SUBMISSION OF THE CITY OF ROXBORO, PERSON COUNTY, AND TOWN OF YANCEYVILLE IN OPPOSITION TO CASWELL COUNTY'S PETITION FOR RECLASSIFICATION OF A PORTION OF THE DAN RIVER

TO: Tom Reeder, Director
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RE: Waterbody Name: Dan River (North Carolina portion)
Index #: 22-(49.5) and 22-(55.5)
Current Classification: WS-IV & WS-IV CA respectively
Request Classification: C

Pursuant to 15A NCAC 02I.0203 and 15A NCAC 02I.0502, the City of Roxboro, Person County, and the Town of Yanceyville, through their General Counsel listed above and with the authority of the governing boards of these units of local governments, provide this Submission in opposition to Caswell County's August 19, 2013 petition for reclassification of a portion of the Dan River to the Committee of the Environmental Management Commission. Pursuant to 15A NCAC 02I.0502(e), the City of Roxboro, Person County, and the Town of Yanceyville respectfully request that the Chairman of the Committee permit the above-listed General Counsel to present the viewpoints of those local governments to the Committee in opposition to Caswell County's petition.

This Submission (with supporting materials) provides the following: I. A Summary of Events Leading Up To Caswell County's Petition; II. Why the EMC's Current Classification of the Dan River to Secure a Long-Term, Future Water Supply for Caswell County, Person County, and the Municipalities Therein Should Not Be Reversed; and III. Why the EMC's Current Classification of the Dan River Should Not be Reversed Due to the Requirement that Caswell County Adopt an Appropriate Watershed Protection Ordinance. For the reasons below, Roxboro, Person County and Yanceyville respectfully pray that this Committee recommend that the EMC deny Caswell County's petition under 15A NCAC 02I. 0503 (b)(2).

I. Summary of Events Leading Up To Caswell County's Petition.

(1) On March 1, 2002, Roxboro submitted an application to the State to request reclassification of the Dan River to allow it to be used as a water supply source.

(2) On March 25, 2003, Roxboro, Person County, and Yanceyville (not then including Caswell County) entered into an Interlocal Agreement regarding the use of the Dan River water source. (The main features of this Agreement are identical to those contained in the current 2008 Interlocal Agreement to which Caswell County is also a party, see paragraphs (6) and (7) below).

(3) Pursuant to the 2003 Agreement, Yanceyville acquired the land in Caswell County necessary for the in-take site on the Dan River; and Caswell County filed a declaratory judgment action, contending that this property acquisition was unlawful.

(4) The trial court granted summary judgment against Caswell County, and the Court of Appeals affirmed the trial court's ruling in a decision filed on May 3, 2005. *Caswell County v. Town of Yanceyville, et al.*, 170 N.C. App. 124, 611 S.E.2d 451 (2005). (See Exhibit A).

(5) The Court of Appeals' decision expressly rejected Caswell County's contention that the acquisition of the in-take site was unjustified by any water-supply need, stating that "the additional source of water [from the Dan River] allows for greater future growth and expansion even in the absence of immediate need." 170 N.C. App. at 130.

(6) In July 2008, a new Interlocal Agreement was entered into that was essentially identical to the 2003 Agreement, except that Caswell County joined the new Agreement. It obligated Caswell County to (a) cooperate with and support all other parties in the acquisition of

all permits for the project, (b) enact a water supply watershed management protection ordinance as required by the EMC and N.C. Gen. Stat. 143-214.5, and (c) cooperate and supply to the Sate such documents requested or needed to show support for the project. See 2008 Interlocal Agreement at §§ 7.3 through 7.5. This new Agreement provided that, if Caswell County breached the Agreement, Caswell County would pay to Roxboro and Person County essentially all costs and other expenses or damages associated with obtaining regulatory approval for the project. See 2008 Interlocal Agreement at §§ 14.5, 14.6, and 14.8 at Exhibit B.

(7) The 2008 Interlocal Agreement, which is a 40-year Agreement, recited as its purpose the establishment of "a public enterprise for an interconnected and regional water supply and distribution system that will (1) serve the current and long-term water supply needs of Yanceyville, Caswell County, Roxboro and Person County; (2) accommodate industrial, commercial, and residential development within the jurisdiction of those units of local government; and (3) provide Yanceyville with the revenue to operate, maintain, and repair a water supply system and for the benefit of uses in Caswell County." Interlocal Agreement at § 1.6 at Exhibit B.

(8) The Interlocal Agreement calls for Roxboro to construct a raw water intake, pump station, pretreatment facility, and meter vault at the Dan River (the "Point of Connection"), along with a raw water line across Caswell County and through Person County to Roxboro's Water Treatment Plant at Lake Isaac Walton in Person County (see Section 3 of the Agreement). The Agreement calls for Yanceyville to construct a raw water line in Caswell County from the Point of Connection to Yanceyville's existing Water Treatment Plant in Yanceyville, along with a water treatment unit and high service pump station at the raw water intake site with a finish water line from the water treatment unit to the water distribution system of the Town of Milton in Caswell County (see Section 4 of the Agreement). These water lines are specifically designed to be interconnected to serve Caswell County and Person County, and "[n]o party to [the[Agreement envisions selling any water to any unit of local government or other entity or person outside of Person and/or Caswell County." (See Section 8 of the Agreement). Under the Agreement, all financial responsibility for the construction of this water system will be borne by Roxboro, Person County, and Yanceyville; and the Agreement places no financial responsibility upon Caswell County in connection with any of these water-system facilities. (See Agreement at Sections 10 and 11).

(9) At the time of the Court of Appeals' decision referred to in paragraph (5) above, the costs to Roxboro and Person County for the Project under the Interlocal Agreement were approximately $500,000. Today, those costs exceed $895,000, including Fiscal Year 2013-14. (Exhibit C).

(10) On May 10, 2012, the Caswell County Commissioners passed a Resolution to "oppose[] The Reclassification of the Dan River and also oppose any local bill or Administrative Rule supporting the Reclassification." (Exhibit D).

(11) On May 15, 2012, the Caswell County Commissioners passed a Resolution to petition the State to get the Dan River Reclassification delayed, notwithstanding Sections 7.3 and 7.5 of the Interlocal Agreement that mandated Caswell County's cooperation and support for all

permits necessary for using the Dan River as a future water source for the benefit of the parties. (Exhibit E). On May 18, 2012 (pursuant to the May 15, 2012 Resolution), the Chairman of the Caswell County Board of Commissioners sent a letter to Representative Bill Faison, Senator Rick Gunn, the North Carolina House of Representatives and North Carolina Senate requesting legislation to oppose the reclassification. (Exhibit F).

(12) The North Carolina Legislature took no action on the request to delay or oppose the reclassification.

(13) On July 3, 2012, the EMC reclassified the Dan River in Caswell County from Class C to Class WS-IV; and the County was ordered by DENR to enact an appropriate ordinance to protect this water supply under the Water Supply Watershed Protection Act (G.S. 143-214.5) by March 30, 2013. (Exhibit G).

(14) On April 15, 2013, Caswell County held a public hearing about the need to amend the County's Water Supply Watershed Protection ordinance as required by DENR. Comments by citizens at the public hearing reflected the following: (a) Roxboro was taking land away from the County; (b) there is no immediate need for a new water supply; (c) Roxboro intends to sell Dan River water to Durham and Wake County; (d) Caswell County's water and future industry are being stolen; and (e) future State regulations may restrict even further land uses along the Dan River. (Exhibit H).

(15) On June 3, 2013, the Caswell County Commissioners (by a 4-3 vote) approved a resolution to petition the EMC to change the WS-IV reclassification back to a Class C classification. (Exhibit I).

(16) NCDENR gave Caswell County an extension of time to enact a Water Supply Watershed Protection ordinance by June 17, 2013. No ordinance has been enacted to date, pending consideration of the County's instant petition.

(17) On July 9, 2013 the City of Roxboro, pursuant to its commitments under the Interlocal Agreement, passed a Resolution to Authorize the Design of the Intake at the Dan River at a cost of $110,000, and that design work is currently underway.

(18) On August 19, 2013, Caswell County filed its instant Petition for Reclassification of a Portion of the Dan River.

(19) From 2002 to date, Caswell County has consistently adhered to two propositions: (a) the Dan River water source is essentially owned by or is exclusively reserved to Caswell County use, and (b) the enactment of a Water Supply Watershed Protection Ordinance would unduly disrupt (now or in the future) private land activity in the County along the Dan River.

II. Why The EMC's Current Classification Of The Dan River To Secure A Long-Term, Future Water Supply For Caswell County, Person County, and the Municipalities Therein Should Not Be Reversed.

Caswell County contends in its petition that "[t]he Yanceyville water system has more than sufficient water supplies to meet its current and anticipated future needs including anticipated growth," and that "[u]pon information and belief, there is no current need for potable water from [the Dan River] source for either Roxboro or Person County, other than for an emergency water supply." This "no immediate water need" contention is an entirely misplaced ground for reversing the EMC's current classification of the Dan River water source for three reasons.

First, the EMC's classification decision of July 3, 2012 spanned over 10 years of study, deliberation, and public hearings on the merits of this classification, which was originally requested on March 1, 2002. Thus, Caswell County's wholly conclusory and unsubstantiated assertion about current water needs in the region (and future needs) is no cause to reverse the results of a decade-long, deliberative decision.

Second, Caswell County seeks to reverse a decision that has involved the expenditure of nearly $1 million dollars of taxpayer funds from Roxboro, Person County, and Yanceyville collectively. This expenditure does not include the considerable resources utilized and paid for by the State in connection with the lengthy and deliberative rule-making process that culminated in the EMC's current decision. In contrast, Caswell County has neither (1) expended any funds in connection with securing the Dan River as a future water supply source (notwithstanding its affirmative obligations under the Interlocal Agreement to otherwise support that effort) nor (2) obligated itself to expend any funds for the extensive water-supply infrastructure called for in the Agreement (notwithstanding all of the benefits that the County will gratuitously receive from that infrastructure).

Third, Caswell County overlooks the quintessential purpose of the EMC's current decision and the Interlocal Agreement that the County joined in furtherance of that purpose — to secure a future and long-standing water source for the benefit of Caswell County, Person County, and the municipalities in those counties. As expressly stated in the Interlocal Agreement, signed by Caswell County:

> The purpose of this Agreement is to establish a public enterprise for a water supply and distribution system and inter-governmental approach for supplying raw water services to Yanceyville, Roxboro, Person County, the Town of Milton, and other areas of Caswell County. The availability of raw water services is vital to the public health, welfare, and economic growth of these units of local government.

(Exhibit B at § 1.1). As mentioned above, the legitimacy of this very purpose was recited by the North Carolina Court of Appeals in *Caswell County v. Town of Yanceyville, City of Roxboro and Person County*, 170 N.C. App. 124, 130, 611 S.E.2d 451 (2005), wherein the Court rejected Caswell County's "no immediate water need" contention and upheld Yanceyville's acquisition

of the land for the in-take site at the Dan River by stating that "the additional source of water [from the Dan River] allows for greater growth and expansion even in the absence of immediate need," particularly when immediate needs have been static in the face of an on-going recession.[1]

In sum, after more than a decade of study and deliberation, the expenditure of nearly $1 million of taxpayer funds, the collaborative efforts of Roxboro, Person County, Yanceyville (and Caswell County when it joined the Interlocal Agreement), the affirmance of our judiciary, and the lengthy and transparent rule-making process of the EMC — all parties involved have endorsed the wisdom of the current classification of the Dan River as a long-term, future water source for this vital region of our State. That decision should not be reversed at the mere request of a bare majority of Caswell County Commissioners who now think otherwise.

III. Why The EMC's Current Classification Of The Dan River Should Not Be Reversed Due To The Requirement That Caswell County Adopt An Appropriate Watershed Protection Ordinance.

Caswell County further contends in its petition that the EMC's current classification of the Dan River "requires the imposition of unnecessary restrictions on land use within the County. . . and imposes economic restrictions on development and growth in the affected area of Caswell County." This contention is entirely misplaced because Caswell County's obligation to adopt an appropriate Watershed Protection Ordinance poses no economic or other undue burden on landowners whose lands would be subject to that ordinance. This is so for two reasons.

First, as explained by Caswell County Planner, Mr. B. Collie, at the County's April 15, 2013 public hearing (see Exhibit H) after which the Commissioners authorized the filing of the instant petition, the adoption of a Watershed Protection Ordinance would have virtually no effect on existing land use in the County along the Dan River:

> The WS-IV rules [under a Watershed Protection Ordinance, see Exhibit K] will only apply to new development projects. They require a sedimentation and erosion control plan. A sedimentation and erosion plan is requested when you are disturbing more than one acre of land. If you are not disturbing over an acre of land, then you are not affected. As such, residential projects involved in the construction of a single family home and small commercial projects would likely be exempt. All the current land uses are grandfathered [such that] landowners on the Dan River can continue to operate on their land [in] the same [way] as before the reclassification. These rules will not affect the current minimum lot size; single family residential uses are allowed with a maximum of two dwelling units per acre. Our current subdivision standards only allow one dwelling unit per acre and will still supersede that. Forestry and farming practices are not affected in this reclassification. All other residential and non-residential

[1] In spite of the recession, in the past few years, at least three new companies have considered locating in Person County. The water needs of one of them would have required drawing water from the Dan River within a year, and each of the other two companies would have had water requirements of over 6 million gallons per day. These examples underscore the need for a long-term, adequate water supply to attract and accommodate new economic development for the region.

> development shall be allowed a maximum 24% built upon area within the critical area and 35% in the protected area. In addition, new development may occupy 10% of the watershed area outside of the critical area with 70% built upon when you get a special residential non-allocation permit from the county. The allowed uses straight from the ordinance draft state single family residential, multi-family residential and non-residential uses. When it comes to agriculture operations, they are only encouraged voluntarily to participate in the agricultural Cost Share Program and are subject to provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Silvicultural operations are subject to the provisions of the Forest Practices Guidelines related to Water Quality. …Stream Buffer areas are required for development activities. A minimum of thirty foot undisturbed and an additional fifty foot vegetative is required along all perennial waters for development activities. Agriculture and forestry activities are exempt from these buffer requirements.

Thus, the County's contention that a Watershed Protection Ordinance would somehow unduly restrict existing land uses and/or the agricultural or animal uses that predominate the lands adjacent to the Dan River is factually specious. All existing land uses and all existing or future land uses for agricultural activities and animal operations would be exempt from such an ordinance. (See Exhibit K).

Second, despite Caswell County's factually-erroneous objections to adopting a Watershed Protection Ordinance for the Dan River, the County Commissioners otherwise adopted, on January 7, 2013 (see Exhibit L), a WS-IV reclassification of the Haw River watershed area into the County's Watershed Protection Ordinance. At the County's December 17, 2012 meeting at which this action was considered (see Exhibit M), County Planner Collie explained the inconsequential impact of this ordinance change as follows:

> Under the WS-IV…this…classification would require [a] minimum lot size of ½ acre. The [County's] Subdivision Ordinance currently requires a minimum of 1 acre lot size, so the minimum lot size would not be affected in this reclassification. The built upon area restriction [is] 24% total acreage for multi-family… The only other thing that this watershed reclassification would change… is a requirement [for] perennial and intermittent streams to have a 50 foot buffer and no development can be within that area. Currently…the Jordan Lake Buffer rules are more stringent than the WS-IV buffer rules. So essentially the minimum lot size is not going to change, the built upon area restrictions are not going to change and the buffer restrictions are not going to change. For clarification, if you want to call it a technicality, …we have to adopt this WS-IV reclassification into our Watershed Protection Ordinance to meet state requirements.

Thus, Caswell County can hardly be heard to adopt a Watershed Protection Ordinance for the Haw River but resist such an ordinance for the protection of the Dan River, when the requirements of neither ordinance would have any demonstrable, adverse impact on development and growth in the County.

Conclusion

In summary, Caswell County's petition contains no reasonable ground for reversing the EMC's current classification of the Dan River, which is essential for the long-term economic viability and welfare of this region of the State. As such, Roxboro, Person County, and the Town of Yanceyville respectfully pray that this Committee recommend a denial of the instant petition to the EMC.

CASWELL CTY. v. TOWN OF YANCEYVILLE, 170 N.C. App. 124 (2005)

611 S.E.2d 451

CASWELL COUNTY, Plaintiff v. TOWN OF YANCEYVILLE, CITY OF ROXBORO, and PERSON COUNTY, Defendants.

No. COA04-472

North Carolina Court of Appeals.

Filed 3 May 2005

1. **Cities and Towns — taking by town in county — no consent from county — regional water system**

Condemnation of property by defendant Town of Yanceyville in Caswell County for a regional water system without the consent of Caswell County was not invalidated by N.C.G.S. § **153A-15**, which applies when a local government unit attempts to acquire land in another county. Yanceyville is within Caswell County, and summary judgment was correctly granted for defendants. Any claim that Yanceyville is merely undertaking the condemnation on behalf of other counties or towns outside Caswell County is obviated by the real and substantial benefits accruing to Yanceyville.

2. **Cities and Towns — regional water system — property condemned by town within county — no leaseholder interest by town in different county**

The Town of Roxboro did not acquire a leasehold in real property located in Caswell County in violation of N.C.G.S. § **153A-15** through the condemnation of land for a regional water system by Yanceyville, a town within Caswell County. The parties have mutually and cooperatively utilized the subject property, and Yanceyville has not surrendered to Roxboro the occupation and profits of the land.

3. **Public Works — interlocal water agreement — formalities for water system not skirted**

The defendants did not use an interlocal water agreement and the pertaining statutory provisions to skirt the formalities

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required for the creation of a water authority under N.C.G.S. Chapter **162A**. The provisions on which plaintiff relies are permissive, and nothing in Chapter 162A indicates that it was designed to restrict the broad grant of authority to local government units for interlocal cooperation.

Appeal by plaintiff from order entered 11 December 2003 by Judge Ripley E. Rand in Caswell County Superior Court. Heard in the Court of Appeals 1 December 2004.

Caswell County Attorney Robert V. Shaver, Jr., for

plaintiff-appellant.

Brough Law Firm, by G. Nicholas Herman, Ramsey, Ramsey & Long, by James A. Long, and R. Lee Farmer, for defendant-appellees.

CALABRIA, Judge.

Caswell County appeals the trial court's entry of summary judgment in favor of the Town of Yanceyville ("Yanceyville"), the City of Roxboro ("Roxboro"), and Person County (collectively, "defendants") on issues involving defendants' proposed water supply and distribution facility to draw water from a portion of the Dan River that runs from Virginia through Caswell County. We affirm.

Caswell and Person Counties are adjoining counties. Yanceyville, a municipal corporation located in Caswell County, owns and operates a public enterprise water supply distribution system currently capable of treating approximately 1.0 million gallons per day ("MGD"). Yanceyville currently supplies water to its citizens from Farmer Lake, which is located within Caswell County, pursuant to an agreement with Caswell County. Yanceyville's current water need is 0.4 MGD, and its projected water need in twenty years is 1.0 MGD. Farmer Lake has the capacity to supply approximately 6.3 MGD of water.

Roxboro, a municipal corporation located in Person County, also owns and operates a public enterprise water supply distribution system. Person County does not operate a public enterprise water supply distribution system but has an agreement with Roxboro for future extension of Roxboro's system to provide water to residents located within Person County but outside of Roxboro's boundaries. Roxboro currently supplies water to its citizens from Lake Isaac Walton and

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Lake Roxboro, having respective capacities for water supply of 3.2 MGD and 7.8 MGD. Current peak demand of usage for Roxboro is 3.7 MGD of water, and the latest water study by Roxboro and Person County indicated the current supply would be sufficient for projected needs for twenty years.

In September of 2001, Dominion Energy ("Dominion"), a Virginia-based power company, expressed an interest in constructing a natural gas fired electrical generation plant in Person County. To service the proposed plant, Dominion required peak raw water supplies in the amount 8.0 MGD. As a result of this need, Roxboro and Person County began investigating alternative sources of water to ensure supply for future growth. Ultimately, Roxboro and Person County identified the Dan River, which flows out of Virginia and through Caswell County, as the most viable alternative source of water. On 1 March 2002, Roxboro submitted an application to request reclassification of the Dan River to allow it to be used as a drinking water supply source as well as an application for a permit to withdraw water from the Dan River at a proposed intake facility to be located along the Dan River in Caswell County. Although Dominion withdrew its plans regarding the construction of an electrical plant in Person County in February of 2003, Roxboro and Person County elected to proceed with the applications based on the expenditure of approximately $500,000.00 on the project at that time.

At all times relevant to the issues on appeal, Caswell County opposed the applications regarding the Dan River; nonetheless, on 25 March 2003, defendants executed an interlocal agreement (the "agreement") to establish a public enterprise water supply

distribution system. The stated purpose of the agreement was "to establish a . . . regional and inter-governmental approach for supplying raw water services to Yanceyville, Roxboro, Person County, and other areas of Caswell County" by utilizing the water supply capacity of the Dan River. The planned interconnected and regional water supply and distribution system (the "supply system") was intended to

> (1) serve the current and long-term water supply needs of Yanceyville, other areas of Caswell County, and Roxboro and Person County; (2) accommodate industrial, commercial, and residential development within the jurisdiction of those units of local government; (3) provide Yanceyville with the revenue to operate, maintain, and repair a water supply system for the benefit of users in Caswell County; and (4) be financed by Yanceyville, Roxboro, and Person County.

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The supply system consists of five segments. Segment 1 consists of a raw water intake, a raw water pump station, a pretreatment facility, and a meter vault with water line connection points (the "Point of Connection"). Segment 2 consists of a raw water line in Caswell County extending from the Point of Connection to the Caswell County-Person County line and traversing existing easements. Segment 3 consists of a raw water line in Person County extending from Segment 2 at the Caswell County-Person County line to Roxboro's water facility at Lake Isaac Walton and traversing existing easements. Segment 4 consists of a raw water line in Caswell County from the Point of Connection to Yanceyville's water treatment plant. Segment 5 consists of a water treatment unit and high service pump station at the raw water intake site and a finish water line from the water treatment unit to the water distribution system located in the Town of Milton.

The agreement details the parties' responsibilities with respect to each segment. Regarding construction, maintenance, associated costs, and other costs for regulatory approvals, Roxboro is responsible for segments 1, 2, and 3, and Yanceyville is responsible for segments 4 and 5. With respect to holding title to the physical improvements to the real property, Roxboro and Person County hold title to segments 1, 2, and 3, and Yanceyville holds title to segments 4 and 5. As to the real property on which the physical improvements are located for segments 1, 2, 4, and 5, title is held by Yanceyville alone; however, the agreements provides that

> [i]f, at any time during the [forty-year, renewable] term of this Agreement, it becomes lawful under G.S. 153-15A or other law for Roxboro to hold title to the Raw Water Intake Site and the real property or interests in real property by way of easements or right-of-ways necessary for the Segment 1 and Segment 2 facilities, title to the Raw Water Intake Site will be held in the joint names of Yanceyville and Roxboro, and title to the real property or interests in real property necessary for the Segment 2 facilities will be held in the sole name of Roxboro . . . [without] any monetary or other consideration for such transfers of title.

Title to the real property upon which segment 3 is located is held jointly by Roxboro and Person County.

Other pertinent provisions in the agreement include (1) how the water drawn from the Dan River is allocated between Roxboro and Yanceyville, (2) that Roxboro pay three cents to Yanceyville for each 1,000 gallons of raw water Roxboro draws from the Dan River
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through the Point of Connection, (3) provisions for liquidated damages in favor of Roxboro and Person County in the event of breach by Yanceyville, (4) the parties' respective responsibilities for acquiring the necessary real property for the five segments, and (5) Yanceyville's right to draw water, at operating cost, from Lake Isaac Walton via segments 2 and 3 during times of need when the Dan River cannot supply the necessary water, provided that Roxboro has sufficient water capacity to supply such volume.

Pursuant to the agreement, Yanceyville instituted a condemnation action against a Caswell County property owner to take land on which the proposed water intake facility would be located. Plaintiff subsequently filed a declaratory judgment action requesting the trial court determine the applicability of N.C. Gen. Stat. § **153A-15** to the condemnation action. Both plaintiff and defendants moved for summary judgment, and on 11 December 2003, the trial court entered summary judgment in favor of defendants after hearing arguments and concluding "that the provisions of N.C. Gen. Stat. § **153A-15** do not invalidate the condemnation action initiated by Yanceyville or otherwise prevent the proposed use of the land pursuant to the `Interlocal Agreement' presented. . . ." Plaintiff appeals, asserting the trial court "erred by granting summary judgment to defendants and denying summary judgment to plaintiff when defendants failed to obtain the consent of the Caswell County Board of Commissioners pursuant to N.C. Gen. Stat. § **153A-15** before acquiring real property in Caswell County."

