

## **ARTICLE XV**

### **WATERSHED PROTECTION REGULATIONS**

#### **Section 1501. PURPOSE**

It is the purpose of this section to protect the quality of drinking water for the Town of West Jefferson by setting standards for the development that occurs within designated Public Water Supply Watershed areas. It is further intended that the establishment of watershed regulations reflect the protection of critical environmental areas in accordance with the State of North Carolina's Water Supply Watershed Protection Rules.

#### **Section 1502. ADOPTION DATE AND EFFECTIVE DATE.**

The provisions in this Article were adopted on September 23, 1993, and shall become effective on April 20, 1994.

#### **Section 1503. AUTHORITY AND ENACTMENT**

The Legislature of the State of North Carolina has, in Chapter 160A, Article 8, Section 174, General Ordinance Authority, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Board of Alderman for the Town of West Jefferson does hereby ordain and enact into law the following articles as the Watershed Protection regulations of West Jefferson.

#### **Section 1504 JURISDICTION**

The provisions of this Article shall apply within the areas designated as a Public Water Supply Watershed by the NC Environmental Management Commission and shall be defined and established on the map entitled, Watershed Protection Map of West Jefferson, North Carolina which is adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompany and are hereby made a part of this Article.

#### **Section 1505. EXCEPTIONS TO APPLICABILITY**

- (A) Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replaces; nor shall any provision of the Article amend, modify, or restrict any provisions of the Code of Ordinances of the Town of West Jefferson; however, the adoption of this Article shall and does amend any and all ordinances, resolutions, and regulations in effect in the Town of West Jefferson at the time of adoption of this Article that may be construed to impair or reduce the effectiveness of this Article or to conflict with any of its provisions.

- (B) It is not intended that these regulations interfere with any easement, covenants, or other agreements between parties. However if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.
- (C) Existing development, as defined in this Article, is not subject to the requirements of this Article. Expansions to structures classified as existing development must meet the requirements of this Article; however, the built-upon area of the existing development is not required to be included in the density calculations.
- (D) A pre-existing lot owned by an individual prior to the effective date of this ordinance, regardless of whether or not a vested right has been established, may be development of single family residential purposes without being subject to the restrictions of this ordinance.

#### **Section 1506. ESTABLISHMENT OF WATERSHED REVIEW BOARD**

The West Jefferson Board of Aldermen shall act as the Watershed Review Board on all subdivision regulation and zoning ordinance matters.

#### **Section 1507. ESTABLISHMENT OF WATERSHED AREAS**

The purpose of this section is to list and describe the watershed areas herein adopted.  
WS-IV-PA (protected area)

#### **Section 1508. WATERSHED AREA DESCRIBED**

A. WS-IV Watershed Areas Protected Area. Only new development activities that require an erosion/sedimentation control plan under State law or approved local government program are required to meet the provisions of this ordinance when located in as WS-IV watershed. In order to address a moderate to high land use intensity pattern, single family residential uses shall develop at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of twenty-four (24) percent built-upon area. A (high density development permit shall be required where new development requires a sedimentation/erosion control plan and exceeds either two dwelling units per acre or twenty-four percent built-upon area.) High density development standards require engineered stormwater controls be used to control runoff from the first inch of rainfall and development shall not exceed seventy percent built-upon area. Ultimate responsibility for the operation and maintenance of the engineered stormwater control facilities will rest with the local government.

## 1. Uses Allowed

- a. Agriculture, subject to the provisions of the food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
- b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC II .6101-.0209).
- c. Residential Development
- d. Non-residential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.

## 2. Density and Built-upon Limits

- a. New single family residential development shall not exceed two dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than one-half acre, except within an approved cluster development.
- b. All other new residential commercial and industrial development shall not exceed twenty-four percent built-upon area on a project by project basis. Where new development requires a sedimentation/erosion control plan and exceeds twenty-four percent built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed seventy percent built-upon area. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.

## **Section 1509. HIGH DENSITY DEVELOPMENT**

### **A. HIGH DENSITY DEVELOPMENT STANDARDS**

1. The Watershed Review Board may approve high density development proposals consistent with the following standards
  - a. WS-IV watershed areas ■ protected area. Where new development requires a sedimentation/erosion control plan and exceeds either two dwelling units per acre or twenty-four percent built-upon, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed seventy percent built-upon area.
2. High density development shall meet the requirements of this ordinance.

