

ORDINANCE

WHEREAS, the Polk County Board of Commissioners on October 4, 2004, adopted the Polk County Land Use Plan which includes provisions for controlling development on mountainsides and ridgelines of the mountainous region of Western Polk County so as to protect them from erosion and blight, so as to regulate moving or removing more than a determined amount of soil, and so as to establish suitable development densities (taking into consideration slopes and soil types) that will sustain the supply of water and ensure properly operating septic systems; and

WHEREAS, the Board of Commissioners finds that the protection of those mountainsides and ridgelines in these respects is an urgent matter given growing public concern about development on them as evidenced by the Polk County Land Use Plan itself and by the more recent Polk County Visioning Committee Report submitted to the Board of Commissioners on June 16, 2008; and

WHEREAS, the current efforts of the County's Planning Staff, its professional advisor Holland Consulting Planners LLC and the Comprehensive Plan Advisory Committee to develop a new comprehensive plan addressing these (and numerous other) concerns will not likely not result in an adopted plan for at least 9 months, if then; and

WHEREAS, substantial additional time will be required to implement a new comprehensive plan by the adoption of an appropriate unified development ordinance or other new or amended ordinances; and

WHEREAS, interim protective measures are required pending development and adoption of the new comprehensive plan and implementation of an appropriate unified development ordinance or other new or amended ordinances, and those interim measures may serve as a guide for permanent protective measures to be incorporated in such a unified development ordinance or other new or amended ordinances; and

WHEREAS, the Polk County Planning Board has duly considered this matter and provided the Board of Commissioners with its comments, recommendations and conclusions concerning consistency with the County's comprehensive plan, as required by law; and

WHEREAS, notice has been duly provided and a public hearing has been duly held by the Board of Commissioners on this matter, as required by law;

NOW, THEREFORE, BE IT RESOLVED That the Board of Commissioners adopts the following Ordinance:

**MOUNTAINSIDE AND RIDGELINE PROTECTION ORDINANCE  
FOR UNZONED AREAS OF POLK COUNTY, NORTH CAROLINA**

Adopted June 22, 2009

**Section 1. Title.**

This Ordinance shall be known and may be cited as the “Mountainside and Ridgeline Protection Ordinance For Unzoned Areas of Polk County, North Carolina.”

**Section 2. Authority and Jurisdiction.**

This Ordinance is adopted in accordance with, and pursuant to the authority granted by, N.C. Gen. Stat. §§113A-209 and -210 (mountain ridge building prohibitions), N.C. Gen. Stat. §153A-121(a) (grant of general police powers), and N.C. Gen. Stat. §§153A-330, -331(a) (grant of subdivision powers).

**Section 3. Findings.**

The mountainsides and ridgelines of the mountainous region of Western Polk County are characterized by steep slopes and thin soils. Land-disturbing activity on these steeper-sloped, thin-soiled mountainsides and ridgelines potentially threatens the public health, safety, welfare, and economic progress of Polk County. This land-disturbing activity has the potential to do the following: (a) degrade the quality of surface water by increasing erosion, stream sedimentation, and stormwater runoff; (b) destabilize mountain slopes thereby increasing the risk of landslides and other slope failures that threaten safety and property; (c) adversely affect sustainability of ground water supplies due to the difficulty in providing adequate recharge to the underlying regolith-fractured crystalline rock aquifers upon which most residents of unincorporated areas of Polk County now depend for their water supply; (d) adversely affect ground water quality due to difficulty in providing proper sewage disposal; and (e) damage the habitat for some species of wildlife (both plants and animals).

The Board of Commissioners specifically finds the following:

(g) Mountainsides and ridgelines are inherently unstable.

(h) Changes to mountainside and ridgeline slopes — through undermining by humans, flowing rivers, heavy rains or the focusing of stormwater runoff by human-built channels or storm drain outlets — can cause erosion, landslides and other slope failures. Landslides and other slope failures, which include avalanche-type catastrophes and slower-moving earth flows, can occur on slopes of 25% and more. Serious erosion can occur on much shallower slopes. Steeper slopes are less forgiving of construction errors than are shallower slopes.

(i) When steeper slopes fail, such failures can have disastrous consequences. Disturbed surfaces create loose materials which tend to move downhill. Development can result in alteration of land surfaces that can contribute to slope destabilization. Alterations that have the potential for creating unstable slopes include placing fills on top of marginally stable slopes, cutting slopes at too steep an angle or undermining the toe of a slope without adequate supporting structures, redirecting storm runoff in a way that artificially concentrates flows onto portions of the landscape not prepared to receive such flows, removing woody vegetation, and adding water by means of mountainside septic systems. These factors work together and can cumulatively decrease the stability of slopes and eventually lead to disaster. Landslides and slope failures pose a variety of hazards to persons and property.

(j) Mountainside and ridgeline development, if unregulated, can take place at the expense of environmental concerns. Stormwater runoff from slopes is greater in both quantity and velocity than it would be from level ground. Preserving existing vegetation reduces erosion by maintaining roots which increase infiltration and bind soils. Constructing mountainside and ridgeline roads involves cuts in the upslope side and fills on the downslope side. Such cuts and fills are often much wider than the minimum required road right-of-way and can be more susceptible to failure.

(k) Mountainside and ridgeline development can impair the recharge of groundwater contained in the regolith-fractured crystalline rock aquifers which underlie Polk County. Preservation of existing vegetation reduces the velocity of raindrops and slows the velocity of surface water flow by increasing the roughness of the ground, thereby increasing recharge of those aquifers. Such groundwater recharge is also enhanced by minimizing impermeable areas caused by construction of buildings, paving of roads and compaction of soils. Wholly apart from efforts to protect groundwater recharge by preserving existing vegetation and minimizing impermeable areas, studies conducted under the auspices of the U. S. Geological Survey establish that, in the central Piedmont of North Carolina, the minimum area required to enable recharge of groundwater supplies required by a single-family dwelling in a developed area to a sustainable level varies between 2.45 and 2.66 acres. Much of the Eastern part of Polk County is a part of the central Piedmont of North Carolina and is similar in topography and soil content and structure to the Piedmont areas in which these studies were conducted. However, due to far greater runoff quantities and velocities and less permeable soil conditions, the minimum area to assure sustainable recharge in developed, and to be developed, areas of the mountainous terrain of Western Polk County is indisputably greater. Studies published by the North Carolina Department of Environment and Natural Resources conclude that, as the slope increases beyond 15%, little groundwater recharge is expected. Calculations performed in connection with the Polk County Land Use Plan suggest that that minimum area to assure adequate recharge may be as great as 10 acres or more for a single-family dwelling where the slope exceeds that 15%.

(l) Mountainsides and ridgelines are unique vegetation communities and wildlife habitats. Mountainsides and ridgelines in developing areas are often the last remaining natural

areas and are the final refuges for many species of wildlife. Development needs to be sensitive to the mountainsides' and ridgelines' function of providing biodiversity.

(m) The problems, difficulties and hazards addressed in the preceding findings are predominantly encountered in those parts of the mountainous regions of Western Polk County that are at elevations of 1,650 feet or more above mean sea level. While areas at lower elevations elsewhere in the County may share one or more of those problems, difficulties and hazards, they are typically lesser in both geographic extent and severity, and are not in as compelling need of being addressed on a comprehensive basis as those encountered at higher elevations.

(n) Polk County has recently been experiencing rapid growth in the number of subdivision lots available for residential housing development. Since 2004, the Polk County Planning Board has given final plat approval to subdivisions comprising 1,427 building lots, and subdivisions comprising another 925 are currently awaiting final plat approval. This growth has been paralleled by similar growth in the towns in Polk County, where well over 1,000 additional lots have been either approved or proposed since 2004. A significant part of this development has occurred, and continues to occur, both within and adjacent to the mountainous region of Western Polk County.

(o) Most of the growth experienced in Polk County since 2004 has occurred within Major and Minor Subdivisions. Family and Two-Lot Subdivisions have contributed inconsequentially to this growth and, unlike Major and Minor Subdivisions, have historically proven to be important tools for ensuring that affordable housing remains available to less affluent Polk County citizens. For these reasons, there exists a valid basis for distinction between Family and Two-Lot Subdivisions, on the one hand, and Major and Minor Subdivisions, on the other, in regard to the relative rigor of land use regulatory requirements applicable to them.

(p) Development of individual homesites in the mountainous region of Western Polk County at elevations of 1,650 feet or more above mean sea level not situated on steep slopes, ridgelines or problem soils typically has significantly less adverse impact on fragile mountainous terrain than does subdivision development, involving extensive installation of roads, streets and subdivision infrastructure, and other structures. Such individual homesite development thus warrants less land use regulatory scrutiny than other more extensive development proposals.

