



**JACKSON COUNTY
MOUNTAIN AND HILLSIDE DEVELOPMENT ORDINANCE**

Adopted August 6, 2007

WHEREAS, the Jackson County Board of Commissioners has adopted a land development plan which includes provisions for mountain protection; and

WHEREAS, the Board finds that the protection of mountains and hillsides is an urgent matter given growing public concern about development on them; and

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

WHEREAS, the Jackson County Planning Board has considered this matter;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Jackson County, North Carolina, as follows:

1 **Section 1. Title.**

2 This ordinance shall be known and may be cited as the "Mountain and Hillside
3 Development Ordinance of Jackson County, North Carolina."
4

5 **Section 2. Authority and Jurisdiction.**

6 This ordinance, enacted in accordance with, and pursuant to the authority granted by,
7 Articles 6 and 18 of Chapter 153A, and Article 14 of Chapter 113A, of the North
8 Carolina General Statutes, shall only apply to that portion of the county outside the

1 jurisdictions of the various municipalities and the Qualla Reservation and as noted in
2 Section 6, below.

3
4 **Section 3. Findings.**

5 The mountains of Jackson County, North Carolina, are characterized by steep slopes
6 and thin soils. Land-disturbing activity on high-elevation, steep-slope mountains
7 potentially threatens the public health, safety, welfare, and economic progress of
8 Jackson County. Such land-disturbing activity has the potential to do the following: (a)
9 endanger the quality of surface water by increasing erosion, stream sedimentation, and
10 stormwater runoff; (b) induce landslides; (c) adversely affect ground water due to the
11 difficulty in providing proper sewage disposal; (d) damage the habitat for some species
12 of wildlife (both plants and animals); and (e) detract from the mountains' scenic and
13 natural beauty which is vital to the recreation and tourism industry of Jackson County.
14

15 The Jackson County Board of Commissioners finds the following:

16
17 (a) Steep hillsides are inherently unstable.
18

19 (b) Changes to slopes — through undermining by humans, flowing rivers, heavy rains,
20 or the focusing of stormwater runoff by human-built channels or storm drain outlets
21 — can cause erosion or landsliding. Soil slips, which cause avalanche-type failures,
22 and slower-moving earth flows can occur on slopes of 25 percent and more. Serious
23 erosion can occur on much shallower slopes. Steeper slopes are less forgiving of
24 construction errors than are shallower slopes.
25

26 (c) When steeper slopes fail, such failures can have disastrous consequences. Disturbed
27 surfaces create loose materials which tend to move downhill. Development can
28 result in alteration of land surfaces that can contribute to slope destabilization.
29 Alterations that have the potential for creating unstable slopes include placing fills
30 on top of marginally stable slopes, cutting slopes at too steep an angle or
31 undermining the toe of a slope, redirecting storm runoff in a way that artificially
32 concentrates flows onto portions of the landscape not prepared to receive such
33 flows, removing woody vegetation, and adding water by means of hillside septic
34 systems. These factors work together and can cumulatively decrease the stability of
35 slopes and eventually lead to disaster. Landslides and slope failures pose a variety
36 of hazards to persons and property.

1 (d) Hillside development, if unregulated, can take place at the expense of
2 environmental concerns. Stormwater runoff from slopes is greater in both quantity
3 and velocity than it would be from level ground. Preserving existing vegetation
4 reduces erosion by maintaining roots which increase infiltration and bind soils.
5 Vegetation also reduces the velocity of raindrops and slows the velocity of surface
6 water flow by increasing the roughness of the ground, thereby increasing
7 groundwater recharge. Constructing hillside roads involves cuts in the upslope side
8 and fills on the down slope side. Such cuts and fills are often much wider than the
9 minimum required road right-of-way and can be more susceptible to failure.

10
11 (e) Hillsides and ridge lines are unique vegetation communities and wildlife habitats.
12 Hillsides in developing areas are often the last remaining natural areas and are the
13 final refuges for many species of wildlife. Development needs to be sensitive to the
14 hillside's function of providing biodiversity.

15
16 (f) Hillsides have aesthetic value to Jackson County and its municipalities and
17 contribute to the community's sense of identity, as well as its tourism economy.
18 Prominent mountains, peaks, hills, and ridges have significance as identifiable
19 landmarks to area residents. Hillside development, if unregulated, can take place at
20 the expense of aesthetic concerns. Hills and ridges are highly visible from
21 surrounding areas.

22
23 (k) Vegetation clearance and landform grading practices, if unregulated, can upset the
24 natural shape of hills. The bulk, shape, height, and color of buildings can contrast
25 with the natural landscape if unregulated and thus intrude on the natural character
26 of the landform. Regulations are needed to ensure that buildings and structures
27 blend in with the natural environment through their placement on the land, shape,
28 materials, and colors.

29
30 **Section 4. Purpose, Intent and Objectives.**

31 It is the purpose of this Ordinance to provide development regulations applicable to
32 mountains and hillsides to ensure that development occurs in the following manner:

- 33
34 (a) Protects the natural conditions and respects existing topography;
35 (b) Prevents inappropriate development;
36 (c) Preserves the aesthetic and scenic qualities of such areas;
37 (d) Ensures the public health, safety, and general welfare.

1 The provisions of this Ordinance are intended to prevent developments that will erode
2 hillsides, result in sedimentation of lower slopes and bodies of water, cause damage
3 from landslides or create the potential for damage from landslides, flood downhill
4 properties, or result in the severe cutting of trees or the scarring of the landscape. It is
5 the intent of this Ordinance to encourage a sensitive form of development and to allow
6 for a reasonable use that complements the natural and visual character of the
7 community. These purposes cannot be met fully with existing development regulations
8 such as subdivision, soil erosion and sedimentation control, and flood damage
9 prevention. This Ordinance is considered the minimum necessary to attain these
10 purposes. These regulations are also intended to encourage the application of
11 principles of landscape architecture, architecture, planning, and civil engineering to
12 preserve the appearance and protect the resources of mountains and hills.

13

14 **Section 5. Definitions.**

15

16 *Building and grading envelope (BGE):* The limits of disturbance affected by the
17 establishment of a building and grounds. All buildings, walls, lawns, site amenities,
18 and associated disturbance from construction activity shall be confined within this
19 zone. The BGE may be sited in one mass or apportioned into several smaller
20 compounds connected by walks or drives. Driveways are not included in the overall
21 BGE but parking areas and garages are.

22

23 *Director:* The Jackson County Planning Director or his or her designee.

24

25 *Excavation:* A land-disturbing activity involving the mechanical removal of earth
26 material.

27

28 *Filling:* A land-disturbing activity involving the placement of fill material, including the
29 temporary stockpiling of fill material.

30

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

33

34 *Grading:* Any scraping, excavating or filling of the earth's surface or combination
35 thereof.

36

1 *Hazardous waste:* Any waste which has been defined as a hazardous waste in
2 regulations promulgated by the administrator of the United States Environmental
3 Protection Agency.
4

5 *Land-disturbing activity:* Any grading of land, any clearing of vegetation, and any
6 construction or rebuilding of a building or structure. This term shall not include
7 activities such as ordinary maintenance and landscaping operations, individual home
8 gardens, the upkeep of yard and grounds, repairs, and the cutting of firewood for
9 personal use.
10

11 *Lot of record.* A lot included within a plat which has been recorded in the Office of the
12 Register of Deeds of Jackson County or a lot described by metes and bounds, the
13 description of which has been so recorded.
14

15 *Multi-family dwelling:* A structure that contains multiple dwelling units.
16

17 *Natural ground surface:* The ground surface in its original state before any land-
18 disturbing activity.
19

20 *Protected mountain ridges:* All mountain ridges whose elevation is at least 2,500 feet and
21 whose elevation is 400 feet or more above the elevation of an adjacent valley floor.
22

23 *Quadrangle map:* The most recently published U.S. Geological Survey 7.5-minute
24 topographic map prepared at a scale of 1:24,000.
25

26 *Reforestation plan:* A plan, prepared by a registered forester, for replacing harvested
27 timber by replanting or by natural regenerative processes (such as coppicing, seed trees,
28 etc.), consistent with recommended best management practices for forestry in North
29 Carolina.
30

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

1 *Single-family dwelling*: A dwelling structure that is designed for the use of one family.
2 For purposes of this Ordinance only, the term includes manufactured homes.