## **B. HIGH DENSITY DEVELOPMENT PERMIT APPLICATION.**

- 1.** A high density development permit shall be required for new development exceeding the requirements of the low density option.
- 2.** Application for a high density development permit shall be addressed and submitted to the Watershed Review Board through the Zoning Administrator. Application for a high density development permit shall be made on the proper form and shall include the following information;
  - a.** A completed high density development permit application signed by the owner of the property. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization;
  - b.** Two reproducible copies of the development plan within the drainage basin including the applicable information listed in Appendix A: application forms, subdivision plat check list, and detailed information concerning built-upon area;
  - c.** Two reproducible copies of the plans and specifications of the stormwater control structure.
  - d.** When required by law, written verification that a soil erosion and sedimentation control plan has been approved by the appropriate state or local agency.
  - e.** Permit application fees.
- 3.** Prior to taking final action on any application, the Board or the Zoning Administrator may provide an opportunity to public agencies affected by the development proposal to review and make recommendations on the application. However, failure of the agencies to submit their comments and recommendations shall not delay the Board's action within the prescribed time limit.

4. The Watershed Review Board shall either approve or disapprove each application for a high density development permit based on the applicable criteria contained in this ordinance. First consideration of a completed application shall be at the next regularly scheduled meeting of the Board following receipt. The Board shall take action on the application at its first consideration or within sixty-five days of its first consideration.
  - a. If the Board approves the application based on its findings, each approval shall be indicated on the permit and both copies of the site plan and both copies of the plans and specifications of the stormwater control structure. A high density development permit shall be issued after the applicant posts a performance bond or other acceptable security as required herein and executes an operation and maintenance agreement. A copy of the permit and one copy of each set of plans shall be kept on file at the Zoning Administrator's office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or registered mail, return receipt requested.
  - b. If the Board disapproves the application based on its findings, the reasons for such action shall be stated in the minutes of the Board and presented to the applicant in writing either by personal service or registered mail, return receipt requested. The applicant may make changes and submit a revised plan. All revisions shall be submitted, reviewed and acted upon by the Board pursuant to the procedures of this section.
  
5. The Watershed Review Board shall issue a high density development permit within sixty-five days of its consideration upon finding that the proposal is consistent with the applicable standards set forth in the watershed protection ordinance and the following conditions are met:
 

Example 1 The use will not endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;

Example 2 The use minimized impacts to water quality through the use of best management practices, clustered development and/or maximum setbacks from perennial waters;

Example 3 The use is vital to the continued growth and economic development of the Town of West Jefferson. The Board shall find a development as vital if one or more of the following are met:

  - a. The development when completed and fully occupied will increase the tax base of West Jefferson by at least \$1,000,000.00.

- b.** The development will create at least \_\_\_\_\_ full time employment positions not including construction and development of the use, or,
- c.** The development is an expansion or affiliate of an existing development located within the watershed and requires a location in close proximity to the existing facility.

Example 4 Consistent with the Town of West Jefferson industrial site survey, the industrial use cannot be alternatively located on another site outside of the designated water supply watershed;

Example 5 The use is consistent with the officially adopted land use plan for West Jefferson.

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

- 6.** In addition to any other requirements provided by this ordinance, the Board may designate additional permit conditions and requirements to assure that the use will be harmonious with the area in which it is proposed to be located and with the spirit of this ordinance. All additional conditions shall be entered in the minutes of the meeting, at which the permit is granted, on all plans and on the permit certificate. All conditions so imposed shall run with the land and shall be binding upon the applicant and the applicant's heirs, successors or assigns during the continuation of the permitted use.
- 7.** The Board shall issue a written ruling and make copies available at the office of the Zoning Administrator and the Town of West Jefferson Clerk.
  - a.** If the Board approves the application based on its findings, such approval shall be indicated on the permit and both copies of the site plan and both copies of the plans and specifications of the stormwater control structure (s). A high density development permit shall be issued after the applicant post a performance bond or other acceptable security and executes an operation and maintenance agreement. A copy of the permit and one copy of each set of plans shall be kept on file at the Zoning Administrator's office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service, or registered mail, return receipt requested.