(q) The Board of Commissioners' adoption of this Ordinance is consistent with the Polk County Land Use Plan adopted on October 4, 2004, which is Polk County's currently adopted comprehensive plan, in that it specifically implements the following recommendations in the Polk County Land Use Plan:

Recommendation II(A) concerning preservation of open space;

Recommendation II(B) concerning encouragement of natural resource conservation;

Recommendation III(A) concerning regulation of stormwater runoff in subdivisions;

Recommendation III(B) concerning preservation of well water supplies;

Recommendation III(C) concerning protection of stream quality by requiring vegetative buffers;

Recommendation V(A) requiring subdivisions to provide green space;

Recommendation VII(A) concerning measures to prevent the wholesale leveling of mountains; and

Recommendation VII(B) concerning limitation of development on mountain slopes and ridges.

The Board of Commissioners considers the adoption of this Ordinance to be reasonable and in the public interest for the reasons set forth in this Section 3 and in Section 4, below.

**Section 4. Purpose, Intent and Objectives.**

It is the purpose of this Ordinance to provide development regulations applicable to mountainsides and ridgelines of the mountainous region of Western Polk County at elevations of 1,650 feet or more above mean sea level to ensure that such development as occurs:

- (a) protects the natural conditions and respects existing topography; and
- (b) secures the public health, safety, and general welfare.

The provisions of this Ordinance are intended to prevent developments that will erode the mountainsides and ridgelines of the mountainous region of Western Polk County at elevations of 1,650 feet or more above mean sea level, result in sedimentation of lower slopes and bodies of water, cause or create the potential for damage from landslides or other slope failures, flood downhill properties, impair ground water recharge or result in the severe cutting of trees or the scarring of the landscape. It is the intent of this Ordinance to encourage a responsible and environmentally sensitive form of development and to allow for a reasonable use that complements the natural and visual character of the community. These objectives cannot be met fully with existing development regulations. This Ordinance is considered the minimum necessary to attain these objectives. These regulations are also intended to encourage the application of principles of landscape architecture, building architecture, planning and civil engineering to preserve the appearance and protect the resources of those mountainsides and ridgelines.

**Section 5. Definitions.**

As used in this Ordinance, the following terms have the indicated meanings:

*Board of Commissioners:* The Polk County Board of Commissioners.

*Building:* A *structure* having a roof supported by columns or walls and intended for shelter, housing or enclosure of persons, animals or property.

*Building and grading envelope (BGE):* The limits of disturbance affected by *land-disturbing activity*. All *buildings*, other *structures* and associated disturbance from *land-disturbing activity* shall be confined within this area. The BGE may be sited in one area or apportioned into several smaller areas connected by walks or drives. Driveways and walks are not included in the overall BGE but parking areas and garages are. Drip and other alternative septic systems are not included in the overall BGE where it is demonstrated to the satisfaction of the *Director* that any disturbance associated with them is minimal.

*Director:* An employee or independent contractor of Polk County designated, from time to time, by the Polk County Manager to administer this Ordinance.

*Excavation.* A *land-disturbing activity* involving the removal of earth material.

*Family subdivision:* Any *subdivision* comprising 4 or fewer lots that qualifies as a Family Subdivision within the meaning of that term as defined in the Polk County Subdivision Ordinance.

*Fill Material:* A deposit of earth or other natural or man-made material placed by artificial means.

*Grading:* Any scraping, excavating or filling of the earth's surface or combination thereof. For purposes of this definition, filling is a *land-disturbing activity* involving the placement of *fill material*, including the stockpiling of *fill material*.

*Land-disturbing activity:* Any *excavation* or *grading* of, clearing of vegetation from or otherwise topologically altering land, and any construction, erection or installation of a *building* or other *structure* on land. However, this term shall not include ordinary landscaping maintenance operations, removal of invasive, diseased, dead or damaged trees or shrubbery, installation of individual home gardens or the incidental cutting of firewood for on-site personal use. Neither shall the term include installation of walking or equestrian trails that do not involve extensive *excavation* or *grading*, or clearing of vegetation to a width and height greater than customary for such trails.

*Lot of record:* A lot included within a plat that has been lawfully recorded in the Office of the Register of Deeds of Polk County or a lot described by metes and bounds, the description of which has been lawfully so recorded. For purposes of this Ordinance, a

lot within a *subdivision* shall be treated as a lot of record distinct from the *subdivision* only from and after the date upon which the final plat evidencing that *subdivision* has been lawfully so recorded; until that date, the entire tract being subdivided shall be treated as a distinct, unitary lot of record. Where two or more contiguous lots of record under common ownership are to be developed as a unit, they shall be treated as a single lot of record for purposes of this Ordinance.

EXPLANATORY NOTE: This definition, which is consistent with N.C. Gen. Stat. §§153A-331(b), -334(a), defines an area -- the *lot of record* -- that is the subject of primary regulatory concern under this Ordinance. In the case of a *subdivision*, the *lot of record* is and remains the entire area being subdivided until the final plat evidencing that *subdivision* has been lawfully recorded, at which point the individual lots within the *subdivision* become the subject of primary regulatory concern. This definition has no bearing on the issue whether or when the vested rights contemplated by N.C. Gen. Stat. §153A-344.1 may have been established with regard to a site specific development plan or a phased development plan; that issue must be determined by reference to N.C. Gen. Stat. §153A-344.1 itself and any ordinance of Polk County adopted pursuant to that statute that validly provides for such vested rights. Neither does this definition have any bearing on the issues whether or when common law vested rights may have been established.

*Natural ground surface*: The ground surface in its original state before any *land-disturbing activity* has begun.

*Planning Board*: The Polk County Planning Board.

*Problem soils*: Soils classified as having moderate or severe limitations for the type of building development intended or sanitary facilities proposed as established by the most recent *Soil Survey of Polk County, North Carolina* prepared and published by the United States Department of Agriculture for Polk County.

*Professional Engineer*: A person holding a current, unexpired license as a professional engineer duly issued by the North Carolina State Board of Engineers and Surveyors pursuant to N.C. Gen. Stat. §§89C-1 *et seq.*

*Professional Geologist*: A person holding a current, unexpired license as a geologist duly issued by the North Carolina Board for the Licensing of Geologists pursuant to N.C. Gen. Stat. §§89E-1 *et seq.*

*Professional Landscape Architect*: A person holding a current, unexpired license as a landscape architect duly issued by the North Carolina Board of Landscape Architects pursuant to N.C. Gen. Stat. §§89A-1 *et seq.*

*Professional Surveyor*: A person holding a current, unexpired license as a professional land surveyor duly issued by the North Carolina State Board of Engineers and Surveyors pursuant to N.C. Gen. Stat. §§89C-1 *et seq.*

*Protected mountain ridge:* Any mountain ridge in *protected mountain terrain* the elevation of which is at least 3,000 feet above mean sea level and at least 500 feet above an adjacent valley floor. For purposes of this definition, “mountain ridge” means the elongated crest at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within 100 feet below the elevation of any portion of that crest. “Crest” means the uppermost line of a mountain from which the land falls away on at least two sides to a lower elevation or elevations. “Mountain ridge” and “crest” refer to geological formations, not vegetation.

*Protected mountain terrain:* All terrain having an elevation of 1,650 feet or more above mean sea level that is situated within the unzoned areas of Polk County, as those unzoned areas may exist from time to time. The existing unzoned areas of Polk County at the date upon which this Ordinance has initially been adopted comprise White Oak and Cooper Gap Townships.

*Sensitive natural area:* Any area, which is sensitive or vulnerable to physical or biological alteration, as identified now or hereafter by the North Carolina Natural Heritage Program and which contains one or more of the following: (1) habitat, including nesting sites, occupied by rare or endangered species; (2) rare or exemplary natural communities; (3) significant landforms, hydroforms, or geological features; (4) wetlands; or (5) other areas so designated by the North Carolina Natural Heritage Program, which are sensitive or vulnerable to physical or biological alteration.

*Single-family dwelling:* A detached *building* that is designed for use, and in fact is used, as a dwelling occupied by a single family, together with any accessory *buildings* or other *structures*. For purposes of this definition, an accessory *building* or *structure* is a separate *building* or other *structure* that is subordinate to the dwelling in size or scale and used for a purpose customarily incidental to a dwelling. Also for purposes of this definition, a family is any number of individuals residing together as a single unit, preparing and consuming their meals in common on the premises and sharing housekeeping and maintenance responsibilities; a group occupying a boarding house, rooming house or similar arrangement is not a family.

*Slope:* An inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance. In this Ordinance, slopes are generally expressed as percentages. Percentage of *slope* refers to a given rise in elevation over a given run in distance. A 50% *slope*, for example, refers to a 100-foot rise in elevation over a distance of 200 feet. A 50% *slope* is expressed in engineering terms as a 2:1 *slope*.

