APPENDIX H - Watershed Protection Ordinance

H-1 AUTHORITY AND GENERAL REGULATIONS

(1) Authority and Enactment

The Legislature of the State of North Carolina has, in Chapter 160A, Article 8, Section 174, General Ordinance Authority; and in Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Governing Board of the Town of Siler City does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of the Town of Siler City.

(2) Jurisdiction

The provisions of this Ordinance shall apply within the areas designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission and shall be defined and established on the map entitled, "Watershed Protection Map of the Town of Siler City, North Carolina" ("the Watershed Map"), which is adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies is hereby made a part of this Ordinance. This Ordinance shall be permanently kept on file in the office of the Siler City Town Clerk.

(3) Exceptions to Applicability

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

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

c. Existing development, as defined in this ordinance, is not subject to the requirements of this ordinance. Expansions to structures classified as existing
development must meet the requirements of this ordinance; however, the built-upon area of the existing development is not required to be included in the density calculations.

d. If a nonconforming lot of record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this ordinance if it is developed for single-family purposes. See Section 307(A) (2) regarding the recombination of existing lots.

(4) **Criminal Penalties**

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

(5) **Remedies**

a. If any subdivision, development and/or land use is found to be in violation of this Ordinance, the Town of Siler City Governing Board may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of $100.00, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

b. If the Watershed Administrator finds that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board.

(6) **Severability**

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

(7) Effective Date


H-2 SUBDIVISION REGULATIONS

(1) General Provisions

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

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

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

d. All subdivisions of land within the jurisdiction of Town of Siler City after the effective date of this ordinance shall require a plat to be prepared, approved, and recorded pursuant to this ordinance.

(2) Subdivision Application and Review Procedures

a. All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting a vicinity map to the Watershed Administrator to determine whether or not the property is located within the designated Public Water Supply Watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this ordinance and may be recorded provided the Watershed Administrator initials the vicinity map. Subdivisions within the designated watershed area shall comply with the provisions of this Article and all other state and local requirements that may apply.

b. Subdivision applications shall be filed with the Watershed Administrator. The application shall include a completed application form, two (2) copies of
the plat and supporting documentation deemed necessary by the Watershed Administrator or the Watershed Review Board.

c. The Watershed Administrator shall review the completed application and shall either approve, approve conditionally or disapprove each application. The Watershed Administrator shall take final action within forty-five (45) days of submission of the application. The Watershed Administrator or the Board may provide public agencies an opportunity to review and make recommendations. However, failure of the agencies to submit their comments and recommendations shall not delay action within the prescribed time limit. Said public agencies may include, but are not limited to, the following:

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

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

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

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

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

**Certificate of Approval for Recording**

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

________________          ________________________________
Date                  Watershed Administrator

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

e. If the Watershed Administrator disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant and entered in the minutes. The subdivider may make changes and

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submit a revised plan, which shall constitute a separate request for the purpose of review.

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

g. The plat shall be recorded within thirty (30) days of approval. The subdivider shall provide the Watershed Administrator with evidence the plat has been recorded with the Register of Deeds within five (5) working days.

(3) Subdivision standards and required improvements

a. All lots shall provide adequate building space in accordance with the development standards contained in H-3. Lots which are smaller than the minimum required for residential lots may be developed using build-upon area criteria in accordance with H-3.

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

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

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

e. Roads constructed in critical areas and watershed buffer areas. Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed so to minimize their impact on water quality. Developers must minimize built-upon surface area and direct stormwater runoff away from surface waters.

(4) Construction Procedures

a. No construction or installation of improvements shall commence in a proposed subdivision until a subdivision plat has been approved by the Watershed Administrator.
b. No building or other permits shall be issued for erection of a structure on a lot not of record at the time of adoption of this Ordinance until all requirements of this Ordinance have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection.