3
4 *Slope*: An inclined earth surface, the inclination of which is expressed as the ratio of
5 horizontal distance to vertical distance. In this Ordinance, slopes are generally
6 expressed as a percentage; percentage of slope refers to a given rise in elevation over a
7 given run in distance. A fifty (50) percent slope, for example, refers to a 100-foot rise in
8 elevation over a distance of 200 feet. A fifty (50) percent slope is expressed in
9 engineering terms as a 2:1 slope.

10
11 *Undisturbed*: The natural ground surface remains in its natural state; no land disturbing
12 activity occurs; no vegetation is removed except as exempted by this Ordinance; and no
13 impervious surface is constructed thereon.

14
15 **Section 6. Establishment of the Mountain and Hillside Development District.**

16 The Mountain and Hillside Development District is hereby established, the boundaries
17 and extent of which are depicted on the map entitled "Mountain and Hillside
18 Development District Map" (herein referred to as the District Map), which is hereby
19 adopted as if fully set forth in this Ordinance. Said map shall be attached to the County
20 Clerk's copy of this Ordinance upon adoption and shall be available for public
21 inspection in the office of the director.

22
23 **Section 7. Applicability.**

24 This Ordinance shall apply to any subdivision plat, land-disturbing activity, building
25 permit, or any other development proposal on property situated within the Mountain
26 and Hillside Development District. This Ordinance shall apply, and the director shall
27 apply and enforce the provisions of this Ordinance, to the earliest application for
28 development or building approval required of the applicant. When an application for a
29 preliminary subdivision plat, preliminary development plan as may be required by
30 other provisions of the ordinances of Jackson County, land-disturbing activity (e.g., soil
31 erosion and sedimentation control plans), or a building permit pertaining to property
32 regulated by this Ordinance is filed, said application shall be required to demonstrate
33 compliance with applicable provisions of this Ordinance, unless compliance has already
34 been satisfactorily demonstrated by prior application and approval as determined by
35 the Director.

1 **Section 8. Exemptions.**

2 The following land uses or activities are exempt from the requirements of this
3 Ordinance provided they comply with any limitations or conditions specified herein.
4

5 **8.1 *Agriculture and forestry.***

6 Agriculture and forestry on protected mountains, provided such uses or activities,
7 including associated roads, are consistent with the best management practices
8 established by the North Carolina Division of Forest Resources or the North
9 Carolina Natural Resources Conservation Service, consistent with all state and
10 federal laws, and all applicable regulations promulgated by the State of North
11 Carolina. Logging roads shall be reclaimed in accordance with practices of the
12 Division of Forest Resources when they are no longer in service.
13

14 **8.2 *Landscape maintenance.***

15 Landscape maintenance activities, including the removal of diseased, dead or
16 damaged trees; provided, however, that such activities shall be carried out in
17 conformance with applicable regulations of this Ordinance.
18

19 **8.3 *Additions to single-family residences.***

20 On lots of record with existing residences that were approved prior to the effective
21 date of this Ordinance, said existing residences may be expanded without
22 demonstrating compliance with this Ordinance, provided that the height of the
23 building addition does not exceed the height limitation contained in Section 16.5, no
24 more than minimal land disturbance is required to accomplish the building
25 addition, and the building addition is in conformity with the purposes and intent
26 and consistent with regulations and guidelines of this Ordinance as determined by
27 the planning director.
28

29 **8.4 *Existing lots of record.***

30 The owner, or any successor in interest, of any lot of record existing as of the
31 effective date of this Ordinance shall be entitled to build one single-family home
32 thereon. Such lot shall be exempt from the requirements contained in this
33 Ordinance provided that the development of such home shall be done in compliance
34 with the following provisions: Section 14.1, Minimum Alterations, Section 14.2, Cut
35 and Fill, Section 14.3, Compaction of Fill, Sections 15.1, 15.2 and 15.3, regarding
36 driveways, Section 16.7, Partial Screening, Section 16.9, Hazardous Waste Facilities,
37 Section 18.4, Land Disturbance and Grading, Section 18.8, Building Colors, Section

1 18.11, Screening and View Corridors, Section 18.14, Lighting, and Section 18.17,
2 Natural Drainage Channels.

3
4 **8.5 *Prior development plan approval.***

5 It is recognized that some or all of the lots in subdivisions for which a determination
6 of vested rights has been made, either pursuant to the Jackson County Vested Rights
7 Ordinance or by final judgment of a court of competent jurisdiction, may not be lots
8 of record. For a period of two years subsequent to the effective date of this
9 Ordinance, or such longer period as may have been granted in the determination of
10 vested rights, the building of homes in subdivisions determined to be vested shall be
11 treated as if they were lots of record and regulated in accordance with Section 8.4,
12 above. Subsequent to this vesting period, the building of homes or other
13 improvements on lots in such subdivisions which have not been recorded shall
14 comply with applicable requirements of this Ordinance unless the planning director
15 determines that such compliance would result in practical difficulty or unnecessary
16 hardship.

17
18 **8.6 *Non-regulatory lots.***

19 Lots of record which are not situated on a protected mountain ridge, as defined
20 herein, and for which the average slope, as determined by Section 14.7, below, is less
21 than 30 percent, shall be exempt from the requirements of this ordinance.

22
23 **Section 9. Permit and Plan Required.**

24 No preliminary subdivision plat, preliminary development plan as may be required by
25 other provisions of the ordinances of Jackson County, land-disturbing activity permit,
26 or building permit shall be issued by the director or other administrative official of
27 Jackson County for any land-disturbing activity, land use, building, or structure on
28 property subject to the jurisdiction of this Ordinance, unless the activity, land use,
29 building, or structure conforms to the requirements of this Ordinance. All development
30 activities or site work conducted after approval of the site plan shall conform to the
31 specifications of said site plan as approved by the director. The planning director or
32 designee shall have the authority to inspect property developed under these regulations
33 to ensure compliance therewith.

34
35 **Section 10. Relationship to Other Development Processes.**

36 Prior to any land-disturbing activity permit, development approval, or building permit
37 being issued, the planning director shall require a site plan in sufficient detail to review

1 the proposed development for compliance with the provisions of this Ordinance. The
2 application requirements of this Ordinance hereof shall apply in addition to the
3 submission requirements for subdivision plats, preliminary development plans, land-
4 disturbing activity permits, and building permits as specified in other ordinances or
5 regulations of Jackson County, as applicable. The director shall determine if the
6 application provides the information required by this Ordinance and shall refuse to
7 process any such application that does not contain the information required for an
8 application for development approval, subdivision, land-disturbing activity, or building
9 and for a permit under the terms of this Ordinance.

10
11 **10.1 *Preliminary Subdivision Plat.***

12 In the case of subdivision plat approval, a preliminary plat meeting the
13 specifications of the Subdivision Ordinance of Jackson County shall constitute the
14 site plan required by this Ordinance.

15
16 **10.2 *Building Permit.***

17 In the case of a building permit, a plot plan required for such application shall
18 constitute the required site plan.