"[S]ummary judgment is an appropriate procedure in an action . . . for a declaratory judgment." *Tucker v. City of Kannapolis,* **159 N.C. App. 174, 178, 582 S.E.2d 697, 699** (2003). Our appellate review examines the whole record to determine "(1) whether the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact; and (2) whether the moving party was entitled to judgment as a matter of law." *Id.* In the instant case, the facts are undisputed; therefore, the only question is whether the trial court properly entered summary judgment in favor of defendants.

North Carolina General Statues § **160A-240.1** (2003) authorizes a city to acquire an interest in real property for use by the city through the exercise of eminent domain procedures as provided in Chapter **40A** of the General Statutes. Under N.C. Gen. Stat. § **40A-3**(b)(2) (2003), the governing body of a city is granted the power of eminent domain, for the public use or benefit, to acquire property, "either
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inside or outside its boundaries," for the purpose of "[e]stablishing, extending, enlarging, or improving" public enterprises listed in N.C. Gen. Stat. § **160A-311**. North Carolina General Statutes § **160A-311** (2003) expressly includes water supply and distributions systems within the term "public enterprise." Authority is expressly granted to a city to operate a public enterprise "outside its corporate limits, within reasonable limitations. . . ." N.C. Gen. Stat. § **160A-312**(a) (2003). In addition, this Court has noted that the "broad language . . . in G.S. § **160A-312** . . . evidence[s] [the

Legislature's] intent to give cities . . . comprehensive authority to own and operate public enterprises outside their boundaries . . . [and] grant[s] a city the absolute authority, without limitation or restriction, to establish and conduct a public enterprise for itself and its citizens." *Davidson County v. City of High Point*, **85 N.C. App. 26, 41, 354 S.E.2d 280, 288** (1987). Nonetheless, Caswell County contends Yanceyville's condemnation action cannot be sustained due to operation of N.C. Gen. Stat. § **153A-15** (2003). We disagree.

North Carolina General Statutes § **153A-15**(b) provides, in pertinent part, as follows:

> Notwithstanding the provisions of [N.C. Gen. Stat. § **160A-240.1**], or any other general law or local act conferring the power to acquire real property, before any . . . city . . . which is located wholly or primarily outside another county acquires any real property located in the other county by exchange, purchase or lease, it must have the approval of the county board of commissioners of the county where the land is located.

This statute operates when a unit of local government located in one county attempts to acquire land located in another county. *See, e.g., County of Johnston v. City of Wilson*, **136 N.C. App. 775, 525 S.E.2d 826** (2000). In such cases, the unit of local government undertaking to acquire the realty is required to first obtain approval from the board of commissioners of that county where the land is located. N.C. Gen. Stat. § **153A-15**(b). However, in the instant case, both Yanceyville and the land being condemned are located within Caswell County. Accordingly, Yanceyville's condemnation action does not implicate this statutory provision.

Caswell County alternatively contends Yanceyville is condemning the property on behalf of Roxboro and Person County and is merely a token title-holder allowing Roxboro and Person County to obtain an interest in real property located in Caswell County without the necessary consent. Given the numerous and material benefits afforded

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Yanceyville under the terms of the agreement, we must disagree. First, Yanceyville's sole source of water currently is Farmer Lake. Thus, the addition of another independent source of water is beneficial should conditions cause Farmer Lake to become unusable. Second, Yanceyville is acquiring an additional water treatment unit and pump station to utilize the new water source in addition to their current facilities. Third, the Dan River is less susceptible to local drought conditions than Farmer Lake. Fourth, the additional source of water allows for greater future growth and expansion even in the absence of an immediate need. Finally, the interconnected system allows Yanceyville to obtain water from Lake Isaac Walton should the need arise in the future paying only the cost of operating Roxboro's intake facility provided Roxboro has sufficient capacity. These real and substantial benefits accrue to Yanceyville and obviate any claim that this is an unwanted taking by another government or that Yanceyville is merely undertaking the condemnation action solely on behalf of and in favor of granting Roxboro or Person County an interest in Caswell County property.

Caswell County separately argues Roxboro, through the agreement, has acquired a leasehold interest in real property located in Caswell County in violation of N.C. Gen. Stat. §

153A-15. "A lease for a term of years is a contract, by which one agrees, for a valuable consideration, to let another have the occupation and profits of land for a definite time." *Helicopter Corp. v. Realty Co.*, 263 N.C. 139, 143, 139 S.E.2d 362, 366 (1964). In the instant case, however, the parties have mutually and cooperatively utilized the subject property. Yanceyville has not surrendered to Roxboro "the occupation and profits of the land" under the agreement. To the contrary, Yanceyville has paid for and owns the land, and Roxboro has paid for and owns the facilities for the purpose of harvesting water for the benefit of both from the Dan River. Moreover, Caswell County's reliance on the provision within the agreement requiring Roxboro to pay three cents for every 1,000 gallons of water it draws from the Dan River is misplaced. This payment does not constitute rent; rather, the payment to Yanceyville is, by the agreement's express terms, to purchase water for Roxboro which will "provide Yanceyville with revenue to operate, maintain, and repair" their portion of the interconnected water supply system. We are not persuaded that the instant agreement represents a lease.

Next, Caswell County asserts defendants used the interlocal agreement and the pertaining statutory provisions in an effort to "skirt the formalities required for creation of a water authority under

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G.S. § 162A while making their endeavor sound similar in scope." We disagree. First, the provisions on which Caswell County relies are permissive in nature. *See, e.g.*, N.C. Gen. Stat. §§ 162A-3 to 162A-4; 162A-5.1 (2003). Second, nothing in Chapter 162A indicates it was designed to restrict the broad grant of authority to local governmental units for interlocal cooperation. *See* N.C. Gen. Stat. § 160A-461 (2003) (permitting "[a]ny unit of local government in this State and any one or more other units of local government in this State or any other state (to the extent permitted by the laws of the other state) [to] enter into contracts or agreements with each other *in order to execute any undertaking*") (emphasis added).

In summary, neither N.C. Gen. Stat. § 153A-15 nor Chapter 162A of the North Carolina General Statutes prohibits the interlocal agreement between defendants under the facts of the instant case. We have carefully considered plaintiff's remaining arguments and find them to be without merit.

Affirmed.

Judges HUNTER and LEVINSON concur.

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INTERLOCAL AGREEMENT TO ESTABLISH A PUBLIC ENTERPRISE FOR A WATER SUPPLY AND DISTRIBUTION SYSTEM BY THE TOWN OF YANCEYVILLE, CITY OF ROXBORO, CASWELL COUNTY AND PERSON COUNTY

Pursuant to the North Carolina General Statutes, Article 20, Part 1 of Chapter 160A; Article 16, Part 1 of Chapter 160A; Article 2 of Chapter 162A, and Article 15 of Chapter 153A, and in consideration of the promises made to one another in this Agreement, the Town of Yanceyville, City of Roxboro, Caswell County and Person County agree as follows:

SECTION 1
PURPOSES AND INTENT OF AGREEMENT

1.1. The purpose of this Agreement is to establish a public enterprise for a water supply and distribution system and a regional and inter-governmental approach for supplying raw water services to Yanceyville, Roxboro, Person County, the Town of Milton, and other areas of Caswell County. The availability of raw water services is vital to the public health, welfare, and economic growth of these units of local government.

1.2. Yanceyville has a need for an emergency raw water supply and long-term future water supply, and Milton and other areas in Caswell County have a current and future need for an additional water supply.

1.3. Roxboro and Person County have a current and long-term need for an additional raw water supply for their citizens and for on-going economic development within the jurisdiction of those units of local government.

1.4. The Dan River in Caswell County has the capacity to supply at least 283 millions gallons of raw water per day, which is more than adequate to serve the current and long-term water supply needs of Yanceyville, Milton, other areas of Caswell County, and Roxboro and Person County without depleting that natural source for the water needs of other users; and the Dan River is the most economically viable source from which to meet the water supply needs of these units of local government. In addition, Lake Isaac Walton in Person County and Lake Roxboro in Caswell and Person Counties, which lakes are owned by Roxboro, have sufficient capacity to supply raw water to Yanceyville, Milton, and other areas of Caswell County during those times and circumstances when the Dan River cannot be used as a water supply. (Roxboro owns and operates a water distribution line that supplies water from Lake Roxboro to Lake Isaac Walton).

1.6. It is the intent of this Agreement to utilize the water supply capacity of the Dan River (and the water supply capacity of Lake Isaac Walton and Lake Roxboro during those times and circumstances when the Dan River cannot be used as a water supply) to establish a public

enterprise for an interconnected and regional water supply and distribution system that will (1) serve the current and long-term water supply needs of Yanceyville, Caswell County, and Roxboro and Person County; (2) accommodate industrial, commercial, and residential development within the jurisdiction of those units of local government; (3) provide Yanceyville with the revenue to operate, maintain, and repair a water supply system and for the benefit of users in Caswell County.

SECTION 2
DEFINITIONS

For purposes of this Agreement, the following terms have the following meanings, unless the Agreement indicates otherwise:

"Agreement" means this "Interlocal Agreement to Establish a Public Enterprise for a Water Supply and Distribution System By the Town Of Yanceyville, City of Roxboro, Caswell County and Person County," as it may be amended or supplemented from time to time.

"Business Day" means any day other than a day on which national banks are required or authorized to close.

"Caswell County" means Caswell County, North Carolina.

"Construction" or "Constructing" includes all engineering and design work and other preparatory services or labor necessary for construction.

"Governing Board" means, for any party, its governing board of elected officials, as such governing board may be constituted from time to time.

"Insure" or **"Insurance"** or **"Insuring"** means the purchase of (1) property and casualty insurance coverage in the amount of at least $3,000,000, and (2) general liability insurance coverage in the amount of at least $2,000,000.

"MGD" means million gallons per day.

"Milton" means the Town of Milton, North Carolina.

"Operating Cost" means cost for water facility maintenance and repair, insurance, chemicals, electricity, and labor

"Parties" means, collectively, the Town of Yanceyville, City of Roxboro, Caswell County and Person County and **"Party"** means any one of them individually.

"Person County" means Person County, North Carolina.

"Point of Connection" means the meter vault at the Raw Water Intake Site and the physical point(s) at that Site to which water distribution lines are connected.

"Raw Water Intake" means the physical structure on the Dan River at the Raw Water Intake Site that collects raw water from the Dan River before such water is pumped to a pretreatment facility.

Raw Water Intake Site" means approximately 12-15 acres from two parcels of real property located in Caswell County identified at Caswell County Tax Map 106, Parcel 135 and Parcel 11.

"Roxboro" means the City of Roxboro, North Carolina.

"Yanceyville" means the Town of Yanceyville, North Carolina.

SECTION 3
ROXBORO'S CONSTRUCTION, OPERATION, MAINTENANCE, REPAIR, INSURANCE, AND CONTROL RESPONSIBILITIES

3.1. Roxboro will construct, operate, maintain, repair, insure, and have exclusive control over (i) a raw water intake, (ii) a raw water pump station, (iii) a pretreatment facility, (iv) a meter vault with water line connection points (the "Point of Connection"), and (v) such additional water-supply-related facilities as Roxboro may choose to construct in the future, which facilities will be located at the raw water intake site in Caswell County and are, collectively, referred to in this Agreement as the Segment 1 facilities.

3.2. Roxboro will construct, operate, maintain, repair, insure, and have exclusive control over a raw water line in Caswell County from the Point of Connection to the Caswell County-Person County line, which raw water line will traverse existing Progress Energy and/or North Carolina Department of Transportation easements and is referred to in this Agreement as the Segment 2 facilities.

3.3. Roxboro will construct, operate, maintain, repair, insure, and have exclusive control over a raw water line in Person County from the Caswell County-Person County line to Roxboro's Water Treatment Plant at Lake Isaac Walton in Person County, which raw water line will generally traverse existing Progress Energy and/or North Carolina Department of Transportation easements and is referred to in this Agreement as the Segment 3 facilities.

3.4. The raw water line, consisting of the Segment 2 and Segment 3 facilities combined, will be capable of transporting raw water from (i) the Point of Connection to Roxboro's Water Treatment Plant at Lake Isaac Walton, and (ii) from Lake Isaac Walton to the Point of Connection.

3.5. Roxboro will pay all costs associated with the operation, maintenance, repair, insurance, state and federal permits and other regulatory approvals, and control over the Segment 1, Segment 2, and Segment 3 facilities.

3.6. Roxboro will accept and dispose of the sludge generated by Yanceyville's water treatment plant referred to in Subsection 4.2, provided that such plant does not treat more than

100,000 gallons of water per day, the sludge is treatable and acceptance and disposal of the sludge meets the disposal limits permitted by the State of North Carolina. In the event Yanceyville's water treatment plant treats more than 100,000 gallons of water per day, Roxboro and Yanceyville will renegotiate the terms under which Roxboro will accept and dispose of the sludge generated by such plant.

3.7. Roxboro will construct the Segment 1, Segment 2, and Segment 3 facilities during the term of this Agreement when Roxboro and Person County determine such construction to be economically feasible and after they have obtained financing for such construction under Section 10 of this Agreement or otherwise has obtained funds for such construction.

SECTION 4
YANCEYVILLE'S CONSTRUCTION, OPERATION, MAINTENANCE, REPAIR, INSURANCE, AND CONTROL RESPONSIBILITIES

4.1. Yanceyville will construct, operate, maintain, repair, insure, and have exclusive control over a raw water line in Caswell County from the Point of Connection to Yanceyville's existing Water Treatment Plant in Yanceyville, which raw water line will traverse the existing NC State Road 62 right-of-way and private property in the vicinity of the Water Treatment Plant and is referred to in this Agreement as the Segment 4 facilities.

4.2. Yanceyville will construct, operate, maintain, repair, insure, and have exclusive control in Caswell County over (i) a water treatment unit and high service pump station at the raw water intake site, and (ii) a finish water line from the water treatment unit to the water distribution system of the Town of Milton, which facilities are collectively referred to in this Agreement as the Segment 5 facilities.

4.3. Yanceyville will pay all costs associated with the operation, maintenance, repair, insurance, state and federal permits and other regulatory approvals, and control over the Segment 4 and Segment 5 facilities.

4.4 Yanceyville will construct the Segment 4 and Segment 5 facilities during the term of this Agreement after Yanceyville determines such construction to be economically feasible, and has obtained financing for such construction under Section 11 of this Agreement or otherwise has obtained funds for such construction.

4.5 Caswell County may, at its sole option, elect to participate in the financial obligations of Yanceyville under this section. Said election may be exercised at the time Yanceyville undertakes any of the obligations under this section or at a later date, and may be in any percentage of said obligation determined in Caswell County's sole discretion.

SECTION 5
TITLE TO SEGMENT FACILITIES

5.1. Title to the Segment 4 and Segment 5 facilities will be held in the name of Yanceyville. In the event Caswell County elects to participate in the financing of Yanceyville's obligations as provided in Section 4.5, Caswell County, at its option shall hold title to said Segments in a percentage equal to the percentage of financing contributed by Caswell County.

5.2. Title to the Segment 1, Segment 2, and Segment 3 facilities will be held in the names of Roxboro and Person County during the time that Roxboro and Person County are making debt-service payments on their financial obligations under Section 10 of this Agreement. From and after the date that Roxboro and Person County have fully satisfied their financial obligations under Section 10 of this Agreement, title to the Segment 1, Segment 2, and Segment 3 facilities will be held in the name of Roxboro.

SECTION 6
ACQUISITION AND TITLE TO REAL PROPERTY

6.1. Yanceyville will acquire and, subject to the rights of Caswell County in Section 5.1 herein, hold title to the Raw Water Intake Site and to all real property, or interests in real property by way of easements or right-of-ways, necessary for the Segment 1, Segment 4, and Segment 5 facilities. Within 60 days of execution of this Agreement Caswell County shall, pursuant to G.S. 153A-15, agree to allow Roxboro to hold title to the Raw Water Intake Site and the real property or interests in real property by way of easements or right-of-ways necessary for the Segment 1 and Segment 2 facilities. Within 30 days of such approval Yanceyville and, if required Caswell County, shall execute such instruments as are required to convey joint ownership of the Raw Water Intake Site to Roxboro and Yanceyville, and if required by this Agreement Caswell County. In the event Caswell County makes contributions to Yanceyville pursuant to Section 4.5 of this Agreement and any time subsequent to the creation of the joint ownership, Yanceyville and Roxboro shall, within 30 days of the receipt by Yanceyville of such contribution convey to Caswell County an equal joint interest in the Raw Water Intake Site and the Segment 4 and Segment 5 facilities, but title to the Segment 1 facilities and to the real property or interests in real property for the Segment 2 facilities shall be held in the sole name of Roxboro. No monetary or other consideration for such transfers of title, except as provided herein, shall be required.

6.2. Roxboro and Person County will acquire all real property, or interests in real property by way of easements or right-of-ways, necessary for the Segment 3 facilities; and title to such real property, or interests in real property by way of easements or right-of-ways, necessary for the Segment 3 facilities will be held in the names of Roxboro and Person County during the time that Roxboro and Person County are making debt-service payments on their financial obligations under Section 10 of this Agreement. From and after the date that Roxboro and Person County have fully satisfied their financial obligations under Section 10 of this

Agreement, title to the real property, or interests in real property by way of easements or right-of-ways, necessary for the Segment 3 facilities will be held in the name of Roxboro.

6.3. The Parties, as provided herein, will acquire the real property or interests in real property by way of easements or right-of-ways referred to in this Section during the term of this Agreement when the Parties determine that such acquisition is economically feasible, and after the Parties have obtained financing for such acquisition under Section 10 and 11 of this Agreement or otherwise have obtained funds for such acquisition.

6.4. Except as provided herein, no party having any ownership interest in the Raw Water Intake Site may convey that ownership interest to any third party without the consent of the other parties to this Agreement having an ownership interest in the site, and no party having any ownership interest in the Raw Water Intake Site may take any action of any kind whatsoever that will impair the rights of the other parties to this Agreement having an ownership interest in that site to use it consistent with the purposes of this agreement.

SECTION 7
PERMITS AND OTHER REGULATORY APPROVALS

7.1. Roxboro, on behalf of all the Parties, will acquire all state and federal permits and other regulatory approvals necessary for the Segment 1, Segment 2, and Segment 3 facilities, and all such permits and regulatory approvals will be held in the name of Roxboro.

7.2. Yanceyville, on behalf of all the Parties, will acquire all state and federal permits and other regulatory approvals necessary for the Segment 4 and Segment 5 facilities, and all such permits and regulatory approvals will be held in the name of Yanceyville.

7.3 Caswell County will cooperate with and support the other Parties acquisition of all permits required for the projects contemplated herein.

7.4 Within 60 days of the execution of this Agreement, Caswell County shall, in accordance with §G.S. 143-214.5, enact and submit to the North Carolina Environmental Management Commission a local water supply watershed management and protection ordinance acceptable to the Commission to utilize the water-supply sources of the Dan River for the water supply and distribution systems contemplated by this Agreement.

7.5 All parties shall cooperate with and supply to the State of North Carolina or any agency or Commission of the State such documents requested or needed by the State to show the parties' support for the projects contemplated by this Agreement.

SECTION 8
ALLOTMENTS OF RAW WATER TO BE DRAWN FROM THE DAN RIVER

8.1. Roxboro, on behalf of all the Parties, will apply for a water withdrawal permit from the State of North Carolina to permit Roxboro, on behalf of the Parties, to withdraw a maximum of 30 MGD, or such other maximum as the State of North Carolina will permit, of raw water from the raw water intake on the Dan River to the Segment 1 facilities.

8.2. The Parties acknowledge that their respective needs for water allocation are uncertain at this time and that those needs will change throughout the life of this Agreement. Accordingly, this Agreement shall address only the initial allocation of the water resource to the Parties and all Parties agree that those allocations shall be reviewed every five years, or earlier if requested by one or more of the Parties. At such review the Parties shall amend the water allocations contained in this Section to reflect the needs of the Parties and circumstances existing at the time of the review. In the event the Parties are unable to agree upon an allocation at such review, the matter shall be submitted to arbitrators for decision as provided in Section 8.9 of this Agreement. The initial allocation of raw water withdrawal shall be as follows:

8.2.1 If the State of North Carolina permits Roxboro on behalf of the Parties to withdraw a maximum amount ("Permitted Amount") of 25 MGD or more of raw water from the Dan River, Yanceyville will be allotted 7 MGD of the Permitted Amount, and Roxboro will be allotted the Permitted Amount less Yanceyville's allotment under this Subsection. For example, if the State of North Carolina permits Roxboro to withdraw a maximum amount (Permitted Amount) of 28 MGD, Yanceyville's allotment will be 7 MGD, and Roxboro's allotment will be 21 MGD (28 MGD – 7 MGD).

8.2.2 If the State of North Carolina permits Roxboro on behalf of the Parties to withdraw a maximum amount ("Permitted Amount") of less than 25 MGD of raw water from the Dan River, Yanceyville's allotment will be the Permitted Amount divided by 30 multiplied by 7 MGD, and Roxboro's allotment will be the Permitted Amount less Yanceyville's allotment under this Subsection. For example, if the State of North Carolina permits Roxboro to withdraw a maximum amount (Permitted Amount) of 24 MGD, Yanceyville's allotment will be 5.6 MGD (24 MGD/30 X 7 MGD), and Roxboro's allotment will be 18.4 MGD (24 MGD – 5.6 MGD).

8.3 From and after the time that the Segment 1, facilities are fully operational, Yanceyville will be entitled to draw the volume of raw water allotted to it under this Section from the Dan River through the Point of Connection to the Segment 4 or Segment 5 facilities. During those times when such volume of raw water cannot be drawn from the Dan River and Segment 2 and Segment 3 are fully operational, Yanceyville will be entitled to draw such volume of raw water from Lake Isaac Walton via the Segment 2 and 3 facilities through the Point of Connection to the Segment 4 and Segment 5 facilities provided that the City of Roxboro has

sufficient capacity in Lake Roxboro and Lake Issac Walton to provide such volume of raw water to Yanceyville. For all water drawn by Yanceyville under this Subsection, Yanceyville will pay to Roxboro, on a monthly basis, Roxboro's operating cost for supplying such water to Yanceyville through the Point of Connection.

8.4 Yanceyville may purchase from Roxboro raw water in excess of the amount allotted to Yanceyville under this Section at a volume mutually agreed upon between them. The price for such purchase is to be mutually determined, but shall not exceed the price Roxboro charges for other customers located outside of its municipal limits.

8.5 From and after the time that the Segment 1, Segment 2, and Segment 3 facilities are fully operational, Roxboro will be entitled to draw the volume of raw water allotted to it under this Section from the Dan River through the Point of Connection to the Segment 2 and Segment 3 facilities.

8.6 Roxboro may purchase from Yanceyville raw water in excess of the amount allotted to Roxboro under this Section at a volume mutually agreed upon between them. The price for such purchase is to be mutually determined, but shall not exceed the price Yanceyville charges for other customers located outside of its municipal limits.

8.7 Not inconsistent with the allocations or other terms of this Agreement Roxboro will have operational control over the volume, flow, distribution, and allotments of all raw water at and through the Point of Connection for purposes of administrating and regulating the volume, flow, distribution, and allotments of raw water under this Section, and ensuring compliance with all State and Federal permit requirements.

8.8 Caswell County and Yanceyville shall establish and execute a separate agreement or agreements providing for them to share on an equitable basis the water allocations and access to facilities granted to Yanceyville pursuant to this Section. Caswell County and Yanceyville agree to negotiate in good faith such agreement or agreements which shall provide for, among other things, allocations of water, costs, distribution facilities, and similar matters. In the event such agreement or agreements are not executed within six months from the date of execution of this Agreement, Caswell County and Yanceyville agree to submit the issue of establishing such an agreement or agreements to an arbitrator, selected by the Senior Resident Superior Court Judge of this judicial district. The decisions of such arbitrator shall be binding.

8.9 No party to this Agreement envisions selling any water to any unit of local government or other entity or person outside of Person and/or Caswell County. Accordingly, if any party desires or is required by governmental action or public need to sell water to such a person, entity or government it shall first obtain the approval of the Parties hereto, which approvals shall not be unreasonably withheld. Such approvals may be conditioned on resolution of issues including but not limited to revenue sharing and impact on available water allocation for the Parties use. In the event the Parties are unable to agree upon such approvals, any Party may, after a period of 60 days from the date the request is made, demand that the matter be submitted to an arbitrator for resolution of undecided issues. The arbitrator shall be selected by the chief resident Superior Court judge of the judicial district in which Caswell and Person

Counties are located. The decisions of the arbitrator shall be binding on the Parties and non-appealable.