## C. STORMWATER CONTROL STRUCTURES

1. All stormwater control structures shall be designed by either a North Carolina registered professional engineer or landscape architect, to the extent that the General Statutes, Chapter 89A allow. Other stormwater systems shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required; these registered professions are defined as professional engineers, landscape architects, to the extent the General Statutes, Chapter 89A allow and land surveyors to the extent the design represents incidental drainage within a subdivision, as provided in G.S. 89(c) - 3 (7).
2. All stormwater controls shall use wet detention ponds as a primary treatment system. Wet detention ponds shall be designed for specific pollutant removal according to modeling techniques approved by the NCDDEM. Specific requirements for these systems shall be in accordance with the following design criteria:
  - a. Wet detention ponds shall be designed to remove 85% of total suspended solids in the permanent pool and storage runoff from a one inch rainfall from the site above the permanent pool;
  - b. The designed runoff storage volume shall be above the permanent pool;
  - c. The discharge rate from these systems following the one inch rainfall design storm shall be such that the runoff does not draw down to the permanent pool level in less than two days and that the pond is drawn down to the permanent pool level within at least five days;
  - d. The mean permanent pool depth shall be a minimum three feet;
  - e. The inlet structure shall be designed to minimize turbulence using baffles or other appropriate design features;
  - f. Vegetative filters shall be constructed for the overflow and discharge of all stormwater wet detention ponds and shall be at least thirty feet in length. The slope and width of the vegetative filter shall be determined so as to provide a non-erosive velocity of flow-through the filter for a 10 year, 24 hour storm with a 10 year, 1 hour intensity with a slope of five percent or less. Vegetation in the filter shall be natural vegetation, grasses or artificially planted wetland vegetation appropriate for this site characteristics.

3. In addition to the vegetative filters required in Section 1.9(C) (2) (f), all land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within thirty days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the maintenance agreement described in Section 1.9(D) (3).
4. A description of the area containing the stormwater control structure shall be prepared and filed consistent as a separate deed with the Ashe County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include the detention pond, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs and reconstruction.
5. Qualifying areas of the stormwater control structure may be considered pervious when computing total built upon area. However, if the structure is used to compute the percentage built upon area for one site, it shall not be used to compute the built upon area for any other site or area.

#### **D. POSTING OF FINANCIAL SECURITY REQUIRED**

1. All new stormwater control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, repairs or reconstruction necessary for adequate performance of the stormwater control structures.
2. Financial assurance shall be in the form of the following:
  - a. Security performance bond or other security. The permit applicant shall obtain either a performance bond from a surety bonding company authorized to do business in North Carolina, an irrevocable letter of credit or other instrument readily convertible into cash at face value payable to the Town of West Jefferson or placed in escrow with a financial institution designated as an official depository of the Town of West Jefferson. The bond or instrument shall be in an amount equal to 1.25 times the total cost of the stormwater control structure, as estimated by the applicant and approved by the Watershed Review Board. The total cost of the stormwater control structure shall include the value of all materials such as piping and other structures, seeding and soil stabilization, design and engineering, and grading, excavation, fill, etc. The costs shall not be prorated as part of a larger project, but rather under the assumption of an independent mobilization.





2. Landscaping and grounds management shall be the responsibility of the owing entity. However, vegetation shall not be established or allowed to mature to the extent that the integrity of the control structure is diminished or threatened, or to the extent of interfering with any easement or access to the stormwater control structure.
3. Except for general landscaping and grounds management, the owning entity shall notify the Watershed Administrator prior to any repair or reconstruction of the stormwater control structure. All improvements shall be made consistent with the approved plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Zoning Administrator shall inspect the completed improvements and shall inform the owing entity of any required additions, changes or modifications and of the time period to complete said improvement. The Zoning Administrator may consult with an engineer or landscape architect (to the extent that the General Statutes, Chapter 89A allow), designated by the Watershed Review Board.
4. Amendments to the plans and specifications of the stormwater control structure and/or the operation and maintenance plan or manual shall be approved by the Watershed Review Board. Proposed changes shall be prepared by a North Carolina registered professional engineer or landscape architect and submitted to and reviewed by the Zoning Administrator prior to consideration by the Watershed Review Board.
  - a. If the Watershed Review Board approves the proposed changes, the owing entity of the stormwater control structure shall file sealed copies of the revisions with the Zoning Administrator.
  - b. If the Watershed Review Board disapproves the changes, the proposal may be revised and resubmitted to the Watershed Review Board as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.
5. If the Watershed Review Board finds that the operation and maintenance plan or manual is inadequate for any reason, the board shall notify the owing entity of any required changes and shall prepare and file copies of the revised agreement with the Ashe County Register of Deeds office, the Zoning Administrator, and the owing entity.

