructed, except that there are no
279 restrictions on single family residential development, provided:

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

282 (b) The total amount of space devoted to built-upon area may not be
283 increased unless stormwater control measures that equal or exceed the
284 previous development are provided.

285 (3) *Existing vacant lots.* Existing vacant lots are lots for which plats or deeds
286 have been recorded as of May 23, 1994 in the office of the Register of Deeds of
287 Henderson County. An existing lot may be used for any of the uses allowed in the
288 Watershed Protection Area in which it is located provided that where the lot size is less
289 than the minimum specified in this section, the project requires the issuance of a permit
290 or permits as required by the Mills River Town Code.

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291 (H) Buffer requirements. All uses within Watershed Protection Areas shall be
292 required to maintain a minimum thirty (30) foot vegetated buffer from perennial stream banks;
293 provided, however, that where development is approved as a high-density development, the
294 setback from perennial streams shall be one hundred (100) feet. Perennial streams shall be
295 identified as indicated on the most recent version of the USGS 1:24,000 (7.5 minute) scale
296 topographic maps or as determined by local government studies. Where USGS topographical
297 maps do not distinguish between perennial and intermittent streams, an on-site stream
298 determination may be performed by an individual qualified to perform such stream
299 determinations. Water-dependent structures and public projects, such as road crossings and
300 greenways, may be allowed where no practical alternative exists. The activities shall minimize
301 built-upon surface area and maximize the use of stormwater best management practices.

302 (I) Cluster development. Cluster development is allowed in designated Watershed
303 Protection Areas in accordance with section 154.080 of this Chapter, and under the following
304 conditions.

305 (1) Minimum lot sizes are not applicable to single family cluster development
306 projects; however, the total number of lots shall not exceed the number of lots allowed
307 for single family detached developments in Section 303. Density or built-upon area for
308 the project shall not exceed that allowed for the critical area, balance of watershed or
309 protected area, whichever applies.

310 (2) All built-upon area shall be designed and located to minimize stormwater
311 runoff impact to the receiving waters and minimize concentrated stormwater flow,
312 maximize the use of sheet flow through vegetated areas, and maximize the flow length
313 through vegetated areas.

314 (3) Areas of concentrated density development shall be located in upland area
315 and away, to the maximum extent practicable, from surface waters and drainageways.

316 (4) The remainder of the tract shall remain in a vegetated or natural state. The
317 title to the open space area shall be conveyed to an incorporated homeowners
318 association for management; to a local government for preservation as a park or open
319 space; or to a conservation organization for preservation in a permanent easement.
320 Where a property association is not incorporated, a maintenance agreement shall be
321 filed with the property deeds.

322 (5) Cluster developments that meet the applicable low density requirements
323 shall transport stormwater runoff by vegetated conveyances to the maximum extent
324 practicable.

325

326 (J) Density averaging. An applicant may average development density on up to two
327 noncontiguous properties for purposes of achieving compliance with the water supply
328 watershed development standards if all of the following circumstances exist:

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329 (1) The properties are within the same water supply watershed. If one of the
330 properties is located in the critical area of the watershed, the critical area property shall not be
331 developed beyond the applicable density requirements for its classification.

332 (2) Overall project density meets applicable density or stormwater control
333 requirements under 15A NCAC 2B .0200.

334 (3) Vegetated setbacks on both properties meet the minimum statewide water
335 supply watershed protection requirements.

336 (4) Built upon areas are designed and located to minimize stormwater runoff
337 impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of
338 sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

339 (5) Areas of concentrated density development are located in upland areas and,
340 to the maximum extent practicable, away from surface waters and drainageways.

341 (6) The property or portions of the properties that are not being developed will
342 remain in a vegetated or natural state and will be managed by a homeowners' association as
343 common area, conveyed to a local government as a park or greenway, or placed under a
344 permanent conservation or farmland preservation easement unless it can be demonstrated that
345 the local government can ensure long-term compliance through deed restrictions and an
346 electronic permitting mechanism. A metes and bounds description of the areas to remain
347 vegetated and limits on use shall be recorded on the subdivision plat, in homeowners'
348 covenants, and on individual deed and shall be irrevocable.