SECTION 9
ROXBORO'S PAYMENT TO YANCEYVILLE FOR WATER DRAWN FROM THE DAN RIVER

9.1. Roxboro will pay to Yanceyville 3¢ for each 1,000 gallons of raw water that Roxboro draws from the Dan River through the Point of Connection.

9.2. Roxboro and Yanceyville may agree that monthly, quarterly, or other periodic estimated payments will be made under the provisions of Subsection 9.1, with an adjustment to be made in the final payment in any annual period to account for any discrepancies between the estimated payments and the amount due annually under Subsection 9.1.

9.3. Nothing in this Section will preclude the parties from negotiating future payments that might be made by one to the other for water drawn by any of them from the Dan River.

9.4 Yanceyville shall pay to Caswell County fifty percent of the payments received from Roxboro under this Section. All sums received by Yanceyville and Caswell County shall be retained in a joint infrastructure fund established under the inter-local agreement contemplated in subsection 8.8 for utility infrastructure construction and/or improvements within the territory of Caswell County.

SECTION 10
ROXBORO'S AND PERSON COUNTY'S FINANCIAL RESPONSIBILITIES AND FINANCING

10.1. When and to the extent determined by Roxboro and Person County to be economically feasible, Roxboro and Person County will pay for all costs associated with (i) the construction of the Segment I, Segment 2, and Segment 3 facilities; (ii) the acquisition of real property or interests in real property necessary for the Segment 3 facilities; and (iii) the acquisition of all state and federal permits and other regulatory approvals necessary for the operation of the Segment 1, Segment 2, and Segment 3 facilities.

10.2. When determined by Roxboro and Person County to be economically feasible, Roxboro and Person County will finance their financial responsibilities under this Section through installment contract financing under G.S. §§ 160A-20, 160A-313, and 153A-276 secured by the Segment I, Segment 2, and Segment 3 facilities and the real property or interests in real property acquired for those Segment facilities. In addition, when economically feasible, Roxboro and Person County may finance their financial responsibilities under this Section by (i) making contracts with and accepting grants-in-aid and loans from federal and State governments and their agencies under G .S. 160A-17.1, (ii) drawing upon local budget sources, (iii) issuing

bonds under the provisions of Chapter 159 of the North Carolina General Statutes, or (iv) any of the financing methods set forth in G.S. 153A-276 and G.S. 160A-313.

10.3. The Parties to this Agreement will assist and cooperate with one another to obtain any state or federal grants, loans, or other forms of financial assistance that may be available to help pay for or defray Roxboro's and Person County's financial responsibilities under this Section.

SECTION 11
YANCEYVILLE'S FINANCIAL RESPONSIBILITIES AND FINANCING

11.1. When and to the extent determined by Yanceyville to be economically feasible, Yanceyville will pay all costs associated with (i) the construction of the Segment 4 and Segment 5 facilities; (ii) the acquisition of real property or interests in real property necessary for the Segment 1, Segment 4, and Segment 5 facilities; and (iii) the acquisition of all state and federal permits and other regulatory approvals necessary for the future operation of the Segment 4 and Segment 5 facilities.

11.2. When determined by Yanceyville to be economically feasible, Yanceyville will finance its financial responsibilities under this Section through installment contract financing under G.S. 160A-20 and G.S. 160A-313; secured by the Segment 4 and Segment 5 facilities and the real property or interests in real property acquired for those facilities, but not the real property or interests in real property acquired for the Segment 1 or Segment 2 facilities. In addition, when economically feasible, Yanceyville may finance its financial responsibilities under this Section by (i) making contracts with and accepting grants-in-aid and loans from federal and State governments and their agencies under G.S. 160A-17.1, (ii) drawing upon local budget sources, (iii) issuing bonds under the provisions of Chapter 159 of the North Carolina General Statutes, or (iv) any of the financing methods set forth in G.S. 160A-313.

11.3. The Parties to this Agreement will assist and cooperate with one another to obtain any state or federal grants, loans, or other forms of financial assistance that may be available to help pay for or defray Yanceyville's financial responsibilities under this Section.

SECTION 12
TERM, TERMINATION, ASSUMPTION OF DUTIES AND RENEWAL OF AGREEMENT

12.1. The term of this Agreement will be forty years, commencing as of the date first below written.

12.2. This Agreement may be terminated only by the mutual agreement of all parties.

12.3. This Agreement may be renewed by the mutual agreement of the Parties.

12.4 If any Party determines, pursuant to the terms of this Agreement, that it is not feasible, for financial reasons or otherwise, for that Party to execute its obligations hereunder, any other Party or Parties may assume those obligations, and, in doing so, shall obtain all rights

and obligations under this Agreement that the non-performing Party would have had if it had executed its obligations. This subsection shall not abrogate Roxboro's obligations under Sections 7.1 and 8.1, and no party other than Roxboro may undertake the obligations and assume the rights conferred upon Roxboro under those Sections.

SECTION 13
DISPOSITION OF SEGMENT FACILITIES AND REAL PROPERTY UPON EXPIRATION OR TERMINATION OF AGREEMENT

13.1. Upon the expiration or termination of this Agreement, unless the Agreement is renewed, the party or parties which, at the time of the expiration or termination of this Agreement, holds or hold title under Sections 5 and 6 of this Agreement to the various Segment facilities, the Raw Water Intake Site, and the real property or interests in real property acquired for those facilities may dispose of those facilities and the real property or interests in real property for them in any manner or for any use permitted by law.

SECTION 14
LIQUIDATED DAMAGES

14.1. The Parties stipulate that in the event of a material breach of. this Agreement by Yanceyville and/or Caswell County affecting the Segment 1 or Segment 2 facilities, or the real property or interests in real property for those facilities, the damages which Roxboro and Person County would sustain for potential investment losses under this Agreement and potential other losses as a result of such breach cannot, given the situation of the Parties at the time of entering into this Agreement, be reasonably anticipated and are difficult to ascertain because of their indefiniteness and
uncertainty.

14.2 The Parties stipulate that they have in good faith, and fully and frankly, discussed this issue of indefiniteness and uncertainty of damages, that they have been fully advised by legal counsel about this Section, and that no party has exercised any superior bargaining position over any other party in connection with negotiating the provisions of this Section or the stipulations and agreements made in it.

14.3 The Parties stipulate that a reasonable estimate of the damages to Roxboro and Person County which would probably be caused by a material breach of this agreement by Yanceyville and/or Caswell County affecting the Segment 1 or Segment 2 facilities, or the real property or interests in real property for those facilities, are the sums set forth in Subsections 14.5 and 14.6;, and the computation of such sums is, so far as the Parties are able to estimate at the time of entering into this Agreement, reasonably proportionate to the damages to Roxboro and Person County which would actually be caused by such breach.

14.4. The Parties stipulate that the computed sums set forth in Subsections 14.5 and 14.6 are not fixed as a punishment, as a penalty, or as a threat that is designed to prevent any material breach of this Agreement by Yanceyville and/or Caswell County to serve as security to ensure that Roxboro and Person County will collect their actual damages in the event of such a breach.

14.5 The Parties stipulate and agree that in the event there is a material breach of this Agreement by Yanceyville and/or Caswell County affecting the Segment 1 or Segment 2 facilities, or the real property or interests in real property for those facilities, Yanceyville and/or Caswell County will pay to Roxboro, as liquidated damages, the following sums:

(I) All principal and interest paid by Roxboro on all loans or other indebtedness assumed or incurred (including all debt issuance costs, loan origination fees, consultant fees for economic feasibility studies, and legal fees for bond counsel paid) by Roxboro for all costs associated with (i) constructing the Segment 1, Segment 2, and Segment 3 facilities, (ii) insuring those facilities, (iii) acquiring the real property or interests in real property for the Segment 3 facilities, and (iv) acquiring all state and federal permits and other regulatory approvals for the Segment I, Segment 2, and Segment 3 facilities, from the date the loans were assumed or the indebtedness was incurred by Roxboro through the date of breach of this Agreement; plus .

(2) All of the outstanding principal balance and all future interest payments due by Roxboro on all loans or other indebtedness assumed or incurred by Roxboro for all costs associated with (i) constructing the Segment l, Segment 2, and Segment 3 facilities, (ii) insuring those facilities, (iii) acquiring the real property or interests in real property for the Segment 3 facilities, and (iv) acquiring all state and federal permits and other regulatory approvals for the Segment 1, Segment 2, and Segment 3 facilities, as of the date of breach of this Agreement; plus

(3) Lost revenues from the sale of water drawn by Roxboro from the Point of Connection and sold by Roxboro to third parties as calculated by (i) the average monthly volume of water drawn by Roxboro from the Point of Connection for the 12 months preceding the date of breach of this Agreement, multiplied by (ii) Roxboro's industrial water rate in effect in the year in which the breach occurred, multiplied by (iii) the number of months remaining from the date of breach until the expiration of the term of this Agreement under Section 12; plus

(4) All federal or State funds, grants, or other forms of financial assistance received by Roxboro in connection with its financial responsibilities and financing under Section 10 of this Agreement that Roxboro must pay back to those federal or State governments or their agencies.

14.6. The Parties stipulate and agree that in the event there is a material breach of this Agreement by Yanceyville and/or Caswell County affecting the Segment 1 or Segment 2 facilities, or the real property or interests in real property for those facilities, Yanceyville and/or Caswell County will pay to Person County, as liquidated damages, the following sums:

(1) All principal and interest paid by Person County on all loans or other indebtedness assumed or incurred (including all debt issuance costs, loan origination fees, consultant fees for economic feasibility studies, and legal fees for bond counsel paid) by Person County for all costs associated with (i) constructing the Segment I, Segment 2, and Segment 3 facilities, (ii) insuring those facilities, (iii) acquiring the real property or

interests in real property for the Segment 3 facilities, and (iv) acquiring all state and federal permits and other regulatory approvals for the Segment 1, Segment 2, and Segment 3 facilities, from the date the loans were assumed or the indebtedness was incurred by Person County through the date of breach of this Agreement; plus

(2) All of the outstanding principal balance and all future interest payments due by Person County on all loans or other indebtedness assumed or incurred by Person County for all costs associated with (i) constructing the Segment 1, Segment 2, and Segment 3 facilities, (ii) insuring those facilities, (iii) acquiring the real property or interests in real property for the Segment 3 facilities, and (iv) acquiring all state and federal permits and other regulatory approvals for the Segment I, Segment 2, and Segment 3 facilities, as of the date of breach of this Agreement; plus

(3) All federal or State funds, grants, or other forms of financial assistance received by Person County in connection with its financial responsibilities and financing under Section 10 of this Agreement that Person County must pay back to those federal or State governments or their agencies.

14.7 The Parties stipulate that Subsections 14.1 through 1.4.6 of this Agreement will be inapplicable from and after the date that Roxboro has joint title to the Raw Water Intake Site and sole title to the real property or interests in real property for the Segment 2 facilities under Subsection 6.1 of this Agreement

14.8 Notwithstanding the provisions of this Section, nothing in this Section or in any other Section of this Agreement will prevent any party from recovering from any other party any damages or forms of relief as the law may allow on account of any breach of this Agreement by

SECTION 15
FORCE MAJEURE

15.1. In case any party to this Agreement by reason of Force Majeure is rendered unable wholly or in part to carry out its responsibilities under this Agreement, then if such party gives notice and full particulars of such Force Majeure in writing to the other Parties within five business days of discovering such Force Majeure, the responsibilities of the party giving such notice so far as it is affected by such Force Majeure will be suspended during the continuance of the inability then claimed, but for no longer period, and any such party will be required to resume performance of its responsibilities under this Agreement upon the termination of such inability; provided, however, the party unable to perform will use its best efforts and act in good faith to avoid or overcome the impediment.

SECTION 16
INDEMNIFICATION FOR LOSSES OF THIRD PARTIES

16.1. To the extent permitted by law, and except as otherwise provided in this Agreement, each party agrees to indemnify, defend, hold harmless and reimburse the other Parties, their agents, officers and employees from and against any losses, liabilities, expenses and all claims for damages, by any third party, of any nature whatsoever, relating to or arising out of any action or failure to act of said party, its agents, officers or employees, or relating to or arising out of the performance or failure to perform by the party, its officers, agents or employees of any of that party's responsibilities under this Agreement. Losses, liabilities, expenses and claims for damages by third parties will include, but not be limited to, civil actions, loses under contractual rights, civil and criminal fines and penalties, a taking, whether direct or indirect (inverse), loss of use and/or services, bodily injury, death, personal injury or injury to real or personal property, reasonable defense costs including, legal fees, costs and attorneys fees for an appeal. Recovery under this section will not be limited by the party's insurance coverage.

16.2. Each party will promptly give notice to the other Parties of any civil or criminal actions filed against it or of any notice of violation from any Federal or State agency or of any claim as soon as practical arising out of that party's performance or failure to perform any of that party's responsibilities under this Agreement. The other Parties, upon receipt of such notice, will have the right at their election to defend all actions or suits or join in the defense. This Subsection does not prevent any party from defending its own interests.

SECTION 17
REPRESENTATIONS AND COVENANTS

17.1. Each party to this Agreement represents to the other Parties each of the following as of the effective date of this Agreement, and covenants with the other Parties that each such representation will remain true and correct:

17.1.1. It has full power and authority to enter into this Agreement, and to enter into and carry out the transactions contemplated by this Agreement.

17.1.2. It has by proper action authorized the execution and delivery of this Agreement, and is not in default under any provisions of this Agreement.

17.1.3. The execution, delivery and performance of this Agreement do not violate or conflict with or require any consent or waiver under any of the terms or conditions in its governing documents or any material contract to which it is a party or by which any of its assets are bound or affected, or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it.

17.1.4. This Agreement constitutes a legal, valid and binding obligation enforceable at law and in equity in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally and, to the extent that certain remedies under this Agreement require or may require enforcement by a court, such principles of equity as the court having jurisdiction may impose.

17.1.5. It will comply with all applicable federal, state and local laws with respect to any activities conducted under or pursuant to this Agreement.

17.1.6. No elected or appointed official or employee has any interest (financial, employment, or other) in the transactions contemplated by this Agreement.

17.1.7. It will take no act (or engage in any failure to act) that will prevent, delay, obstruct, frustrate, or otherwise impair or undermine the activities conducted under or pursuant to this Agreement or the activities or matters set forth in the Exhibits to this Agreement, except as may be necessary to enforce this Agreement or ensure compliance with applicable laws, regulations, and ordinances.

SECTION 18
MISCELLANEOUS PROVISIONS

18.1. Amendment to Agreement. This Agreement may be modified or amended only by written amendments that are approved and signed on behalf of all the Parties

18.2. Notices. All notices required or permitted by this Agreement must be in writing. Any notice will be deemed given (i) on the date delivered by hand or (ii) on the date it is received by mail, as evidenced by the date shown on a United States mail registered mail receipt, in any case addressed as follows:

If to Yanceyville, as follows:

Town of Yanceyville
Attn.: Town Manager
P.O. Box 727
Yanceyville, NC 27379-0727

If to Person County as follows:

Person County
Attn: County Manager
304 S. Morgan St.
Roxboro, NC 27573

If to Roxboro, as follows:

City of Roxboro
Attn.: City Manager
P.O. Box 128
Roxboro, NC 27573-0128

If to Caswell County as follows:

Caswell County
Attn: County Manager
PO Box 98
Yanceyville, NC 27379

Any party may designate a different address for communications by notice given under this Section to each other party. Whenever in this Agreement the giving of notice is required, the

giving of such notice may be waived in writing by the Party entitled to receive such notice, and in any such case the giving or receipt of such notice will not be a condition precedent to the validity of any action taken in reliance upon such waiver. When this Agreement requires that notice be given to more than one party, the effective date of the notice will be the last date on which notice is deemed given to any required party.

18.3. No Third-Party Beneficiaries. Nothing in this Agreement will give any person other than the Parties any rights to enforce any provision of this Agreement. There are no intended third-party beneficiaries of this Agreement.

18.4. Survival of representations and Covenants. All representations and covenants made by the Parties in this Agreement shall survive the delivery of this Agreement.

18.5. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

18.6. Entire Contract. This Agreement constitutes the entire Agreement between the Parties with respect to its subject matter.

18.7. Counterparts. This Agreement may be signed in several counterparts, including separate counterparts. Each will be an original, but all of them together constitute the same instrument.

18.8. Recordable Form. As this Agreement limits the Parties' rights to dispose of their respective ownership interests in certain real property, any party may cause this Agreement to be filed in the real property records in the office of the Register of Deeds of Caswell County or Person County, as appropriate.

18.9. Action by a Party. Any references to approvals or other actions by any party will be deemed to be references to actions taken by the party's Governing Board or taken pursuant to express, specific direction given by the party's Governing Board or a person delegated by that Board to give approval or take action.

18.10. Personnel. All responsibilities of the Parties under this Agreement will be performed by personnel employed by them or under contract to them.

18.11. This Agreement supersedes and replaces that certain agreement executed on March 3, 2003 entitled "Interlocal Agreement to Establish a Public Enterprise for a Water System and Distribution System by the Town of Yanceyville, City of Roxboro and Person County."

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in its corporate name by its duly authorized officers, to be effective as of the _____ day of _____, 2008.

ATTEST: (SEAL) TOWN OF YANCEYVILLE, NORTH CAROLINA

Town Clerk By: Mayor

ATTEST: (SEAL) CITY OF ROXBORO, NORTH CAROLINA

City Clerk By: Mayor

ATTEST: PERSON COUNTY, NORTH CAROLINA

Clerk, Board of Commissioners By: Chair, Board of Commissioners

ATTEST: (SEAL) CASWELL COUNTY, NORTH CAROLINA

Clerk, Board of Commissioners By: Chair, Board of Commissioners

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NORTH CAROLINA
CASWELL COUNTY

I, a Notary Public of such County and State, certify that DAVID PARRISH and CURTIS E. DAVIS personally came before me this day and acknowledged that they are the Mayor and Town Clerk, respectively, of the Town of Yanceyville, North Carolina, and that by authority duly given and as the act of such Town, the foregoing instrument was signed in the Town's name by such Mayor sealed with its corporate seal and attested by such Clerk.

WITNESS my hand and official stamp or seal, this 03 day of July, 2008.

(SEAL)

Notary Public

My commission expires: 05-18-2013

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NORTH CAROLINA
CASWELL COUNTY

I, a Notary Public of such County and State, certify that George W. Ward, Jr. and Wanda P. Smith personally came before me this day and acknowledged that they are the Chair and Clerk, respectively, of the County of Caswell, North Carolina, and that by authority duly given and as the act of such County, the foregoing instrument was signed in the County's name by such Chair sealed with its corporate seal and attested by such Clerk.

WITNESS my hand and official stamp or seal, this 1 day of July, 2008.

(SEAL)

Katina J. Graves
Notary Public

NORTH CAROLINA
PERSON COUNTY

I, a Notary Public of such County and State, certify that Thomas J. Brown and Trevie D. Adams personally came before me this day and acknowledged that they are the Mayor and City Clerk, respectively, of the City of Roxboro, North Carolina, and that by authority duly given and as the act of such City, the foregoing instrument was signed in the City's name by such Mayor sealed with its corporate seal and attested by such City Clerk.

WITNESS my hand and official stamp or seal, this 3rd day of July, 2008.

(SEAL) Virginia W. Shull
Notary Public

My commission expires: May 25th, 2009

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NORTH CAROLINA
PERSON COUNTY

I, a Notary Public of such County and State, certify that Johnny M. Carlson and Faye T. Fuller personally came before me this day and acknowledged that they are the Chair and Clerk, respectively, of the Board of Commissioners of Person County, North Carolina, and that by authority duly given and as the act of Person County, the foregoing instrument was signed in the County's name by such Chair sealed with its corporate seal and attested by such Clerk.

WITNESS my hand and official stamp or seal, this 7th day of July, 2008.

(SEAL) Elizabeth A. Farabrough
Notary Public
Elizabeth A. Farabrough

My commission expires: 10/1/2011

Dan River Expenditures

Total from letter dated June 25, 2007	729,497.60
Total from letter dated June 11, 2009	36,364.99
Total expenditures Fiscal Year June 30, 2010	8,478.94
Total expenditures Fiscal Year June 30, 2011	2,834.61
Total expenditures Fiscal Year June 30, 2012	7,445.60
Total expenditures Fiscal Year June 30, 2013	768.00
Budgeted expenditures for Intake, Fiscal Year 2013-14	110,000.00
Total	895,389.74

MINUTES – MAY 10, 2012

The Caswell County Board of Commissioners met in special session at the Historic Courthouse in Yanceyville, North Carolina at 5:00 p.m. on Thursday, May 10, 2012. Members present: Nathaniel Hall, Chairman, Cathy W. Lucas, Vice-Chair, William E. Carter, Jeremiah Jefferies, Gordon G. Satterfield, Kenneth D. Travis and N. Kent Williamson. Also present: Kevin B. Howard, County Manager, recorded the minutes.

MOMENT OF SILENT PRAYER

Chairman Hall opened the meeting with a Moment of Silent Prayer.

APPROVAL OF AGENDA

Commissioner Travis moved, seconded by Commissioner Jefferies to approve the Agenda. The motion carried unanimously.

DAN RIVER RECLASSIFICATION

Vice-Chair Lucas stated "Chairman Hall and other members of the Board there is a resolution before you concerning the reclassification of the Dan River. The reason it is being brought to your attention tonight is the fact that the 2012 Legislature convenes next Wednesday, I believe, for the Short Session and this will be taken up at that time. We have a window of opportunity to address it so I put together a resolution and you have a copy in front of you. Hopefully everyone has read it by now. I hope to take action on this or at least it is up for discussion from the Board members."

Commissioner Travis asked "Ms. Lucas did you contact our attorney and send him a copy for him to look at it to see what he thinks about it?" Commissioner Lucas responded "I talked with him at length, he does not have a copy of the actual resolution but I read to him what the resolution said. He had a lot of comments and he talked with Kevin about it as well. His position was..." Commissioner Travis continued "Does he agree that this is what we need to do?" Commissioner Lucas responded "There are some ramifications involved if we should do this or some risks. The risks would be that we might..." Commissioner Travis responded "Be sued." Commissioner Lucas continued "Yes, absolutely. There is the question of what those risks are and at this point we don't really know a dollar amount that could be put with that but his theory was that we might try to get those numbers together. I think we have until the 23rd of May to actually get something to the legislature. We need to decide whether or not this is something we want to pursue and whether or not we want to contact our legislative leaders to see if they would entertain doing this for us. I have put in calls to two today and I have not gotten any calls back yet." Commissioner Travis asked "Initially when we had this discussion on the water issue before with Roxboro and all of that we did not agree with the decision then, am I right or wrong?" Chairman Hall responded "Initially the Board voted to move ahead with Roxboro." Commissioner Travis stated "I did not think we agreed." Chairman Hall responded "Well a couple of things happened, there was the cost of the politics involved, the power company pulled out. Once they pulled out then Roxboro did not have what they needed. This is

just conjecture but I think because they had invested some kind of money in Milton they wanted to proceed with Roxboro and Yanceyville." Commissioner Lucas asked "They did reimburse them for their time? This is more about the reclassification of the location where the intake site will be. This is just dealing with the reclassification part of it and what could possibly happen if we oppose it based on the 2008 agreement."

Chairman Hall stated "Let's go over the agreement because Kent was not here then." Commissioner Satterfield responded "I was not here either." Chairman Hall continued "The reclassification is necessary to put in an intake. The intake for this was for the Town of Yanceyville and the Town of Roxboro to cut a deal with the power company and the power company pulled out and the deal kind of fell apart. The Town of Yanceyville and the Town of Roxboro still went through with getting the river reclassification. At that time this Board knew that we had to reclassify the river and if we did not do it, it would be kicked up to the state so we never did it. We did eventually agree for them to have the intake but we still did not agree to the reclassification so they kicked it up to the state. The problem they had with the state was they did not have a justification because they did not have a need for the water. The power plant is gone and Roxboro has all the water it needs so why do they keep pushing it. The rumors were that it was their intent, the Town of Yanceyville and the Town of Roxboro's intent, to sell water to Durham. If they could get this intake in they could sell water to Durham and on down to Cary and Raleigh. We don't know how true the rumors are but they continue to pursue it. It got to the point last year that the state was ready to reclassify the area and move forward but the citizens in the community objected. With those objections DENR could not do it so it was kicked up to the legislature. Now it is at the point that the legislature can act. The question is in everybody's mind why move forward with the reclassification. Why do they want to do the intake and at some point still sell water outside of the area because the Town of Roxboro has enough water and the Town of Yanceyville certainly has more water than they need. That is part of the question. The issue for some of the farmers out there, and I am not sure how true all of this is because I have not researched it, is once the reclassification passes there are certain things they can't do along the river. I have received several letters. Some say they want to do this to their farms but I just don't have the details of what a WS-IV will do." Commissioner Lucas responded "Chairman Hall what I have been told is there will be a critical area and then there will be a protected area. I know you cannot have cattle or cows within 30 feet in a critical area." Mr. Howard added "It is actually 50 feet. The setback in both is 50 feet I think."