19
20 **10.3 *Land-Disturbing Activity.***

21 In the case of a land-disturbing activity permit, the filing of plans meeting the
22 specifications of the Jackson County Sediment Control Ordinance shall constitute
23 the site plan required by this Ordinance.

24
25 **Section 11. Relationship to Other Regulations.**

26 Nothing in this Ordinance shall be construed to modify or exempt development from
27 applicable requirements of the state and other ordinances or regulations of Jackson
28 County, including but not limited to the following:

29
30 **11.1 *Land disturbance.***

31 Proposed land-disturbing activity shall meet all applicable state standards and all
32 regulations of Jackson County relating to soil erosion and sedimentation control.
33 The provisions of this Ordinance are more restrictive and require the submission of
34 plans and a permit which may not be required by said land-disturbance and soil
35 erosion requirements.

1 **11.2 *Septic tanks.***

2 Where one or more septic tanks are to be used for individual sewage disposal, the
3 proposed land-disturbing activity shall meet all applicable State standards and all
4 applicable regulations of Jackson County relating to septic tanks.
5

6 **11.3 *Sewage disposal.***

7 If sewage treatment is to be provided by any means other than one or more
8 individual septic tanks, the sewage treatment shall meet all applicable State
9 standards and all applicable regulations of Jackson County relating to sewage
10 disposal.
11

12 **11.4 *Individual wells.***

13 Where one or more wells are to be used for water supply, the proposed land-
14 disturbing activity shall meet all applicable State standards and all applicable
15 regulations of Jackson County relating to water wells.
16

17 **11.5 *Water systems.***

18 If a public water supply system is to be provided, the water supply system shall
19 meet all applicable State standards and all applicable regulations of Jackson County
20 relating to public water systems.
21

22 **Section 12. Application Requirements for All Land-Disturbing Activity Other Than**
23 **That Associated With a Single-Family Dwelling.**

24 The following information shall be submitted as part of the first county application
25 requirement encountered by the applicant, including, without limitation, approval of a
26 preliminary subdivision plat, permit for land-disturbing activity, development plan
27 approval, or permit for a building, road, or driveway for anything other than a single-
28 family dwelling. In order to reduce costs to applicants, the topographic survey, soils
29 report, hydrological report and plan, and geotechnical analysis and report need not
30 address areas not proposed for development.
31

32 Family subdivisions, as defined in the Jackson County Subdivision Ordinance, may be
33 excused from submitting a soils report, a hydrology report and plan, and a geotechnical
34 analysis and plan; provided, however, if the subdivision is excused from such
35 requirements, the plat shall contain, in a prominent location and of a prominent size,
36 the following note:
37

1 “This subdivision is located in an area of steep slopes as determined by
2 Jackson County. Steep slopes are inherently unstable and may be subject to
3 severe erosion or landslides. No soils, hydrological or geotechnical analyses
4 or reports have been prepared for this subdivision to determine the suitability
5 of the lots contained herein for development.”
6

7 **12.1 *Topographic survey.***

8 A topographical survey of the project site shall be required for preliminary
9 subdivision plat approval. Notes and details of existing terrain shall be included in
10 the required topographic information. A topographic survey may be required by
11 the director for any other application for land-disturbing activity or building
12 approval where reliable data on existing topography including County GIS maps or
13 other topographic maps which may be available do not provide sufficient detail to
14 administer the requirements of this Ordinance. Said topographic survey, if required
15 by this section or by the director pursuant to this section, shall provide contour
16 intervals of no more than ten feet unless otherwise approved by the director.
17

18 **12.2 *Certification of Maximum Structure Height.***

19 Plans submitted with an application for a building permit shall contain a
20 certification that the maximum height of any proposed structure complies with the
21 height restrictions contained in this Ordinance.
22

23 **12.3 *Soils report.***

24 This report shall include conclusions and recommendations regarding the effect of
25 soil conditions on the proposed development. This report shall be prepared by a
26 registered professional engineer, soil scientist, engineering geologist, or other
27 qualified professional approved by the director. The report may use the soil survey
28 prepared and published by the Natural Resources Conservation Service for Jackson
29 County, North Carolina, as its basis, although site-specific soil tests may be required
30 at the discretion of the director.
31

32 **12.4 *Hydrology report and plan.***

33 This report shall include a complete description of the hydrology of the site,
34 conclusions and recommendations regarding the effect of hydrological conditions on
35 the proposed development, and the capability of the site to be developed.
36 Hydrology reports shall be completed by a professional engineer experienced and
37 knowledgeable in the practice of hydrology, or other qualified professional

1 approved by the director. A hydrological control plan, prepared by a professional
2 engineer experienced and knowledgeable in the practice of hydrology, or other
3 qualified professional approved by the director, shall also be required. At minimum
4 said plan shall show and take into account the direction of flow within the local
5 drainage basin; all natural drainage channels directed toward and away from the
6 site within fifty feet of the perimeter of the site, and other natural drainage ways
7 which may affect or be affected by the development proposal. Alterations of natural
8 drainage ways shall be prohibited except for approved road crossings and drainage
9 structures. Natural drainage ways shall be rip-rapped or otherwise stabilized below
10 drainage and culvert discharge points for a distance sufficient to convey the
11 discharge without channel erosion. Special notations shall be included which
12 highlight details of the terrain, existing natural surface drainage and areas subject to
13 seepage or spring flow.
14

15 **12.5 *Geotechnical Analysis and Report.***

16 This analysis and report shall address the existing geology, topographic and
17 hydrologic conditions of the site, including an evaluation of the ability of the site to
18 accommodate the proposed activity. Such analysis and report shall contain a
19 professional opinion regarding slope stability, soil-bearing capacity, the potential for
20 landslide or other geological hazards and their potential impact on structures or
21 surrounding properties, and any other pertinent information. The geotechnical
22 report and analysis shall also contain recommendation regarding foundation design,
23 cut or fill slope design, soil-bearing potential, and building restrictions or setbacks,
24 such as are necessary to satisfy the intent of this Ordinance and to protect the public
25 health, safety and welfare. Upon completion of all improvements shown on
26 approved plans but prior to the issuance of any final approval of improvements by
27 the County, the applicant shall submit a declaration by the geotechnical engineer or
28 engineering geologist that all work was done in substantial accordance with the
29 recommendations contained in the geotechnical analysis and report as approved
30 and in accordance with approved plans.
31

32 **12.6 *Assessment.***

33 Applications for preliminary and final plat approval for major and minor
34 subdivisions shall be accompanied by a written assessment addressing the
35 environmental, scenigraphic and public safety impacts of the effect that the project
36 will have on the environment of the mountain or hill after the project has been
37 completed and is in operation.

1 **Section 13. Application Requirements for Land-Disturbing Activity Associated With**
2 **a Single-Family Dwelling.**

3 A plot plan of the lot or site on which the building is to be located shall be submitted to
4 the building inspector for review and approval by the director. The plot plan shall be
5 prepared by a registered surveyor, professional civil engineer, or other qualified
6 professional approved by the director and shall show the finished floor elevation of the
7 building in relation to the natural ground surface and in relation to the uppermost point
8 of the crest, summit, or ridge top of the mountain or hill on which said building is
9 constructed. The plot plan shall also indicate the limits of the area to be disturbed and
10 the slope of the buildable area. Areas proposed or required to remain undisturbed shall
11 be marked on the plot plan and in the field with tape, orange plastic fencing, or other
12 approved marker until a certificate of occupancy is issued or as otherwise approved by
13 the director. The following additional information shall be submitted along with the
14 plot plan.

15
16 **13.1 Level 1 Requirements.**

17 Every application for authorization to undertake land-disturbing activities
18 associated with development of a single-family dwelling shall contain a topographic
19 survey of the lot with contour intervals of two feet and a certification of maximum
20 structure height as per Sections 12.1 and 12.2. An analysis of the county soils map,
21 and if the soils map indicates the presence of problematic soils, a soils report
22 meeting the requirements of Section 12.3, shall accompany the application.