(5) Penalties for Transferring Lots in Unapproved Subdivisions

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the Town of Siler City, thereafter subdivides his land in violation of this ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this ordinance and recorded in the office of the register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The Town of Siler City may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate finds, issue an injunction and order requiring the offending party to comply with this ordinance.

H-3 DEVELOPMENT REGULATIONS

(1) Establishment of Watershed Areas

The purpose of the Article is to list and describe the watershed areas herein adopted. For purposes of this ordinance the Town of Siler City and its extraterritorial jurisdiction are hereby divided into the following area(s), as appropriate:

a. WS-III-CA (Critical Area)
b. WS-III-BW (Balance of Watershed)

(2) Watershed Areas Described

a. WS-III Watershed Areas - Critical Area (WS-III-CA). In order to maintain a low to moderate land use intensity pattern, single family residential uses are allowed at a maximum of one (1) dwelling unit per acre. All other residential and non-residential development shall be allowed to a maximum of twelve percent (12%) built-upon area. New sludge application sites and landfills are specifically prohibited.

i. Allowed Uses:

maintain a minimum ten (10) foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial water indicated on the most recent versions of U.S.G.S. 1:24,700 (7.5 minute) scale topographic maps or as determined by local government studies, Animal operations greater than 100 animal units shall employ Best Management Practices by July 1, 1995 recommended by the Soil and Water Conservation Commission.

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

3. Residential.

4. Non-residential development, excluding: 1) the storage of toxic and hazardous materials unless a spill containment plan is implemented, 2) landfills, and 3) sites for land application of sludge/residuals or petroleum contaminated soils. New industrial development is required to incorporate adequately designed, constructed, and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises.

ii Density and Built-upon Limits:

1. Single-family residential development shall not exceed one dwelling unit per acre on a project-by-project basis. No residential lot shall be less than one acre, except within an approved cluster development.

2. All Other Residential and Non-Residential development shall not exceed twelve percent (12%) built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

b. WS-III Watershed Areas - Balance of Watershed (WS-III-BW). In order to maintain a low to moderate land use intensity pattern, single family detached uses shall develop at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed a maximum of twenty-four percent (24%) built-upon area. In addition, new development and expansions to existing development may occupy ten percent (10%) of the watershed with a seventy percent (70%) built-upon area when approved as a special intensity allocation (SIA). The Watershed Administrator is authorized
to approve SIAs consistent with the provisions of this ordinance. Projects must minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and sludge application sites are allowed. NOTE: Ten percent is based on Town’s jurisdiction of Watershed as of July 1, 1993. The ten percent does not increase due to annexations or expansion of the extraterritorial jurisdiction.

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### i Allowed Uses:


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

3. Residential development.

4. Non-residential development excluding discharging landfills and the storage of toxic and hazardous materials unless a spill containment plan is implemented.

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### ii Density and Built-upon Limits:

1. Single-family residential development shall not exceed two (2) dwelling units per acre, as defined on a project-by-project basis. No residential lot shall be less than one-half (1/2) acre, except within an approved cluster development.

2. New development and expansions to existing development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis except that up to ten percent (10%) of the balance of the watershed may be developed for uses to seventy percent (70%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

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### (3) Cluster Development

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

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a. Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single-family detached developments in Section 302. Built-upon area 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. The title to the open space area shall be conveyed to an incorporated homeowners association for management: to a local government for preservation as park or open space: or to a conservation organization for preservation a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

(4) Buffer Areas Required

a. A minimum one hundred (100) foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.

b. No new development is allowed in the buffer except for water dependent structures and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater Best Management Practices.

(5) Rules Governing the Interpretation of Watershed Area Boundaries

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

a. Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.

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

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

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

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

(6) Application of Regulations

a. No building or land shall hereafter be used and no development shall take
place except in conformity with the regulations herein specified for the
watershed area in which it is located.

b. No area required for the purpose of complying with the provisions of this
ordinance shall be included in the area required for another building.

c. Every residential building hereafter erected, moved or structurally altered
shall be located on a lot which conforms to the regulations herein specified,
except as permitted in Section H-3(7).

d. If a use or class of use is not specifically indicated as being allowed in a
watershed area, such use or class of use is prohibited.