Commissioner Satterfield stated "You can't have cows within so many feet of a stream now, anywhere." Chairman Hall responded "That is without the classification. I don't know what all of the rules are but in the critical areas there are certain things you can't do. One of the things in the critical area is they restrict swimming and all kinds of other things." Commissioner Satterfield asked "The Town of Yanceyville, as I understood it, they were only going to get pennies on the dollars. It really was not a good deal for the Town of Yanceyville that they worked out I did not think from what little I know about it. I assume that is all they are going to get." Chairman Hall asked "How much was it initially?" Commissioner Satterfield responded "It was 3 cents per thousand." Commissioner Lucas added "We are talking about 30 million gallons." Chairman Hall stated "But you are talking about for them with nothing in it because Roxboro is going to pay for everything. They get 3 cents just for being a municipality so they can get to the river." Commissioner Jefferies stated "I thought the county was going to get some

of that 3 cents." Mr. Howard responded "I think and I am going by memory because I have not reread it, but I think it was supposed to go into a fund and both groups had to agree to how it would be spent on water improvements in the county."

Commissioner Carter stated "You are right about the pennies on the dollar but where they are going to benefit is if they ran a line from there to Milton and be able to furnish Milton water and back this way." Commissioner Satterfield responded "They were going to install a raw water line. That is what I understood from Milton to Yanceyville. The raw water line is certainly a mute point now since it is connected to Danville. They certainly don't need that." Commissioner Carter continued "Then if they connect to Danville they will not have any need, they will have an alternate water source." Commissioner Satterfield stated "They were not going to run any kind of clean water line. They were going to run a raw water line." Mr. Howard responded "No, the talk was to put a small treatment plant there for Milton. That is kind of what was discussed and what is in the..." Commissioner Satterfield asked "What happened to the property that was purchased in Milton? I guess it is still purchased? I guess the Town of Yanceyville is the landowners down there. I know they bought some from J.Y. Tomlinson. They paid him a right good amount for the land they bought from him. I don't know if they bought anymore or not."

Commissioner Carter asked "Is it classified as anything now?" Mr. Howard responded "It is a class C which is a basic classification." Commissioner Lucas stated "They want to classify it as a WS-IV." Mr. Howard stated "In addition to having the setbacks you also have limits on the impervious surface. The percentage of each property, I think, is 20. It can't exceed 20% of the property without putting in additional storm water measures to control the runoff. It is limited to 1 acre, or 1 house per acre, actually it is 1 house per half acre. We already limit the 1 acre in the subdivision ordinance but it is 1 house per half acre." Chairman Hall responded "Kevin the farmers are not concerned about that." Mr. Howard stated "I know but I wanted everyone to understand what was in it." Chairman Hall responded "That is not an issue. The issue is those folks that think that it is going to impact their commerce, what they are doing as farmers, raising animals and doing all of that. Doing ½ acre and all of that is already less than what the county has approved. So that is not even an issue for us." Commissioner Carter stated "Well the farmers have stuff planted along the river, hay and what not." Commissioner Lucas stated "The other consideration for the runoffs is the fertilizer and chemical runoffs." Chairman Hall asked "I think we already have laws against that too, don't we?" Commissioner Satterfield responded "Yes." Chairman Hall continued "Remember when the conservation people were here 4 or 5 months ago and I asked them who enforced those rules. I asked about that and the logging rules and one said it was the other organization. The other organization came and said nobody was doing it." Commissioner Williamson stated "Excuse me Chairman. The logging organization is the Forestry, which is a federal program. They restrict that if it is brought to their attention that you are cutting off the streams and creeks." Chairman Hall responded "But there is nobody out there if it is not brought to their attention. What happens is they start clear cutting right down to the creek?" Commissioner Satterfield stated "I had some cut over on my farm Mr. Chairman, Mr. Thompson came out and inspected it and as a matter of fact the logger, David Byrd sold the timber for me, went down beside the stream and he marked with ribbons where they had to stop at and they did come and check back." Chairman Hall stated "Well they might be doing a better job with the logging but for the other people..." Commissioner Travis added "They monitor the

ones that are reporting it but not the ones that don't report it." Commissioner Satterfield asked "Do you mean like if someone goes to cutting their own timber or something?" Commissioner Travis responded "Yes, not all of them report it." Commissioner Satterfield stated "Because nobody knows it is going on. That is like everything else. If you don't go through the process nobody will know."

Chairman Hall stated "Ms. Lucas mentioned two things but we have not talked about the second thing much and that concern of litigation because several years ago we finally agreed to what the Town was doing. Personally I don't have a concern about litigation for two reasons. The first reason is one board cannot tie up another board. You can do contracts for certain services but it is not forever. That is generally not the way it is done. They can't do that. The other reason is they are not selling the water. They have not done anything. It has just recently been updated." Mr. Howard responded "I would like to make a comment about that if you will let me whenever you are ready for it. His two concerns that we talked about Ms. Lucas was 1) in the agreement it says that the county will assist in the reclassification effort. So his first concern is if we do a resolution opposing it then that will be seen as not assisting with the reclassification effort." Chairman Hall stated "Hold that thought." Commissioner Lucas stated "I think the terminology is support." Chairman Hall responded "Well his general concern is we agreed to do something. To me there is no time specific that we should have done that. If this Board changes its mind because the situation has changed and right now with the last meeting we had with the Town we talked about tying into Danville and turning that line over to them. They asked for it and we talked about it turning that line over to them so this need for an alternative water source can go away for the county. But go ahead Kevin with what you were saying." Mr. Howard continued "Well we agreed to support the effort for reclassification and Ms. Lucas is right it was to support. And it also requires that anyone who breaks the agreement to pay restorations to the remaining parties in the agreement. His concerns were that we don't know what those are. It could be $500 and it could be $500,000. What he was asking and what he wanted me to say was if you wanted to do the resolution without knowing what the risks are and you don't know for sure without talking to them if the legislative folks will even support it and put it forward. He also said the local bill in the Short Session is supposed to be non-controversial and you don't know how they will treat this one being between two different counties, it may be received as controversial and it will not even be introduced if that was the case. He said we have until May 23rd as she said to put this in. He just wanted me to pass on the recommendations to maybe meet again and to give him time to look into it and be at that meeting." Commissioner Lucas stated "I have looked into all of those scenarios."

Commissioner Jefferies stated "I think the last time this was discussed I was not on the Board but if we want to do this I think it would be a good idea to discuss it with them in a meeting before we proceed. We would be the one to make the decision but I think it would be the right thing to do to bring the Town of Yanceyville in here and say look this is what is happening and you are going to get the water from Danville and this is what we decided. We felt like this would be best for the county. I think this is what happened before to cause a lot of problem between the two boards or I could be wrong." Commissioner Lucas responded "I was on the board in 2004 and Roxboro came to the commissioners and asked what they could do to get access to the Dan River. The next thing we knew and we learned after the fact that they did not talk with us first they just went right ahead and did it. All of that is behind us and I just don't see the need to talk

to Yanceyville about what we are trying to do." Commissioner Jefferies stated "Well this is my reason for saying what I said. Yes I know that is behind us but we just don't want to go down that same road. Let's keep the relationship where we have it at and try to build it back. That is exactly what I think about that. Maybe we can make it right but we should not make the wrong, wrong. Let's make it right this time. That is how I feel."

Commissioner Williamson asked "Have we heard that Roxboro is planning to move forward with this or anything like that?" Chairman Hall responded "I have not heard anything." Commissioner Williamson continued "Because right now, was Jordan Lake already in the process of doing what they did?" Chairman Hall responded "That has been in the process for about 20 years." Commissioner Williamson stated "That is what I am saying. What I am saying is Durham and Raleigh have plenty of water because of Jordan Lake from my understanding at this time."

Commissioner Lucas stated "I just think this is an opportunity for us to go back and correct something that was done wrong and work together here to eliminate the Roxboro/Person County reclassification. I don't know if it will come to that but that is the direction I would like to see done. It should have never happened the way it happened to begin with."

Commissioner Carter asked "Will we have time to meet with the Town on this and get their input on it too? I kind of feel like what I am gathering is, it is not the Town or Roxboro, the state, DENR is the one that wants to reclassify it, is that right?" Chairman Hall responded "It is not that they want to, they were asked to do it and within their authority based on the process they couldn't because they received some objections. Once they got those objections it was pushed up to the next level."

Commissioner Travis asked "Is the reclassification going to be the same thing?" Commissioner Satterfield responded "The reclassification is going to be the same thing Commissioner Travis, I think, that happened in the western part of the county with that reclassification that just took place up there, up in your section. The Haw River reclassification, I think, a little bit of it came into Caswell County. It is going to be classified the same thing that it is." Commissioner Williamson stated "That is the Jordan Lake reclassification." Commissioner Satterfield responded "That's right, the Jordan Lake reclassification." Mr. Howard added "I want to make sure that everything has the accurate information on what the reclassification is. It is going to be a watershed IV which has the lowest restrictions that there are. The Jordan Lake rules are their own entity. They are not a part of the watershed reclassifications. They are set up for nutrient loading and all of that. It is really heavy nutrient loads from all the towns that feed into the Haw River that goes into Jordan Lake. So it is minimal standards but there are limits and requirements placed on the property owners in that area." Chairman Hall stated "The Haw River reclassification did not have anything to do with Jordan Lake. It had to do with the intake in Greensboro." Commissioner Carter responded "That is right." Chairman Hall continued "Greensboro put that water intake in. Then they had to reclassify it. The problem is that put the intake in and..." Commissioner Carter added "And they can't even use it." Commissioner Lucas asked "Why?" Commissioner Carter responded "There is not enough flow in it." Chairman Hall stated "Here is my concern. Here is what will happen. They put the WS-IV in, that is the lowest classification and once they put the intake in that will mean that the

classification will have to change and we won't be able to stop it." Commissioner Carter responded "That is true." Mr. Howard stated "And the restrictions are used to prevent debris and dirt from going into the river and to keep it from getting too muddy basically for the intake. I can check on this for you but I don't think there are any nutrient guidelines. Now that is not to say that they want come back later on and change that. Once it is classified the state can always change their rules but this is more for erosion control and slowing down the runoff more than it is a nutrient type thing."

Commissioner Satterfield stated "Mr. Chairman the problem I have with this whole thing is if there was a need for the water supply or for people to have water then we are talking a different animal. We are talking about reclassifying 23,000 acres of land that is privately owned by someone and we have no idea when and if or will it ever be an intake put down there. Now when the time comes for the intake to go in down there whether it be 10 years, 20 years or whatever then that is the time to start talking about reclassification and if in fact they need the water. But just to pass a reclassification based on the premises well we are going to put an intake down there one of these days. Chairman Hall responded "And that is where it stands now." Commissioner Satterfield continued "But nobody knows anything about when that intake is going in there." Chairman Hall responded "Right." Commissioner Satterfield stated "If it will ever go in there." Chairman Hall responded "That is absolutely correct." Commissioner Satterfield continued "So why impose these restrictions on taxpayers that is unnecessary." Chairman Hall responded "The problem is, it has gotten bigger. It is going to be reclassified if we don't stop it."

Commissioner Travis asked "What is the guarantee that it is going to be classified at the lowest restriction?" Mr. Howard responded "The state has already told us that. It is in the agreement. State has already informed us that once it is, what it is is they have already applied for a permit for the intake so once they have applied for that permit then the state requires a reclassification to put the restrictions in place. They have already told us that it will be a IV due to it is a raw water intake whereas Farmer Lake they pulling it and treating it straight out of that lake that is going to be transferred into another water source and then will sit and be pumped out of that other water source that is why it will be the least classification. If they go in and change it and want to do a raw water intake and treat it right there they will have to change it like Farmer Lake to a class III." Commissioner Travis continued "It could be 10 or 20 years before it is built." Mr. Howard responded "To answer your question, I don't think the state cares when it is built but when you apply for the permit you have to reclassify it right then. You can't wait until you build you plant and then classify the water." Commissioner Travis stated "I think we need to do what we can to protect the taxpayers of this county. I think we need to try to stop this from being changed."

Commissioner Satterfield asked "When is the latest we can introduce or add this?" Mr. Howard responded "The 23rd. The Wednesday after our next commissioner's meeting." Commissioner Lucas added "That is the latest date. The later you wait the, the sooner we can do it the better. This will give the legislature more time to look at it instead of waiting until the final hour." Commissioner Satterfield stated "Well Commissioner Jefferies said that he would like to have Yanceyville's input though." Commissioner Jefferies responded "And Milton as well if possible." Commissioner Satterfield asked "The only thing that kind of bothers me just a little bit Commissioner Lucas. Who is out of the money on the land that was bought down there?"

Mr. Howard responded "The Town of Yanceyville purchased the land." Commissioner Satterfield continued "The Town of Yanceyville purchased the land. I know we don't have any money in it. Were they reimbursed for that or do you know?" Mr. Howard responded "I do not know." Commissioner Satterfield stated "They paid a big price for the land." Mr. Howard responded "I don't know if Roxboro gave them the money to do that or not." Commissioner Lucas asked "Do you know what they paid for it?" Commissioner Satterfield responded "I don't know what they paid for that. I don't remember the dollars but the man that bought from Fred Thomas it was high priced."

Commissioner Travis asked "When the agreement was approved who was on the Board?" Mr. Howard responded "It was Mr. Carter, you, Jeremiah and Nate." Commissioner Lucas stated "But all the boards are now different. The Town of Roxboro has different board members. The Town of Yanceyville has different board members and we have different board members."

Commissioner Satterfield asked "What is the Town of Milton's input in this thing? Anything? Did they oppose it or were they for it?" Chairman Hall responded "They did not have any, the way the deal went down is the Town of Roxboro came to us and we said no and we were told they were going to get a quarter of a billion dollar plant and they did not want to share the tax revenues or anything. Immediately after we said no within two or three weeks they struck a deal with Yanceyville. Milton was never called." Commissioner Satterfield asked "Did the Milton Town Council object or did they have any kind of input?" Chairman Hall responded "They had no direct contact. The deal went straight to the Town of Yanceyville and Yanceyville had the authority over the water system." Commissioner Satterfield continued "I was just wondering why the deal was not struck with the Town of Milton since it is right there at Milton?" Commissioner Travis responded "I don't think the Town of Milton could condemn the land like the Town of Yanceyville could." Commissioner Satterfield stated "Yes they can. They are incorporated just like Yanceyville." Chairman Hall stated "Milton did not have a water treatment plant. They did not have a water system at all. Yanceyville had a water system in place." Commissioner Satterfield asked "What difference does that make?" Chairman Hall responded "Well when you start talking about laying lines they made an agreement on who would maintain the lines from Person to Caswell and the Town of Yanceyville was going to maintain the lines on the inside of Caswell." Commissioner Satterfield asked "The Town of Yanceyville was going to maintain the lines from there to the Person County line?" Chairman Hall responded "Yes." Commissioner Satterfield continued "How in the world were they going to be able to afford that?" Commissioner Carter responded "No, Gordon, they were not going to maintain the waterlines. They were going to maintain them from Milton to Yanceyville but not to Roxboro." Chairman Hall stated "They were going to get paid. Roxboro was going to have a quarter of a billion dollar plant that would be paying property taxes. So the money was going to flow." Commissioner Carter stated "But everything dried up, didn't it?"

Commissioner Lucas moved, seconded by Commissioner Travis to approve the resolution to act on behalf of the Caswell County citizens to protect our natural resources.

Commissioner Jefferies moved, seconded by Commissioner Carter to amend the motion by asking the Town of Yanceyville to meet with the Board to see what they have to say first.

Commissioner Travis stated "I understand what you are saying Mr. Jefferies but we can't make decisions for Yanceyville. We have to make decisions for Caswell County. I really don't see the point of asking them about it and that is just that way I feel about it."

Commissioner Lucas stated "I agree with Commissioner Travis. We are going to do what we need to do whether Yanceyville agrees or not."

Commissioner Williamson stated "On Mr. Jefferies' amendment we could instead of having a separate meeting add it to the agenda for our May 21st meeting as an agenda item on there." Commissioner Jefferies responded "I think they need to know by the 23rd, is that right?" Commissioner Lucas stated "That will not give us time to get it to the legislatives to give them time to review it and act on it." Commissioner Carter stated "We can have a meeting with them next week." Commissioner Lucas asked "What if we have the meeting and they don't agree with us on it?" Commissioner Satterfield responded "Well at least we can say we talked with them." Commissioner Williamson stated "That is right. We will have their opinion." Commissioner Satterfield asked "Can we meet with them on the 14th, on Monday to make a decision, will that give us time to get it to the legislature? As far as that goes Mr. Chairman can we go ahead and fax this to Representative Faison and Senator Gunn and tell them that we are thinking about asking them to introduce this as local legislature?" Mr. Howard responded "If it is approved based upon the way you have it you are approving based on getting input from Yanceyville. Is that right that you are amending the resolution contingent upon having a meeting?" Commissioner Travis stated "If we meet with the Town of Yanceyville and they don't agree with us where will be stand then? Are you going to pass this resolution and forward it on to the legislation?" Chairman Hall responded "Mr. Travis meeting with someone and getting their input is not going to sway the vote one way or the other." Commissioner Satterfield stated "The only way they will sway my vote is to tell me they need the water. I know that Roxboro does not need the water. I don't see anybody putting an intake down there no time soon in the foreseeable future unless they are going to sell that water to somebody. There only concern I have is whether or not they have an investment down there. If they have done what you said Mr. Chairman they are out that money but they have the land I guess. They could sell that land if they wanted to."

Upon a vote of the motion on the amendment, the motion carried by a vote of five to two with Commissioners Lucas and Travis voting no.

Commissioner Satterfield stated "I think the Town of Yanceyville needs to understand by whoever contacts them that this meeting must be held no later than the first of next week and reason for it and the timing for it to be explained to them. We need to tell them we are seeking local legislation to be passed. If they can't meet with us I would say that we go ahead with it." Mr. Howard responded "You have to call the meeting tomorrow to have it the first of the week." Commissioner Carter stated "We can recess this meeting." Mr. Howard responded "Yes we can recess this meeting but they need time to advertise with 48 hours notice and I am not sure that weekends count in that. I think it will have to be Tuesday, I think." Commissioner Carter stated "You will have to contact Carolyn or the Mayor because the manager is out of town."

Upon a vote of the motion of the original motion as amended, the motion carried unanimously.

Mr. Howard stated "I will call the Town and let them know what Commissioner Satterfield stated that we are looking at local legislation in regards to and I will give them the resolution, in regards to the reclassification but we want to meet with them first and that it is imperative that we meet Tuesday of next week. We will go forward if we don't have a meeting I would assume."

Chairman Hall asked "Does the consensus agree that we meet Tuesday morning?" Commissioner Williamson responded "I cannot do it in the morning. I can probably meet at 3:00." Mr. Howard stated "So anytime after 3:00 whatever time is convenient." Commissioner Travis responded "I would like to meet as quick as we can after 3:00 because I am going out of town."

The meeting will reconvene Tuesday, May 15th at 3:30 p.m.

A RESOLUTION TO ACT ON BEHALF OF CASWELL COUNTY CITIZENS TO TO PROTECT OUR NATURAL RESOURCES

WHEREAS, in 2011 a group of Caswell County property owners/citizens successfully Petitioned the State to get the Dan River Reclassification delayed and sent to the 2012 Legislature for review, and

WHEREAS, approximately 23,000 acres of Caswell County land will have Restrictions/regulations imposed for the next 40 years, and

WHEREAS, the 2008 Interlocal Agreement the Caswell County Board of Commissioners agreed to Section 7.3 and 7.4 without any public input. The DENR Reclassification public hearing was held 3years later in 2011.

Now, Therefore Be It Resolved The Caswell County Board of Commissioners opposes The Reclassification of the Dan River and also oppose any local bill or Administrative Rule supporting the Reclassification.

S/Nathaniel Hall
Nathaniel Hall, Chairman
Caswell County Board of Commissioners

ATTEST:

S/Kevin B. Howard
Kevin B. Howard
County Manager

CLOSED SESSION

Commissioner Travis moved, seconded by Commissioner Williamson that the Board enter into Closed Session to consider the compensation, terms of appointment and performance of an individual public officer (NCGS 143-318.11(a)(6)). The motion carried unanimously.

RECESS

At 7:05 p.m. Commissioner Travis moved, seconded by Commissioner Williamson to recess until Tuesday, May 15, 2012 at 3:30 p.m. The motion carried unanimously.

Kevin B. Howard
County Manager

Nathaniel Hall
Chairman

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MINUTES – MAY 15, 2012

The Caswell County Board of Commissioners reconvened it's meeting at the Historic Courthouse in Yanceyville, North Carolina at 3:30 p.m. on Tuesday, May 15, 2012. Members present: Nathaniel Hall, Chairman, Cathy W. Lucas, Vice-Chair, William E. Carter, and Jeremiah Jefferies, Kenneth D. Travis and N. Kent Williamson. Absent: Gordon G. Satterfield. Also present: Kevin B. Howard, County Manager. Paula P. Seamster, Clerk to the Board, recorded the minutes.

MOMENT OF SILENT PRAYER

Chairman Hall opened the meeting with a Moment of Silent Prayer.

DAN RIVER RECLASSIFICATION

Chairman Hall stated "Before we recessed the last meeting we approved the resolution for the Dan River reclassification. The next thing we wanted to do was to have a meeting with the Town of Yanceyville about our proposed actions. Third, we wanted to decide if we wanted to contact our legislative leaders. I understand from the County Manager that the Town of Yanceyville was not able to meet with us today." Mr. Howard responded "That is correct. I talked with Mayor Davis on Friday morning and explained to him what we wanted to do and gave him a handwritten letter as well as a copy of the resolution. He called me back later that afternoon and said that they would not be able to meet at this time. He could not get the whole board together to meet. We did not discuss other dates because we had this meeting already set." Chairman Hall asked "You did explain to the Mayor what this was all about?" Mr. Howard responded "I explained that due to the time frame of course we had to meet pretty quickly." Chairman Hall continued "But you explained what it was all about?" Mr. Howard responded "Yes sir, I explained it and everything. I gave him a copy of the resolution as well."

Commissioner Lucas asked "As far as you know he did speak with other council members to try to arrange it?" Mr. Howard responded "I assume that he did. He said that he would have to call council." Chairman Hall stated "Only because Ms. Lucas asked I will respond, I spoke with one of the council members and they were not aware of the meeting." Commissioner Lucas stated "I know that Mr. Brigman was out of town because he got married."

Chairman Hall asked "Are there any further discussions about our previous meeting?"

(At 3:35 p.m. Commissioner Travis entered the meeting.)

Commissioner Lucas stated "Chairman Hall in light of the fact that the motion passed with an amendment to include the Town and that was carried through to no avail I think we have met the criteria of the last meeting. I think we need to move forward with contacting the legislature. I have personally spoke with one and forwarded the resolution to him. I think we need to have a letter written specifically from the County Manager or yourself stating what our intentions are."

F

CASWELL COUNTY

Board of Commissioners

"Preserving the Past — Embracing the Future ..."

May 18, 2012

Representative Bill Faison
300 North Salisbury Street, Room 405
Raleigh, NC 27603-5925

Dear Representative Faison:

The Caswell County Board of County Commissioners on May 10, 2012 voted to approve a Resolution to act on behalf of the Caswell County citizens to protect their natural resources regarding the Dan River Reclassification.

In 2008, The Caswell County Board of Commissioners agreed to enter into an Interlocal Agreement to establish a public enterprise for a water supply and distribution system to supply raw water services to the Town of Yanceyville, the Town of Roxboro, and to the counties of Person and Caswell. As of this date the raw water intake has not been installed. It is our understanding that there is no immediate need for this water supply. Approximately 23,000 acres of farm land in Caswell County will have restrictions and/or regulations imposed if this reclassification is approved.

If there is no immediate need for this water supply why impose the restrictions on the property owners in Caswell County. We respectfully request that you introduce legislation to oppose this reclassification during the 2012 Session of the General Assembly. Attached you will find a copy of the proposed amendment for administrative code 15A NCAC 02B .0313(k).

Sincerely yours,

Nathaniel Hall
Chairman

Enclosures

144 Court Square • P.O. Box 98 • Yanceyville, NC 27379
Phone: (336) 694-4193 • Fax: (336) 694-1228

G

NCDENR
North Carolina Department of Environment and Natural Resources
Division of Water Quality
Charles Wakild, P. E.
Director

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

July 12, 2012

Brian Collie
Director
Caswell County Planning Department
P.O. Box 1406
Yanceyville, NC 27379

Dear Mr. Collie:

The Environmental Management Commission reclassified a segment of the Dan River in Caswell County from Class C to Class WS-IV (CA and PA). The reclassification became effective on July 3, 2012. (For additional details, see http://portal.ncdenr.org/web/emc/january-12-2012, Action Item 12-03.)