349 (7) Development permitted under density averaging and meeting applicable low
350 density requirements shall transport stormwater runoff by vegetated conveyances to the
351 maximum extent practicable.

352 (8) A special use permit or other such permit or certificate shall be obtained
353 from the local Watershed Review Board or Board of Adjustment to ensure that both properties
354 considered together meet the standards of the watershed ordinance and that potential owners
355 have record of how the watershed regulations were applied to the properties.

356 (K) Calculation of project density. The following requirements shall apply to the
357 calculation of project density:

358 (1) Project density shall be calculated as the total built-upon area divided by the
359 total project area;

360 (2) A project with "existing development," as that term is defined in 15A NCAC
361 02B .0621, may use the calculation method in Sub-Item (1) of this Item or may calculate
362 project density as the difference of total built-upon area minus existing built-upon area
363 divided by the difference of total project area minus existing built-upon area.

364 (3) Expansions to existing development shall be subject to 15A NCAC 02B .0624
365 except as excluded in Rule 15A NCAC 02B .0622 (1)(d).

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366 (4) Where there is a net increase of built-upon area, only the area of net
 367 increase shall be subject to 15A NCAC 02B. .0624.

368 (5) Where existing development is being replaced with new built-upon area, and
 369 there is a net increase of built-upon area, only the area of net increase shall be subject
 370 to 15A NCAC 02B .0624;

371 (6) Total project area shall exclude the following:

372 (a) areas below the Normal High Water Line (NHWL); and

373 (b) areas defined as "coastal wetlands" pursuant to 15A NCAC 07H
 374 .0205.

375 (7) Projects under a common plan of development shall be considered as a
 376 single project for purposes of density calculation except that on a case-by-case basis,
 377 local governments may allow projects to be considered to have both high and low
 378 density areas based on one or more of the following criteria:

379 (a) natural drainage area boundaries;

380 (b) variations in land use throughout the project; or

381 (c) construction phasing.

382 (L) Low density projects. In addition to complying with the project density requirements
 383 of the Mills River Watershed Protection Ordinance, low density projects shall comply with the
 384 following:

385 (1) Vegetated conveyances. Stormwater runoff from the project shall be
 386 released to vegetated areas as dispersed flow or transported by vegetated conveyances
 387 to the maximum extent practicable. In determining whether this criteria has been met,
 388 the local government shall take into account site-specific factors such as topography and
 389 site layout as well as protection of water quality. Vegetated conveyances shall be
 390 maintained in perpetuity to ensure that they function as designed. Vegetated
 391 conveyances that meet the following criteria shall be deemed to satisfy the
 392 requirements of this Sub-Item:

393 (a) Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless
 394 it is demonstrated to the local government that the soils and vegetation will
 395 remain stable in perpetuity based on engineering calculations and on-site soil
 396 investigation; and

397 (b) The conveyance shall be designed so that it does not erode during
 398 the peak flow from the 10-year storm event as demonstrated by engineering
 399 calculations.

400 (2) Curb outlet systems. In lieu of vegetated conveyances, low density projects
 401 shall have the option to use curb and gutter with outlets to convey stormwater to

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402 grassed swales or vegetated areas. Requirements for these curb outlet systems shall be
403 as follows:

404 (a) The curb outlets shall be located such that the swale or vegetated
405 area can carry the peak flow from the 10-year storm and at a non-erosive
406 velocity;

407 (b) The longitudinal slope of the swale or vegetated area shall not
408 exceed five percent except where not practical due to physical constraints. In
409 these cases, devices to slow the rate of runoff and encourage infiltration to
410 reduce pollutant delivery shall be provided;

411 (c) The swale's cross section shall be trapezoidal with a minimum
412 bottom width of two feet;

413 (d) The side slopes of the swale or vegetated area shall be no steeper
414 than 3:1 (horizontal to vertical);

415 (e) The minimum length of the swale or vegetated area shall be 100
416 feet; and

417 (f) Low density projects may use treatment swales designed in
418 accordance with 15A NCAC 02H .1061 in lieu of the requirements specified in
419 Sub-Items (a) through (e) of this Sub-Item.