#### **F. APPLICATION AND INSPECTION FEES**

1. Processing and inspection fees shall be submitted in the form of a check or money order made payable to the Town of West Jefferson. Applications shall be returned if not accompanied by the required fee.

2. A permit and inspection fee schedule, as approved by the Town of West Jefferson Board of Aldermen, shall be posted in the office of the Zoning Administrator.
3. Inspection fees shall be valid for 60 days. An inspection fee shall be required when improvements are made to the stormwater control structure consistent with Section 1.9(E) (3), except in the case when a similar fee has been paid within the last 60 days.

## **G. INSPECTIONS AND RELEASE OF THE PERFORMANCE BOND**

1. The stormwater control structure shall be inspected by the Zoning Administrator after the owing entity notifies the Zoning Administrator all work has been completed. At this inspection, the owning entity shall provide:
  - a. The signed deed, related easements and survey plat for the stormwater control structure ready for filing with the Ashe County Register of Deeds;
  - b. A certification sealed by an engineer or landscape architect stating the stormwater control structure is complete and consistent with the approved plans and specifications.
2. The Zoning Administrator shall present the materials submitted by the developer and the inspection report and recommendations to the Watershed Review Board at its next regularly scheduled meeting.
  - a. If the Board approves the inspection report and accepts the certification, deed and easements, the Board shall file the deed and easements with the Ashe County Register of Deeds office, release up to seventy-five percent of the value of the performance bond or other security and issue a Watershed Protection Occupancy Permit for the storm water control structure.
  - b. If deficiencies are found, the Board shall direct that improvements and inspections be made and/or documents corrected and resubmitted to the board.
3. No sooner than one year after the filing date of the deed, easements and maintenance agreement, the developer may petition the Watershed Review Board to release the remaining value of the performance bond or other security. Upon receipt of said petition, the Zoning Administrator shall inspect the stormwater control structure to determine whether the controls are performing as designed and intended. The Zoning Administrator shall present the petition, inspection report and recommendations to the Watershed Review Board.
  - a. If the Board approves the report and accepts the petition, the developer shall deposit with the Watershed Review Board a cash amount equal to

that described herein after which, the Board shall release the performance bond or other security.

- b. If the Board does not accept the report and rejects the petition, the Board shall provide the developer with instructions to correct any deficiencies and all steps necessary for the release of the performance bond or other security.

#### **Section 1510. CLUSTER DEVELOPMENT**

Clustering of development is allowed in all Watershed Areas (except WS-I) under the following conditions.

- A. Built upon area or stormwater control requirements of the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.
- B. All built upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- C. The remainder of the tract shall remain in a vegetated or natural state. Where the development has an incorporated property owners association, the title of the open space area shall be conveyed to the association for management. Where a property association is not incorporated, a maintenance agreement shall be filed with the property needs.

#### **Section 1511. BUFFER AREAS REQUIRED**

- A. A minimum 30 foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial stream bank or shoreline stabilization is perennial waters for all new development activities that exceed the low density option.
- B. No new development is allowed in the buffer except for water dependent structures and public projects such as road crossings and greenways where no practical alternative exists. The activities should minimize built upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater best Management Practices.

#### **Section 1512. RULES GOVERNING THE INTERPRETATION OF WATERSHED AREA BOUNDARIES**

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

- A. Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.
- B. Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the Town of West Jefferson as evidence that one or more properties along these boundaries do not lie within the watershed area.
- C. Where the watershed area boundaries lie at a scaled distance more than twenty-five feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.
- D. Where the watershed area boundaries lie at a scaled distance, of twenty-five feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.
- E. Where other uncertainty exists, the Zoning Administrator shall interpret the Watershed Map as to the location of such boundaries. This decision may be appealed to the Board of Adjustment.