The Water Supply Watershed Protection Act (NCGS 143-214.5) requires that all local governments having land use jurisdiction within a water supply watershed adopt and implement land use ordinances that at least meet the minimum requirements of the state's water supply watershed protection rules. The statute requires local governments to adopt and implement the appropriate watershed protection ordinance and maps within 270 days after reclassification and notification of this action.

Since Caswell County is not currently implementing water supply watershed protection provisions for WS-IV waters within its jurisdiction, revisions to the county's ordinance will be necessary. You will also need to update your watershed map to reflect the reclassified WS-IV waters. Please let me know if you need assistance with this. Your revised map and ordinance will need to be approved by DWQ.

Please take the following actions by March 30, 2013:

1. Adopt and implement the appropriate watershed protection ordinance revisions.
2. Submit to us a copy of the county's approved watershed ordinance for DWQ approval.
3. Submit to us an updated 1:24,000 U.S.G.S. topographic map indicating your local government boundary and the location of the reclassified waters, including critical area and protected area boundaries within your jurisdiction.

1617 Mail Service Center, Raleigh, North Carolina 27699-1617
Location: 512 N. Salisbury St, Raleigh, North Carolina 27604
Phone: 919-807-6300 \ FAX: 919-807-6492
Internet: www.ncwaterquality.org

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have not heard that." Chair Lucas continued "Would the rear of this building be eligible for some of those funds?" Mr. Mills responded "This is normally, is that the drive for the fire department or the road?" Chair Lucas stated "It is at the back of the courthouse, you pass by the fire department." Mr. Mills continued "Normally we maintain the area in front of the bays. That is what we normally maintain out of this money here. Now the road going down past it that could be some other funds to improve that." Chair Lucas stated "Thank you."

Commissioner Hamlett asked "How many dirt roads do we still out here?" Mr. Mills responded "I can tell you there is none in Alamance and Orange but there are still quite a few in Caswell, Rockingham and even Guilford. What is happening is we are getting down to the dirt roads that only have one or two houses on them. We are getting close to that in Caswell and that is a decision we are going to have to make if there is one house on it do we pave it and then it is like a paved driveway and where do we start saying is it worthwhile to do that rural road or is it worthwhile to do some strengthening like on Walters Mill or do some safety issues and things like that. That is what we will be faced with pretty soon." Mr. Norris stated "There are 45 dirt roads left." Mr. Mills asked "How many have one or two houses on it can you tell me real quick?" Mr. Norris responded "I don't have the actually number of houses listed." Mr. Mills stated "I can get that to you though. I can give it to all the commissioners. I will say this is what we have left and this is the house counts on them." Mr. Howard asked "And that is the public roads only and not the private?" Mr. Mills responded "It is only the state maintained roads right." Commissioner Hamlett stated "That is a lot of roads." Mr. Mills responded "That is a lot of roads. We are a long way in Caswell, Rockingham, and even Guilford; I know Guilford and Rockingham are close to one or two roads. Alamance and Orange we have everything paved except for the ones on the hold list because all we are doing down there is paved road improvements and straighten some intersections out and things like that. I will get our latest list to everybody and the house counts."

Commissioner Jefferies moved, seconded by Commissioner Travis to end the public hearing on the proposed 2012-2013 Secondary Road Construction Programs for Caswell County. The motion carried unanimously.

Commissioner Hall moved, seconded by Commissioner Jefferies to approve the proposed 2012-2013 Secondary Road Construction Programs for Caswell County. The motion carried unanimously.

PUBLIC HEARING – PROPOSED AMENDMENT TO THE CASWELL COUNTY WATERSHED PROTECTION ORDINANCE

Commissioner Hall moved, seconded by Commissioner Jefferies that the Board enter into a public hearing to receive comments on the Proposed Amendment to the Caswell County Watershed Protection Ordinance. The motion carried unanimously.

Mr. Brian Collie, County Planner, stated "Good evening Commissioners. I would like to give a brief power point presentation on the background summary of the reclassification changes. In 2002 the City of Roxboro requested that a Dan River segment of Caswell County be reclassified from a Class C to a WS-IV water supply watershed to allow for an intake structure to be placed

in the river in Milton, NC. This intake will initially serve Roxboro as well as the Town of Yanceyville and Milton with an emergency potable water supply source and eventually a permanent water supply source if needed. An interlocal agreement was signed I believe in 2008 by the Caswell County Board of Commissioners as well as the Town of Yanceyville, City of Roxboro and Person County. This agreement states Caswell County shall enact and submit to the North Carolina Environmental Management Commission a local water supply watershed management and protection ordinance acceptable to the Commission to utilize the water supply sources of the Dan River. (Mr. Collie showed a map of the area covered). What a WS-IV classification means it is a primarily classification that is assigned to waters protected as water supplies that are located generally moderately in a highly developed watershed. Before these waters can be classified to a WS-IV rule those two rules must be met. This reclassification area proposes to have a critical area and a protected area. The critical area is the area that is adjacent to the intake or reservoir where risk associated with pollution is high. This critical area will extend along the river from the intake which is located nearly .7 miles upstream of the NC 62 bridge in Milton to a point about one half mile upstream and draining into the intake. This critical area is nearly 200 acres and is located entirely in North Carolina. The protected area is upstream from the critical area in which protection measures are required. The land and waters that are within approximately 10 miles of the drain and intake are in the protected area. It is split nearly in half by the NC/VA state line. This area covers about 39 ½ miles in land and water bodies and 22,800 acres. (A map of this was shown). At the top of the map, that area is the critical area. The blue outline, the triangle, going from the state line is the protected area, the light blue area. The NC DENR reclassified this segment of the Dan River in Caswell County from a Class C to a Class IV on July 3, 2012. What that means is under the Watershed Protection Act required that Caswell County adopt and implement the appropriate watershed protection ordinance within 270 days. Caswell was given until March 30, 2013 to do this. How these rules will affect the property owners in this area. The WS-IV rules will only apply to new development projects. They require a sedimentation and erosion control plan. A sedimentation and erosion plan is requested when you are disturbing more than one acres of land. If you are not disturbing over an acre of land then you are not affected. As such residential projects involved in the construction of a single family home and small commercial projects would likely be exempt. All the current land uses are grandfathered in meaning that landowners on the Dan River can continue to operate on their land the same as before the reclassification. These rules will not affect the current minimum lot size, single family residential uses are allowed with a maximum of two dwelling units per acre. Our current subdivision standards only allow one dwelling unit per acre and will still supersede that. Forestry and farming practices are not affected in this reclassification. All other residential and non-residential development shall be allowed a maximum 24% built upon area within the critical area and 36% in the protected area. In addition new development may occupy 10% of the watershed area outside of the critical area with 70% built upon when you get a special residential non-allocation permit from the county. The allowed uses straight from the ordinance draft state single family residential, multi-family residential and non-residential uses. When it comes to agriculture operations they are only encouraged voluntarily to participate in the agricultural Cost Share Program and are subject to provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Silvicultural operations are subject to the provisions of the Forest Practices Guidelines related to Water Quality. Prohibited Use: Storage of toxic and hazardous materials unless a spill containment plan is implemented. New Landfills and new site for land application

of sludge/residuals or petroleum contaminated soils. Stream Buffer areas are required for development activities. A minimum of thirty foot undisturbed and an additional fifty foot vegetative is required along all perennial waters for development activities. Agriculture and forestry activities are exempt from these buffer requirements."

Chair Lucas started to call up individuals that signed up to speak during the public hearing.

Mr. David Stiles made the following statement

"Good evening my name is David Stiles. I live in the Blanch area. I also work as a chemist at the water plant in Danville so I have a lot of knowledge about the water quality of the river there. I am here representing myself as a small farmer as well. One thing I would like the commissioners to consider before they essentially take and restrict the land use in this area is that even if there were no people activities in this portion of Caswell County we have this huge producer called the City of Danville there and they produce about twenty million gallons of normal waste a day which they treat and do a very good job of and during a rain event that can go up by a factor of ten so the river is not a pristine river. It is not pristine and because of my job activities at the water plant I understand there is a lot of waste coming down the river now from Eden and Mayodan and Roanoke and a lot of other cities that are upstream that the City of Danville is able to deal with quite successfully. Of course we would like for it to be cleaner but we are able to deal with it successfully. The idea that Roxboro would essentially take my use of the land away me or restrict it in some way without a clear need. I was at an earlier meeting where a person in Roxboro admitted they really did not need the water right now. Their initial plans were to build this reservoir to perhaps sell it to Durham and the Raleigh area which do desperately need water. Here is a gambit where you would be taking and restricting use land in Caswell County which is already extremely poor and providing this resource to another community for no good reason and like I said it is not even clear if you make it as restrictive as possible that you would have a great impact on the quality of the water in the river. I noticed this map very carefully excludes you can't tell that just at the edge of this gray zone is where the Danville Water Treatment Plant is so the gray zone goes right up to the Danville Water Treatment Plant or very close to it. Another thing to consider is half of the watershed is in Virginia and you can't do anything about the restriction of water there. I understand if the economy improves there are great plans for that area to be developed industrially so here would be an example if we restricted on this side of the water then we would be putting Caswell County behind the eight ball in terms of Pittsylvania County and we already have trouble competing with them anyway. I just want the commissioners to consider these facts and if this is something we are going to do we are not going to have a pristine river. That is just not going to happen. Thank you."

Mr. Lawrence Bernard made the following statement:

"My name is Lawrence Bernard and I would like to urge the Commissioners to vote against it. It says that forestry and agriculture is exempt but there is no law stating that. It is just somebody saying that and it is going to affect a whole lot of farmers on restrictions and stuff. On our side of the river it is real hilly and the terrain is rough. It is 428 acres there and it has 11 live branches running on it that feed into the river. If you fence all of them off to keep the cattle out you could

hardly fly a helicopter across it. What I don't understand is how you can pump water from one basin river which is the Roanoke and the intention is Roxboro and they don't need the water, they actually had to go up on their rates because the industries moved out and they are not using the water and they went up on the water rates to justify the industries moving out. What I have heard the intentions are is to sell it to Durham and Wake Counties which will be pumping water out of the Roanoke Basin into the Neuse Basin and I don't think that is right neither. I would like to urge you all to vote again it. I would like to see a show of hands of the people in the audience that are against this watershed if possible. (A lot of people raised their hands.) Thank you ma'am."

Mr. C.L. Wentz, Sr. made the following statement:

"Good evening and thank you for hearing me. I am glad to see all of these people here. I live in Pelham. I have lived there for about 6 ½ years. I have a long background in public administration. I have served as county administrator, assistant county administrator, city manager, etc, etc. I was on the Roanoke River Basin Association Board of Directors and I made the motion to fight the withdrawal of the water from Bugs Island and or Gaston Lake to go to Virginia Beach. I had to resign that position because I quantified it to $300,000 maximum expense by an agency that had no ability to raise money other than $10.00 per capita for each county that bordered on the Dan River and that is not enough money. The first bill came in at over $450,000 and I asked the chairman at that point, how do you pay it. We were possibly jointly and severally liable for those fees and I said oh no you have severally exceeded the authority of this board by about $150,000 which is over 50% and I resigned that night. My point there is the future of Caswell County is tied dearly to the major water source of Caswell County. That is Dan River. I was born and raised in Danville. I fish on it. I love it but there are several problems. On the west side of Danville there are between two and five thousand geese. On the south side of Danville leaving Milton I know there are over two thousand because I have almost had to fight them with my boat to even get out of the water. My basic point is I have heard and I may not be right I don't know the statistics, the river between Danville and South Boston, I used to be the assistant city manager in South Boston, is probably one of the most polluted waters in the state of Virginia. So it is polluted. My question is, what do we do with geese. This has nothing to do with this issue but as people we need to drink and have water to live. Folks I am against this. I think that when we look at where are we going to be if this is a 40 year deal. Roxboro has our water. They are out of the basin and we want to grow for our kids and our grandkids where are we going to get the water from. If you give it to Roxboro or anybody else without saying no because we need it for us. Please wrap your hand around what that is and you say well I have no capacity right now. If you let everybody else jump in the pool there is no capacity for you to get in and out of the pool. Please, please think seriously about the long range influence and consequences of walking into this and not saying no because it affects, I may not live 40 years and I probably won't but our kids and grandkids will. As I understand it right now we are one of the poorest counties in North Carolina. My desire is to rid us of that moniker and the only way to do it is to develop. That is water. That is sewer. That is road and folks we don't seem to see that. You all have an awesome responsibility. Again I was a non-elected official but I will tell you I respect every one of you. You have an awesome job. All of these people out here are saying do it with some of what I am saying in mine and the other side is and I hope I am not offending anybody and I hope not but I believe in Jesus Christ the Lord. Turn it over to the

Lord. Think about this before you go walking down a road that may take us to a road that we don't want to be on. I have a lot of say but I am not going to say much more but there is one or two things that I want to know. 23,000 acres are affected. How large is Caswell County's total acreage? If you don't know a number is that 1/10, 1/5 or whatever." Chair Lucas responded "It is 422 square miles." Mr. Wentz stated "Well that does not tell me how many acres. I don't know the acres well anyway I don't know what 23,000 acres is either. But my basis is we might need to figure that out. We are giving a pretty big chunk of this county with some fairly significant things to meet. I look at the industry in this county and I don't see a lot. Folks you have to develop industry. The other thing is we have to educate our kids. We can't do that if everybody is stealing our waters and stealing our industries and we don't have any jobs and our schools our dragging us to tax. How do you stop the bleeding? You don't give your water away. I could sit here and go on and on and on. I am very opposed to it. I think you have an awesome job and I hope these people hold you to the rail. God bless us all."

Mr. Thomas Bernard made the following statement:

"Good evening Madam Chair and Commissioners. I am Thomas Bernard, 608 Bernard Road, Milton. I too am opposed to this. I have one question for Mr. Collie. There is a statement in there that says agriculture and forestry will be grandfathered in. Where in the statutes is that located please sir? I just need a statute number." Chair Lucas stated "For those of you that don't know we have four representatives from the Division of Water Quality with us tonight. Ms. Julie Ventaloro with DENR responded "Where it talks about agriculture can be found in the rule. I don't think it specifically states it in the statutes but in Rule 15A." Mr. Bernard continued "But it is not a statute?" Ms. Ventaloro responded "I don't believe it is in the statute itself. I don't think it is addressed either way in a statute." Mr. Bernard stated "It is a rule. So it is not in a statute?" Ms. Ventaloro responded "I don't believe so." Mr. Bernard continued "Because I never could find it in a statute. I am going to echo the sentiments of the speakers before me. This is the second time that the City of Roxboro has came in and did it to Caswell County. They did it to the Roxboro Lake. Then it is my understanding they came to the commissioners and the commissioners turned them down the first time, I don't know. They turned them down then they came through well I call it the back door by way of Yanceyville and condemned land right outside the jurisdiction of the Town of Milton. To me that is wrong. It is taking Caswell County's resources away from us. Like the gentleman said we may not see it but our children and our grandchildren and our great children should be. Therefore if you will look on your map where the river comes down from Virginia through Caswell you will see that there is not a whole lot of development there. There is a whole lot of agriculture and forestry land through that area. These people make their livelihoods off of that. I think there is a good job going on along that river. I dare say once they get their foot in the door then it opens it up to more restrictions, more restrictions, more restrictions. Thank you Madam Chairman."

Mr. Wells Barker made the following statement:

"Good evening. My name is Wells Barker. I currently live in Beaufort, NC but I spent my first 35 years of my life on my family farm near Milton and we still maintain a residence and farm there. Thank you for having this public hearing and for allowing us to speak regarding the reclassification issue. I am opposed to the reclassification that will put land use restrictions on

23,000 acres of Caswell land in order for Roxboro, Person County to take water from the Dan River near Milton. If Roxboro, Person was in need of this water I am pretty sure Caswell would be willing to share its natural resources but there is no need. Roxboro's recent water report to the State projects Roxboro will only be using 52% of its present water supply in the year 2050. Almost forty years from now they still will not be anywhere near to running dry. The restrictions that come with the reclassification will affect development, agriculture, transportation, forestry and so forth for a minimum of forty years. Quoting from the NC Division of Water Quality 'before you buy property, plan a new development project, construct a new road or undertake other land use activities you should check with local, state, and federal agencies about the assigned surface water classification for the water body on your property. Many classifications especially those designed to protect drinking water supplies and certain high quality water have protection use rules which may affect land use and other activities.' So they recognize that it is not just something off your cuff. These regulations can be more even more restrictive at any time after the initial reclassification and often are. An example is the new regulations being developed and enacted for the Jordan Lake Watershed which includes some land in southern Caswell. To think that in the future that some of the same regulations won't be enacted on the land along the Dan and its tributaries is being naïve. From the Division of Water Quality Jordan Lake Nutrient Management Strategy new rules require a fifty foot wide riparian buffer on all surface waters including intermittent and perennial streams, lakes, ponds and reservoirs. New agricultural rules may include vegetative buffers from ten to one hundred feet, fencing setbacks for livestock are ten to one hundred feet, and so far. It will all be up to what the Soil and Water Conservation Commission, the Environmental Management Commission, the Division of Water Quality and other decide are the best management practices for the watershed. I urge you as Caswell elected representatives to stand united to protect Caswell's natural resources and work to persuade the legislature to rescind this reclassification water deal. Our current North Carolina Governor is repealing lots of deals made during the previous administration's reign. If it can be done at the State level it can be done at the County level. Thank you."

Mr. George Daniel made the following statement:

"Thank you Madam Chairman and members of the Board. I want to echo all the sentiments and I think very eloquent sentiments have been given by the previous speakers and I want to thank you for your willingness to hold this public hearing during this meeting. I know there are a lot of comments and misinformation that goes around but there are some facts that are unrefuted. The facts that are unrefuted are that the Dan River winds from Virginia through Caswell County for a certain distance and back into Virginia. Danville has now rediscovered this river. A lot of money is going towards it. As I understand it, I sit on the Danville Regional Foundation Board, and a lot of money is going to be put in that redevelopment or development along the river now where they are taking the old textiles where the had the back end of the buildings facing the river and turning it so that the enjoyment of the beautiful stream of water that goes through there can be enjoyed by all. We need to take heed in that because North Carolina has a program, a very similar governmental program that allows for the State to declare natural and scenic rivers and it has been done throughout the State even in statute where you are dealing with the Lumbee River, where you are dealing with certain portions of it. You are dealing with Horse Pasture River in Transylvania County and Linville River and even when they are classified whether it is recreational or whether it is natural or whether it is scenic the one thing that if I interpret with

right in the statute and looking at natural and scenic rivers there is a prohibition for certain things to be performed or done in those river basins and one of which was the actual putting of a water impairment device. I just looked at this quickly before I came here. The State Utilities Commission may not permit the construction of any dam, water conduit, reservoir, power lines, transmission line or any other project works on or directly affecting any river that is designated or as a component or potential component of the state natural and scenic river. Now I am not trying to throw a red herring here but I do want you to know that Caswell, the main use we have had for that river as we know it has been a source of certainly pleasure, beauty, fishing, hunting, wildlife, that river has a history. That river has a history that is tied to this county that goes back to the time before when the Sauratown Indians, there were exports being taken all the way down to the Albemarle Sound. This history is certainly significant in this county because you have to do harp it back on what this county was built on and we road that horse for almost 200 years and that is tobacco. It was the transportation system for that long before the plank road and long before the railroad went to Danville and missed Milton. That is what the use of this river was. Before that a lot of these folks that have land along this river know that the Indians had the fish traps which are of great historic importance. Why does this come out when we talk about whether this is a agriculture use or where you have forestry affected I will tell you why because this gentleman back here sited it very eloquently in that our opportunity with dealing with this river basin and the water that runs through it has to do with inviting people to come into an area that has not been developed. They want to get away from the Triangle. They want to get away from the Triad and they want to participate and communes with nature whether it is on a kayak or on a canoe, whether it is on a john boat, whether it is duck hunting, whether it is swimming, tubing what a wonderful place to put in at the Dan Daniel Park and take out at the Milton take out area. These kinds of things are the things that we should be focusing on and not necessarily joining in with what Roxboro, the City of Yanceyville wants to do with the water. I was the lawyer for the landowner. We fought the condemnation act and we lost. The County fought and went all the way to the Court of Appeals. Boards change and times change. If you look at the changes that have gone on since we were involved in that fight. At one time Dominion Resources was wanting to put a surplus power plant over in Person County and that water was possibly going to be needed as a backup for whatever the reason. When that did not happen there was a lot of money spent by the City of Roxboro to do that so to make good on their already investment that is when the approach was made and Yanceyville came in and then the rest is sort of history. The thing here is because one thing about it Brian's Dad is a darn good lawyer. Wake County attorney for 20 some years and I know when they entered into that interlocal agreement he did what he could do to try to at least give this county an opportunity if all else fails and that is if this thing goes through and it is not stopped now by this and it is not stopped later by the historical and scenic river way. If it is not stopped somehow by Virginia doing what they can do there is going to come a time Roxboro if they are successful when they take water out of that river and they are not using it within the confines of Person and Roxboro it is going to be an agreement between Caswell, Roxboro and Yanceyville as to selling that water outside. Now you say well okay that is fine and dandy well let me tell you why I bring that up tonight because I understand there have been some fear tactics that have been put out that Caswell is going to be sued. If you don't follow through you are going to be sued thousands and thousands of dollars. Well suing is something that I know a little something about. To sue somebody you have to prove your damages. Let's talk about our damages here. If the damages that Roxboro wants to sue for are the investments they put in to give water to Dominion Resources that was

the purpose they chose to do that and with this contractual agreement, with this interlocal agreement, you are on the hook for these damages. Well one of the first questions I would want to see asked if that happens if you stand in the gap as this courageous board I would want to ask how many of those expenses that was spent for this were reimbursed by Dominion Resources. Have you already got that money back? Oh and you want to base your damages on the future sell of water? Mr. Barker just said they don't need any water until 2040 but if you want to base your damages on potential sale of water how do you have a potential sale when the agreement still lies with the three parties and all three parties have to agree to sell the water anyway. I ask you as you are making your decision I know there is the DENR side and if things are not done then Caswell may end up facing daily penalties but I want you to know that it strikes me as mighty funny for an agreement that was entered into in 2002 and then I think the interlocal agreement was entered into in 2008. Now I don't have the interlocal agreement in front of me but it should have spoken to when the reclassification was going to take place. I recall there was something in there about it and if it was here we are 4 years later after the interlocal agreement and 11 years after the request of the reclassification. Somewhere in there seems to be, why would somebody wait so late in the game to now be requesting this reclassification and certainly could it be that July 3, 2012. Do you know where you were last July 3rd? I know where I was. I as on Hyco Lake getting ready for July 4th and I was not thinking about the reclassification of the Dan River. How that thing ended up going through the legislature at that time without, at this point in time, without any knowledge or any input from you, the county leaders, I don't know but I do believe you owe it to yourself, you owe it to the people that you govern for to determine how that happened. I believe DENR would give you the time to do that. I think you need to do that because it is amazing how some of these things sort of just happened and then you looking in the paper and say I did not know that was going on, not through your fault. It is just amazing how some of that happens and there needs to be a follow up on that because this is probably one of the most critical issues that you board members will be dealing with tonight and for a long time because water is our future. The more that we can protect the water that runs through our borders the better the story we will be able to tell our children. Yes we are working for you. We are not just giving lip service. We want you to come home. We want you to have a place to live, to work, to play and to recreate and we want you to invite your friends. We want all people to come into this county and see how pretty it is and leave some of their money here and go on back and reload and come back next weekend. Folks if we continue down this path then again Caswell's future is going to be hamstrung and restricted yet by somebody a little smarter, a little quicker, a little whatever than we are. It is time for it to stop. It is time to take the stand. It is time to stand in the gap. If we face a law suit, members I will be and I am on record right now I will be out beating the bushes for you. Let me tell you something we have a courageous board of commissioners because they are standing up for us and they are not going to let anybody run over us. I ask you, I urge you whatever it takes slow walk it, deny it, do what you need to do and if somebody threatens to sue you bring it on."