420 (M) High density projects. In addition to complying with the project density
421 requirements of the Mills River Watershed Protection Ordinance, high density projects shall
422 comply with the following:

423 (1) Stormwater Control Measures (SCMs) shall be designed, constructed, and
424 maintained so that the project achieves either "runoff treatment" or "runoff volume
425 match" as those terms are defined in 15A NCAC 02B .0621;

426 (2) For high density projects designed to achieve runoff treatment, the required
427 storm depth shall be one inch. Applicants shall have the option to design projects to
428 achieve runoff volume match in lieu of runoff treatment;

429 (3) Stormwater runoff from off-site areas and "existing development," as that
430 term is defined in 15A NCAC 02B .0621, shall not be required to be treated in the SCM.
431 Runoff from off-site areas or existing development that is not bypassed shall be included
432 in sizing of on-site SCMs;

433 (4) SCMs shall meet the relevant MDC set forth in 15A NCAC 02H .1050 through
434 .1062; and

435 (5) Stormwater outlets shall be designed so that they do not cause erosion
436 downslope of the discharge point during the peak flow from the 10-year storm event as
437 shown by engineering calculations.

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438 (N) Options for implementing project density. The Town of Mills River has the following
439 options in addition to those enumerated in items (D) and (E) above, as appropriate.

440 (1) The Town of Mills River may allow only low density development in its water
441 supply watershed areas in accordance with this Section.

442 (2) The Town of Mills River may regulate low density single-family detached
443 residential development using the minimum lot size requirements, dwelling unit per
444 acre requirements, built-upon area percentages, or some combination of these.

445 (3) 10/70 OPTION. Outside of WS-I watersheds and the critical areas of WS-II,
446 WS-III, and WS-IV watersheds, the Town of Mills River may regulate new development
447 under the "10/70 option" in accordance with the following requirements:

448 (a) A maximum of 10 percent of the land area of a water supply
449 watershed outside of the critical area and within the Town of Mills River's
450 planning jurisdiction may be developed with new development projects and
451 expansions of existing development of up to 70 percent built-upon area.

452 (b) In water supply watersheds classified on or before August 3, 1992,
453 the beginning amount of acreage available under this option shall be based on
454 the Town of Mills River's jurisdiction as delineated on July 1, 1993. In water
455 supply watersheds classified after August 3, 1992, the beginning amount of
456 acreage available under this option shall be based on the Town of Mills River's
457 jurisdiction as delineated on the date the water supply watershed classification
458 became effective. The acreage within the critical area shall not be counted
459 towards the allowable 10/70 option acreage;

460 (c) Projects that are covered under the 10/70 option shall comply with
461 the low density requirements set forth in Item (C) above unless the Town of
462 Mills River allows high density development, in which case the Town may
463 require these projects to comply with high density requirements;

464 (d) The maximum built-upon area allowed on any given new
465 development project shall be 70 percent;

466 (e) The Town of Mills River may transfer, in whole or in part, its right to
467 the 10/70 land area to another local government within the same water supply
468 watershed upon submittal of a joint resolution and approval by the Commission;
469 and

470 (f) When the water supply watershed is composed of public lands, such
471 as National Forest land, the Town of Mills River may count the public
472 land acreage within the watershed outside of the critical area in
473 calculating the acreage allowed under this provision.

474 (4) New development shall meet the development requirements on a project-
475 by-project basis except the Town of Mills River may submit ordinances that use density
476 or built-upon area criteria averaged throughout the Mills River watershed jurisdiction

477 instead of on a project-by-project basis within the watershed. Prior to approval of the
478 ordinance, the Town of Mills River shall demonstrate to the Commission that the
479 provisions as averaged meet or exceed the statewide minimum requirements and that a
480 mechanism exists to ensure the planned distribution of development potential
481 throughout the local government's jurisdiction within the watershed.