(7) Existing Development

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

a. Vacant Lots. This category consists of vacant lots for which plats or deeds
have been recorded in the office of the Register of Deeds of (County). Lots
may be used for any of the uses allowed in the watershed area in which it is
located, provided the following:
i Where the lot area is below the minimum specified in this ordinance the Watershed Administrator is authorized to issue a watershed protection permit.

ii Notwithstanding the foregoing, whenever two or more contiguous residential vacant lots of record are in single ownership at any time after the adoption of this ordinance and such lots individually have less area than the minimum requirements for residential purposes for the watershed area in which such lots are located, such lots shall be combined to create one or more lots that meet the standards of this ordinance, or if this is impossible, reduce to the extent possible the nonconformity of the lots.

b. Occupied Lots. This category consists of lots, occupied for residential purposes at the time of the adoption of this ordinance. These lots may continue to be used provided that whenever two or more adjoining lots of record, one of which is this ordinance, and such lots individually or together have less area than the minimum requirements for residential purposes for the watershed area in which they are located, such lots shall be combined to create lots which meet the minimum size-requirements or which minimize the degree of nonconformity.

c. Uses of Land. This category consists of uses existing at the time of adoption of this ordinance where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:

i When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.

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

iii When such use ceases for a period of at least one year, it shall not be reestablished.

d. Reconstruction of Buildings or Built-upon Areas. Any existing building or built-upon area not in conformance with the restrictions of this ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single family residential development, provided:
i Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.

ii The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

(8) **Watershed Protection Permit**

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

b. Watershed Protection Permit applications shall be filed with the Watershed Administrator. The applications shall include a completed application form and supporting documentation deemed necessary by the Watershed Administrator.

c. Prior to issuance of a Watershed Protection Permit, the Watershed Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance.

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

(9) **Building Permit Required**

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

(10) **Watershed Protection Occupancy Permit**

a. The Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this ordinance have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.
b. A Watershed Protection Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Watershed Protection Permit and shall be issued or denied within ten (10) days after the erection or structural alterations of the building.

c. When only a change in use of land or existing building occurs, the Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this ordinance have been met coincident with the Watershed Protection Permit.

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

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

H-4 PUBLIC HEALTH REGULATIONS

(1) Public Health, in general

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

(2) Abatement

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

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

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

(1) Watershed Administrator and Duties thereof

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

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

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

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

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

e. The Watershed Administrator is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of his responsibility the full police power of the Town of Siler City. The Watershed Administrator, or his duly authorized representative may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this Ordinance.

f. The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted each calendar year to the Division of Water Quality on or before January 1st for the following calendar year and shall provide a description of each project receiving a variance and the reasons for granting the variance.
(2) Appeal from the Watershed Administrator

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

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

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

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

(3) Changes and Amendments to the Watershed Protection Ordinance

a. The Town Governing Board may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restriction as described herein.

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

c. Under no circumstances shall the Town Board adopt such amendments, supplements or changes that would cause this ordinance to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the N.C.
Division of Water Quality, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

(4) **Public Notice and Hearing Required**

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

(5) **Establishment of Watershed Review Board**

There shall be and hereby is created the Watershed Review Board consisting of the Siler City Planning Board as selected by the Governing Board.

(6) **Rules of Conduct for Members**

Members of the Board may be removed by the Town Governing Board for cause, including violation of the rules stated below:

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

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

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

d. Members of the Board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.
e. Members of the Board shall give notice to the chairman at least forty-eight (48) hours prior to the hearing of any potential conflict of interest, which he has in a particular case before the Board.