**Section 1513. EXISTING DEVELOPMENT.**

Any existing development may be continued subject to the provisions herein. Expansion of any structures within an existing development must meet all applicable requirements of this Ordinance. However, the build upon area of the existing development is not required to be included in the density calculations.

**Section 1514. WATERSHED PROTECTION PERMIT**

- A. Except where a single family residence is constructed on a lot deeded prior to the effective date of this ordinance, no building or built upon area shall be erected, moved, enlarged or structurally altered, nor shall any zoning or building permit be issued nor shall any change in the use of any building nor land be made until a Watershed Protection Permit has been issued by the Town Manager. No Watershed Protection Permit shall be issued except in conformity with the provisions of this ordinance.
- B. Watershed Protection Permit applications shall be filed with the Zoning Administrator. The application shall include a completed application form and supporting documentation deemed necessary by the Zoning Administrator.

- C. Prior to issuance of a watershed protection permit, the Zoning Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance.
- D. A watershed protection permit shall expire if a zoning or building permit for such use is not obtained by the applicant within twelve months from the date of issuance.

**Section 1515. WATERSHED OCCUPANCY PERMIT**

- A. The Zoning Administrator shall issue a watershed protection occupancy permit certifying that all requirements of this ordinance have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.
- B. A watershed protection occupancy permit, either for the whole or part of a building, shall be applied for coincident with the application for a watershed protection permit and shall be issued or denied within ten days after the erection or structural alterations of the building.
- C. When only a change in use of land or existing building occurs, the Zoning Administrator shall issue a watershed protection occupancy permit certifying that all requirements of this ordinance have been met coincident with the watershed protection permit.
- D. If the watershed protection occupancy permit is denied, the Zoning Administrator shall notify the applicant in writing stating the reasons for denial.
- E. No building or structure which has been erected, moved, or structurally altered may be occupied until the Zoning Administrator has approved and issued a watershed protection occupancy permit.

**Section 1516. PUBLIC HEALTH, IN GENERAL**

No activity, situation, structure or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety and welfare.

**Section 1517. ABATEMENT**

- A. The Zoning Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.
- B. The Zoning Administrator shall report all findings to the Watershed Review Board. The Zoning Administrator may consult with any public agency or official and request recommendations.

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

**ADDITIONAL REQUIREMENTS FOR VARIANCES WITHIN WATER  
SUPPLY WATERSHEDS**

- A. The Zoning Enforcement Officer shall notify in writing each local government having jurisdiction in the watershed and any entity using the water supply for consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the watershed administrator prior to a decision by the watershed review board. Such comments shall become a part of the record of proceedings of the watershed review board.
  
- B. If the application calls for the granting of a major variance, and if the watershed review board decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include: (1) the variance application; (2) the hearing notices; (3) the evidence presented; (4) motions, offers of proof, objections to evidence, and ruling on them; (5) proposed finding and exceptions; (6) the proposed decision, including all conditions proposed to be added to the permit. The preliminary record shall be sent to the Environmental Management Commission for its review as follows: (1) if the Commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the proposed variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the watershed review board. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance. (2) if the Commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure a reasonable return from or make a practical use of the property without the variance or the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed. A description of each project receiving a variance and the reason for granting the variance shall be submitted to the Commission on an annual basis, on or prior to January 1 of each year.

## DEFINITIONS

**Animal Unit** - a unit of measurement developed by the US EPA that is used to compare different types of animal operations.

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

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

**Built Upon Area** - built upon areas shall include that portion or a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities. (note: wooden slatted decks and the water area of a swimming pool are considered pervious).

**Cluster Development** - the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes non-residential development as well as single family residential subdivisions and multi-family developments that do not involve the subdivision of land.