*Structure:* Anything constructed, erected or installed on the land having a more or less permanent location on the land, excluding a conventional rail, plank, board, picket or wire fence no more than 4 feet in height. A *building* is a structure. A road, street or driveway, all impervious surfaces, drainage control structures and subdivision infrastructure are examples of structures other than *buildings*.

*Subdivision:* Any subdivision within the meaning of that term as defined in N.C. Gen. Stat. §153A-335.

*Two lot subdivision:* Any *subdivision* that qualifies as a Two Lot Subdivision within the meaning of that term as defined in the Polk County Subdivision Ordinance.

*Undisturbed:* The *natural ground surface* remains in its natural state; no *land-disturbing activity* occurs; no vegetation is removed except as exempted by this Ordinance; and no *building*, other *structure* or impervious surface is constructed thereon.

## **Section 6. Protected Mountain Terrain.**

This Ordinance establishes standards for *land-disturbing activities* on all *protected mountain terrain* and procedures for advance review and approval of those *land-disturbing activities* that entail potentially significant impact upon *protected mountain terrain* and *protected mountain ridges*.

## **Section 7. Applicability.**

Unless (and only to the extent) the exemption granted by Section 8.1 or 8.2 applies, this Ordinance governs all *land-disturbing activity* on any *lot of record* situated, in whole or in part, within *protected mountain terrain*.

## **Section 8. Exemptions.**

The following activities are wholly or partially exempt from the requirements of this Ordinance, as indicated in this Section 8, provided they comply with any limitations or conditions set forth in this Section 8.

### *8.1 Agriculture.*

Any activity undertaken for bona fide farm purposes within the meaning of that term as defined in N.C. Gen. Stat. §153A-340(b). However, this exemption does not apply to any activities on property that are not bona fide farm purposes or to any *land-disturbing activity* not specifically in furtherance of bona fide farm purposes.

### *8.2 Forestry.*

Any activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices established by the North Carolina Division of Forest Resources or the North Carolina Natural Resources Conservation Service, and compliant with all applicable federal and North Carolina statutes and regulations. Logging roads shall be reclaimed in accordance with such best management practices when no longer in service. However, this exemption does not apply to any activities on property that are not for the production and harvesting of timber and timber products so conducted or to any *land-disturbing activity* not

specifically in furtherance of the production and harvesting of timber and timber products so conducted.

### 8.3 Alterations and Replacements of Certain Single-Family Dwellings.

*Land-disturbing activity* consisting of the alteration or replacement of a *single-family dwelling* occurring on a *lot of record* that is situated, in whole or in part, in *protected mountain terrain* but that is not located on a *protected mountain ridge* shall be exempt from the application submission and approval requirements of Section 9, provided that (1) the alteration or replacement is confined to what was the original *building and grading envelope* for the *single-family dwelling* as it was historically constructed and (2) the alteration or replacement is in compliance with the other provisions of this Ordinance, including the substantive requirements set forth in Sections 14 through 17.

### 8.4 Construction of Certain Single-Family Dwellings.

*Land-disturbing activity* consisting of the construction, erection or installation of a *single-family dwelling* located on a *lot of record* that is situated, in whole or in part, in *protected mountain terrain* but that is not located on a *protected mountain ridge*, and the *slope* of the proposed *building and grading envelope* of which, as determined in accordance with Section 14.7, below, is less than 15%, shall be exempt from the application submission and approval requirements of Section 9, provided that the *land-disturbing activity* on those lots is in compliance with the other provisions of this Ordinance, including any substantive requirements set forth in Sections 14 through 17.

EXPLANATORY NOTE: Sections 8.3 and 8.4 simply relieve a landowner seeking to construct, alter or replace a *single-family dwelling* not located on a *protected mountain ridge* from the requirement of submitting and securing approval of an application, not from complying with the substantive requirements of Sections 14 through 17. The 15% threshold in Section 8.4 is the point at which the deleterious effects of surface water runoff begin to become more significant.

## Section 9. Application Submission and Approval Requirements.

Unless (and only to the extent) an exemption granted by Section 8 applies, *no land-disturbing activity* shall be conducted on any *lot of record* situated, in whole or in part, within *protected mountain terrain* until the application required by this Ordinance has been submitted to and approved by the *Director*.

The requirement to submit that application with respect to any proposed *land-disturbing activity* on a *lot of record* situated, in whole or in part, within *protected mountain terrain* will normally be triggered by the filing of any one or more of the following:

- (a) a request for a land-disturbing permit with respect to that *lot of record* where such a permit is required by a North Carolina statute or an ordinance of Polk County relating to soil erosion and sedimentation control;

(b) a request under the Polk County Subdivision Ordinance for preliminary or final plat approval of any *subdivision* of that *lot of record*;

(c) a request for a building permit with respect to that *lot of record*.

Normally, the application required by this Ordinance should be submitted to the *Director* no later than the triggering event requiring that submission, although it may be submitted sooner. However, regardless of whether a triggering event has occurred or when that application is submitted, no *land-disturbing activity* shall be undertaken on that *lot of record* pursuant to any permit or approval granted in response to any such a request unless and until the application required by this Ordinance has also been duly submitted to and approved by the *Director*.

EXPLANATORY NOTE: Regulation of residential subdivision development of undeveloped *protected mountain terrain* under this Ordinance generally proceeds in two distinct stages. The developer must first seek approval under this Ordinance for construction, erection and installation of *structures* constituting streets, roads and other subdivision infrastructure following preliminary plat approval. This will usually be triggered by a request for a land disturbing permit relating to soil erosion and sedimentation control or a request for preliminary plat or master plan approval. Thereafter, when streets, roads and other subdivision infrastructure are in place and the final plat has been approved and recorded, a purchaser of a *lot of record* within the subdivision typically must (unless exempted) seek approval under this Ordinance for construction, erection or installation of a *single-family dwelling* on that *lot of record*. That will ordinarily be triggered by a request for a building permit.

### **Section 10. Contents of Application.**

The application required by Section 9 shall include:

(a) complete copies of the document or documents the filing of which may have triggered the requirement to file the application under Section 9; and

(b) the information required by such of Sections 12 and 13 as apply.

In the case of an application submitted in respect of a proposed *subdivision* other than a *family subdivision* or *two lot subdivision*, the application shall be filed in triplicate; in all other cases a single application will suffice.

The *Director* shall determine whether the application contains the documents and information so required and shall refuse to process any application that does not contain them.

**Section 11. Relationship to Other Regulations.**

For the most part, this Ordinance is supplementary to otherwise applicable North Carolina statutes and regulations and other pertinent ordinances of Polk County. Nothing in this Ordinance shall be construed to modify or exempt development on any *lot of record* situated, in whole or in part, within *protected mountain terrain* from the requirements of those North Carolina statutes or regulations or, except as provided in Section 24, the Polk County Subdivision Ordinance and other applicable ordinances of Polk County. Among others, that development is subject to the following:

**11.1 Land Disturbance.**

The proposed *land-disturbing activity* shall meet any applicable state standards and any ordinances of Polk County relating to soil erosion and sedimentation control. However, the provisions of this Ordinance are supplemental to any applicable state standards and any ordinances of Polk County relating to soil erosion and sedimentation control. Should the requirements of those state standards or those ordinances vary from those contained in this Ordinance, the stricter requirements shall prevail.

**11.2 Septic Tanks and Drainage Fields.**

Where one or more septic tanks and drainage fields are to be used for sewage disposal, the proposed *land-disturbing activity* shall meet all applicable state standards and all applicable ordinances of Polk County relating to septic tanks and drainage fields.

**11.3 Other Means of Sewage Disposal.**

Where sewage treatment is to be provided by any means other than one or more individual septic tanks and drainage fields, the sewage treatment means shall meet all applicable state standards and all applicable regulations of Polk County relating to sewage disposal.

**11.4 Individual Wells.**

Where one or more wells are to be used for water supply, the proposed *land-disturbing activity* shall meet all applicable state standards and all applicable regulations of Polk County relating to water wells.

**11.5 Public Water Systems.**

Where a public water system, as defined in N.C. Gen. Stat. §130A-313(10), is to be provided, it shall meet all applicable state standards and any applicable ordinances of Polk County relating to public water systems.

## Section 12. Simplified Application Requirements for Land-Disturbing Activity Associated With Certain Single-Family Dwellings.

The following information shall be submitted as a part of each application required by Section 9 with respect to any *land-disturbing activity* attributable to construction, erection or installation of a *single-family dwelling* on a *lot of record* that is situated, in whole or in part, in *protected mountain terrain* if, but only if, all three of the following conditions are satisfied:

- (a) the *lot of record* is not located, in whole or in part, on a *protected mountain ridge*,
- (b) the soils report required by Section 12.2 does not reveal the presence of *problem soils* within the proposed *building and grading envelope*, and
- (c) the *slope* of the *building and grading envelope*, determined in accordance with Section 14.7, is less than 30%.