482 (5) The Town of Mills River may administer oversight of future development
483 activities in single-family detached residential developments that exceed the applicable
484 low density requirements by tracking dwelling units rather than percentage built-upon
485 area, as long as the SCM is sized to capture and treat runoff from 1) all pervious and
486 built-upon surfaces shown on the development plan and 2) any off-site drainage from
487 pervious and built-upon surfaces, and when an additional safety factor of 15 percent of
488 built-upon area of the project site is figured in.

489

490 **ZONING BOARD OF ADJUSTMENT AND TOWN COUNCIL**

491 **§ 154.179 POWERS AND DUTIES OF ZONING BOARD OF**
492 **ADJUSTMENT.**

493 The Zoning Board of Adjustment shall have the following powers and duties:

494 (E) *Watershed Review Board.* Unless Watershed Review Board functions are
495 otherwise designated by the Mills River Town Council, the Henderson County Mills River Zoning
496 Board of Adjustment ~~may~~shall hear and decide cases which arise from appeals or may perform
497 other proper administrative functions pursuant to the provisions set forth in ~~Chapter 192,~~
498 ~~General Provisions, Henderson County Water Supply Watershed Protection~~ the Mills River Town
499 Code.

500 **AMENDMENTS**

501 **§ 154.196 INITIATION.**

502 (B) Proposed changes or amendments to this chapter or to the Official Zoning Map
503 of the Town of Mills River may be initiated by the Mills River Town Council, the Planning Board,
504 the Zoning Board of Adjustment, the Town Manager, the ~~Henderson County~~ Watershed Review
505 Board, or 1 or more owners of property within the area proposed to be changed or affected, as
506 applicable.

507 **§ 154.198 PLANNING BOARD ACTION.**

508 Before taking any action on a proposed amendment to this chapter or the Official
509 Zoning Map, the Mills River Town Council shall consider the Planning Board's recommendation
510 on each proposed amendment. The Planning Board shall have 30 days after the first
511 consideration of an application for re- zoning at a regular meeting to submit its
512 recommendations to the Mills River Town Council. Failure of the Planning Board to submit
513 recommendations within the 30 day period shall constitute a favorable recommendation, except
514 that, if by agreement of the Planning Board and the applicant 30 days is insufficient due to the
515 size of the area, the complexity of the request or similar circumstances, the Planning Board shall
516 have 60 days to submit the recommendation. Time limitations, however, shall not be applied to
517 applications for areas not previously zoned, to text amendments or to zoning amendments
518 initiated by the Planning Board, the Board of Adjustment, the Town Manager, the Town Council,
519 or the ~~Henderson County~~ Watershed Review Board.

TITLE XV: LAND USAGE

CHAPTER 153: SUBDIVISIONS

1 § 153.008 COMPLIANCE WITH OTHER PROVISIONS.

2 All proposed subdivisions of land, including all those defined in § 153.045, shall comply,
3 where applicable, with the requirements of the Zoning Ordinance of The Town of Mills River, the
4 ~~Water Supply Watershed Protection~~[Natural Resources Ordinance of the Town of Mills River](#)~~for~~
5 ~~Henderson County~~, the Property Address Ordinance for Henderson County and any other
6 officially adopted plans, maps or ordinances approved by any governmental body or agency
7 having proper jurisdiction.

8 DEFINITIONS AND WORD USAGE

9 § 153.025 SUBDIVISION DEFINED.

10 DESIGNATED PUBLIC WATER SUPPLY WATERSHED. An area designated by the North
11 Carolina Environmental Management Commission, delineated on the official map entitled "
12 [Watershed Protection Map of the Town of Mills River, North Carolina](#)~~Henderson County Water~~
13 ~~Supply Watershed Protection Map~~," and regulated by the ~~Water Supply Watershed~~
14 ~~Protection~~[Mills River Natural Resources Ordinance](#) ~~and Mills River Zoning Ordinance~~~~for~~
15 ~~Henderson County~~.