Mr. Gwen Hunt made the following statement:

"Good evening Commissioners. How are you? My name is Gwen Hunt. I own property near the Milton area and I actually border up against the wetlands so I have a couple of questions that I would like for you all to consider. Hearing from the four representatives here. I don't really have an argument because I was just writing notes as I heard them but I do have a couple of

questions I would like for you to consider and I would like for you to consider rejecting this. First, this is a very nice generic map. It does not show any detail. You have landowners that came in here to give their time tonight and it would have been nice to have something more blown up on the river to see what exactly we are talking about here and not just a general map. Documentation. Where was this advertised? I found out about this by word of mouth. Where is this located? What is the address for the website? Tell me where I can go to get this information. Also it was mentioned about being grandfathered in, that has been addressed by previous speakers does this contain a detailed project time line? Everyone is throwing around 40 years but I would like to know is there a timeline. You don't have to answer I am just asking this for consideration. Once again you are taking water downstream from a wetland area how are you going to purify that? I mean think about it. Also one last request, can we please have a detailed communication plan. You have all of this here please tell us how to get in touch with you. We will give you emails, telephone numbers and addresses keep us informed on what is going on. Thank you for your time and consideration."

Chair Lucas stated "You did ask a very important question and I would like to address it to Ms. Ventaloro. Do you have a time line, just for clarification purposes, on the actual reclassification that took place in July? Do you have a time line that leads up to that?" Ms. Ventaloro responded "Do you mean how we got to this point? Well I was not much involved with that. I have a general idea of how that happened. I believe it started about 2002 from a request for a reclassification to a water supply which is what you need in the state of North Carolina." Chair Lucas continued "So a request actually came to you in 2002?" Ms. Ventaloro responded "I believe it came to NC DENR. I don't know if it was the Division of Water Quality at that time or not but it would have come to us. I don't really know what happened a few years after that but I know things picked back up around 2007 or 2008 and things were moving forward and it generally does take a couple of years for a reclassification to go through even if there isn't any controversial issues associated with it. This particular one I believe was approved by the Environmental Management Commission in 2011 and then it went to the Rules Review Commission which is standard procedure. The approved it after that they got..." Chair Lucas asked "Do you know when that happened? Was that the July 3rd?" Ms. Ventaloro responded "No not yet. I think that was sometime in 2011 sometime around September where it went to the Rules Review Commission and after that there is a rule in North Carolina where if they receive 10 or more letters of objection..." Chair Lucas stated "And that did happen." Ms. Ventaloro continued "and that did happen so there was a little bit more of a delay before it went into effect and I am a little fuzzy on the process but it went to the legislature at some point after that. They think they could have decided against it or in favor of it or not even considered it which is what I think is what happened so in essence automatically went into effect on July 3, 2012. Some of this explains why this has taken so long. I don't really know between 2002 and 2007 what was going on." Chair Lucas stated "According to the agreement it said within 60 days of the execution of the agreement that Caswell County should enact and submit the changes to the ordinance and obviously that did not happen." Ms. Ventaloro responded "Right and from my understanding that is not a requirement from the State. I don't know if that is just something that you worked out with Person County but the only thing that we, the State, would look at is the 270 days that Brian mentioned after July 3, 2012. 270 days after that date is when the ordinance should be adopted."

Commissioner Carter asked "I have a question for the Division of Water person if she could come back up. You are saying the State reclassified it in July of 2012?" Ms. Ventaloro responded "Yes." Commissioner Carter continued "Was the Haw River and the Dan River reclassified at the same time." Ms. Ventaloro responded "Yes but the Haw River was a little bit a head of the Dan River. I don't remember the date on that. I want to say it was six months or so before that but I am not entirely sure." Commissioner Carter asked "The other question I had is why was it reclassified?" Ms. Ventaloro responded "It was reclassified; a water body needs to be classified for a water supply for public drinking water sources before any water can be taken out of the river for potable water uses for the public." Commissioner Carter stated "I am hearing a lot, I was not on the Board when the Roxboro thing happened in the past but I keep hearing the Roxboro thing but to the best of my knowledge I have not heard where Roxboro has approached the county or the town or anybody to get water out of the Dan like they did before. So I guess my question to you is it is not based on Roxboro or Caswell County on the reclassification?" Ms. Ventaloro responded "Well the reclassification is something the State requires in order for an entity in this case Roxboro who requested it initially to be able to draw water out of a surface water." Commissioner Carter continued "So it has been reclassified?" Ms. Ventaloro responded "Yes, it was reclassified as of July 3, 2012." Chair Lucas asked "But you are saying the initial request took place in 2002 from Roxboro?" Ms. Ventaloro responded "That is my understanding." Chair Lucas continued "And it just lay dormant all that time until 2008?" Ms. Ventaloro responded "I have limited knowledge of what went on. I don't think it was held up on the state's end of things. I think there may have been some local issues being resolved during that time but I am really not very familiar with that."

Commissioner Carter asked "I am getting what you are saying. I am thinking the Dan River because I know the Haw River was reclassified and I think the state just went ahead and reclassified the Dan River also, right?" Ms. Ventaloro responded "Yes."

Mr. Collie stated "I am Brian Collie. I am an employee of Caswell County. If anybody want to speak with my outside after the public hearing to get my contact information to you. There is not a copy of this draft on Caswell County's website right now. There is a model of it on DENR's website under the WS-IV rules but I an email you or paper copy you a copy of this ordinance. I am sorry I did not bring the blown up maps but I can get you a copy of that. Anybody that wants to talk to me after this public hearing is over, please do. I will give you my contact information so if you have any questions I can answer them."

Commissioner Carter stated "I have one more question because I had a lot of calls this weekend. The main person that called me is not here tonight. I know it has been presented by Brian and his main concern was the agricultural part. I know you have already reclassified it but according to what I have researched on it is it not going to affect the farmers, the WS-IV? It is the same was the WS-II or the Class C." Ms. Ventaloro responded "That is correct, yes." Commissioner Carter continued "The only thing I saw was the 10 feet buffer from the stream is that correct?" Ms. Ventaloro responded "That is encouraged. Agricultural operations are encouraged to have a 10 foot vegetative buffer only in the critical areas and that is the half mile area around the intake or they can use an equivalent control and that call is made by the Soil and Water Conservation Commission." Commissioner Carter asked "The intake has not been built yet has it so it is not a critical area until the intake is built is that correct?" Ms. Ventaloro responded "I see what you

are saying but actually as far as the State is concerned it is currently a critical area there and is classified that already. The State is already implementing a couple of programs that we are responsible for in regards to application of sludge." Commissioner Carter continued "As far as basic farming operations nothing is going to change as it was with the Class C, is that what you are telling me?" Ms. Ventaloro responded "Correct, nothing in the water supply watersheds will affect agriculture or forestry."

Mr. Wells Barker asked "You can guarantee the people in this county that they will never be more restrictive in the future, is that what you are tell me because that did not happen with the Jordan Lake Watershed? They are now a WS-IV NSW. So if you are telling me that you can guarantee me that this will stay a Class IV with no additional restrictions forever and ever?" Ms. Ventaloro responded "No I cannot say that. What I can tell you is as you have seen from this the reclassification took quite a while and there was a number of opportunities for input and that would be the same if there was down the road, however many years from now something else it is a long process with opportunities to..." Mr. Barker continued "Will that be like the last state reclassification public hearing that was held and it was not posted in our local paper and it was not posted in our public library would that be the same kind of notification you mean?" Ms. Ventaloro responded "Well I hope not. We did submit a request to publish that information in the Caswell Messenger and several other papers and we sent it to the public libraries. Whether they chose to publish it or not was up to them."

Mr. Gwen Hunt asked "Was it requested to submit a press release?" Ms. Ventaloro responded "I believe it was a request. We follow the requirements that we have for public notification for this type of hearing."

Mr. Thomas Bernard asked "The first public hearing was held at North Elementary School which is on the Danville, VA line. Why was it not held right near the critical area in Milton, NC? Why was it that nobody in Milton knew about it?" Ms. Ventaloro responded "I can't speak to how the location was chosen, I am sorry."

Chair Lucas asked "Julie have you ever know of a reclassification to be reversed? Do you have personal knowledge of this?" Ms. Ventaloro responded "I don't have personal knowledge of that." Chair Lucas continued "Would any of your other association have any knowledge of any reclassification that has taken place as being reversed?" Mr. Corey Mason responded "I recently served as a hearing officer for a process very similar to what you just described where a municipality requested that a formally water supply classified waters were reclassified to a Class C water because they were no longer using the water supply and they asked that it be reclassified back to a Class C and that is still pending at this point." Chair Lucas asked "So a municipality petitioned DENR is that correct?" Mr. Mason responded "That is correct." Chair Lucas continued "For that reversal?" Mr. Mason responded "It was not necessarily a reversal just a reclassification." Chair Lucas asked "A reclassification back to the original Class C?" Mr. Mason responded "That is correct." Chair Lucas continued "So that has happened, well it is pending currently?" Mr. Mason responded "It is pending that is correct, yes ma'am."

Mr. Jason Daniel asked "I have a question regarding farmland; if we go and clear more land than an acre on our farms for agricultural use will we still have to put up catch basins, silt fences and

stuff such as this?" Mr. Collie responded "No the sediment and erosion control is for residential, industrial and commercial and not agricultural." Mr. Corey Mason responded "It would be good to request an agricultural exempt from this process." Chair Lucas asked "How would the farmers know about that, an agricultural exemption? How do they know to go through that process?" Mr. Mason responded "That can be found out through the local Soil & Water Resources Commission."

Chair Lucas asked "At this time I would like to request that Brian Ferrell if you would weigh in on the knowledge you have to date concerning this issue."

Mr. Ferrell responded "Well what I understand about where the county is in this process right now. The portion of the Dan River that is under discussion tonight has been reclassified by the State. That reclassification triggers certain statutory requirements for local governments to do certain things. One of those things is within 270 days of the reclassification to adopt the watershed ordinance similar to what is in front of you tonight which is based on the model ordinance. The statute that requires the county to do that under certain potential penalties. My understanding is and we have the representatives here so they can speak to this can be up to $10,000 a month if the State comes in and implements these regulations that the county does not implement on its own. So the statutory scheme is such that the county has an opportunity to enact the watershed ordinance. The State has the ability to come in an implement the program for Caswell County if it is not done at the Board level. You are in that process now. The State deadline for implementing these regulations expired on March 30th. I had an email at my place this evening that reflects if the County is interested in making a request to extend that deadline for 60 days that request would be considered by DENR but again I am acting off an email that I have at my place tonight. Currently the timeframe allowed by statute to the County to implement these regulations has expired and there are potential penalties that could flow as a result of the expiration or failure of the commissioners to enact this ordinance. That is one piece of procedure and time line that is in front of you. Of course you have heard about the interlocal agreement. A predecessor to this Board entered into an agreement with several other parties in Roxboro, Person County, and Yanceyville by which it agreed to support the reclassification effort by implementing these regulations. There were time periods that have long since expired as per contract were due within 60 days my understanding was it was not right within 60 days because the State has not acted but you have heard a potential defense this evening from Attorney Daniel to that certain provision of timeline provision of the agreement. I think the public also needs to understand the agreement was set up in such a way that if the county is in breach, does not fulfill its obligation there could be significant liquidated damages assessed against the county. There are two, in my view, legal issues that the Board needs to consider and be aware of and one is the statutory scheme that we find ourselves in and two is the agreement. Now I have written to you an attorney/client privilege letter with some more in depth analysis of those two issues but at a high level I think that is where the County finds itself. My recommendation this evening would be to receive this information that was presented at public hearing, give your Planning Board, which under the amendment process under this particular ordinance has an opportunity to weigh in on the amendment, hear back from them to the extent the Board wants to take further action on moving forward with the ordinance. I am happy to answer any other questions that you have. One other recommendation I have, I recommend that this Board tonight consider requesting formally that DENR extend the time for the County's

adoption of this ordinance by 60 days as per this letter because technically we have missed the deadline."

Chair Lucas asked "I would like to ask because I would be interested to know, has DENR ever came in and taken over a local program like this?" Ms. Ventaloro responded "We have initiated the enforcement process on two local governments and during that enforcement process which required that local governments have at least 120 days to come into compliance at that point as your attorney said we can assume responsibilities for the program. In both of those cases they were resolved within that 120 day time period so we did not ever have to assume that program." Chair Lucas asked "So there is still time built into the process if it is deemed that you are going to do it?" Ms. Ventaloro responded "Correct." Chair Lucas continued "For 120 days?" Ms. Ventaloro responded "Correct."

Commissioner Travis moved, seconded by Commissioner Williamson to end the public hearing on the proposed Amendment to the Caswell County Watershed Protection Ordinance. The motion carried unanimously.

Commissioner Jefferies stated "Madam Chairman I would like to make a motion. I would like to withdraw my vote for the reclassification. I have heard from our representatives in Milton and other parts of Caswell County. I heard what my people want and I represent them. I feel like I owe this to them. I want to withdraw it. If they charge us $10,000 a month they know it is going to be one penny and a half on your tax bill whatever the fee. But I feel like I have heard from these three and other people in Caswell County. I want to make a motion to withdraw my vote for the reclassification."

Commissioner Jefferies moved, seconded by Commissioner Hamlett to bring the issue back to the table for a vote.

Mr. Ferrell stated "I want to make sure I understand what the motion is. Votes that have already been taken are just that. So whatever this Board wants to do it is not a reversal of a prior vote. It will have to be in the form of a new action that the Board takes."

Commissioner Jefferies stated "I would like the motion to come back up to reclassify the Dan River Watershed."

Commissioner Jefferies moved to reclassify the Dan River Watershed." Mr. Ferrell responded "Before you move forward let me say the reclassification has already taken place."

Commissioner Hamlett stated "He want to go on record that he is opposed to what he has voted on prior." Mr. Ferrell responded "And the public record will reflect that you have opposed your prior vote since you have listened to the audience and you have heard them. Nobody has to second that on this Board if that is what you intend to do and the public record will reflect that you have listened to the testimony and that you have that stance now. I don't there needs to be a second for that to take place."

Chair Lucas stated "Now we need to entertain a motion to not amend the Caswell County Watershed Protection Ordinance from a WS-C to a WS-IV. That would be the motion that we would need. We have a proposed amendment to the Caswell County Watershed Protection Ordinance and it has been amended to read that it has changed from a WS-IV to a WS-C."

Commissioner Carter stated "Madam Chair I have not heard a motion and our attorney said tonight said he thought we should not action on this tonight and to wait until he sends us some more information." Mr. Ferrell responded "The way the Caswell County's Watershed Protection Ordinance is set up is the Planning Board has an opportunity to make a recommendation to this Board before it acts and my understanding is what the Planning Board did at its last meeting when they considered this was the wanted to wait until the public hearing so they would have the benefit of this information before it made its recommendation to you. Therefore, my recommendation would be don't act until you have your feedback from the Planning Board and I think that is the right process under your ordinance and perhaps I was not clear about that earlier."

Chair Lucas asked "Do we need a motion to that affect?" Mr. Ferrell responded "No it has already been referred to the Planning Board. My understanding is the Planning Board is in the process of considering it now pending public hearing. Again the only motion that I think the Board might really want to consider because of where we are in the timeline I just mentioned is asking for DENR to give a 60 days extension while this process continues to work its way through."

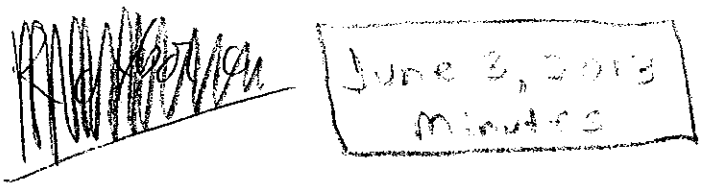
Commissioner Carter moved, seconded by Commissioner Jefferies to request DENR for a 60 day extension on the amendment to the water reclassification thus giving the Planning Board time to act on it and report back to this Board.

Commissioner Hall asked "To our counsel, once we request this extension when does the 60 days start?" Mr. Ferrell responded "You know that is a good question. I don't know if they would consider it starting as of March 30th but I do think assuming it is March 30th, April 30th, May 30th you would still have time at your first meeting in May, I believe it is May 5th there about, to deal with it in advance of the expiration of the 60 days and that is assuming it just relates back to the March 30th deadline. Perhaps we can ask if they will consider 60 days from today." Chair Lucas stated "I think the intent is from when it is granted that that would be the starting date." Mr. Ferrell asked "From when the request is granted?" Chair Lucas responded "Yes." Mr. Ferrell continued "Okay so we can ask for a full 60 days from the date of the request, from the date the request is granted. Anybody here, have you heard that request before and do you know if that is something that you would consider?" Mr. Bradley Bennett with the Division of Water Quality responded "Yes we can consider that. I think that is appropriate for us to consider that."

Upon a vote of the motion, the motion carried unanimously.

RECESS

The Board took a brief recess.



to say to the extend to be practical if you have zoning in less than the entire county you need to have a representative member of that zoning district because should this board decide that it wants to keep the current construct and the county board of commissioners be the county board of adjustment it just might not work out that you could have a member of that district. What I would say to you is I think this is an important issue to talk about and think about and I will mention one other area that the Planning Director hit on which is potential conflicts that I think is certainly something that you want to consider and that is this generally this body sits as a legislative policy making body not a quasi-judicial or fact finding permitting process that is common in the planning arena so when citizens are interested in talking to their elected representatives on policies or legislative decisions including something that you only have in one area of the county and that is zoning, zoning decisions, citizens can lobby you as part of the process. They can talk to you directly. They can call you. The contact that is permitted on a due process perspective in a quasi-judicial capacity is different and that is there is not supposed to be for due process reasons ex parte communication between a citizen and the decision maker. Because this Board of Commissioners sits so regularly in its legislative capacity it is not always easy to separate the duties out when you are asked then to sit in a quasi-judicial capacity. I think that is a significant reason that many jurisdictions have taken the approach that has been recommended by your Planning Board. I think quite frankly it's certainly worth considering as you go forward. I will also say we are really close I think to some legislation going in to rewrite the Board of Adjustment statutes and legislature and I will leave it at that."

Chair Lucas stated "So the recommendation is to maybe perhaps tabling the action on this learning about House Bill 276 certainly would be a consideration." Mr. Ferrell responded "You can at least see what the exact language is going to look like coming out of the legislature specifically as it pertains to this district in question and some of the to the procedures might very well be incorporated into and the Planning Board may very well take a look at the implications on the UDO in general. I know your consultant is aware of the legislation and I think he has done a great job incorporating some of the legislative changes in the next draft but this is one I think is just a couple of days away from passing."

Chair Lucas asked "Any questions from commissioners?"

Commissioner Hamlett moved, seconded by Commissioner Travis to table any action on this issue for 60 days. The motion carried unanimously.

PROPOSED AMENDMENT TO THE CASWELL COUNTY WATERSHED PROTECTION ORDINANCE

Mr. Brian Collie stated "I don't really have any more information that has not already been presented to you. As you probably all are aware of that the Division of Water Quality gave us a 60 day extension that ends on June 17th. I spoke with them today, a representative with DWQ and told them that you would be meeting tonight and that the possibility of passing the amendment might not happen and that the next Board of Commissioners' meeting would be on June 17th and she said it was fine if we waited until that day that after 5:00 was not the cutoff. I wanted to make sure of that."

City of Roxboro

RESOLUTION TO AUTHORIZE THE DESIGN OF THE INTAKE AT THE DAN RIVER

WHEREAS, on March 1, 2002, the City of Roxboro submitted an application to the State of North Carolina to request reclassification of the Dan River to allow it to be used as a regional water-supply source for the benefit of Caswell County, Person County, and the municipalities therein.

WHEREAS, in July 2008, the Town of Yanceyville, City of Roxboro, Caswell County, and Person County entered into an Interlocal Agreement to establish a public enterprise for a water supply and distribution system through the use of a raw water intake site at the Dan River.

WHEREAS, the purpose of the Interlocal Agreement was to establish a regional and inter-governmental water supply and distribution system to supply raw water services to Yanceyville, Roxboro, Person County, the Town of Milton, and other areas of Caswell County.

WHEREAS, as recited in the Interlocal Agreement, Yanceyville has a need for an emergency raw water supply and long term future water supply, and Milton and other areas in Caswell County have a current and future need for an additional water supply. In addition, Roxboro and Person County have a long-term need for an additional water supply for their citizens and for on-going economic development within the jurisdiction of those units of local government.

WHEREAS, to effectuate the purposes of the Interlocal Agreement, the real property for the intake site on the Dan River has been acquired for the benefit of the parties to the Agreement.

WHEREAS, to date, nearly 800,000.00 has been expended in connection with securing the Dan River as a future water supply source for the benefit of the parties to the Interlocal Agreement.

WHEREAS, on July 3, 2012, the State of North Carolina reclassified the Dan River in Caswell County so that the River could be used as a future water supply source for the region.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ROXBORO RESOLVES that the City Manager or his designee is authorized to enter into the "Scope of Services and Fee Schedule" contract with Pease Engineering & Architecture PC, dated July 3, 2013, for engineering services in an amount not to exceed $110,000 to proceed immediately with

design document preparation in connection with a new raw water intake structure at the Dan River and associated services as set forth in that contract.

This Resolution is effective upon adoption this the 9th day of July, 2013.

The motion to adopt this Resolution was made by Council Member _____, seconded by Council Member _____ and passed by a vote of _____ to _____.

_____
Mayor Merilyn P. Newell

ATTEST:

_____
City Clerk

This is to certify that this is a true and accurate copy of Resolution No. _____ adopted by the Roxboro City Council on the 9th day of July, 2013.

_____ _____
City Clerk Date

SCOPE OF SERVICES AND FEE SCHEDULE

ENGINEER will provide all preliminary and design documents, permitting, bidding and award, construction administration and resident inspection services for **Phase 1 Roxboro Raw Water Intake, Phase 2 Raw Water Pump Station, and Phase 3 Water Treatment Plant with distribution water line.** ENGINEER will provide the Basic Services defined herein for the PROJECT. The terms "OWNER", "CITY", "CITY OF ROXBORO" are considered equivalent for purposes of this scope of services.

PROJECT DESCRIPTION (the "PROJECT")

The OWNER plans to construct under Phase 1 a raw water intake structure on the Dan River. Based on discussions completed by Pease Engineering & Architecture and the Owner, the recommended improvements under Phase 1 include an intake structure and associated piping on the Dan River to withdraw 30 mgd.

Based on these recommendations, the scope of services will include:

BASIC SERVICES

Basic Services to be provided by the ENGINEER under this Agreement shall be limited to the following:

- Task 100 – Project Meetings and Coordination
- Task 200 – Survey Investigations
- Task 300 – Design
- Task 400 – Permitting
- Task 500 – Bidding and Award
- Task 600 – Construction Contract Administration
- Task 700 – Resident Project Representative
- Task 800 - Record Drawings and Close-Out

The ENGINEER will proceed immediately with design document preparation.

The proposed project is for a new raw water intake structure to be constructed which requires an Authorization to Construct permit from NCDENR.

Cost Estimates will be provided with each of the percent deliverables to the OWNER produced under the Final Design Task.

Operation and Maintenance Manuals will be those delivered by the manufacturer only. ENGINEER will not provide a comprehensive O&M manual (hardcopy or electronic).

The detailed scope of services for the Basic Services included under this Agreement (Tasks 100 through 800) follows:

TASK 100 PROJECT MEETINGS AND COORDINATION

101 PROJECT Meetings

The ENGINEER shall meet with OWNER's representative(s) on an as needed basis during design to keep the OWNER apprised of PROJECT progress and all significant issues. Up to 4 meetings have been included in this scope of work. Informal meetings with operations staff will be coordinated as needed.

TASK 200 SURVEY INVESTIGATIONS

201 Field Survey

Field survey will be completed by the ENGINEER verifying conditions of the area proposed for the new construction. All field survey information will be added to the base maps. Previously established permanent bench marks will be used to establish 100 year flood elevations.

TASK 300 DESIGN

301 Design Drawings and Specifications

Prepare Contract Documents to include final drawings and specifications showing the scope, extent, and character of the work to be performed and furnished by Contractor, and Specifications (which shall be prepared, where appropriate, in general conformance with the fifty division format of the Construction Specifications Institute). EJCDC 2006 front end documents (Division 0 and 1) will be used. One set of Contract Documents shall be developed and it is anticipated that this work will be bid under one Contract.

Drawings shall include civil/site work requirements including an erosion control plan.

302 Construction Cost Estimate and Schedule

Provide a construction cost estimate and schedule for the PROJECT at the 90-percent deliverable stage. Review scheduling constraints with respect to time, funding availability, and PROJECT completion.

303 Design Technical and Constructability Review

At approximately the 90 percent completion stage of the drawings and specifications, perform a Technical and Constructability Review and review the Contract Documents with the OWNER. Conduct a conference to discuss any adjustments to the design or Contract Documents. Perform a final review of drawings and specifications with the OWNER. At this stage, the "front end" Contract Documents shall be complete for the OWNER's review, and a minimum of 2 weeks shall be included in the PROJECT for each of these OWNER reviews. Thereafter, the ENGINEER shall bring the documents to completion.