23
24 **13.2 Level 2 Requirements.**

25 Level 2 requirements apply to any application to develop a single-family home
26 where (1) the soils report confirms the presence of problematic soil types, and/or (2)
27 the natural slope of the building and grading envelope equals or exceeds 40%. In
28 addition to the topographic survey and certification of maximum building height
29 required in Sections 13.1, Level 2 applications shall also contain the following
30 information:

- 31
- 32 a) A soils report meeting the requirements of Section 12.3, if one has not already
33 been provided;
 - 34
 - 35 b) A hydrographic report and plan meeting the requirements of Section 12.4, above;
36 and
- 37

1 c) A geotechnical analysis and report meeting the requirements of Section 12.5,
2 above.

3
4 **Section 14. General Regulations for All Development and Other Land-Disturbing**
5 **Activity.**

6 The following minimum standards shall apply to earth moving and land-disturbing
7 activity which is not otherwise exempt.

8
9 **14.1 *Minimum alterations.***

10 Earth moving shall be limited to the minimum required for building foundations,
11 driveways, drainage control structures and immediate areas surrounding the
12 building, structure, road driveway, or drainage structure required by this
13 Ordinance. With the exception of approved stockpiling or restoration efforts,
14 substantial earth moving beyond that required for the installation or construction of
15 approved buildings, structures, driveways, roads, or drainage structures shall not be
16 permitted.

17
18 **14.2 *Cut and fill.***

19 Unless otherwise specifically approved by the county engineer, cut slopes shall be
20 no steeper than one foot horizontal to one foot vertical (1:1) and fill slopes shall not
21 be steeper than one-and-one-half feet horizontal to one foot vertical (1½:1). Artificial
22 slopes exceeding 35 feet in height shall be benched at 35-foot intervals.

23
24 **14.3 *Compaction of fill.***

25 All fill shall be stabilized in conformance with generally accepted engineering
26 standards, including a compacted density of at least ninety-five percent (95%).
27 Vegetation which has been cut or cleared shall be removed from the site and shall
28 not be covered by, or imbedded in, fill material. The planning director may require
29 certification of compaction by a qualified professional if necessary to determine
30 compliance with this section.

31
32 **14.4 *Control of stormwater run-off.***

33 Run-off from concentrated impervious surfaces shall be collected and transported in
34 a pipe or other approved manner to an approved storm water system if available, or
35 if unavailable, to the bottom of the drainage way or other location specified by the
36 county engineer and in a safe, adequate, and non-erosive manner. Where required
37 by other ordinances or regulations or by the county engineer, storm water retention

1 facilities shall be installed. Where required, interceptor ditches shall be established
2 above steep slopes in such a way as not to avoid saturation or erosion of soil, and
3 the intercepted water shall be conveyed in a pipe or other manner to the bottom of
4 the drainage way or other location specified by the county engineer. The overall
5 drainage system shall be completed and made operational at the earliest possible
6 time during construction.
7

8 **14.5 *Impact on adjacent property.***

9 Realignment of streams and natural drainage channels shall not be permitted except
10 for the purpose of effecting a stream crossing and only as specifically approved by
11 the planning director upon issuance of all necessary state and federal permits. In
12 such cases, natural or typical flow of surface or subsurface water shall not be altered
13 or obstructed in any way by grade changes if such alteration may adversely affect
14 the property of another by either contributing to pooling or collection of waters, or
15 to the concentration or intensification of surface water discharge.
16

17 **14.6 *Density limits.***

18 Development on lands that are subject to this Ordinance shall meet the density
19 requirements shown in the table below.
20

Average Slope of Land to Be Developed or Subdivided	Minimum Lot Size (in acres)	Maximum Density (lots per acre)
30-34%	2	.5
35-39%	2½	.4
40-44%	5	.2
45% or more	10	.1

21
22 NOTE: Minimum lot size may also be expressed in terms of dwelling units per acre.
23 Thus, a two-acre minimum lot size would result in a maximum density of one
24 dwelling per two acres (or one-half dwelling per acre), a two-and-a-half-acre
25 minimum lot size would result in a maximum density of one dwelling per two-and-
26 a-half acres (or four-tenths of a lot per acre), and so forth. This table shall not be
27 construed to impair the clustering of dwellings and lots so long as maximum density
28 is not exceeded.
29

1 **14.7 Determining slope.**

2 Average slope shall be determined for each separate land tract in accordance with
3 the methods and procedures contained herein.
4

5 **14.7.1.** Prior to commencing any development or land disturbing activity and
6 prior to making application for any permits and/or other approvals, the
7 calculated average slope for a particular land tract shall be approved by the
8 director. Average slope calculations and supporting documentation shall be
9 submitted to the director for review. Within 20 days of receipt, the director shall:
10 (a) request additional information; (b) request revisions to the average slope
11 calculation submittal; or (c) issue written concurrence with the determination of
12 average slope, as submitted.
13

14 **14.7.2.** Each slope calculation submitted to the director for review shall include a
15 scaled map, accurately showing (a) topography for the entire land tract, (b) a
16 closed perimeter line delineating a single area proposed for any type(s) of land of
17 land-disturbing activity, and (c) the deeded land tract boundary. The accuracy
18 and detail of the map shall be acceptable to the director for site specific
19 conditions and the particular land-disturbing activities proposed. In certain
20 cases, the director may, at his/her discretion, require that the slope calculation
21 and associated mapping be prepared by a NC Professional Land Surveyor, a NC
22 Professional Engineer, or a NC Professional Landscape Architect.
23

24 **14.7.3.** For an individual building site, the basis of the average slope calculation
25 will include only the building and grading envelope for such site. For
26 subdivisions, the average slope calculation shall be based on the entire tract to be
27 subdivided unless the subdivider has elected to exclude areas subject to an
28 absolute conservation easement pursuant to Section 14.8 or the director has
29 approved a division of area pursuant to Section 14.9, below. For the purpose of
30 determining entitlement to an exemption pursuant to Section 8.6, above, the
31 average slope calculation shall be based on the lot or parcel for which a
32 determination of exemption is sought. When used for determining slope, the
33 term “delineated area” shall refer to the relevant parameters described herein.
34

35 **14.7.4.** Land slopes shall be calculated based on both (a) the downstream
36 drainage slope from the highest, most remote point within delineated area, and

1 (b) the upstream drainage slope from the lowest, most remote point within the
2 delineated area in accordance with the following requirements.

3
4 **14.7.4.1.** Land slope based on the highest, most remote point shall be
5 calculated by determining the maximum horizontal length of drainage travel
6 (D) from the highest, most remote point (Elevation H1) within the delineated
7 area in a downslope, drainage direction and perpendicular to topographic
8 contours for the greatest distance to the lowest point (Elevation H2) at which
9 drainage would exit the delineated area. Slope based on the highest, most
10 remote point shall be calculated using the following formula:

$$11 \quad S_a = ((H1-H2)/D)(100)$$

12
13 Where:

14 S_a = slope expressed as a percentage

15 H1 = elevation of highest, most remote point

16 H2 = elevation of the lowest point drainage point
17 below H1

18 D = is the maximum length of drainage travel
19 between points H1 and H2 expressed as a
20 horizontal measurement (D is not necessarily
21 a straight line distance)

22
23 **14.7.4.2.** Land slope based on the lowest, most remote point shall be
24 calculated by determining the maximum horizontal length of drainage travel
25 (D) from the lowest, most remote point (Elevation L2) within the delineated
26 area in an upslope direction and perpendicular to topographic contours for
27 the greatest distance to the highest point (Elevation L1) at which location
28 drainage to point L2 would begin within the delineated area. Slope based on
29 the lowest, most remote point shall be calculated using the following formula:

$$30 \quad S_b = ((L1-L2)/D)(100)$$

31
32 Where:

33 S_b = slope expressed as a percentage

34 L1 = elevation of highest point above drainage
35 point L2

36 L2 = elevation of the lowest, most remote point

37 D = is the maximum length of drainage travel

1 between points L1 and L2 expressed as a
2 horizontal measurement (D is not necessarily
3 a straight line distance)
4

5 Average slope shall be a weighted average of S_a or S_b based on ratio
6 of drainage travel lengths rounded off to the nearest one percent.
7

8 **14.8 *Conservation easements.***

9 Lands subject to an “absolute” conservation easement, that is, an easement in which
10 the landowner retains no development rights, may, at the landowners’ option, be
11 excluded when determining average natural slope under this ordinance.
12

13 **14.9 *Division of area.***

14 Where there is a drastic variation in the landform character within one site, the site
15 may be divided into several distinct areas for the purposes of slope determination.
16 This division must be approved by the director. Generally, this provision shall only
17 be used in cases where large tracts of property encompass flat land as well as
18 significant mountain and hillside terrain. Details for each division must be
19 provided.
20

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

22 No new public road, private road, or driveway, including undeveloped lots of record,
23 shall be permitted or constructed unless it complies with the requirements of Appendix
24 A of the Jackson County Subdivision Ordinance and this section.
25

26 **15.1.** All new public and private roads and driveways shall be designed and
27 constructed to minimize the potential for landslides, erosion, and runoff.
28

29 **15.2.** Roads and driveways shall be located such that the maximum number of
30 existing trees on the site is preserved.
31

32 **15.3.** Roads and driveways shall be designed to create the minimum feasible
33 amounts of land coverage and the minimum feasible disturbance of the soil.
34 Variations in road design and road construction specified by the county in its land
35 subdivision regulations shall be permitted, as may be approved by the county
36 engineer, to prevent the dedication of unnecessarily large amounts of land to such
37 roads or driveways. One-way streets shall be permitted and encouraged where

1 appropriate for the terrain and where public safety would not be jeopardized in the
2 opinion of the county engineer. For instance, a two-way road may have the
3 directions of flow split into one-way pairs that differ in elevation, circumnavigate
4 difficult terrain, or avoid tree clearance.
5

6 **Section 16. Requirements for Construction of Buildings.**

7 Unless exempted pursuant to Section 8, above, no residential or nonresidential building
8 or manufactured home shall be erected within the area governed by this Ordinance
9 except in compliance with the provisions of this section.
10

11 **16.1 *Plot plan.***

12 A plot plan of the lot or site on which the building is to be located shall be submitted
13 to the planning office for review and approval by the director. The plot plan for a
14 single home site lot can be prepared using the Jackson County GIS Mapping system
15 without the assistance of professionals provided sufficient accuracy of detail is
16 maintained. The plot plan shall be prepared by a registered surveyor, professional
17 civil engineer, or other qualified professional and shall show the finished floor
18 elevation of the building in relation to the natural ground surface and in relation to
19 the uppermost point of the crest, summit, or ridge top of the mountain or hill on
20 which said building is constructed. The plot plan shall also indicate the limits of the
21 area to be disturbed and the slope of the buildable area. Areas proposed or required
22 to remain undisturbed shall be marked on the plot plan and in the field with tape,
23 orange plastic fencing, or other approved marker until a certificate of occupancy is
24 issued or as otherwise approved by the director.
25

26 **16.2 *Disturbance limits for lots intended for single family homes.***

27 The building and grading envelope for any lot subject to this ordinance shall not
28 exceed 10,000 square feet. Furthermore, impervious surfaces within the building
29 and grading envelope shall not exceed 6,000 square feet. No other disturbance or
30 impervious surfaces are permitted on the lot other than for a driveway to provide
31 ingress and egress.
32

33 **16.3 *Disturbance limits for lots intended for other than single-family homes.***

34 For lots intended for development as other than single-family homes, the building
35 and grading envelope and impervious surfaces shall be the minimum necessary to
36 develop the property for its intended use.
37

1 **16.4 *Building and grading envelopes.***

2 Building and grading envelopes shall be sited so that any structure to be placed
3 thereon shall not be readily visible from public rights-of-way or public lands, the
4 elevation of which is equal to or less than such structure. This may be accomplished
5 through natural terrain, existing vegetation or other means approved by the
6 director.

7
8 **16.5 *Building height.***

9 The height of any building shall not extend closer than 20 feet to the uppermost
10 point of any protected mountain ridge, as that term is defined herein, on which said
11 building is constructed. For the purposes of this Ordinance, the uppermost point of
12 the crest, summit, or ridge top refers to geological formations and not vegetation.

13
14 **16.6 *Exempted appurtenances.***

15 The building height restriction specified in this section shall not apply to any of the
16 following which are attached to the single-family dwelling: equipment for the
17 transmission of electricity or communications, chimneys, flag poles, flues, poles, or
18 wires; provided, however, that such appurtenances shall not extend to or beyond
19 the uppermost point of the crest, summit, or ridge top of the mountain or hill on
20 which said dwelling is constructed.

21
22 **16.7 *Partial Screening.***

23 A portion of natural on-site vegetation shall be retained sufficient to partially screen
24 (along fifty percent of the building face, or that achieves 50 percent opacity or more
25 along the building face) the building, structure, use, or activity from views from
26 public roads not serving the building, or landscaping shall be installed and designed
27 to partially screen the building, structure, use, or activity from views from public
28 roads, or other measures have been included in the project and approved by the
29 director to reduce the visual impacts of such development from views from public
30 roads.

31
32 View corridors from the proposed development to surrounding areas may be
33 provided, but such corridors shall not extend for more than fifty percent of the
34 width of building face between the view sought and the building face from which
35 the view is sought.

1 **16.8 *Antennas and towers.***

2 Water, radio, television, cell, or other towers shall not extend more than forty (40)
3 feet, as measured from the highest point at which the foundation of such structure
4 intersects the natural ground surface, above the uppermost point of the crest,
5 summit, or ridge top of the protected mountain on which the structure in
6 constructed.

7
8 **16.9 *Hazardous waste facilities.***

9 Handling areas for the receiving and storage of hazardous waste and hazardous
10 waste or solid waste disposal facilities are prohibited in areas regulated by this
11 Ordinance.

12
13 **16.10 *Mining.***

14 Mining activity which requires a new permit from the North Carolina Department
15 of Environment and Natural Resources shall be prohibited in the areas regulated by
16 this Ordinance. Expansion of an existing mining activity that would require a permit
17 modification from the North Carolina Department of Environment and Natural
18 Resources shall be prohibited in the areas regulated by this Ordinance.

19
20 **Section 17. Fire Protection.**

21 Adjacent to residences or structures to be occupied, in areas of high risk of forest fires
22 there shall be required a fire-buffer zone of no less than 30 feet on all sides of said
23 residences or structures, or to the property line, whichever is nearer. Within the fire-
24 buffer zone, all brush, flammable vegetation, or combustible growth shall be
25 maintained in a fire-safe manner. This provision shall not apply to single specimens of
26 trees, ornamental shrubbery, or similar plants used as ground cover, provided that they
27 do not form a continuous means of rapidly transmitting fire from the native growth to a
28 residence or structure to be occupied. In areas of high risk of forest fires as determined
29 by the Fire Marshal, the following provisions may be made a condition of development
30 or building permit approval: (1) roofs shall be covered with noncombustible materials,
31 such as clay or concrete shake, or tile, or other fire retardant materials; (2) exterior walls
32 shall be surfaced with noncombustible or fire-resistant materials; and (3) chimneys shall
33 be provided with approved spark arresters. Where no public water is available to serve
34 a development or subdivision, the planning director may, in the interests of public
35 safety, require the establishment of ponds and dry hydrants to serve such development
36 or subdivision.