16 REVIEW AGENCY. Any local, or federal government agency qualified to review and
17 comment on development plans; the agencies include but not be limited to: the NCDOT,
18 Henderson County Permits & Inspection Department, Fire Marshal's Office, Health Department,
19 County Engineer, Mills River Zoning Board of Adjustment, ~~Henderson County~~[Mills River](#)
20 Watershed Review Board and Mills River Planning Board.

21 WATERSHED ADMINISTRATOR. An official or designated person ~~of Henderson County~~
22 responsible for the administration and enforcement of the ~~Water Supply Watershed Protection~~
23 ~~Ordinance for Henderson County~~[Natural Resources Ordinance for the Town of Mills River](#).

24 MINIMUM DESIGN AND CONSTRUCTION STANDARDS FOR 25 MAJOR SUBDIVISIONS

26 § 153.067 SEDIMENTATION AND EROSION CONTROL PLAN.

27 Any subdivision of land regulated by the terms of this chapter shall submit to the
28 Subdivision Administrator a written notice from the NCDENR, Land Quality Section, verifying

29 that a soil erosion and sedimentation control plan has been received or a written notice from a
30 professional land surveyor, engineer, landscape architect, architect, or professional planner
31 certifying that no plan is required. The plans are required anytime one (1) acre or more of land is
32 disturbed.

33 **§ 153.079 LOT DESIGNS.**

34 (A) Lot dimensions. The lot area, width, depth, shape, orientation and building
35 setback lines shall be reasonable for the location of the subdivision and for the type of
36 development and use contemplated and shall be sufficient to accommodate proposed utilities.
37 The minimum lot area, depth, width and setbacks shall comply with the district requirements of
38 the Town of Mills River Zoning Ordinance and ~~for the requirements of the Henderson County~~
39 ~~Water Supply Watershed Protection~~ Mills River Natural Resources Ordinance, where applicable.
40 Lot area shall be calculated excluding road right-of-way .

41 **§ 153.117 APPROVAL PREREQUISITE TO PLAT RECORDATION.**

42 Pursuant to G.S. § 160D-804, and except where otherwise provided in this chapter,
43 no final plat of a subdivision within the jurisdiction of this chapter shall be recorded by the
44 Register of Deeds of Henderson County until it has been approved by the Subdivision
45 Administrator, the Mills River Planning Board or as provided herein. The Register of Deeds shall
46 not file or record a plat of the subdivision of land, any part of which is located within the
47 jurisdiction of this chapter that has not been approved in accordance with these provisions. In
48 addition to meeting the requirements of this chapter, subdivisions proposed within designated
49 watershed areas shall be subject to the provisions of the ~~Water Supply Watershed Protection~~
50 ~~Ordinance for Henderson County~~ Natural Resources Ordinance, and the Watershed
51 Administrator or his or her designee shall certify on the plats that the subdivision complies with
52 the provisions of the ~~Water Supply Watershed Protection Ordinance~~ Natural Resources
53 Ordinance of Mills River. Subdivisions proposed within zoned areas of Mills River shall be subject
54 to the appropriate zoning ordinance, and the Administrator of the ordinance shall certify that
55 the subdivision complies with the applicable zoning regulations.

56 **§ 153.118 CERTIFICATION OF EXEMPTIONS.**

57 (A) Any plat of property exempted from the regulations of this chapter shall be
58 certified by the Subdivision Administrator or a professional land surveyor as exempt, prior to the
59 plat being recorded. The plat is not exempt from the Zoning Ordinance, ~~Water Supply~~
60 ~~Watershed~~ Natural Resources Ordinance or any other local ordinances. Pursuant to G.S. § 47-
61 30(f)11 (Duty of the Surveyor), a professional land surveyor may certify that the plat represents
62 an exception to the definition of subdivision and is not subject to the provisions of the
63 Subdivision Ordinance. The plat may be recorded without being certified by the Subdivision
64 Administrator. Any exemption from the regulations of this chapter shall not be deemed an
65 exemption from any other applicable ordinance.