### 12.1 Site Plan and Topographic Map.

A site plan and topographic map of the *lot of record* that is the subject of the application shall be required.

The site plan and topographic map shall be scaled no less than 1" = 40' and depict contour intervals of no more than 20 feet. It shall show the boundaries of that *lot of record*, the boundaries of the proposed *building and grading envelope*, the location or locations of the proposed *buildings* and other *structures* and the finished floor elevations of those *buildings* and other *structures* in relation to the *natural ground surface*. The site plan and topographic map shall also indicate the data pertinent to any *slope* calculations required by Section 14.7, setting forth the *slope* calculations so required. Areas proposed or required to remain *undisturbed* shall be marked on the site plan and topographic map and in the field with tape, orange plastic fencing, or other approved marker until a certificate of occupancy is issued. Notes and details of existing terrain features of consequence shall be included on the site plan and topographic map.

The site plan and topographic map required by this Section 12.1 can be prepared using:

- (a) on-site GPS observations taken, observed or confirmed by the *Director*,
- (b) Polk County GIS maps,
- (c) recorded plats or surveys of an area in which the *lot of record* is included, or
- (d) unrecorded preliminary plats or surveys of an area in which the *lot of record* is included, prepared by a *Professional Surveyor*, *Professional Engineer* or *Professional Landscape Architect*, that were previously submitted pursuant to this

Ordinance or the Polk County Subdivision Ordinance or that were prepared for other purposes (so long as properly certified),

without the assistance of a *Professional Surveyor*, a *Professional Engineer* or a *Professional Landscape Architect*, provided sufficient accuracy of detail is maintained. Any data pertinent to any *slope* calculations required by Section 14.7 and the *slope* calculations themselves, can be omitted when the applicant elects the option afforded by Section 14.7.4.5.

The site plan and topographic map can be consolidated in a single document with the graphic information required by the soils report required by Section 12.2, provided that all information required by both sections is compiled in the manner and by the persons specified in those sections.

### 12.2 Soils Report.

A soils report with respect to the project site shall be required. The soils report shall be prepared by a *Professional Engineer* or *Professional Geologist* and shall indicate whether, in the opinion of the *Professional Engineer* or *Professional Geologist*, any *problem soils* are present within the proposed *building and grading envelope*. The report shall also specifically indicate that, in the opinion of the *Professional Engineer* or *Professional Geologist* preparing it, any and all site specific soil tests required by good engineering or geological practice have been made and the results duly incorporated in the report.

Where a *subdivision* has previously secured the required *Director's* approval in compliance with the provisions of Section 13, the owner of a *lot of record* in that *subdivision* may be excused from the requirements for submitting a soils report required by this Section 12 if and to the extent that the soils report previously submitted in compliance with the provisions of Section 13 in securing the required *Director's* approval in respect of that *subdivision* remains available, or is otherwise provided, to the *Director* for review, and is, in the opinion of the *Director*, sufficient to establish that there are no *problem soils* within the proposed *building and grading envelope*.

### 12.3 Certification of Maximum Structure Height.

An application triggered by a request for a building permit with respect to a *single-family dwelling* to be situated on a *protected mountain ridge* shall contain a certification by the applicant or his, her or its representative that the maximum height of any proposed *structure* complies with the height restrictions contained in this Ordinance.

## **Section 13. General Application Requirements for All Other Land-Disturbing Activity (Including Single-Family Dwellings Not Qualifying Under Section 12).**

The following information shall be submitted as a part of each application required by Section 9 with respect to any *land-disturbing activity* attributable to construction, erection

or installation of any *building* or other *structure* on a *lot of record* situated, in whole or in part, in *protected mountain terrain* other than a *single-family dwelling* meeting all three conditions prescribed in Section 12.

### 13.1 *Site Plan and Topographic Map.*

A site plan and topographic map of the *lot of record* that is the subject of the application shall be required.

The site plan and topographic map shall be prepared by a *Professional Surveyor*, a *Professional Engineer* or a *Professional Landscape Architect*. It shall be scaled no less than 1" = 40' and depict contour intervals of no more than 5 feet. It shall show the boundaries of that *lot of record*, the boundaries of the proposed *building and grading envelope*, the location or locations of the proposed *buildings* and other *structures*, the finished floor elevations of the those *buildings* and other *structures* in relation to the *natural ground surface* and, in the case of *land-disturbing activity* on a *protected mountain ridge*, the distance to and elevation of the uppermost point of the crest of the mountain ridge adjacent to which the *buildings* and other *structures* are to be constructed, erected or installed. The site plan and topographic map shall also indicate the data pertinent to any *slope* calculations required by Section 14.7, setting forth the required *slope* calculations themselves. Areas proposed or required to remain *undisturbed* shall be marked on the site plan and topographic map and in the field with tape, orange plastic fencing, or other approved marker until a certificate of occupancy is issued. Notes and details of existing terrain features of consequence shall be included on the site plan and topographic map.

Where reliable data in sufficient detail to enable the *Director* to administer the requirements of this Ordinance are available from:

- (a) on-site GPS observations taken, observed or confirmed by the *Director*,
- (b) Polk County GIS maps,
- (c) recorded plats or surveys of an area in which the *lot of record* is included, or
- (d) unrecorded preliminary plats or surveys of an area in which the *lot of record* is included, prepared by a *Professional Surveyor*, *Professional Engineer* or *Professional Landscape Architect*, that were previously submitted pursuant to this Ordinance or the Polk County Subdivision Ordinance or that were prepared for other purposes (so long as properly certified),

the data contained in a site plan and topographic map that might otherwise be provided by a physical on-site survey may be based on them. However, if and to the extent that the *Director* determines that such data are insufficient, he or she may require the pertinent data to be acquired from a physical on-site survey to be conducted by a *Professional Surveyor* or *Professional Engineer*.

The site plan and topographic map can be consolidated in a single document with the graphic information required by one or more of the soils report required by Section 13.2, the hydrological control plan required by Section 13.3 or the geotechnical analysis and report required by Section 13.4, provided that all information required by all pertinent sections is compiled in the manner and by the persons specified in those sections.

### 13.2 *Soils Report.*

Except as otherwise provided in this Section 13, a soils report with respect to the project site shall be required. The soils report shall be prepared by a *Professional Engineer* or *Professional Geologist* and shall indicate whether, in the opinion of the *Professional Engineer* or *Professional Geologist*, any *problem soils* are present within the proposed *building and grading envelope*. To the extent such *problem soils* are present, the report shall include his or her conclusions and recommendations regarding the effects of soil conditions on the proposed development and measures to be taken to abate adverse effects. The report shall specifically indicate that, in the opinion of the *Professional Engineer* or *Professional Geologist* preparing it, any and all site specific soil tests required by good engineering or geological practice have been made and the results duly incorporated in the report.

### 13.3 *Hydrology Report and Plan.*

Except as otherwise provided in this Section 13, a hydrology report and plan with respect to the project site shall be required. This report and plan shall be prepared by a *Professional Engineer* or *Professional Geologist* and shall include a complete description of the hydrology of the site, and his or her conclusions and recommendations regarding the effect of hydrological conditions on the proposed development and the capability of the site to be developed. This report and plan shall include a hydrological control plan, prepared by a *Professional Engineer* or *Professional Geologist*. At minimum the hydrological control plan shall show and take into account the direction of flow within the local drainage basin; all natural drainage channels directed toward and away from the site within 50 feet of the perimeter of the site, and other natural drainage ways that may affect or be affected by the development proposal. Special notations shall be included in the hydrological control plan that highlight details of the terrain, existing natural surface drainage and areas subject to seepage or spring flow.

### 13.4 *Geotechnical Analysis and Report.*

Except as otherwise provided in this Section 13, a geotechnical analysis and report with respect to the project site shall be required. The analysis and report shall be prepared by a *Professional Engineer* or a *Professional Geologist* and shall address the existing geology, topographic and hydrologic conditions of the site, including an evaluation of the ability of the site to accommodate the proposed activity. Such analysis and report shall contain the *Professional Engineer's* or *Professional Geologist's* opinion regarding *slope* stability, soil-bearing pressure, the potential for landslide or other geological hazards and

their potential impact on proposed *buildings* or other *structures*, or on surrounding properties, and any other pertinent information. The geotechnical report and analysis shall also contain recommendations of the *Professional Engineer* or *Professional Geologist* regarding foundation design, cut or fill *slope* design, soil-bearing pressure, and building restrictions or setbacks, such as are necessary to satisfy the intent of this Ordinance and to protect the public health, safety and welfare. Upon completion of all improvements shown on approved plans but prior to the issuance of any final approval of improvements by the County, the applicant shall submit a declaration by the *Professional Engineer* or *Professional Geologist* that all work was done in substantial accordance with the recommendations contained in the geotechnical analysis and report as approved and in accordance with approved plans.