TASK 400 PERMITTING

401 Regulatory Review

The ENGINEER shall finalize the list of permit and approval requirements based on the information collected during initial final design phase. Where necessary, the ENGINEER shall discuss the proposed PROJECT with the applicable regulatory agencies to fully define the permit requirements and to identify the major permitting issues that must be resolved. A permitting strategy shall be developed to address the major issues identified and to facilitate the permit acquisition process.

402 Prepare and Submit Permit Applications

Applications for the required permits and approvals shall be prepared for submittal to the respective agencies. Where acceptable, the ENGINEER will make applications directly. This scope of work assumes that the following permits and approvals will be required for this project:

- Sedimentation and Erosion Control Plan from the North Carolina DENR Division of Land Resources
- Authorization to Construct Permit from North Carolina DENR Division of Water Quality.

403 Agency Meetings and Coordination

The ENGINEER will coordinate with the regulatory agencies as necessary throughout the permit application and review process. As part of this subtask, once the permit applications are submitted, the ENGINEER shall maintain contact with the regulatory agencies to monitor and, where possible, facilitate the review process.

TASK 500 BIDDING AND AWARD

Following receipt of authorization from OWNER, ENGINEER shall perform the following services related to Bidding and Award. One bidding phase for one construction contract is included as part of this scope of services.

501 Prepare and submit to OWNER required Minority Business Program (MBE) documentation including breakdown of potential estimated work and costs for minority business opportunities. Participate in any MBE review meetings as required.

502 Assist OWNER in advertising for construction, materials, equipment, and services; and maintain a record of prospective bidders to whom Contract Documents have been issued, attend and conduct one pre-bid conference.

503 Prepare addenda as appropriate to interpret, clarify, or further define the Contract Documents. Addenda will be issued by ENGINEER.

504 Consult with and advise OWNER to determine the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Contract Documents.

505 Attend and conduct the bid opening and prepare a certified bid tabulation sheet. Evaluate bids or proposals and assemble contracts for construction, materials, equipment, and services. Assist OWNER in contract award process.

TASK 600 CONSTRUCTION CONTRACT ADMINISTRATION

Following receipt of authorization from OWNER, The ENGINEER shall provide Contract Construction Administration services for the construction PROJECT.

601 Definitions

"Work" means the entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

602 General Administration of Construction Contract

ENGINEER shall consult with and advise OWNER and act as OWNER's representative as set forth herein. OWNER's instructions to the Contractor(s) shall be issued through ENGINEER who shall have the authority to act on behalf of OWNER in dealings with Contractor to the extent provided in this Agreement.

603 Visits to Site and Observation of Construction

ENGINEER shall make visits to the site at intervals appropriate to the stage of construction, or otherwise agreed to by ENGINEER in writing, to observe as an experienced and qualified design professional the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. The ENGINEER shall provide the services of a Resident Project Representative at the site to assist the ENGINEER and to provide more continuous inspections of the Work. ENGINEER's observation of the Work shall not be intended to involve work beyond the responsibility specifically assigned to ENGINEER in this Agreement and the Contract Documents. On the basis of on-site observations, ENGINEER shall keep the OWNER informed of the progress and quality of the Work and shall alert the OWNER to defects and deficiencies in the Work of the Contractor. ENGINEER shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures of construction selected by Contractor or for safety and environmental programs and precautions incidental to the Work. ENGINEER shall not be responsible for the failure of the Contractor, his Subcontractors, or any other persons performing any of the Work to comply with laws, rules, regulations, ordinances, code,

or orders, or for failure of any of them to carry out the Work in accordance with the Contract Documents except as otherwise expressly provided herein.

The purpose of ENGINEER's visits to the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform to the Contract Documents, and that the integrity of the design concept of the completed PROJECT as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor.

604 Defective Work

ENGINEER shall have authority to disapprove or reject Contractors' Work while it is in progress if ENGINEER believes that such Work does not conform to the Contract Documents or that it will prejudice the integrity of the design concept of the PROJECT as reflected in the Contract Documents. ENGINEER shall have access to the Work at all times wherever it is in preparation or progress.

605 Shop Drawings

ENGINEER shall review and approve or take other appropriate action with respect to Shop Drawings, samples, and other data which Contractor is required to submit, but only for conformance with the design concept of the completed PROJECT as a functioning whole as indicated in the Contract Documents and in compliance with the information given in the Contract Documents. Such reviews or other action shall not include means, methods, techniques, sequences, or procedures of construction or safety programs and precautions incident thereto.

606 Clarifications and Interpretations: Field Orders

ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents. Field Orders shall not involve change in Contract Price or Time.

607 Change Orders and Work Change Directives

ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required. ENGINEER shall not issue such Change Orders and Work Change Directives until OWNER has approved and accepted Contractor's cost and schedule change to implement such Change Orders and Work Change Directives.

608 Substitutes

ENGINEER shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor.

609 Inspections and Tests

ENGINEER shall make recommendations to OWNER regarding the advisability of requiring special inspections or testing of the Work and have authority to receive and review all certificates of inspections, testing, and approvals required by laws, rules, regulations, ordinances, codes, orders, or the Contract Documents to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents.

610 Disagreements Between OWNER and Contractor

ENGINEER shall act as initial interpreter of the requirements of the Contract Documents, judge the acceptability of the Work, and make decisions on all claims of OWNER and Contractor relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work.

611 Applications for Payment

ENGINEER shall determine the amount owing to Contractor based on ENGINEER's observations and inspections at the site and the data comprising the Application for Payment, and the accompanying data and schedules, and recommend in writing payments to Contractor in such amounts. Such recommendations of payment will constitute a representation to OWNER that the Work has progressed to the point indicated and that, to the best of ENGINEER's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The issuance of a recommendation will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a recommendation for payment will not be a representation that the ENGINEER is responsible for construction means, methods, techniques, sequences, or procedures or has ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Price. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

612 Contractor's Completion Documents

ENGINEER shall receive, review, and transmit to OWNER with written comments maintenance and operating instructions, schedules, guarantees, certificates of insurance, marked-up record drawings (including shop drawings, samples and other pertinent data), bonds, certificates of inspection, and tests and approvals of equipment which are to be provided by Contractor in accordance with the Contract Documents. ENGINEER

shall determine that their content complies with the requirements of the Contract Documents.

613 Substantial Completion

Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections by the OWNER, ENGINEER considers the Work substantially complete, ENGINEER shall deliver a notice of substantial completion to OWNER and Contractor.

614 Final Notice of Acceptability of Work

Prior to final payment to the Contractor, and in company with the OWNER, ENGINEER shall visit the PROJECT to observe any apparent defects in the completed work, assist OWNER in consultations and discussions with Contractor concerning correction of such defects, and make recommendations as to replacement or correction of defective work.

ENGINEER shall conduct a final inspection to determine if the completed Work is acceptable to ENGINEER and OWNER so that ENGINEER may recommend, in writing, final payment to Contractor and may give written notice to OWNER and Contractor that the Work is acceptable, subject to any conditions therein expressed. Accompanying the recommendation for final payment, ENGINEER shall indicate that the work is acceptable to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services performed and furnished by ENGINEER under this Agreement.

ENGINEER shall provide ENGINEER's certification that the work has been completed in accordance with OWNER's approved plans and specifications.

TASK 700 RESIDENT PROJECT REPRESENTATION

701 OWNER and ENGINEER agree that representation at the site shall be provided. OWNER shall provide one Project Coordinator to assist ENGINEER in inspecting the progress and quality of the work of the Contractor. PROJECT representation shall be on a part-time basis and is intended to be at a sufficient level to inspect the Contractor's Work and discharge its responsibilities under Tasks 500, 600 and 700. ENGINEER shall notify OWNER promptly if above level of field representation is insufficient to inspect work as defined by ENGINEER and OWNER.

702 Such PROJECT Representative shall be selected, employed, and directed by ENGINEER. The duties, responsibilities, and limitations of authority of such PROJECT Representatives shall be described in the General Conditions of the Contract Documents and as detailed herein. ENGINEER shall provide to OWNER resumes for review and allow OWNER to interview PROJECT Representatives for approval prior to assignment to the PROJECT.

703 Through more extensive on-site inspections of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall use reasonable effort to provide further protection for OWNER against defects and deficiencies in the work of Contractor. However, ENGINEER shall not, during such visits or as a result of such inspections of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety procedures and programs incident to the work of Contractor, for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes, or orders applicable to Contractor's performing and furnishing the work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents except as expressly provided herein.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's Agreement with the OWNER and in the construction Contract Documents and are further limited and described as follows:

703.1 General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealing with Contractor's subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

703.2 Duties and Responsibilities of RPR

Schedules: RPR shall review the progress schedule, schedule of Shop Drawing submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.

Conferences and Meetings: RPR shall attend meetings with Contractor such as preconstruction conferences, progress meetings, job conferences, and other PROJECT-related meetings and prepare and circulate copies of minutes thereof.

Liaison: RPR shall serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent, and assist in understanding the intent of Contract Documents; and assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-site operations.

RPR shall assist in obtaining from Owner additional details or information when required for proper execution of the Work.

703.3 Shop Drawings and Samples:

RPR shall advise ENGINEER and Contractor of the commencement of any Work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.

703.4 Review of Work, Rejection of Defective Work, Inspections and Tests:

RPR shall conduct on-site inspections of the Work in progress to assist ENGINEER in determining if the Work is proceeding in accordance with the Contract Documents.

RPR shall report to ENGINEER whenever RPR believes that any Work will not produce a completed PROJECT that conforms to the Contract Documents or will prejudice the integrity of the design concept of the completed PROJECT as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that the RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

RPR shall verify that tests, equipment and systems start-ups, and operating and maintenance training are conducted in the presence of appropriate personnel; and that Contractor maintains adequate records thereof; and observe, record, and report to ENGINEER appropriate details relative to the test procedures and start-ups.

RPR shall accompany visiting inspectors representing public or other agencies having jurisdiction over the PROJECT, record the results of these inspections, and report to ENGINEER.

RPR shall coordinate and review the results of tests made by the independent soils and materials testing laboratory.

Interpretation of Contract Documents: RPR shall report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.

Modifications: RPR shall consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.

703.5 Records:

RPR shall maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents including all Work Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's

clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing submittals received from and delivered to Contractor, and other PROJECT related documents.

RPR shall prepare a daily report, required Erosion Control Inspection reports, and keep a diary or log book, recording Contractor's hours on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.

RPR shall record names, addresses and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.

703.6 Reports:

RPR shall furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.

RPR shall consult with ENGINEER in advance of scheduled major tests, inspection, or start of important phases of the Work.

RPR shall draft proposed Change Orders and Work Change Directives obtaining backup material from Contractor and recommend to ENGINEER Change Orders, Work Change Directives, and Field Orders.

RPR shall report immediately to ENGINEER and OWNER the occurrence of any accident in accordance with Task 705

703.7 Payment Requests:

RPR shall review Applications for Payment with Contractor for compliance with the established procedures for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requests to the schedule of values, Work completed, and materials and equipment delivered at the site but not incorporated in the Work.

703.8 Certificates, Maintenance and Operation Manuals:

During the course of the Work, RPR shall verify that certificates, maintenance and operation manuals, and other data required to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents and have this material delivered to ENGINEER to review for forwarding to OWNER prior to final payment for the Work.

703.9 Completion:

Before ENGINEER issues a Certificate of Substantial Completion, RPR shall submit to Contractor a list of observed items requiring completion or correction.

RPR shall observe whether Contractor has performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the Work including but not limited to those to be performed by public agencies having jurisdiction over the Work.

RPR shall conduct a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected.

RPR shall observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of the Work.

704 Limitations of Authority by RPR:

RPR shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items) unless authorized by ENGINEER.

RPR shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.

RPR shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.

RPR shall not advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences, procedures of construction, or health and safety procedures unless such advice or directions are specifically required by the Contract Documents.

RPR shall not accept Shop Drawing or sample submittals from anyone other than Contractor.

RPR shall not authorize OWNER to occupy the PROJECT in whole or in part.

RPR shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

705 When the RPR observes, or has knowledge of, a violation of OSHA or other established safety regulations, he shall notify the CONTRACTOR of such violation. If, to the best of the ENGINEER's knowledge and belief, the violation is not promptly corrected, the RPR shall notify the OWNER and the OSHA enforcement agency. Notwithstanding the foregoing, the Contractor shall be responsible for compliance with all OSHA and safety rules and regulations.

TASK 800 RECORD DRAWINGS AND CLOSEOUT

801 ENGINEER shall provide assistance in connection with the refining and adjusting of any equipment or system.

802 ENGINEER shall assist OWNER in training OWNER's staff to operate and maintain the PROJECT.

803 ENGINEER shall prepare a set of reproducible record prints of Record Drawings showing those changes made during the construction process based on the marked-up prints, shop drawings, drawings, and other data furnished by the Contractor to ENGINEER. The record prints shall also incorporate the PROJECT Representative's observation of changes made during construction. These record drawings shall be prepared on reproducible hard copies and on disk (in the latest version of AutoCAD or such version as the parties agree) for delivery to the OWNER.

804 ENGINEER shall assist OWNER in resolving warranty or operational situations during the 1-year warranty period.

805 ENGINEER shall conduct one follow-up warranty review with OWNER to determine status and condition of warranted items for the PROJECT. Follow-up warranty review will be conducted 11 months after substantial completion of the PROJECT.

806 ENGINEER shall provide miscellaneous services as necessary in conjunction with PROJECT closeout.

PHASE – 1 FEE SCHEDULE (DESIGN ONLY)

Task	Description	Water Plant Lump Sum
100	Project Meetings	$ 15,000.00
200	Surveying	$ 15,000.00
300	Design	$ 70,000.00
400	Permitting	$ 10,000.00
500	Bidding and Award	$ To Be Negotiated
600	Construction Contract Admin.	$ To Be Negotiated
700	Resident Project Representation	$ To Be Negotiated
800	Record Drawings and Closeout	$ To Be Negotiated
	Total	**$ 110,000.00**

Fees for Phase 2 and 3 will be negotiated at time of service.

THIS AGREEMENT, entered into as of the day and year first written above for Engineering Services for the in an amount not to exceed **$110,000.00**.

Pease Engineering & Architecture, PC

By: _____
Donald T. Garbrick, PE
Vice President

Witness: _____
Keith R. Garbrick, PE
Vice President

Date: 7/3/13, 2013

CITY OF ROXBORO

By: _____
Tommy Warren
Assistant City Manager

Date: _____, 2013

This instrument has been preaudited in the manner required by the "Local Government Budget and Fiscal Control Act".

_____
Deputy Finance Officer

THE MODEL

WATERSHED PROTECTION ORDINANCE

NOTE: Citations shown in [ ] indicate references for counties followed by those for towns. [county][town]

ARTICLE 100: AUTHORITY AND GENERAL REGULATIONS

Section 101. Authority and Enactment.

The Legislature of the State of North Carolina has, in Chapter [153A][160A], Article [6][8], Section [121][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 [county][town] does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of [county][town].[1]

Section 102. Jurisdiction.

The provisions of this Ordinance shall apply within the areas designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission and shall be defined and established on the map entitled, "Watershed Protection Map of [county][town], North Carolina" ("the Watershed Map"), which is adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this Ordinance. This Ordinance shall be permanently kept on file in the office of the [county][town] Clerk.[2]

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[1] House Bill 124, enacted in 1991, provides that watershed regulations may be adopted by a local government pursuant to its "general police power," to its power to adopt a land subdivision ordinance, to its zoning power, or to some combination of these powers. The model ordinance, since it has been established as a free-standing ordinance, cites the general police power statutes as its authority along with the watershed statutes. Local governments must choose which authority they wish to use and should not cite all legislative authorities because each authority has its own corresponding jurisdictional implications. For example, a municipal ordinance adopted under 160A-174 cannot be enforced in the extraterritorial jurisdiction [ETJ], but if adopted under zoning (160A-381) or subdivision (160A-371) authority it may be enforced in the ETJ. Local governments should decide whether or not they intend to adopt a free-standing ordinance, or as an alternative, separate (or amendments to) zoning and subdivision ordinances. Whichever method is chosen, the appropriate authorities should be cited in this section and elsewhere in the ordinance whenever needed.

There is the potential for an area located in a municipality's ETJ to be inadvertently omitted from coverage if the municipality that exercised ETJ establishes its program using its police power, and the county establishes its program under its zoning ordinance. Coordination between the jurisdictions is very important. A county may enforce the watershed protection regulations for a municipality within that county if a resolution is passed by both the county and municipal governing boards.

[2] Statutory authority for this section is derived from N.C. General Statutes Chapter [153A][160A], Article [6][8], Section [121][174], Section [140][193] and Chapter 143-214.5. Alternate statutory authority for this section may be derived from N.C. General Statutes 153A-320, and 160A-360 for those cities and counties interested in adopting the

Section 103. Exceptions to Applicability.

(A) Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this Ordinance amend, modify, or restrict any provisions of the Code of Ordinances of [county][town]; however, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in the [county][town] 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 residential purposes. Any lot or parcel created as part of a family subdivision after the effective date of these rules shall be exempt from these rules if it is developed for one single-family detached residence and if it is exempt from local subdivision regulation. Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject to the land use requirements (including impervious surface requirements) of these rules, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent practicable.[3]

Section 104. Repeal of Existing Watershed Ordinance. (Optional)

This ordinance in part carries forward by re-enactment, some of the Watershed Ordinance of the [county][town], North Carolina (adopted by the [Board of Commissioners][Town Board] on [date] as amended), and it is not the intention to repeal but rather to re-enact and continue in force such existing provisions so that all rights and liabilities that have accrued thereunder are preserved and may be enforced. All provisions of the Watershed Ordinance which are not re-enacted herein are hereby

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watershed legislation as part of separate zoning and subdivision ordinances.

For counties, this ordinance will apply to watershed areas outside of the municipal limits of any town unless the town requests (and the county agrees) that the ordinance be enforced within all or part of the town's jurisdiction. Towns may enforce the ordinance within their corporate limits. If adopted under zoning and/or subdivision authority, the town may enforce in ETJ.

[3] This section states the watershed protection ordinance will not affect existing ordinances or agreements between parties unless those ordinances or agreements are less restrictive than the watershed protection ordinance. In those situations the watershed protection ordinance will take precedence.

If a nonconforming lot is contiguous to another nonconforming lot or lots, the local government may require the lots to be combined in order to make a conforming lot or one that is more conforming than each lot individually. If a local government does not enforce subdivision regulations, then that local government may or may not allow the exemption for family subdivisions.

repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of any ordinance provisions heretofore in effect, which are now pending in any court of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this ordinance, but shall be prosecuted to their finality the same as if this ordinance had not been adopted; and any and all violations of the existing Watershed Protection Ordinance, prosecutions for which have not yet been instituted, may be hereafter filed and prosecuted; and nothing in this ordinance shall be so construed as to abandon, abate or dismiss any litigation or prosecution now pending and/or which may heretofore have been instituted or prosecuted.

Section 105. Criminal Penalties.

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

Section 106. Remedies.

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

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

Section 107. Severability.

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

Section 108. Effective Date.

This Ordinance shall take effect and be in force on (month, day and year).[4]

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[4] The latest date on which an ordinance shall become effective is as follows:

- by July 1, 1993: Affected municipalities with a population of 5,000 or greater
- by October 1, 1993: Affected municipalities with a population less than 5,000
- by January 1, 1994: Affected counties.

ARTICLE 200: SUBDIVISION REGULATIONS.

Note: Provisions in this Article are derived in part from statutory authority Chapter [153A][160A], Article [18][19], Part [2][2]

Section 201. General Provisions.

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

(B) The approval of a plat does not constitute or effect the acceptance by the [county][town] 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 [county][town] after the effective date of this ordinance shall require a plat to be prepared, approved, and recorded pursuant to this ordinance.[5]

Section 202. Subdivision Application and Review Procedures.

(A) All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting a vicinity map to the Watershed Administrator 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. In addition, subdivisions within a WS-IV watershed are subject to the provisions of this ordinance only when an erosion and sedimentation plan is required under the provisions of State law, or approved local program. 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 (see appendix A).

(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:

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

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5 Statutory authority for this section is derived from N.C. General Statutes Chapter [153A][160A], Article [6][8], Section [121][174], Section [140][193] and Chapter 143-214.5. Alternate authorities may be derived from General Statutes 153A-330 and 153A-340, and 160A-371 and 160A-381 for those counties and cities interested in adopting the watershed legislation as part of separate subdivision and zoning ordinances.

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

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

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

(D) If the Watershed Administrator approves the application, such approval shall be indicated on 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 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.

Section 203. Subdivision Standards and Required Improvements.

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

(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 [local agency administering a Sedimentation and Erosion Control Ordinance approved by the N.C. Division of Land Quality] [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 to minimize their impact on water quality.[6]

Section 204. Construction Procedures.

(A) No construction or installation of improvements shall commence in a proposed subdivision until a subdivision plat has been approved.

(B) No building or other permits shall be issued for erection of a structure on any 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.

Section 205. Penalties for Transferring Lots in Unapproved Subdivisions.

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

ARTICLE 300: DEVELOPMENT REGULATIONS

Section 301. Establishment of Watershed Areas.

The purpose of this Article is to list and describe the watershed areas herein adopted.[7]

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6 Lots which are smaller than the size required for residential lots may be developed with single family residential development using built-upon area criteria. See corresponding commentary under Article 300.

7 Statutory authority for this section is derived from N.C. General Statutes Chapter [153A][160A], Article [6][8], Section [121][174], Section [140][193] and Chapter 143-214.5. Alternate statutory authority for this article may be derived from N.C. General Statute 153A-340 through 153A-390, and 160A-381 through 160A-394. This article contains development regulations for each of the watershed classifications. Watersheds designated WS-V require no local government regulatory program. Local governments will only need to include the regulations corresponding to the classifications assigned to watersheds in their jurisdiction. For WS-II, WS-III and WS-IV watershed areas, the EMC rules provide for single family residential development to be controlled either by limiting built-upon area or by limiting density (dwelling units per acre). Those involved in drafting the model ordinance felt that most local units of government would find it easier to enforce single family residential requirements through density controls rather than limiting built-upon area. All other residential and non-residential development is controlled by regulating the amount of built-upon area as required by the EMC rules.

For purposes of this ordinance the [county is] [town is] [town and its one mile extraterritorial jurisdiction are] hereby divided into the following area[s], as appropriate:

WS-I	
WS-II-CA	(Critical Area)
WS-II-BW	(Balance of Watershed)
WS-III-CA	(Critical Area)
WS-III-BW	(Balance of Watershed)
WS-IV-CA	(Critical Area)
WS-IV-PA	(Protected Area)

Section 302. **Watershed Areas Described.**

(A) WS-I Watershed Areas. The intent is to provide maximum protection for water supplies

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Under the low density option used in this ordinance, local governments with jurisdiction within a WS-II and/or a WS-III watershed area as defined on July 1, 1993 are allowed to establish a procedure by which ten percent of the balance of watershed (area outside the critical area) may be developed with new development or expansions to existing development at up to 70 percent built-upon area without requiring stormwater controls. Local governments with jurisdiction within the protected area of a WS-IV watershed that do not allow development under the high density option within that WS-IV protected area, may also establish a procedure by which ten percent of that area may be developed with new development or expansions to existing development at up to 70 percent built-upon area. The amount of land allowed to development under this provision in WS-IV watershed areas is based on the size of the local government's jurisdiction on July 1, 1995. How this ten percent will be allocated, over time, among the local government's jurisdiction will be up to each local government. For example, the local government may choose to plan growth by identifying one or more areas of its jurisdiction that would be suited for an industrial park. Even though the rule states that this additional new development may be up to 70 percent built-upon area, other new development may occur throughout the watershed in conformance with the built-upon area requirements. Another method by which a local government may choose to use to allocate its share of the 10%-70% provision is on a project-by-project basis throughout the non-critical area of the watershed. This may occur either on a first-come-first-served basis or projects may be required to compete for the credits. If projects are required to compete for credits, the ordinance must specify specific rules and criteria that would apply to all projects competing for the credits. Regardless of the method of allocation chosen, each local government must keep careful records of the total amount of land that is eligible for development under the 10%-70% provision and the total number of acres of built-upon surface already developed. Local governments may establish procedures for trading land area available for development under the 10%-70% provision between local governments within the same watershed and also may apply the 10%-70% development potential of public lands within their jurisdiction to private lands within the same watershed. The rules allow each local government to choose either a low density or high density option for residential and non-residential development in WS-II, WS-III and WS-IV watershed areas. The text of the model ordinance only includes the low density option. Appendix C contains a suggested high density option text. Under the high density option, all new residential development must be controlled by limitations on built-upon area rather than dwelling units per acre. Under the high density option, any new development exceeding the low density requirements must use stormwater controls, including the 10% of the watershed that can be developed at up to 70% built-upon area (in WS-IV watersheds, a local government must choose either the high density option or the 10%-70% provision). Local watershed protection ordinances using the high density option must require all new development projects which exceed the low density option limits to use engineered stormwater controls designed to control the first inch of rainfall. The rules also state that local governments will 1) assume ultimate responsibility for the operation and maintenance of all stormwater devices, 2) perform annual inspections of each device, and 3) keep standardized records on each stormwater device in their jurisdiction. Local governments will also have to require the "posting of adequate financial assurance, in the form of a cash deposit with or a bond made payable to the local government, or other acceptable security." This is to assure maintenance, repairs and reconstruction, when necessary. (Refer to sections .0104(f) and (g) and Rules .0214, .0215 and .0216 for more complete information.) All requirements contained in Article 300 implement the minimum standards adopted by the EMC. Local governments, therefore, cannot relax these regulations but may adopt more stringent ones if desired.

within natural and undeveloped watersheds in public ownership by allowing only low intensity uses. No residential or non-residential uses are allowed except those listed below. Impacts from non-point source pollution shall be minimized.