**Composting Facility** - a facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

**Critical Area** - the area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed, whichever comes first, or one-half mile upstream from the intake located directly in the stream or river, or the ridge line of the watershed, whichever comes first. Since WS I watersheds are essentially undeveloped, establishment of a critical area is not required. Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

**Discharging Landfill** - a facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.



**Existing Development** - those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this ordinance based on at least one of the following criteria: (1) substantial expenditures of resources based on a good faith reliance upon having received a valid local government approval to proceed with the project; or (2) having an outstanding valid building permit as authorized by the General Statutes; or (3) having expended substantial resources and having an approved site specific or phased development plan as authorized in the General Statutes.

**Existing Lot** - a lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

**Hazardous Material** - any substance listed as such in SARA section 302, extremely hazardous substances, CERCLA hazardous substances, or section 311 of CWA.

**Industrial Development** - any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

**Major Variance** - a variance that results in any one or more of the following: (1) a complete waiver of a management requirement; (2) the relaxation, by a factor of more than ten percent, of any management requirement that takes the form of a numerical standard; (3) the relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.

**Minor Variance** - a variance that does not qualify as a major variance.

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

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

**Protected Area** - the area within a designated water supply watershed that is not a critical area as defined in this ordinance.

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

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

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

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

**Watershed** - the entire land area contributing surface drainage to a specific point.

### **WORD INTERPRETATION**

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

Words in the present tense include the future tense.

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

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

The word structure shall include the words plot, parcel, or tract.

The word lot shall include the words plot, parcel, or tract.

The word shall is always mandatory and not merely directory.

The word will is always mandatory and not merely directory.

The words used or occupied include the words intended, designed, or arranged to be used or occupied.

Terms not herein defined shall have the meanings customarily assigned to them.

**TOWN OF WEST JEFFERSON  
HAZARDOUS MATERIALS SPILLS PLAN  
WATERSHED AREAS**

**1.** This plan predetermines, to the extent possible, actions to be taken by the emergency organizations of the Town of West Jefferson and cooperating private institutions to prevent hazardous chemical spills in watershed areas, if possible; to establish capabilities for protecting citizens and the watershed from the effects of spills; to respond effectively to the actual occurrence of disasters; and to provide for recovery in the aftermath of any emergency involving extensive damage or other debilitating influence on the normal pattern of life within the community. Only a small portion of the Town of West Jefferson is located within the watershed, however, preventing any spill of hazardous materials is crucial to the health and environmental well being of the Town.

**2. SITUATION AND ASSUMPTIONS**

**A.** Situations. The Town of West Jefferson's watershed area is exposed to many hazardous materials all of which have the potential to disrupt the community, cause damage to the land, and create casualties. Possible hazards include release of toxins by spill, release of toxic gases by accidental release or fire, major transportation accidents involving hazardous materials, or acts of nature that would subject the land and water to hazardous materials.

**B.** Assumptions. (1) The municipal governments and industry within the watershed area involving hazardous materials, in addition to the county, are primarily responsible for emergency actions and will commit all available resources to save lives, avoid injury to persons, and minimize damage to property and water. (2) While it is likely that outside assistance would be available in most large scale disaster situations affecting the Town and while plans have been developed to facilitate coordination of this assistance, it is necessary for West Jefferson to plan for and be prepared to carry out disaster response and short term recovery operations on an independent basis.

**3. WATERSHED AREA DELINEATION**

The watershed area covers a small part of the south end of the Town of West Jefferson.

#### 4. SPECIFIC THREATS TO THE WATERSHED

- A.** Hazardous Materials Found Most in Watershed Boundaries. Three hazardous materials, specific and non-specific, have been reported to the Ashe County Emergency Management Office under Title III of the Superfund Amendment Reauthorization Act of 1986 and are located within the watershed. Of these, all are listed in the US Department of Transportation's Emergency Response Guidebook of Hazardous Materials. The hazardous materials that were found in the reports are listed below, in no particular order:
- Gasoline
  - Diesel Fuel
  - Kerosene

- B.** Facilities with the Most Hazardous Materials. The Town of West Jefferson is host to many different types of services and industry.

It should be noted that agricultural uses (such as all farms, nurseries, and pesticide companies) and retail stores (such as pharmacies, hardware, and grocery stores) are exempt from having to file a SARA Title III report with any emergency agency, yet pose a very real threat to the quality of water in West Jefferson, were a hazardous material incident to occur.