### 13.5 *Impact Assessment.*

Applications with respect to *subdivisions* other than *family subdivisions* and *two lot subdivisions* shall be accompanied by a written assessment of the developer or his or her or its representative addressing the environmental and public safety impacts that the project will have on the environment of the mountainside or ridgeline after the project has been completed and is in operation, and the measures proposed to ameliorate those impacts.

### 13.6 *Certification of Maximum Building Height.*

An application triggered by a request for a building permit with respect to a *building* to be situated on a *protected mountain ridge* shall contain a certification by the applicant or his, her or its representative that the maximum height of any proposed *building* complies with the height restrictions contained in this Ordinance.

### 13.7 *Areas Not Proposed for Development.*

To reduce costs to applicants, the soils report required by Section 13.2, the hydrological report and plan required by Section 13.3, and the geotechnical analysis and report required by Section 13.4 need not address areas within that *lot of record* with respect to which no *land-disturbing activity* is to occur unless and to the extent the *Director* otherwise requires.

EXPLANATORY NOTE: The *Director's* discretion to require information concerning areas not proposed for development enables him or her to obtain, where appropriate, information bearing on possible risk features to the *building and grading envelope* and neighboring properties presented by areas that will remain undeveloped where appropriate.

### 13.8 *Alternative Plat Disclosure Option.*

The owners or the developer of a *family subdivision* or *two lot subdivision* may elect to be excused from the requirements for submitting a soils report, a hydrology report and plan,

and a geotechnical analysis and plan; provided, however, if the owners or developer of that *family subdivision* or *two lot subdivision* elects to be excused from those requirements, the recorded plat of the *family subdivision* or *two lot subdivision* shall contain, in a prominent location and of a prominent size, the following declaration signed by the owners or developer:

“This subdivision is located in a mountainous area with steep slopes. Steep slopes are inherently unstable and may be subject to severe erosion or landslides. No soil, hydrological or geotechnical analyses or reports have been prepared for this subdivision to determine the suitability of the lots contained herein for development.”

EXPLANATORY NOTE: The owners or the developer of a *family subdivision* or *two lot subdivision* are cautioned that their election of this option will not relieve the purchaser or owner of a *lot of record* within the *subdivision* of the requirement for submitting a soils report required by Section 12.2 or 13.2, a hydrology report and plan required by Section 13.3, and a geotechnical analysis and plan required by Section 13.4 when submitting an application pursuant to Section 9.

#### **Section 14. General Standards for All Land-Disturbing Activity.**

Unless (and only to the extent) an exemption granted by Section 8 applies, all *land-disturbing activity* in *protected mountain terrain* shall be governed by the provisions of this Section 14:

##### *14.1 Minimum Alterations.*

Earth moving shall be limited to the minimum required for *building* and other *structure* foundations, roads, driveways, subdivision infrastructure, drainage control *structures* and immediate areas surrounding the *buildings* and other *structures*, roads, driveways, infrastructure and drainage control *structures*. With the exception of stockpiling or restoration efforts, substantial earth moving beyond that required for those purposes shall not be permitted.

##### *14.2 Cut and Fill.*

Cut *slopes* in soil steeper than 35%, fill *slopes* steeper than 30% and artificial *slopes* exceeding 35 feet in height shall be designed by a *Professional Engineer*. Steeper cut and fill *slopes* are encouraged in areas of steep terrain in order to confine the area disturbed to the minimum required for establishing stable *slopes*. To achieve stable *slopes* in steep terrain, retaining walls may be used. The height of any retaining wall should not exceed 4 feet unless required to be higher for engineering reasons; generally, in areas where cuts are steeper, a stepped or terraced wall structure should be used in preference to walls higher than 4 feet. Walls higher than 4 feet shall also be designed by a *Professional Engineer*.

#### 14.3 *Compaction of Fill.*

All fill shall be compacted in 6" loose horizontal layers to conform with generally accepted engineering standards to a minimum compacted density of at least 95% standard Proctor maximum dry density at optimum moisture by  $\pm 2\%$ . Vegetation that has been cut or cleared shall be removed from the site and shall not be covered by, or imbedded in, *fill material*. When compaction has been completed, a *Professional Engineer* shall provide the *Director* with a certificate evidencing that the compaction has been done in conformity with this Section 14.3.

#### 14.4 *Control of Stormwater Run-Off.*

All applications that affect the natural flow of storm water must meet all North Carolina and local regulations, including those governing erosion and sedimentation control. Storm water flow shall not be altered from its natural flow so as to impact adversely or damage the property of others.

Alterations of natural drainage ways shall be avoided except for road crossings and drainage control *structures* compliant with any applicable federal or North Carolina requirements. Natural drainage ways shall be rip-rapped or otherwise stabilized below drainage and culvert discharge points for a distance sufficient to convey the discharge without channel erosion.

Run-off from impervious surfaces shall be collected and conveyed in a pipe, culvert, dip or other approved manner to an approved storm water retention system if available, or if unavailable, to the bottom of the drainage way or other location specified by a *Professional Engineer* and in a safe, adequate, low impact and non-erosive manner. Roads and driveways shall be designed to shed water as soon as feasible.

Where required by other North Carolina statutes or regulations or Polk County ordinances or by a *Professional Engineer*, a storm water retention system shall be installed. Where so required, interceptor ditches shall be established above steep *slopes* in such a way as to avoid saturation or erosion of soil, and the intercepted water shall be conveyed in a pipe, culvert, dip or approved other manner to the bottom of the drainage way.

The overall drainage system on a *lot of record* shall be completed and made operational at the earliest possible time during construction.

Riparian buffers extending a minimum of 50' from each bank shall be used to protect established streams.

#### 14.5 *Impact on Adjacent Property.*

Realignment of streams and natural drainage channels shall not be permitted except for the purpose of effecting a stream crossing and only as specifically approved by a

*Professional Engineer* to meet all necessary federal and North Carolina requirements. In such cases, natural or typical flow of surface or subsurface water shall not be altered or obstructed in any way by grade changes if that alteration may adversely affect the property of another by either contributing to pooling or collection of waters, or to the concentration or intensification of surface water discharge.

#### 14.6 *Density Limits and Lot Size.*

Development in all *subdivisions* situated, in whole or in part, in *protected mountain terrain* shall meet the following density and lot size requirements:

##### 14.6.1 *Density in Subdivisions With Both Public Water and Public Sewer.*

In the case of a *subdivision* (other than a *family subdivision* or *two lot subdivision*) where both a public water system and a public sewer system owned and operated by a local government in Polk County are available to all lots, the maximum density shall not exceed one *single-family dwelling* for each 5 acres.

14.6.2 *Density in Subdivisions Without Both Public Water and Public Sewer.* In the case of a *subdivision* (other than a *family subdivision* or *two lot subdivision*) where both a public water system and a public sewer system owned and operated by a local government in Polk County are not available to all lots, the maximum density shall not exceed one *single-family dwelling* for each 7 acres.

14.6.3 *Other Cases.* In the cases of *family subdivisions* and *two lot subdivisions*, the maximum density of *single-family dwellings* shall be determined by reference to the Polk County Subdivision Ordinance.

EXPLANATORY NOTE: For purposes of Section 14.6.3, minimum lot sizes established by the Polk County Subdivision Ordinance can be used to determine the density of dwelling units (or other structures) allowed per acre. Thus, a two-acre minimum lot size would result in a maximum density of one dwelling per two acres (or one-half dwelling per acre), a two-and-a-half-acre minimum lot size would result in a maximum density of one dwelling per two-and-a-half acres (or four-tenths of a lot per acre), and so forth. The density restrictions set forth in this Section 14.6 shall not be construed to impair the clustering of dwellings and lots so long as maximum density is not exceeded.

14.6.4. *Minimum Lot Size.* To encourage clustering, the minimum lot size for a *single-family dwelling* in any *subdivision* is 10,000 square feet, provided that the density restrictions set forth in this Section 14.6 are satisfied with respect to that *subdivision*. Developers are cautioned that this minimum lot size may, in some circumstances, be insufficient to install a septic system and drainage field compliant with sanitation requirements and should resolve that issue with the Polk County Health Department before seeking final plat approval. In all other cases, minimum lot size shall be determined by reference to the Polk County Subdivision Ordinance.

#### 14.7 Determining Slope.

*Slope* shall be determined for each delineated area specified below in accordance with the methods and procedures set forth below:

14.7.1 *Approval of Calculation.* The calculated *slope* for a particular land tract shall normally be reviewed and approved by the *Director* in connection with his or her consideration of an application required by Section 9. If no application required by Section 9 has yet been submitted to the *Director*, *slope* calculations and supporting documentation may be submitted to the *Director* for advance review and approval.