(1) Allowed Uses:

(a) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and all rules and regulations of the Soil and Water Conservation Commission.[8]

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

(c) Water withdrawal, treatment and distribution facilities.
(d) Restricted road access.

(e) Power transmission lines.

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

(B) WS-II Watershed Areas - Critical Area (WS-II-CA). In order to maintain a predominately undeveloped land use intensity pattern, single family residential uses shall be allowed at a maximum of one dwelling unit per two acres. All other residential and non-residential development shall be allowed at a maximum six percent (6%) built-upon area. New residuals application sites and landfills are specifically prohibited.

(High density development using engineered stormwater controls is permitted in this district. Ultimate responsibility for the operation and maintenance of these controls will rest with the local government. Please refer to Appendix C for a more detailed explanation of this topic.)

(1) Allowed Uses[9]:

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

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

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[8] The Soil and Water Conservation Commission is the designated management agency responsible for implementing provisions in the water supply watershed protection rules pertaining to agricultural activities. The following are required in all WS-I watersheds and the critical areas of WS-II, WS-III and WS-IV watersheds:

(1) Agricultural activities conducted after January 1, 1993 shall maintain a minimum 10 foot vegetated buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 scale (7.5 minute) scale topographic maps or as determined by local government studies; and

(2) Animal operations permitted under 15A NCAC 2H .0217 and deemed permitted are allowed in all classified water supply watersheds.

[9] Additional authority for the requirements of this section is derived from the water supply watershed protection rules adopted by the Environmental Management Commission on February 13, 1992 and amended on June 8, 1995.

Whenever dwelling units per acre are referred to, one acre is equal to 43,560 square feet.

(c) Residential development.

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

(2) Density and Built-upon Limits:

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

(b) All Other Residential and Non-Residential--development shall not exceed six percent (6%) built-upon area on a project by project basis. for the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(C) WS-II Watershed Areas - Balance of Watershed (WS-II-BW). In order to maintain predominantly undeveloped land use intensity, single family residential uses shall be allowed at a maximum of one dwelling unit per acre (1 du/ac). All other residential and non residential development shall be allowed a maximum of twelve percent built-upon area. In addition, new development may occupy ten percent (10%) of the watershed area which is outside the critical area, with 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, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and residuals application sites are allowed.

(High density development using engineered stormwater control devices is permitted in this district. Ultimate responsibility for the operation and maintenance of these facilities will rest with the local government. Please refer to Appendix C for a more detailed explanation of this topic.)

(1) Allowed Uses:

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

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

(c) Residential development.

(d) Non-residential development excluding discharging landfills.

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed one dwelling unit per acre (1 du/ac) on a project by project basis. No residential lot shall be less than one acre (or 40,000 square feet excluding roadway right-of-way), except within an approved cluster development.

(b) All Other Residential and Non-Residential--development shall not exceed twelve percent (12%) built-upon area on a project by project basis except that up to ten percent (10%) of the balance of the watershed may be developed at up to seventy percent (70%) built-upon area on a project by project basis. For the purpose calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

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

(High density development using engineered stormwater control devices are permitted in this district. Ultimate responsibility for the operation and maintenance of these controls will rest with the local government. Please refer to Appendix C for a more detailed explanation of this topic.)

(1) Allowed Uses:

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

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

(c) Residential.

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

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed one dwelling unit per acre (1 du/ac) on a project by project basis. No residential lot shall be less than one acre (or 40,000 square feet excluding roadway right-of-way), except within an approved cluster development.

(b) 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.

(E) WS-III Watershed Areas - Balance of Watershed (WS-III-BW). In order to maintain a low to moderate land use intensity, single family detached uses shall develop at a maximum of two (2) dwelling units per acre (2 du/ac). All other residential and non-residential development shall be allowed at 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 balance of the watershed area with up to 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, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts.

Non-discharging landfills and residuals application sites are allowed.

(High density development using engineered stormwater control devices is permitted in this district. Ultimate responsibility for the operation and maintenance of these controls will rest with the local government. Please refer to Appendix C for a more detailed explanation of this topic.)

(1) Allowed Uses:

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

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

(c) Residential development.

(d) Non-residential development excluding discharging landfills.

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed 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 (or 20,000 square feet excluding roadway right-of-way), except within an approved cluster development.

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

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

(High density development using engineered stormwater control devices is permitted in this district. Ultimate responsibility for the operation and maintenance of these controls will rest with the local government. Please refer to Appendix C for a more detailed explanation of this topic.)

(1) Allowed Uses:

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

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

(c) Residential.

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

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed two dwelling units per acre on a project by project basis. No residential lot shall be less than one-half (1/2) acre (or 20,000 square feet excluding roadway right-of-way), except within an approved cluster development.

(b) All Other Residential and Non-Residential--development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(G) WS-IV Watershed Areas - Protected Area (WS-IV-PA). Only new development activities that require an erosion/sedimentation control plan under State law or approved local government program are required to meet the provisions of this ordinance when located in a WS-IV watershed. In order to accommodate moderate to high land use intensity, single family residential uses shall develop at a maximum of two (2) dwelling units per acre (2 du/ac). All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area. A maximum of three (3) dwelling units per acre (3 du/ac) or thirty-six (36%) percent built-upon area is allowed for projects without a curb and gutter street system.

(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 1I.0101-.0209).

(c) Residential development.

(d) Non-residential development.

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed two (2) dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than one-half (1/2) acre (or 20,000 square feet excluding roadway right-of-way), or one-third (1/3) acre for projects without a curb and gutter street system, except within an approved cluster development.

(b) All Other Residential and Non-Residential--development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. For projects without a curb and gutter street system, development shall not exceed thirty-six percent (36%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be

developed.

(c) [OPTIONAL FOR LOCAL GOVERNMENTS THAT DO NOT CHOOSE TO INCORPORATE THE HIGH DENSITY OPTION] In addition to the development allowed under paragraphs (a) and (b) above, new development and expansions to existing development may occupy up to ten percent (10%) of the protected area with up to seventy percent (70%) built-upon area on a project by project basis, 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, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

Section 303. Cluster Development.

Cluster development is allowed in all Watershed Areas [except WS-I] under the following conditions:

(A) Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in Section 302. Density or built-upon area for the project shall not exceed that allowed for the critical area, balance of watershed or protected area, 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, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

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

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

(E) Cluster developments that meet the applicable low[1] density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

Section 304. Buffer Areas Required.

(A) A minimum one hundred (100) foot vegetative buffer is required for all new development activities that exceed the low density option; otherwise, a minimum thirty (30) foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.[10]

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[10] Development that uses the 10/70% provision (see page 6 for explanation of SIA provision) is considered "high density development" and thus a 100 foot vegetated buffer is required.

(B) No new development is allowed in the buffer except for water dependent structures, other structures such as flag poles, signs and security lights which result in only diminutive increases in impervious area 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.

Section 305. Rules Governing the Interpretation of Watershed Area Boundaries.

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

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

(B) Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the [county][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.[11]

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

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

Section 306. Application of Regulations.

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

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

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

Section 307. 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.[12]

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[11] The EMC adopted this provision with the intention of locating built-upon surface area in the least environmentally sensitive area of the project.

[12] This section deals with all existing development as defined in the EMC rules. All existing development, whether

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

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

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

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

(B) Reconstruction of Buildings or Built-upon Areas. Any existing building or built-upon area not in conformance with the restrictions of this ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single family residential development, provided:

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

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

Section 308. Watershed Protection Permit.

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

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

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

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

Section 309. Building Permit Required.

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

Section 310. 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

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or not it meets the statewide minimum standards, is exempt from the provisions of this ordinance.

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.

ARTICLE 400: PUBLIC HEALTH REGULATIONS

Section 401. Public Health, in general.

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

Section 402. Abatement.

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

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

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

ARTICLE 500: ADMINISTRATION, ENFORCEMENT AND APPEALS[13]

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[13] Statutory Authority for this section is derived from N.C. General Statutes Chapter [153A] [160A], Article [6] [8], Section [121] [174], Section [140] [193] and Chapter 143-214.5. Alternate statutory for this article may be derived from N.C. General Statute 143-214.5; 153A, Parts 1 and 3; 160A, Parts 1, 2 and 3.

This article outlines a suggested procedure for the administration and enforcement of the ordinance. It provides for the appointment of a Watershed Administrator and a Watershed Review Board. An individual already employed by the County or Municipality may also assume the duties of the Watershed Administrator, just as an existing board may assume the duties of the Watershed Review Board. A local government may use other procedures; however, such procedures should be of sufficient detail to ensure adequate enforcement of the ordinance.

Section 501. Watershed Administrator and Duties thereof.

The [county][town] 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 Water Quality Section of the Division of Water Quality.[14]

(D) The Watershed Administrator shall keep records of the jurisdiction's use of the provision that a maximum of ten percent (10%) of the non-critical area of WS-IIand WS-III watersheds and, for local governments that do not choose to incorporate the high density option, ten percent (10%) of the protected area of WS-IV watersheds may be developed with new development at a maximum of seventy percent (70%) built-upon surface area. Records for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, number of developed acres, type of land use and stormwater management plan (if applicable).

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

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

Section 502. Appeal from the Watershed Administrator.

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

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

An appeal stays all proceedings in furtherance of the action appealed, unless the officer from

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[14] For additional discussion of this issue, refer to the commentary under Article 300.

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

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

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

(A) The [county][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 restrictions as described herein.

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

(C) Under no circumstances shall the [county][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.

Section 504. Public Notice and Hearing Required.

Before adopting or amending this ordinance, the [county][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 than twenty-five (25) days before the date for the hearing.

Section 505. Establishment of Watershed Review Board.

(A) There shall be and hereby is created the Watershed Review Board consisting of five (5) members appointed by the [county][town] Governing Board.

(Option 1) [town] Three (3) residents of [town] shall be appointed for three year terms. Two (2) residents of [town] shall be appointed for two (2) year terms. Thereafter, all new terms shall be for three (3) years, and members may be reappointed.

(Option 2) [county] Three (3) residents of [county] shall be appointed for three year terms. Two (2) residents of [county] shall be appointed for two (2) year terms. Thereafter, all new terms shall be for three (3) years, and members may be reappointed.

(Option 3) [joint town and county] Three (3) members shall reside within the town. Two (2) of the town members shall be appointed for a two (2) year term and one

(1) shall be appointed for a three (3) year term. Two (2) members shall reside within the county and shall be appointed for three (3) year terms. Thereafter, all new terms shall be for three (3) years, and members may be reappointed.

(B) Two (2) alternate members shall be appointed to serve on the Watershed Review Board in the absence of any regular member and shall be appointed for three (3) year terms. While attending in the capacity of a regular member, the alternate shall have and exercise all the powers and duties of the absent regular member.

(Option 1) [town] The town shall appoint two (2) alternate members.

(Option 2) [county] The county shall appoint two (2) alternate members.

(Option 3) [joint town and county] The county shall appoint one (1) alternate member from the county and the town shall appoint one (1) alternate member from the town limits.

Section 506. Rules of Conduct for Members.

Members of the Board may be removed by the [county][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 case in which he is personally or financially interested. A Board member shall have a "financial interest" in a case when a decision in the case will: 1) cause him or his spouse to experience a direct financial benefit or loss, or 2) will cause a business in which he or his spouse owns a 10 per cent or greater interest, or is involved in a decision-making role, to experience a direct financial benefit or loss. A Board member shall have a "personal interest" in a case when it involves a member of his immediate family (i.e., parent, spouse, or child).[15]

(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 judgement of any case prior to its determination on that case.

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

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

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

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[15] The intent is to prohibit members of the Board from acting in situations where they have a conflict of interest in a manner similar to the prohibition in NCGS 14-234(c)(1).

(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.[16] The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this Ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this Ordinance will result in practical difficulties or unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done. In addition, the [county][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.

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

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

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

(c) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and the 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.

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

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

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

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16 This section outlines the procedures for local governments to use in approving minor variances. Major variances may be granted for certain projects; however, the major variance must be reviewed by and receive approval from the Environmental Management Commission prior to the local government issuing the watershed protection permit. Procedures for local government review of major variance requests and submission of a recommendation to the Commission are also included.

minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of his property.

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

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

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

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

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

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

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

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

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

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

(a) The variance application;
(b) The hearing notices;
(c) The evidence presented;
(d) Motions, offers of proof, objections to evidence, and rulings on them;

(e) Proposed findings and exceptions;
(f) The proposed decision, including all conditions proposed to be added to the permit.

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

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

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

(C) Subdivision approval. See Article 200.

(D) Public Health. See Article 400.

(E) Approval of all development greater than the low density option. See Appendix C.

Section 508. 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. Decisions by the Superior Court will be in the manner of certiorari.

ARTICLE 600: DEFINITIONS

Section 601. General Definitions.

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

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

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

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

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

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

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

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

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

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

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

(2) having an outstanding valid building permit as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1), or

(3) having an approved site specific or phased development plan as authorized by the

General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1).

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

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

Family Subdivision. Family subdivision means a division of a tract of land: (a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or (b) to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

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

Landfill. A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the N.C. General Statutes. For the purpose of this ordinance this term does not include composting facilities.

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

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

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

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

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

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

Nonconforming Lot of Record. A lot described by a plat or a deed that was recorded prior to the effective date of local watershed protection regulations (or their amendments) that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.

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

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

Protected Area. The area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within 10 miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

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

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

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

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

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

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

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

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

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

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

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

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

Toxic Substance. Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause

death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

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

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

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

Watershed Administrator. An official or designated person of [county][town] responsible for administration and enforcement of this ordinance.

Section 602. Word Interpretation.

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

Words in the present tense include the future tense.

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

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

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

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

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

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

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(2)

could better write up so you can better understand it please feel free to contact me, you have my email address and we can go from there."

Chair Lucas stated "Jennifer I think that we will probably be talking about it and discussing it collectively again." Ms. Reese responded "That is fine. If you want to write it up collectively and send it to me that will be perfectly fine. However you want to do it is fine."

Chair Lucas asked "Are there any other questions for Ms. Reese? Thank you for your time." Ms. Reese responded "Thank you for your time."

RECESS

The Board took a brief recess.

APPROVAL OF THE AMENDMENT FOR THE RECLASSIFICATION OF THE HAW RIVER WATERSHED AREA TO A WS-IV WATERSHED

Mr. Collie asked "Would the Board like for me to go back over a summary of the reclassification at this time?" Chair Lucas responded "Only if Commissioner Hall who was not here wants you to." Commissioner Hall stated "I read over it." Mr. Collie continued "On December 17th I went over the reclassification at that point and there was a member missing. Due to the policing power of the board for this reclassification text amendment it needed a full seat to take the vote. I believe there was a vote that pass at that time on December 17th but everybody needs to be present in order for it to be put into effect."

Mr. Ferrell stated "The long and the short of it is for an ordinance to be passed under your police power if it does not get a unanimous approval by all board members at its first introduction it has to be passed within 100 days of it first reading. You will have to pass it by a majority vote in order for it to be enacted. That is the exercise you are going through tonight." Chair Lucas asked "But not unanimous, just by majority?" Mr. Ferrell responded "That is exactly right. If it does not get a unanimous approval at the first one you have to bring it back and if it gets a majority within 100 days it is approved and that is what you are doing."

Commissioner Travis moved, seconded by Commissioner Williamson to approve the Amendment for the Reclassification of the Haw River Watershed area to a WS-IV watershed. The motion carried by a vote of six to one with Commissioner Lucas voting no.

COUNTY MANAGER'S REPORT AND UPDATES
Commissioner Upcoming Educational Opportunities

Mr. Howard stated "What I have in your packets is a listing of School of Government Elected Officials Academy courses that are coming up over the next several months. I just wanted to remind the Board if you are interested in taking these trainings let us know. Also the newly elected commissioners need to take the Ethics course and these courses include that. The Ethics course online has not been offered as of yet."

December 17, 2012 Minutes

PUBLIC HEARING – AMENDMENT FOR THE RECLASSIFICATION OF THE HAW RIVER WATERSHED AREA TO A WS-IV WATERSHED

Commissioner Travis moved, seconded by Commissioner Hamlett that the Board enter into a public hearing to receive comments on the Amendment for the reclassification of the Haw River Watershed area to a WS-IV Watershed. The motion carried unanimously.

Mr. Brain Collie stated "Currently Caswell County has a Watershed Protection Ordinance. The watersheds encompassed in that ordinance are Stoney Creek, Countyline Creek, South Hyco and Fullers Creek. All four of those watersheds are WS-II watersheds. In your watershed classifications you have I through IV. Currently you have WS-IIs. I through IV, I is the most stringent and IV being the least stringent. Before you tonight is the Haw River Watershed reclassification. This watershed affects five counties and I will pass out a map if that is okay. This map shows the land area in each county where the watersheds are located. As you can see there is a very small portion in Caswell County as compared to the other five. In terms of real world application this watershed would be established in the southeastern part of the county encompassing the area of Cherry Grove Road, Brown Chapel Road to the southernmost part of the county line. There should be other maps that I passed out of a zoomed in map as well as another map showing the entire county that Commissioner Travis has if you will pass it around."

Commissioner Travis stated "Brian explain to everybody where it is. It goes down the Browns Chapel Road down 87 towards the Alamance County line so that the people will understand the map better." Mr. Collie responded "In looking at that map there is approximately 155 addresses and a total of 820 acres that will be affected. This area of land is already currently under the Jordan Lake Buffer rules which was adopted January 18, 2011 in Caswell County. Under the WS-IV which this is the classification would require the minimum lot size of ½ acre. The Subdivision Ordinance currently requires a minimum of 1 acre lot size so the minimum lot size would not be affected in this reclassification. The built upon area restriction of 24% total acreage for multi-family. In the WS-II which is the rest of the county is 12%. The only other thing that this watershed reclassification would change in that part of the county which would not change but there is a requirement perennial and intermittent streams to have a 50 foot buffer and no development can be within that area. Currently under the Jordan Lake, that is why I brought that up; the Jordan Lake Buffer rules are more stringent than the WS-IV buffer rules. So essentially the minimum lot size is not going to change, the built upon area restrictions are not going to change and the buffer restrictions are not going to change. For clarification if you want to call it a technicality that we have to adopt this WS-IV reclassification into our Watershed Protection Ordinance to meet state requirements."

Commissioner Carter stated "Like Mr. Collie stated the WS-IV is not as stringent as the WS-II. It is not a public water supply. All public water supplies are WS-II or WS-I. Greensboro put the Haw River pump station to pump to Lake Townsend and it did not have enough flow in it so it is my understanding that the Haw River is not a public water supply so that is probably the reason that DENR is asking for the reclassification of WS-IV."

Chair Lucas asked "Brian is that true that the Haw River intake prompted this reclassification? What was the purpose of the intake? Go supply water to Greensboro?" Commissioner Carter

responded "To supply water to Lake Townsend." Chair Lucas continued "And they are not utilizing it?" Commissioner Carter responded "There was not enough flow in the Haw River." Mr. Collie responded "This all started back during the drought of 2002." Chair Lucas asked "Have all the counties approve this? I think Alamance County has not." Mr. Collie responded "Of the five counties the only two counties that have not approved is Caswell County and Alamance County. I spoke with the Alamance County Planning Department today as far as the time frame and why they have not approved it yet and it is basically a timing of submission. It will be presented to their board of commissioners in January and they hoped to get it approved at that point." Chair Lucas asked "How was this advertised, the initial public hearing that DENR had concerning this?" Mr. Collie responded "I believe it was back in 2007 I think and in 2009 I think, whatever year it was the public hearing was advertised in the Caswell Messenger." Commissioner Carter stated "I think it was in 2007 when they had the drought."

Mr. Ferrell asked "Mr. Collie did you send a copy of this to the State for their prior review?" Mr. Collie responded "Yes sir." Mr. Ferrell continued "And they have approved what is before the Commissioners tonight?" Mr. Collie responded "Yes." Mr. Ferrell stated "Part of the process is there is a watershed implementation that essentially says local governments shall implement watershed protection as required by the State at the threat of civil penalty and threat of the State taken over of your watershed. It sounds like Mr. Collie has implemented what the State has asked him to do with the Haw River reclassification." Commissioner Hamlett asked "So we don't have a choice?"

Chair Lucas asked "Did the Planning Board approve this reclassification?" Mr. Collie responded "On November 27, 2012 the Planning Board unanimously made a recommendation to adopt this reclassification. The ordinance should be attached in the agenda. The WS-IV is verbatim from the model ordinance that the State has provided and it is the highlighted yellow areas in your ordinance."

Chair Lucas asked "Did the 155 addresses get notification?" Mr. Collie responded "Not specifically no." Mr. Ferrell responded "It is a little quirk. If the enabling legislation or the watershed statute works is if a county is going to adopt a regulation that is more stringent than the model you are required to give notice in the same manner that you would give notice for rezoning which requires giving notice to particular addresses in the affected area. It is not a requirement to do that if the county is going to adopt the model with no stricter requirements."

Commissioner Hamlett asked "Is this the same stuff the Mike Cuzimano was working on some time ago?" Chair Lucas responded "I think that might have been Jordan Lake."

Chair Lucas asked if there was anyone would else who would like to speak during the Public Hearing.

Commissioner Travis moved, seconded by Commissioner Jefferies to go out of the Public Hearing. The motion carried unanimously.

Mr. Ferrell stated "Before you move on to deciding whether to implement this the way police power ordinances are enacted if the entire Board was here tonight and you voted in the

affirmative you could adopt the ordinance one time and one time only and you would be done. However since we are missing a member tonight assuming that there is a majority vote to approve you will have to hear this again. It will have to be read to you a second time within 100 days of tonight in order to actually implement the ordinance."

Chair Lucas asked "Even if it is a unanimous vote?" Mr. Ferrell responded "It cannot be a unanimous vote of all seated members because one is absent tonight." Chair Lucas stated "But the ones present you are saying we still have to hear it again?" Mr. Ferrell responded "That is right because you are missing a member."

Commissioner Carter moved, seconded by Commissioner Travis to adopt the Haw River Reclassified to a WS-IV Watershed as presented by DENR. The motion carried by a vote of five to one with Chair Lucas voting no.

Mr. Ferrell stated "If the motion carries the next time you consider it a simple majority passes it then it is adopted."

PUBLIC COMMENTS

Chair Lucas opened the floor for public comments. There were no public comments.

RECESS

Commissioner Travis moved, seconded by Commissioner Williamson for the Board to take a brief recess. The motion carried unanimously.

CONNECTOR BETWEEN COURTHOUSE AND DETENTION CENTER

Mr. Justin Doyne stated "Good evening Commissioners, two weeks ago I passed out drawings that had some different elevations and drawings of the connector and I was just passing those out to get your feedback on anything that needed to be added or changed. Has anybody noticed anything on that? Ms. Lucas the architect is going to try to incorporate some arched windows." Chair Lucas responded "They were not arched windows they were just arched openings." Mr. Doyne stated "Yes ma'am he is trying to incorporate that. He is going to issue those drawings to you."

Commissioner Carter asked "Has anything changed since the last meeting?" Mr. Doyne responded "Nothing has changed. I am just trying to keep everyone abreast of what we are doing. If there is anything that needs to be changed you can let me know."

Chair Lucas asked "Is this fencing something that is new? Was that part of the drawings that you had previously?" Mr. Doyne responded "They were on there the last time. These two gates that are on the end of it, yes." Chair Lucas continued "And what is the total cost?" Mr. Doyne responded "They don't have a final estimate yet. They are working with the electrical contractor right now to get him to incorporate his items. Once they get that they will have a final estimate for you." Chair Lucas asked "So this is just a report, we are not approving anything?" Mr.