- C.** Hazardous Materials Found in Greatest Quantities. These hazardous materials are found most often and/or in greatest amounts throughout Ashe County, in no particular order.
- Gasoline found at service stations, their suppliers, and large industries with their own transportation services.
  - Diesel fuel same as gasoline
  - Kerosene found at service stations and distribution companies.
  - Fuel oil found in tanks at homes that utilize heating oil.
- D.** Major Transportation Passageways. A current map of Ashe County better delineates the major transportation passageways.

- i. Highways US 221 runs north and south across the county, from Scottsville to Deep Gap, serving as the primary access to US 421 in Watauga County and US 21 in Alleghany County. It passes through both the Town of Jefferson and the Town of West Jefferson. NC 194 crosses the county north and south, passing through the Town of West Jefferson. It serves as a transportation route from Watauga County, NC, to Grayson County, VA.

## 5. SPILL PREVENTION AND CONTAINMENT PLAN

- A. **Organization and Assignment of Responsibilities.** The Ashe County Emergency Management Office has final responsibility for reporting all hazardous materials incidents. Any West Jefferson emergency services personnel may report a hazardous materials incident. The organization of the Emergency Management office and the responsibilities of the agencies involved in a hazardous materials incident are better described in Appendix #2, which is the Ashe County Hazardous Material Appendix to the Emergency Operations Plan. It lists the jurisdictional, state, and federal agencies and their duties.
- B. **Spill Notification Procedures.** There are two ways of notifying the Ashe County Emergency Management Office of a hazardous material spill. By phone a person may report a hazardous material spill by calling the West Jefferson Police Department at 910-246-9410 or the Ashe County Office of Emergency Management directly at 910-246-8492, between the hours of 8:00 am and 5:00 pm, weekdays. On weekends and after office hours, a person should call the Ashe County Communications Center, 911, and report the incident. By radio an emergency responder on the scene should report a hazardous material spill to the Emergency Management Coordinator/Fire Marshall by radio. If they do not know the coordinator's I.D. number, they may radio back to the Ashe County Communications Center base and have the EM Coordinator paged. Upon receiving notification of the incident, the coordinator will direct the handling of the situation and write a report on the incident to be filed with the North Carolina Division of Emergency Management. A copy is kept on file in the Ashe County Emergency Management office.
- C. **Training Needs of Emergency Response Personnel.** In Ashe County HAZMAT Awareness (Level I) training is available to all emergency response personnel through the community college system. The Town of West Jefferson currently maintains a volunteer fire department for the Town that includes personnel trained to the HAZMAT Awareness Level (Level I). All DOI-certified Level I County fire fighters are trained to the HAZMAT Awareness Level. Awareness-level training is maintained by each individual fire station and rescue squad in keeping with the NC Department of Insurance requirements for certification.

**D.** Spill Containment Protective Equipment. Generally, neither the Town of West Jefferson nor Ashe County emergency services participate in the clean-up process of a HAZMAT spill. The emergency services personnel will secure the area until a contractor, such as Four Seasons out of Greensboro or STAT out of Lenoir is called in to remove the hazardous waste and contaminated materials. Some of the county fire departments have containment materials. (Such as buoys, Speed-Dry, and other absorbent materials) used to keep spilled hazardous materials under control until the clean-up effort can begin. In addition, hay or straw is available to soak up hazardous liquids. The contaminated hay or straw is then disposed of by the clean-up company.

**6. SUMMARY**

Even though the Town of West Jefferson has only a small portion of the incorporated limits located within the watershed protection area, it is still crucial to the well-being and health of Town residents and the land to prevent hazardous materials incidents. Beside the hazards presented by the one fixed facility within the Town limits, transportation accidents are the main source of possible hazardous materials incidents. If prevention measures fail, resources are available to West Jefferson (both in and out of the county) to contain and remove contaminated materials.

Reporting Ranges (for maximum and Average Amount reporting)

Range Value	Weight Range in Pounds (from to)	
01	0	to 99
02	100	to 999
03	1000	to 9,999
04	10,000	to 99,999
05	100,000	to 999,999
06	1,000,000	to 9,999,999
07	10,000,000	to 49,999,999
08	50,000,000	to 99,999,999
09	100,000,000	to 499,999,999
10	500,000,000	to 999,999,999
11	1 billion	to higher than 1 billion