14.7.2 *Map Submission.* Where *slope* calculations and supporting data are submitted to the *Director* for advance review and approval, the supporting data shall include a site plan and topographic map meeting the requirements of Section 13.1. The *slope* calculation and associated mapping shall be prepared by a *Professional Surveyor*, *Professional Engineer* or *Professional Landscape Architect*.

14.7.3 *Basis for Slope Calculation.* For a *single-family dwelling* that is located on a *lot of record* situated, in whole or in part, in *protected mountain terrain* but that is not located on a *protected mountain ridge*, the delineated area for the *slope* calculation shall comprise only the *building and grading envelope* for that *lot of record* unless the *Director* has approved a division of the delineated area in the manner provided below. In all other cases, the delineated area for the *slope* calculation shall comprise the entire *lot of record* unless the *Director* has approved a division of the delineated area in the manner provided below.

Where there is a significant variation in the landform character within a delineated area, the delineated area may (and, in the discretion of the *Director*, shall) be divided into several distinct delineated subareas for the purposes of *slope* determination. This division must be approved by the *Director*. Normally, such a division will be used only in cases where large tracts of property encompass flat land as well as significant mountainside and ridgeline terrain. However, it may also prove appropriate where the *building and grading envelope* for an individual building site is of irregular conformation. In the case of *subdivisions*, the *Director* may require that the *subdivision* be divided into delineated subareas no greater than 20 acres in extent, the boundaries of each of which coincide at least for the most part with lot lines the developer proposes for the *subdivision*. *Slope* details for each delineated subarea must be provided.

When used for determining *slope*, the term “delineated area” shall refer to the relevant delineated area or delineated subarea parameters described in this Section 14.7.3.

14.7.4 *Dual Calculations.* *Slopes* shall be calculated based on both (a) the downstream drainage *slope* from the highest point within the delineated area, and (b) the upstream drainage *slope* from the lowest point on the boundary of the delineated area, in accordance with the following requirements:

14.7.4.1 *Highest Point Based Calculation.* *Slope* based on the highest point within the delineated area shall be calculated by determining the horizontal straight line distance (D1) from the highest point within the delineated area (Elevation H1) to the lowest point at which drainage from that highest point (Elevation H1) exits the delineated area (Elevation H2). *Slope* based on the highest point within the delineated area shall be calculated using the following formula:

$$Sa = ((H1-H2)/D1)(100)$$

Where:

Sa = *slope* expressed as a percentage

H1 = elevation of highest point in delineated area

H2 = elevation of the lowest point at which drainage  
from H1 would exit delineated area

D1 = is the horizontal straight line distance  
between points H1 and H2

14.7.4.2 *Lowest Point Based Calculation.* *Slope* based on the lowest point on the boundary of the delineated area shall be calculated by determining the horizontal straight line distance (D2) from the lowest point on the boundary of the delineated area (Elevation L2) to the highest point at which drainage to that lowest boundary point (Elevation L1) would begin within the delineated area (Elevation L1). *Slope* based on the lowest point on the boundary of the delineated area shall be calculated using the following formula:

$$Sb = ((L1-L2)/D2)(100)$$

Where:

Sb = *slope* expressed as a percentage

L1 = elevation of the most remote highest point within  
the delineated area at which drainage  
to point L2 would begin

L2 = elevation of the lowest point on the boundary  
of the delineated area

D2 = is the horizontal straight line distance  
between points L1 and L2

14.7.4.3 *Average Slope.* *Slope* shall be the average of Sa and Sb rounded off to the nearest one percent. It is possible, in some circumstances, that D1 and D2 may coincide.

14.7.4.4 *Horizontal Straight Line Distance.* Geometrically, the horizontal straight lines used in determining distances D1 and D2 are perpendicular to vertical lines dropped from points H1 and L1, respectively. D1 and (H1-H2), and D2 and (L1-L2), are, respectively, the lengths of two sides of a right triangle, neither of which is the hypotenuse.

14.7.4.5 *Alternative Slope Computation Option.* In the case of construction, erection or installation of a proposed *single-family dwelling* that is situated, in whole or in part, in *protected mountain terrain* but that is not located on a *protected mountain ridge*, the owner may opt to have the *slope* of the delineated area estimated by the *Director*. In this case, the *Director* shall assign to the delineated area a *slope* equal to the greatest *slope* on the delineated area that he or she is able to establish using the Polk County GIS system.

#### 14.8 *Conservation Easements.*

Lands subject to an “absolute” conservation easement, that is, an easement in which the landowner retains no development rights other than the rights to install and maintain hiking and equestrian trails, to remove invasive, diseased, dead or damaged trees and shrubbery and to take reasonable sedimentation and erosion control measures, may, at the landowner’s option, be excluded when determining *slope* under this ordinance. Subdivision developers may avail themselves of this exclusion with respect to required or voluntarily established open space only by properly granting such an “absolute” conservation easement with respect to that open space.

### **Section 15. Requirements for Roads and Driveways.**

Unless (and only to the extent) an exemption granted by Section 8 applies, no new or extended roads or driveways shall be constructed or installed on any *lot of record* situated, in whole or in part, in *protected mountain terrain* except in compliance with the provisions of this Section 15.

#### 15.1 *Hazard Avoidance.*

All new and extended public and private roads and driveways shall be designed and constructed with particular attention to minimizing the potential for landslides, erosion, and runoff.

#### 15.2 *Emergency Access.*

All new and extended public and private roads and driveways shall be designed and constructed with particular attention to providing adequate access for emergency vehicles.

#### 15.3 *Minimum Disturbance.*

All new and extended public and private roads and driveways shall be designed to avoid where possible (or minimize, where not possible) cuts and fills, to reduce where possible road width and otherwise to diminish the extent of *land-disturbing activity*, having due regard for maximum grade and other restrictions established by the Polk County Subdivision Ordinance or other applicable ordinances.

However, variations in road design and road construction requirements specified by the Polk County Subdivision Ordinance may be permitted by the *Director* to prevent the consumption of unnecessarily large amounts of land for such roads or driveways. One-way roads shall be permitted and encouraged where appropriate for the terrain and where public safety would not be jeopardized. A two-way road may have the directions of flow split into one-way pairs that differ in elevation, circumnavigate difficult terrain, or avoid tree clearance.

Pulloffs on narrower two-way roads, and turnaround features on longer driveways, may be necessary to facilitate ingress and egress of emergency vehicles in difficult terrain.

### **Section 16. Requirements for Construction of Buildings and Other Structures.**

Unless (and only to the extent) an exemption granted by Section 8 applies, no *building* or other *structure* shall be constructed, erected or installed on any *lot of record* situated, in whole or in part, in *protected mountain terrain* except in compliance with the provisions of this Section 16.

#### *16.1 Disturbance Limits for Lots Intended for Single-Family Dwellings.*

For a single *lot of record* intended for the development of a *single-family dwelling*, the *building and grading envelope* shall not exceed an area equal to 50% of that *lot of record*, subject to the following:

- (a) if the area equal to 50% of that *lot of record* or preliminarily approved *subdivision* lot is less than 7,500 square feet, then the *building and grading envelope* may be as great 7,500 square feet; and
- (b) if the area equal to 50% of that *lot of record* or preliminarily approved *subdivision* lot is greater than 15,000 square feet, then *the building and grading envelope* shall be no greater than 15,000 square feet.

Furthermore, impervious surfaces within the *building and grading envelope* for that *lot of record* shall not exceed 6,000 square feet. No other disturbance or impervious surfaces are permitted on the lot other than for a driveway to provide ingress and egress.

These same restrictions set forth in this Section 16.1 shall apply to each single lot contained in a preliminarily approved plat of a *subdivision* the final plat of which has not yet been lawfully recorded with the Register of Deeds of Polk County

#### *16.2 Disturbance Limits for Lots Intended for Other Than Single-Family Dwellings.*

For a single *lot of record* intended for development of a *building* or other *structure* other than a *single-family dwelling*, the *building and grading envelope* and impervious surfaces shall be the minimum necessary to develop the property for its intended use.

These same restrictions set forth in this Section 16.2 shall apply to each single lot contained in a preliminarily approved plat of a *subdivision* the final plat of which has not yet been lawfully recorded with the Register of Deeds of Polk County

#### 16.3 *Areas Where Land-Disturbing Activities Prohibited.*

No *land-disturbing activity* shall occur in the following areas of a *lot of record*:

- (a) rock outcroppings unless a geotechnical analysis and report meeting the requirements of Section 13.4 and favorably assessing the suitability of the site for proposed *land-disturbing activity* is provided;
- (b) wetlands or buffer areas along streams as required by Section 14.4;
- (c) natural drainage ways except as permitted by Section 14.4;
- (d) *sensitive natural areas*; or
- (e) significant historical and archeological resource areas as defined by the National Register of Historic Places or other federal or North Carolina state agencies.