1 **Section 18. Best Management Practices.**

2 Applications for development authorization shall demonstrate compliance with the best
3 management practices set forth herein unless waived by the planning director in those
4 circumstances where (1) strict compliance would result in practical difficulty or
5 unnecessary hardship, (2) the public safety and welfare are assured, and (3) the
6 purposes of this ordinance are not compromised.

7
8 **18.1 Accepted professional practices.**

9 All development proposals subject to the requirements of this Ordinance shall be
10 designed to meet generally accepted principles of land use planning, soil mechanics,
11 engineering geology, civil engineering, environmental management, civic design,
12 architecture, landscape architecture, landscape ecology, and related disciplines.

13
14 **18.2 Planning.**

15 Planning of the development shall take into account the topography, soils, geology,
16 hydrology, vegetation, and other features of the proposed site. Areas not well suited
17 for development due to soil characteristics, geology, vegetation, existing plant and
18 animal life, or hydrology limitations, should not be developed.

19
20 **18.3 Innovation.**

21 Site designers are encouraged to propose and apply innovative concepts for slope
22 and soil stabilization, grading, landscaping, and building placement and design to
23 meet the purposes and intentions of this Ordinance.

24
25 **18.4 Land Disturbance and Grading.**

26 When grading is necessary, rigid contouring should be avoided; contours should be
27 rounded to appear undulating and natural. Projects involving more than one use or
28 phase should be phased into workable units in a way that minimizes the amount of
29 soil disturbance at any given point in time. When grading must occur, it should
30 blend with the natural land form as much as possible. Grading to form level pads
31 and building sites is strongly discouraged and when required such grading should
32 be minimized.

33
34 Earth berms, rock forms, or stone retaining walls should be used to minimize visual
35 impacts of cuts. Hedges and fences may also be appropriate in some locations.
36 Large, continuous surfaces of smooth concrete and related structures are considered
37 inappropriate. The height of any retaining wall should not exceed four feet unless

1 required to be higher for engineering reasons. In areas where cuts are steeper, a
2 stepped or terraced wall should be used.

3
4 **18.5 *Vegetation, landscaping, and habitat.***

5 Plans for development should consider any characteristics of the area that make it
6 unique or significant in the conservation of flora and fauna including threatened,
7 rare, and endangered species. Existing deep-rooted vegetation, including trees,
8 bushes and ground covers, should be removed only in cases where necessary for
9 buildings, roads, driveways, parking, and minimal yards. Use plant materials that
10 blend with the mountainside or hillside. Landscape schemes that are rough, natural
11 and/or subdued in character are encouraged. Extensive areas of exotic plants and
12 sod are discouraged where they would be visible from the public right-of-way.

13
14 **18.6 *Historic and archaeological resources.***

15 Plans for development should consider the preservation of significant state historical
16 and archaeological resources (defined as properties on or eligible for the National
17 Register of Historic Places) within areas subject to the requirements of this
18 Ordinance. Cemeteries and gravesites shall be protected and family members shall
19 be assured reasonable access thereto. Anyone developing properties containing
20 roads, trails and other travel ways connecting to national forests and other public
21 lands shall assure continued public access thereto.

22
23 **18.7 *Sensitive natural areas.***

24 Plans for development shall comply with requirements concerning sensitive natural
25 areas contained in the Jackson County Subdivision Ordinance and shall be sensitive
26 toward and mitigate any negative effects of development activities on immediately
27 adjacent sensitive natural areas.

28
29 **18.8 *Building colors.***

30 Exterior colors for new buildings and structures, including roofs, should be
31 coordinated with the predominant colors of the surrounding landscape to minimize
32 contrast between the structure and the natural environment. It is strongly
33 encouraged that dark or earth-tone colors be used to make the home less
34 conspicuous as seen from off site.

1 **18.9 *Clustering of buildings and building locations.***

2 Buildings and structures should be clustered where possible to reduce disturbance
3 and removal of vegetation. Buildings should be sited with different floor elevations
4 to achieve height variation. For multi-family projects, stagger alignments of
5 buildings both horizontally and vertically to create unit identity, privacy at entry
6 and private outdoor space, and to share common open space.

7
8 **18.10 *Building setbacks.***

9 Where appropriate, buildings and structures should be located as close to the road
10 as possible to preserve the natural terrain and to minimize disturbance and the
11 length of driveways.

12
13 **18.11 *Screening and view corridors.***

14 The thinning of limbs of individual trees is preferred over tree removal as a means
15 to provide a view corridor. Dwellings or buildings that are proposed to be sited to
16 maximize views from the lot or that require removal of vegetation to produce a view
17 corridor are strongly discouraged.

18
19 **18.12 *Road and driveways should follow the natural terrain.***

20 Road and driveway alignments should follow the natural terrain unless the project
21 engineer can justify additional cuts or fills. Roads, walkways, and parking areas
22 should be designed to parallel the natural contours of the site.

23
24 **18.13 *Shared driveways and parking.***

25 Combinations of collective private driveways, shared parking areas and on-street
26 parallel parking bays should be used where possible to minimize land and soil
27 disturbance, minimize impervious surface coverage, and achieve excellence of
28 design and aesthetic sensitivity.

29
30 **18.14 *Lighting.***

31 Outside lighting should be muted and directed so that it does not spill over on to
32 neighboring properties. Reduce the amount of light emanating from a development
33 on a mountainside or hillside, since lighting from buildings located on
34 mountainsides or hillsides can be highly visible at night and may affect the night
35 character of the community. High-pressure sodium lights are prohibited.

1 **18.15 *Building pads.***

2 For subdivisions and developments with multiple buildings, building pads (i.e.,
3 clearing and grading for buildings and structures) should be varied in elevation
4 above or below road level to avoid the appearance of monotonous, flat, level pads.
5

6 **18.16 *Step-down design.***

7 Single-family dwellings and other structures should “step down” the hillside or
8 mountainside to limit the amount of grading required. Large building pads and
9 footings should be split into more than one (i.e., split-level homes that step down the
10 hillside) where possible to allow the building pad and structure to more closely
11 follow the existing slope of the land. Building footprint coverage should be
12 minimized where possible by using multiple-level (two or more stories) buildings.
13 The visible mass of larger buildings and structures should be reduced by utilizing
14 below-grade rooms cut into the natural slope.
15

16 **18.17 *Natural drainage channels.***

17 Natural drainage ways shall be preserved to the maximum extent possible.
18

19 **18.18 *Setbacks.***

20 Setbacks should be used to protect natural features of the mountain and hillside
21 terrain. Placing structures away from the shoulder reduces the visual impact of
22 development as well as erosion on steep slopes. All structures should be set back a
23 minimum of 20 feet from the shoulder of a ridge line. The shoulder is defined as the
24 plane at which the slope of the land changes from greater than 20% to a ridge top of
25 less than 20%. Natural vegetation should be maintained undisturbed within the
26 setback area except for access to a lot or limited cutting to provide a view. All other
27 setbacks including, but not limited to, those from streams, creeks, springheads and
28 property lines shall be met as required by Jackson County ordinances.
29

30 **Section 19. Submission and Review of Applications.**

31 Upon the filing of a request for approval of a subdivision, land-disturbing activity,
32 development, or building permit, the following procedures shall be required and
33 followed to determine whether the proposed action is governed by provisions of this
34 Ordinance and whether a permit pursuant to this Ordinance is required for a lot, parcel,
35 part of lot, or part of a parcel. The application shall be reviewed by the director.
36 Applications for development authorization that are required by the regulations of
37 Jackson County to obtain approval of the Jackson County Board of Commissioners, if