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

(7) **Powers and Duties of the Watershed Review Board**

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

b. Variances. The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this Ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this Ordinance will result in practical difficulties or unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done. In addition, the Town shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered and the entity using the water supply for consumption.

i. Application for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:

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

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

   3. The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed. Such notice shall
include a description of the variance being requested. Local
governments receiving notice of the variance request may submit
comments to the Watershed Administrator prior to a decision by
the Watershed Review Board. Such comments shall become a part
the record of proceedings of the Watershed Review Board.

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

1. There are practical difficulties or unnecessary hardships in the way
of carrying out the strict letter of the Ordinance. In order to
determine that there are practical difficulties or unnecessary
hardships, the Board must find that the five following conditions
exist:

   A. If he complies with the provisions of the Ordinance, the
      applicant can secure no reasonable return from, nor make
      reasonable use of, his property. Merely proving that the
      variance would permit a greater profit to be made from the
      property will no be considered adequate to justify the Board
      in granting an variance. Moreover, the Board shall consider
      whether the variance is the minimum possible deviation
      from the terms of the Ordinance that will make possible the
      reasonable use of his property.

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

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

   D. The hardship is not the result of the actions of an applicant
      who knowingly or unknowingly violates the Ordinance, or
      who purchases the property after the effective date of the
      Ordinance, and then comes to the Board for relief.

   E. The hardship is peculiar to the applicant's property, rather
      that the result of conditions that are widespread. If other
      properties are equally subject to the hardship created in the
      restriction, then granting a variance would be a special
privilege denied to others, and would no promote equal justice.

2. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.

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

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

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

v A variance issued in accordance with this Section shall be considered a Watershed Protection Permit and shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within six (6) months from the date of the decision.

vi 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 findings and exceptions;
6. The proposed decision, including all conditions proposed to be added to the permit.

vii The preliminary record shall be sent to the Environmental Management Commission for its review as follows:

Appendix H-19
1. If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

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

c. Subdivision approval. See H-2

d. Public Health. See H-4

(8) **Appeals from the Watershed Review Board**

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

**H-6 DEFINITIONS**

(1) **General Definitions**

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

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

d. **Building.** Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall no be deemed to make them one building.

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

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

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

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

i. **Customary Home Occupations.** Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over twenty-five percent (25%) of the total floor occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, etc.

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

k. **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.

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

m. **Existing Development.** Those project 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:

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

   ii. having an outstanding valid building permit as authorized by the General Statutes (G.S. 160A-385.1), or

   iii. having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1).

n. **Existing Lot (Lot of Record).** A lot which is part of a subdivision, a plat of which as 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.

o. **Family.** One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage or adoption, no such family shall contain over five persons, but further provided that domestic servants employed or living on the premises may be housed on the premises without being counted as a family or families.

p. **Hazardous Material.** Any substance listed as such in SARA section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

q. **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.

r. **Landfill.** A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the N.C. General Statutes. For the purposes of this ordinance this term does no include composting facilities.

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

t. **Major Variance.** A variance from the minimum statewide watershed protection rules that results in the relaxation, by a factor greater than five percent of any buffer, density or built-upon area requirement under the high density option; any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system; or relaxation by a factor greater than 10 percent, of any management requirement under the low density option.

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

v. **Non-conforming Lot of Record.** A lot described by a plat or a deed that was recorded prior to the effective date of this ordinance that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.
w. **Non-residential Development.** All development other than residential development, agriculture and silviculture.

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

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

z. **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.

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

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

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

dd. **Subdivision.** All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized this ordinance:

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

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

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

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

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

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

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

gg. **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.

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

ii. **Watershed Administrator.** An official or designated person of the Town responsible for administration and enforcement of this ordinance.

(2) **Word Interpretation**

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

a. Words in the present tense include the future tense.

b. 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.

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

d. The word "structure" shall include the word "building"
e. The word "lot" shall include the words, "plot," "parcel," or "tract."

f. The word "shall" is always mandatory and not merely directory.

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