#### 16.4 *Building Height.*

The height of any *building* situated on a *protected mountain ridge* in *protected mountain terrain* shall not be greater than 40 feet in height as measured from the lowest point at which the foundation of that *building* intersects the *natural ground surface*, and shall not protrude above the nearest crest of the associated *protected mountain ridge* by more than 35 feet. In the case of step-down construction, height may be determined separately for each step unit.

#### 16.5 *Building Setbacks.*

Where appropriate, *buildings* and other *structures* can be located as close to the access road as possible (having due regard for rights-of-way) to preserve the natural terrain and to minimize land disturbance and the length of driveways. For that purpose, the Director, when feasible, and the Planning Board (or Polk County Subdivision Administrator) when giving preliminary or final plat approval to a *subdivision*, may relax front lot property line setback requirements to accommodate such proximity of *buildings* and other *structures* to the access road so long as they do not encroach into rights-of-way.

## Section 17. Fire Protection and Emergency Access.

### 17.1. Fire Department Review.

The *Director* shall submit one of the triplicate copies of each application submitted to him or her in respect of a proposed *subdivision* to the Fire Chief of the Fire District in which the proposed *subdivision* will be located for review, comment and recommendations. The *Director* may consider the comment and recommendations he or she may receive from the Fire Chief in determining whether to approve the application and may implement any recommendations of the Fire Chief bearing on public safety concerns by way of conditions on that approval.

### 17.2. EMS and Emergency Services Department Review.

The *Director* shall submit one of the triplicate copies of each application submitted to him or her in respect of a proposed *subdivision* to the Department Head of the Polk County EMS and Emergency Services Department for review, comment and recommendations. The *Director* may consider the comment and recommendations he or she may receive from the Department Head in determining whether to approve the application and may implement any recommendations of the Department Head bearing on public safety concerns by way of conditions on that approval.

### 17.3 Fire Buffer Zone.

Unless (and only to the extent) an exemption granted by Section 8 applies, no *building* shall be constructed, erected or installed on any *lot of record* situated, in whole or in part, in *protected mountain terrain* unless a fire-buffer zone of no less than 30 feet is established on all sides of the *building*, or to the property line, whichever is nearer. Within the fire-buffer zone, all brush, flammable vegetation, or combustible growth shall be maintained in a fire-safe manner, except that this restriction shall not apply to single specimens of trees, ornamental shrubbery, or similar plants used as ground cover, provided that they do not form a continuous means of rapidly transmitting fire from the native growth to the *building*.

### 17.4 Other Fire Prevention Measures.

Unless (and only to the extent) an exemption granted by Section 8 applies, no *building* shall be constructed, erected or installed on any *lot of record* situated, in whole or in part, in *protected mountain terrain* unless:

- (a) its roof consists of metal, clay, concrete shake, tile or other fire retardant materials,
- (b) its exterior walls are surfaced with fire-retardant materials, or treated with fire-retardant coatings and

(c) its chimneys are provided with approved spark arresters.

Where no public water is available to serve a development or *subdivision*, the *Director* may, in the interests of public safety, require the establishment of ponds or dry hydrants to serve the development or *subdivision*.

**Section 18. Criteria for Approval of Applications.**

No application required by Section 9 shall be approved unless the *Director* determines that the proposed *land-disturbing activity* satisfy all of the requirements of this Ordinance, conform to any conditions imposed by the *Director* pursuant to this Section 18 and are in compliance with all other federal and North Carolina laws and regulations and Polk County ordinances governing the project.

In approving an application, the *Director* may impose conditions on the *land-disturbing activity* to ensure that the minimum requirements and the purposes and intentions of this Ordinance, and any recommendations made pursuant to Sections 17.1 and 17.2, are met.

Applications that do not meet the criteria contained in this Section 18 shall be denied by the *Director* in writing, stating the reasons for denial.

All *land-disturbing activity* undertaken or conducted after approval of the application shall conform to the approved application, any conditions imposed by the *Director* and the requirements of this Ordinance.

**Section 19. Variances.**

The *Planning Board* shall have authority to grant a variance to provide relief when a strict application of this Ordinance would impose practical difficulties or unnecessary hardships on the applicant as provided in this Section 19.

19.1 *Standards.*

A variance from the requirements of this Ordinance may be granted by the *Planning Board* if it finds the following:

- (a) strict enforcement of those requirements would result in practical difficulties or unnecessary hardships to the applicant for the variance, particularly in the case of a proposed *single-family dwelling*;
- (b) the variance is in harmony with the general purpose and intent of this Ordinance and preserves its essential spirit; and
- (c) in the granting of the variance, the public safety and welfare will be secured and substantial justice done.

Such findings shall be based on the following considerations:

- (d) the fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance;
- (e) the hardship relates to the applicant's property rather than to personal circumstances;
- (f) the hardship results from the application of this Ordinance and from no other cause, including the actions of the owner of the property or previous owners; and
- (g) the hardship is peculiar to the property in question rather than a hardship shared by the neighborhood or the general public.

#### 19.2 *Conditions.*

Reasonable conditions may be imposed by the *Planning Board* in connection with a variance as deemed necessary to protect the best interests of the surrounding property or neighborhood, and otherwise secure the purpose and requirements of this Ordinance. Guarantees and evidence may be required to establish compliance with those conditions.

### **Section 20. Appeals.**

An applicant or other person aggrieved by a decision of the *Director* in the administration, interpretation, or enforcement of this Ordinance may appeal the decision to the *Planning Board* by filing a written appeal application with the *Director*. The application for appeal shall be filed within 30 days of receipt of the decision appealed by the applicant or other person aggrieved.

### **Section 21. Procedures for Variances and Appeals.**

Upon the filing of any complete application for a variance or appeal with the *Director*, the *Planning Board* shall schedule and hold a public hearing on the proposed variance or appeal.

#### 21.1 *Newspaper Notice.*

A notice of the public hearing shall be published in a newspaper of general circulation in Polk County once a week for two successive weeks, the first publication of which shall not appear less than 10 days or more than 25 days before the date fixed for the public hearing. In computing the number of days, the date of publication shall not be counted but the date of the public hearing shall. The notice shall include the time, place and date of the hearing and include a description of the property and the character of the variance sought or the decision of the *Director* being appealed.

### 21.2 Mailed Notice.

The owners of all parcels of land abutting the parcel of land with respect to which the variance is sought or the appeal taken as shown on the Polk County tax listing shall be mailed a notice of the public hearing by first class mail at the last addresses listed for those owners on the county tax listing containing the same information as in the newspaper notice published in accordance with Section 21.1. This notice must be deposited in the mail at least 10 but not more than 25 days before the date of the public hearing. In computing the number of days, the date of publication shall not be counted but the date of the public hearing shall. The person(s) mailing the notices shall certify to the *Planning Board* that fact, and the certificate shall be deemed conclusive in the absence of fraud.

### 21.3 Planning Board Decision.

The variance may be granted, or the decision of the *Director* overturned, only by majority vote of the members of the *Planning Board*. The decision of the *Planning Board* shall be final, subject only to any subsequent action in the Superior Court or other court of competent jurisdiction. The *Planning Board* shall make findings and render a decision in writing within 30 days after the initial public hearing on the proposed variance or appeal. The Clerk of the *Planning Board* shall notify the applicant, in writing, of the decision on the variance or appeal within 5 days after the *Planning Board* has rendered its decision. The burden of proof on any matter to come before the *Planning Board* shall lie with the person seeking the variance or appealing the decision. Proceedings in the case of an appeal or variance shall be quasi-judicial in character and governed by quasi-judicial principles.

## Section 22. Administration and Enforcement.

It shall be the duty of the *Director* to administer and enforce this Ordinance, directly or through one or more subordinates under his or her supervision and control, or through one or more independent contractors, and to bring to the attention of the appropriate county attorney any violations or lack of compliance with it. The *Director* may delegate enforcement functions, powers and duties assigned by this Ordinance to his or her subordinates, or to an independent contractor, without the need to reflect that delegation by formal action.

### 22.1 Refusal of Permits or Permissions.

The *Director* is authorized and directed to deny and withhold permits or permissions on any application pursuant to this Ordinance or other ordinances of Polk County where the applicant, applicant's business or applicant's agent has failed or refused to comply with this Ordinance.

22.2 *Stop Work Order.*

The *Director* is authorized to issue written "stop work" and "cease and desist" orders with respect to any activity that fails to comply with the provisions of this Ordinance. Stop work or cease and desist orders may be lifted at such time as the *Director* is satisfied that a good faith effort is being made to comply with applicable provisions of this Ordinance. Nothing shall prevent the *Director* from reissuing stop work and cease and desist orders where warranted.