1 any, shall be referred to the planning commission and/or Board, as the case may be.
2 Applications which do not require review and approval by the Board of Commissioners
3 shall be administratively processed by the planning director.
4

5 **Section 20. Criteria for Approval of Applications.**

6 No land-disturbing activity, development, building, structure, road, driveway, or other
7 development related activity which requires a permit under the terms of this ordinance
8 or other ordinance of Jackson County shall be permitted unless the director or planning
9 board, whichever has final authority over said application, has determined that the the
10 project as designed and sited meets all of the requirements of this Ordinance and
11 substantially conforms to the best management practices set forth in this Ordinance.
12

13 **Section 21. Action on Application.**

14 An application that meets the requirements of this Ordinance shall be approved by the
15 planning director who shall be authorized to place conditions on the land disturbing
16 activity, development, building, structure, use, or other development-related activity to
17 ensure that the minimum requirements and the purposes and intentions of this
18 Ordinance are met. Applications that do not meet the standards contained in Section
19 20, above, shall be denied in writing, stating therein the reasons for denial.
20

21 **Section 22. Variances.**

22 The purpose of a variance is to provide relief when a strict application of this ordinance
23 would impose practical difficulties or unnecessary hardships on the applicant. Owners
24 of approved lots of record at the time of this regulation shall be given every assistance
25 and consideration to overcome problems in the application and construction of personal
26 single family dwellings.
27

28 **22.1 Standards.**

29 A variance from the requirements of this ordinance may be granted by the Board of
30 Adjustment if it finds the following:
31

- 32 (a) Strict enforcement of the regulations would result in practical difficulties or
33 unnecessary hardships to the applicant for the variance;
34
35 (b) The variance is in harmony with the general purpose and intent of the ordinance
36 and preserves its spirit; and
37

1 (c) In the granting of the variance the public safety and welfare have been secured
2 and substantial justice has been done.

3
4 Such findings shall be based on the following considerations:

5
6 (a) The fact that the property could be utilized more profitably or conveniently
7 with the variance than without the variance shall not be considered as
8 grounds for granting the variance.

9
10 (b) The hardship relates to the applicant's property rather than to personal
11 circumstances.

12
13 (c) The hardship results from the application of the ordinance and from no other
14 cause, including the actions of the owner of the property or previous owners.

15
16 (d) The hardship is peculiar to the property in question rather than a hardship
17 shared by the neighborhood or the general public.

18
19 **22.2 Conditions.**

20 Reasonable conditions may be imposed in connection with a variance as deemed
21 necessary to protect the best interests of the surrounding property or neighborhood,
22 and otherwise secure the purpose and requirements of this ordinance. Guarantees
23 and evidence may be required that such conditions will be and are being complied
24 with.

25
26 **Section 23. Appeal.**

27 An applicant or other party aggrieved by a decision of the planning director in the
28 administration, interpretation, or enforcement of this Ordinance may appeal said
29 decision to the Board of Adjustment by filing a written appeal application with the
30 director. Said application for appeal shall be filed within 30 days of receipt of the order
31 of denial. The decision of the planning director may be overturned only by vote of
32 four-fifths of the members of the Board of Adjustment entitled to vote upon the matter.
33 The decision of the board of adjustment shall be final, subject, however, to any
34 subsequent action in Jackson County Superior Court or other court of competent
35 jurisdiction.

1 **Section 24. Procedures for Variances and Appeals.**

2 Upon the filing of any complete application for a variance or appeal with the director, a
3 public hearing shall be scheduled and held on the proposed variance or appeal. Notice
4 of the public hearing shall be given at least fifteen (15) days in advance of the public
5 hearing in a newspaper of general circulation in Jackson County. The board of
6 adjustment shall make findings and render a decision in writing within thirty-two (32)
7 days after the initial public hearing on the proposed variance or appeal. The director
8 shall notify the applicant, in writing, of the decision on the variance or appeal within
9 five (5) days after the board has rendered its decision. The burden of proof on any
10 matter to come before the Board of Adjustment shall lie with the person seeking the
11 variance or appealing the decision. Until such time as the Board of Commissioners
12 shall establish an independent board of adjustment, the planning board shall serve in
13 such capacity.
14

15 **Section 25. Administration and Enforcement.**

16 It shall be the duty of the director to administer and enforce this Ordinance and to bring
17 to the attention of the county attorney any violations or lack of compliance therewith.
18 The director may delegate enforcement functions, powers and duties assigned by this
19 Ordinance to other staff as may be appropriate, without the need to reflect such
20 delegation by formal action.
21

22 **25.1 Refusal of permits or permissions.**

23 The director is hereby authorized and directed to deny and withhold permits or
24 permissions on any new project or application pursuant to this ordinance or other
25 regulations of the county where the applicant, applicant's business or agent has
26 failed or refused to comply with this Ordinance.
27

28 **25.2 Stop work order.**

29 The director is hereby authorized to issue written "stop work" and "cease and desist"
30 orders for any activity that fails to comply with the provisions of this Ordinance.
31 Such stop work or cease and desist orders may be lifted at such time as the director
32 is satisfied that a good faith effort is being made to comply with applicable
33 provisions of this Ordinance. Nothing shall prevent the director from reissuing stop
34 work and cease and desist orders where warranted.
35
36
37

1 **25.3 Injunction.**

2 If any land is used or building, structure, or other activity is established or
3 maintained in violation of this Ordinance, the director is authorized to and may
4 institute, in addition to other remedies, an injunction or undertake other appropriate
5 action to cause the violation to cease or to be corrected.

6
7 **25.4 Rule-making.**

8 The Administrator shall have authority to promulgate such rules as may be
9 necessary to facilitate the administration of this ordinance; provided, however, any
10 such rule shall not be contrary to the express provisions of the ordinance and shall
11 be in harmony with its purposes.

12
13 **25.5 Violations; remedies.**

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

- 15
16 (a) Prevent any violation of this ordinance;
17
18 (b) Prevent unlawful construction;
19
20 (c) Recover damages;
21
22 (d) Restrain, correct or abate a violation; and / or
23
24 (e) Prevent illegal occupancy of a building, structure or premises.

25
26 **25.6 Enforcement Procedures.**

27 When the Administrator becomes aware of a violation of this Ordinance, it shall be
28 his duty to notify the owner of the land of the violation. The owner shall
29 immediately remedy the violation.

30
31 **25.6.1 Notice of Violation.** If the owner of the land fails to take prompt corrective
32 action, the Administrator shall give the owner or occupant written notice (by
33 certified or registered mail to his last known address, by personal service, or by
34 posting notice conspicuously on the property) of the following:

- 35
36 (a) That the activity is in violation of this Ordinance;
37

1 (b) The nature of the violation, and citation of the Section(s) of this Ordinance
2 violated;

3
4 (c) The measures necessary to remedy the violation; and

5
6 (d) Mechanisms available to appeal the decision of the Administrator.

7
8 **25.6.2 Appeal.** Any owner who has received a Notice of Violation may appeal in
9 writing the decision of the Administrator to the Board of Adjustment within
10 fifteen days following the date of the Notice of Violation. The Board of
11 Adjustment shall hear an appeal within a reasonable time, and it may affirm,
12 modify, or revoke the Notice of Violation. In the absence of an appeal, the
13 decision of the Administrator shall be final.

14
15 **25.7 Criminal penalty.**

16 Any violation of this ordinance or amendments thereto shall constitute a
17 misdemeanor. Those convicted of such violations shall be punished as provided by
18 N.C.G.S. 14-4. Each day that a violation continues shall be considered a separate
19 violation and punishment assigned accordingly.

20
21 **25.8 Civil penalty.**

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

26
27 **25.8.1 Notice.** No civil penalty shall be assessed until the person alleged to be in
28 violation has been notified in accordance with Section 25.6.1. If after receiving a
29 notice of violation under Section 25.6.1, the owner or other violator fails to take
30 corrective action, a civil penalty may be imposed under this Section in the form
31 of a citation. The citation shall be served in the same manner as of a Notice of
32 Violation. The citation shall state the nature of the violation, shall state the civil
33 penalty to be imposed upon the violator, and shall direct the violator to pay the
34 civil penalty within fifteen (15) days of the date of the citation.

1 **25.8.2 Continuing violation.** For each day the violation is not corrected, the
2 violator will be guilty of an additional and separate offense and subject to
3 additional civil penalty.
4

5 **25.8.3 Penalties.** Any person who violates any provision of this Ordinance shall
6 be subject to assessment of a civil penalty in accordance with the following
7 schedule:
8

9 (a) \$50.00 for the first violation;

10 (b) \$100.00 for the second violation;

11 (c) \$200.00 for the third violation; and
12

13 (d) \$500.00 for the fourth and each succeeding violation.
14
15
16

17 **Section 26. Amendments.**

18 This ordinance, including the Mountain and Hillside Development District Map, may
19 be amended by the Board of County Commissioners in accordance with the provisions
20 of this section.
21

22 **26.1 General Procedure.**

23 Amendments shall be regulated by the general provisions contained herein.
24

25 **26.1.1.** The text of this ordinance and the District Map may be amended in order
26 to (a) correct an error or clarify statements or boundaries, (b) change the
27 regulations in the text, or (c) change the boundaries of the District.
28

29 **26.1.2.** Proposed changes or amendments to this ordinance or to the District Map
30 may be initiated by the Board of County Commissioners, the Planning Board, the
31 Board of Adjustment, the Watershed Review Board, the County Manager or one
32 or more owners of property within the District, as applicable.
33

34 **26.1.3.** All proposed changes to this chapter, including the District Map, shall
35 first be reviewed by the Planning Board prior to consideration by the Board of
36 Commissioners.
37

1 **26.2 Application.**
2

3 **26.2.1. Text amendments.** In order for a person authorized by Section 26.1.2 to
4 initiate a change to the text of this ordinance, an application accompanied by the
5 application fee shall be submitted to the Jackson County Planning Department at
6 least 30 days prior to the date of the Planning Board meeting at which the
7 application is to be considered. The application shall contain the name(s) and
8 address(es) of the applicant(s), a copy of the proposed text change and a
9 statement from the applicant(s) which explains the purpose for the amendment.
10

11 **26.2.2. Map amendments.** In order for a property owner to initiate a change to the
12 District Map, an application accompanied by the application fee shall be
13 submitted to the Jackson County Planning Department at least 30 days prior to
14 the date of the Planning Board meeting at which the application is to be
15 considered. The application shall contain the name(s) and address(es) of the
16 owner(s) of the property in question, the location of the property, a list of the
17 name(s) and address(es) of the owner(s) of property abutting the property in
18 question as shown on the county tax listing. All applications requesting a change
19 in the District Map shall include a description of the property in question
20 sufficient to unequivocally describe and identify said property. Such description
21 may take the form of a property survey, a legal description or a legible copy of a
22 Jackson County cadastral or composite Tax Map clearly annotated with district
23 lines which follow political boundaries, geographical features or property lines.
24

25 **26.2.3.** Application forms may be modified by the Planning Department, as
26 necessary.
27

28 **26.2.4.** The Planning Board and the Board of County Commissioners will not
29 consider an application for an amendment denied within the preceding 12
30 months by the Board of Commissioners.
31

32 **26.3 Planning Board action.**

33 Before taking any action on a proposed amendment to this ordinance or the District
34 Map, the Board of County Commissioners shall consider the Planning Board's
35 recommendation on each proposed amendment. The Planning Board shall have 45
36 days after the first consideration of an application for rezoning at a regular meeting
37 to submit its recommendations to the Board of County Commissioners. Failure of

1 the Planning Board to submit recommendations within the forty-five-day period
2 shall constitute a favorable recommendation, except that, if by agreement of the
3 Planning Board and the applicant 45 days is insufficient due to the size of the area,
4 the complexity of the request or similar circumstances, the Planning Board shall
5 have 90 days to submit such recommendation. Time limitations, however, shall not
6 be applied to text amendments or to District Map amendments initiated by the
7 Planning Board, the Board of Adjustment, the Watershed Review Board, the County
8 Manager or the Board of Commissioners.

9
10 **26.4 Public hearing.**

11 Before enacting any amendment to this ordinance or the District Map, the Board of
12 Commissioners shall hold a public hearing. Public notification of such hearing shall
13 comply with the provisions of N.C.G.S. 153A-323 and 153A-343, as amended.
14

15 **26.4.1. Newspaper notice.** In accordance with N.C.G.S. 153A-323, a notice of such
16 public hearing shall be published in a newspaper of general circulation in
17 Jackson County once a week for two successive weeks, the first publication of
18 which shall not appear less than 10 days or more than 25 days prior to the date
19 fixed for the public hearing. The notice shall include the time, place and date of
20 the hearing and include a description of the property or the nature of the change
21 or amendment to the ordinance and/or map.

22
23 **26.4.2. Mailed notice.** In accordance with N.C.G.S. 153A-343, whenever there is
24 an amendment to the District Map, the owner of that parcel of land as shown on
25 the county tax listing and the owners of all parcels of land abutting that parcel of
26 land as shown on the county tax listing shall be mailed a notice of a public
27 hearing on the proposed amendment by first class mail at the last addresses
28 listed for such owners on the county tax abstracts. This notice must be deposited
29 in the mail at least 10 but not more than 25 days prior to the date of the public
30 hearing. The person(s) mailing such notices shall certify to the Board of
31 Commissioners that fact, and such certificate shall be deemed conclusive in the
32 absence of fraud.

33
34 **26.4.3. Posted notice.** For any proposed amendment to the District Map, the
35 Planning Department shall post a sign in a prominent location on or near the
36 subject property which indicates that a map change has been proposed for the
37 subject property. In the event that more than one parcel is involved in a

1 particular District Map amendment, at least one sign shall be posted in a central
2 location; however, the Planning Department may post multiple signs. Said
3 sign(s) shall be posted at least 10 days prior to the public hearing date.
4

5 **Section 27.**

6 All ordinances or parts of ordinances, including, without limitation, the Mountain
7 Ridge Protection Ordinance, which are in conflict with this ordinance are hereby
8 repealed to the extent of such conflict.
9

10 **Section 28.**

11 If any section, subsection, paragraph, sentence, clause, phrase or portion of this
12 ordinance is for any reason held invalid or unconstitutional by any court of competent
13 jurisdiction, such portion shall be deemed severable and such holding shall not affect
14 the validity of the remaining portions hereof.
15

16 **Section 29.**

17 The enactment of this ordinance shall in no way affect the running of any amortization
18 provisions or enforcement actions, or otherwise cure any existing land use violations.
19

20 **Section 30.**

21 This ordinance shall be in full force and effect from and after the date of its adoption.
22
23

24 Adopted this 6th day of August, 2007, by the Jackson County Board of Commissioners.
25
26
27

28 _____
29 Brian Thomas McMahan, Chairman
30 Jackson County Board of Commissioners

31 (SEAL)

32 ATTEST:

APPROVED BY:

33
34
35 _____
36 Clerk to the Board

37 _____
Michael Egan, J.D., M.A., Consulting Attorney

1 JACKSON COUNTY MOUNTAIN AND HILLSIDE DEVELOPMENT ORDINANCE

2
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