22.3 *Injunction.*

If any *building* or other *structure* is constructed, erected or installed or any *land-disturbing activity* is undertaken in violation of this Ordinance, the *Director* is authorized to and may institute, in addition to other remedies, an action for an injunction or undertake other appropriate action to cause the violation to cease or to be corrected.

22.4 *Rule-Making.*

The *Director* shall have authority to promulgate such rules as may be necessary to facilitate the administration of this Ordinance; provided, however, any such rule shall not be contrary to the express provisions of this Ordinance and shall be in harmony with its purposes.

22.5 *Violations; Remedies.*

Appropriate actions and proceedings may be taken at law or in equity to:

- (a) prevent any violation of this Ordinance;
- (b) prevent unlawful construction;
- (c) recover damages;
- (d) restrain, correct or abate a violation; and
- (e) prevent illegal occupancy of a *building*, other *structure* or premises.

22.6 *Enforcement Procedures.*

When the *Director* becomes aware of a violation of this Ordinance, it shall be his or her duty to notify the owner of the land of the violation. The owner shall immediately remedy the violation.

22.6.1 *Notice of Violation.* If the owner of the land fails to take prompt corrective action, the *Director* shall give the owner or occupant written notice (by certified or registered

mail to his last known address, by personal service, or by posting notice conspicuously on the property) of the following:

- (a) that the activity is in violation of this Ordinance;
- (b) the nature of the violation, and citation of the Section(s) of this Ordinance violated;
- (c) the measures necessary to remedy the violation; and
- (d) mechanisms available to appeal the decision of the *Director*.

22.6.2 *Appeal*. Any owner who has received a Notice of Violation may appeal the decision of the *Director* to the *Planning Board* as provided in Section 20.

22.7 *Civil Penalty*.

The owner of any land and any developer, builder, contractor, agent, or other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this Ordinance may be held responsible for the violation and subject to the civil penalties and remedies provided herein.

22.7.1 *Notice*. No civil penalty shall be assessed until the person alleged to be in violation has been notified in accordance with Section 22.6.1. If after receiving a notice of violation under Section 22.6.1, the owner or other violator fails to take corrective action, a civil penalty may be imposed under this Section 22.7 in the form of a citation. The citation shall be served in the same manner as of a notice of violation. The citation shall state the nature of the violation, shall state the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within 15 days of the date of the citation.

22.7.2 *Civil Penalties*. Any person who violates any provision of this Ordinance shall be subject to assessment of a civil penalty in accordance with the following schedule:

- (a) \$50 per day for as long as the first violation remains uncured;
- (b) \$100 per day for as long as a second distinct violation remains uncured;
- (c) \$200 per day for as long as a third distinct violation remains uncured; and
- (d) \$500 per day for as long as a fourth and any succeeding distinct violations remain uncured.

22.7.3. *Violation Not A Misdemeanor or Infraction*. A violation of this Ordinance for which this Section 22.7 prescribes a civil penalty is not a misdemeanor or infraction under N.C. Gen. Stat. §14-4.

## Section 23. Amendments.

This Ordinance may be amended by the *Board of Commissioners* in accordance with the provisions of this Section 23.

### 23.1 *General Procedure.*

Amendments shall be regulated by the provisions set forth below:

23.1.1 *Permitted Amendments.* The text of this Ordinance may be amended for any proper purpose.

23.1.2 *Permitted Proponents.* Proposed amendments to this Ordinance may be initiated by the *Board of Commissioners*, the *Planning Board*, the *Watershed Review Board*, the *County Manager*, the *Director* or one or more owners of property within Polk County affected, or adjacent to property affected, by this Ordinance.

23.1.3 *Planning Board Review.* All proposed changes to this Ordinance shall first be reviewed by the *Planning Board* before final consideration by the *Board of Commissioners*.

### 23.2 *Applications by Property Owners.*

23.2.1. *Written Application and Filing Fee.* In order for a property owner authorized by Section 23.1.2 to initiate a change to the text of this Ordinance, an application accompanied by the application fee shall be submitted to the *Director* at least 30 days prior to the date of the *Planning Board* meeting at which the application is to be considered. The application shall contain the name(s) and address(es) of the property owner(s), a copy of the proposed text change and a statement from the property owner(s) which explains the purpose for the amendment. Application forms may be established and modified by the *Director*, as necessary.

23.2.2 *Repeated Applications.* The *Board of Commissioners* shall not consider an application for an amendment by a property owner denied within the preceding 12 months by the *Board of Commissioners*.

### 23.3 *Planning Board Action.*

Before taking any action on a proposed amendment to this Ordinance, the *Board of Commissioners* shall consider the *Planning Board's* written recommendations on the proposed amendment. The *Planning Board* shall have 45 days after the first consideration of the application at a regular meeting to submit its recommendations to the *Board of Commissioners*. Failure by the *Planning Board* to submit recommendations within the 45 day period shall constitute a favorable recommendation, except that if, by agreement of the *Planning Board* and the applicant, 45 days is insufficient due to the size of the area,

the complexity of the request or similar circumstances, the *Planning Board* shall have 90 days to submit its recommendations.

#### 23.4 *Public Hearing.*

Before taking action on a proposed amendment to this Ordinance, the *Board of Commissioners* shall hold a public hearing. Public notification of the hearing shall comply with the provisions of N.C. Gen. Stat. §§153A-323.

23.4.1. *Newspaper Notice.* In accordance with N.C. Gen. Stat. §153A-323, a notice of the public hearing on a proposed amendment to this Ordinance shall be published in a newspaper of general circulation in Polk County once a week for two successive weeks, the first publication of which shall not appear less than 10 days or more than 25 days before the date fixed for the public hearing. In computing the number of days, the date of publication shall not be counted but the date of the public hearing shall. The notice shall include the time, place and date of the hearing and include a description of the nature of the change to the Ordinance proposed.

### **Section 24. Conflict With Statutes, Other Ordinances or Vested Rights.**

Where the provisions of any North Carolina statute or regulation are in conflict with this Ordinance, the statute or regulation shall control unless, by its terms, the statute or regulation allows a more restrictive ordinance or an ordinance imposing the higher standards, in which event the ordinance shall govern. Where the provisions of any other ordinance of Polk County are in conflict with this Ordinance, the more restrictive or that imposing the higher standards shall govern except in the case of (1) a density or lot size restriction, in which event the density and lot size restrictions set forth in Section 14.6 shall prevail, (2) road and driveway requirements, in which case the variations permitted in or required by Sections 14.2, 15.2 and 15.3 shall govern and (3) front lot setback requirements, in which event Section 15.3 shall control.

It is not the intent of this Ordinance to attempt to defeat any lawfully and validly established statutory or common law vested right under North Carolina law that was in effect at the effective date of the adoption of this Ordinance. If and to the extent, but only to the extent, that any restriction arising as a consequence of the adoption of this Ordinance in fact would otherwise conflict with any vested right arising under a Polk County ordinance adopted in conformity with N.C. Gen. Stat § 153A-344.1 and is not permitted by any of the exceptions prescribed in N.C. Gen. Stat. §153A-344.1(e), then (and only to that extent) that restriction will not apply in that case for so long, but only for so long, as that vested right remains in effect pursuant to N.C. Gen. Stat. §153A-344.1(d).

Neither is it the intent of this Ordinance to attempt to defeat any lawfully and validly established statutorily authorized development agreement under North Carolina law that was in effect at the effective date of the adoption of this Ordinance. If and to the extent, but only to the extent, that any restriction arising as a consequence of the adoption of this

Ordinance in fact would otherwise conflict with any such development agreement, then (and only to that extent) that restriction will not apply in that case for so long, but only for so long, as that development agreement remains in effect.

**Section 25. Fee Schedule.** The *Board of Commissioners* may, by separate ordinance or other appropriate authorization, prescribe fees payable in respect of the various filings and procedures required or permitted by this Ordinance.

**Section 26. Severability.**

If any section, subsection, paragraph, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed severable and that holding shall not affect the validity of the remaining portions of this Ordinance.

**Section 27. Non-Waiver.**

The enactment of this Ordinance shall in no way affect the running of any statute of limitations, amortization provisions or enforcement actions, or otherwise cure any existing land use violations.

**28. Effective Date.**

This Ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 22nd day of June, 2009, by the Polk County Board of Commissioners.

\_\_\_\_\_  
Cynthia M. Walker, Chair  
Polk County Board of Commissioners

(SEAL)

ATTEST: \_\_\_\_\_  
Anne Britton, Secretary  
Polk County Board Of Commissioners

APPROVED AS TO FORM:

\_\_\_\_\_  
Tom Hix, Polk County Attorney