

A PROPOSAL TO AMEND THE CHARTER OF THE TOWN OF BLACK MOUNTAIN TO RECOGNIZE AND PROTECT THE RIGHTS OF THE SWANNANOA RIVER WATERSHED ECOSYSTEM AND TO RECOGNIZE AND PROTECT THE RIGHT OF THE PEOPLE OF BLACK MOUNTAIN TO A HEALTHY SWANNANOA RIVER WATERSHED ECOSYSTEM

Adapted from the [Ohio River Bill of Rights](#), [Lake Erie Bill of Rights](#), [Wekiva and Econlockhatchee Rivers Bill of Rights](#), and the [Rights of the Haw River Ecosystem Act](#)

INTRODUCTION

The Swannanoa River Watershed Ecosystem includes its mainstem and tributaries, and all species and ecosystems found in those areas or dependent upon species and ecosystems found in the watershed. The benefits of a healthy ecosystem are essential to and interconnected with humanity's cultural, environmental, and economic well-being.

The Swannanoa River Watershed Ecosystem, like all ecosystems and beings on our planet, is facing the immense impacts and irreversible threats of climate change. Additionally, the Swannanoa River faces increased contamination attributed to sedimentation and stormwater runoff from development and urbanization; consequently, a seven-mile segment of the river is classified as impaired by the NC Department of Environmental Quality.¹

Town of Black Mountain officials demonstrate initiative in remediating issues of water quality and promoting watershed health. State preemption of local protective laws, however, deprives local communities of full democratic decision-making about their own health and safety, the health and safety of future generations, and from advocating for the inherent rights of the Swannanoa River Watershed Ecosystem to thrive. Local initiatives aimed at reducing pollution, such as a proposed plastic bag ban supported by Black Mountain's town council and backed by substantial numbers of local businesses and residents, faced challenges due to provisions in the state budget.² At the time of writing, at the national level, the possibility that the Supreme Court could soon limit or overturn Chevron deference poses severe implications for the ability of federal agencies to implement and enforce regulations that protect the health of the country's residents and ecosystems at every level.

We, concerned residents of the Town of Black Mountain, have a compelling obligation to protect each other and the living ecosystem of which we are a part. Clean, safe water is imperative for all life and for our collective security. To protect the Swannanoa River

¹ McCormick, F. (2023, September 19). *Terry Estate Drive Bioretention Project Targets Stormwater Runoff*. The Valley Echo. <https://www.thevalleyecho.com/all-news/terry-estate-drive-bioretention-project-targets-stormwater-runoff>

² Mallison, S. (2023, September 27). *NC Budget Provision Targets Local Efforts To Ban Plastic Bags*. WUNC. <https://www.wunc.org/environment/2023-09-27/plastic-bag-ban-nc-budget-waste-reduction-asheville-durham>

Watershed Ecosystem and to empower its communities, we must rethink our environmental laws and policies. Our legal system traditionally views nature as property, a resource from which wealth is extracted, and allows environmental costs to be externalized. To ensure a more resilient future, we must change assumptions about our place in the natural world as well as the presumed “right” of property holders to inflict irreversible harm upon it. We therefore affirm the rights and the responsibilities of the human community to protect its own health and safety and to advocate for the inherent rights of the Swannanoa River Watershed Ecosystem to thrive, regenerate, and flourish.

The land within which the Town of Black Mountain is now chartered is unceded territory of Cherokee and Catawba peoples. We are proposing to codify into law our rights to restore and protect our watershed from the systemic threats and irreparable harm to its ecological integrity, an approach rooted in Indigenous values which regard land and beings as sacred heritage and living legacy. As of 2021, Rights of Nature laws exist at local or national levels in 40 countries³, including dozens of cities and counties across the United States in the form of constitutional provisions, treaty agreements, statutes, local ordinances, and court decisions. The Rights of Nature movement is proposing a paradigm shift that would align contemporary environmental law with the nature-centered principles of Indigenous law.

PREAMBLE

WHEREAS, Article I, Section 1.1, of the Charter of the Town of Black Mountain (the “Charter”) provides that the Charter may be amended as provided by the laws of the State of North Carolina; and

WHEREAS, Section 160A-104, North Carolina General Statutes, provides that “citizens may on their own accord bring forth proposed charter amendments and may initiate a referendum on the proposals by petition;” and

WHEREAS, Article I, Section 3, of the North Carolina State Constitution provides that “The people of this State have the inherent, sole, and exclusive right of...altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness...in pursuance of law and consistently with the Constitution of the United States;” and

WHEREAS, Article I, Section 18, of the North Carolina State Constitution provides that “All courts shall be open; every person for an injury done [them] in [their] lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay;” and

WHEREAS, the headwaters of the Swannanoa River fall within the town limits of Black Mountain and the Town lies almost entirely within the perimeter of the Upper Swannanoa River

³ Kauffman, Craig, Shrishtee Bajpai, Kelsey Leonard, Elizabeth Macpherson, Pamela Martin, Alessandro Pelizzon, Alex Putzer, and Linda Sheehan. Eco Jurisprudence Tracker. V1. 2022. Distributed by the Eco Jurisprudence Monitor. <https://ecojurisprudence.org>.

Watershed⁴; and

WHEREAS, the Swannanoa River Watershed is home to four animal species and one plant species categorized as “Federal Species of Concern” as well as 25 other at-risk animal and plant species and natural communities⁵, as well as an estimated 8,500+ human residents⁶; and

WHEREAS, accordingly, the citizens desire to submit the Charter amendment below.

NOW THEREFORE THE CHARTER OF THE TOWN OF BLACK MOUNTAIN IS AMENDED AS FOLLOWS:

(Existing sections amended, with additions underlined and strikethrough of removed text)

Article I, Section 1.1 - Incorporation and corporate powers

The inhabitants of the Town of Black Mountain, North Carolina, shall continue to be a body politic and corporate under the name of the “Town of Black Mountain” and under that name shall have perpetual succession; may use a corporate seal; may sue and be sued; may acquire property, real and personal, within or without its boundaries for any municipal purpose, in fee simple or lesser interest or estate, by purchase, gift, devise, lease or condemnation, and may sell, lease, hold, manage and control such property as its interests may require; and, except as prohibited by the Constitution of North Carolina or restricted by this Charter, shall have and may exercise all municipal powers, functions, rights, privileges and immunities conferred upon municipal corporations by general law of this state.

The Town of Black Mountain recognizes and protects the rights of the Swannanoa River ecosystem and the right to the people of the Town to a system of government capable of protecting the ecosystem. The rights of the ecosystem include, but are not limited to, all of the following:

- (1) The right to naturally exist, flourish, regenerate, and evolve.
- (2) The right to full restoration, recovery, and preservation.
- (3) The right to abundant, pure, clean, unpolluted water, including the right to natural surface water flow and recharge and groundwater recharge.
- (4) The right to a healthy natural environment and natural biodiversity.
- (5) The right to carry on all natural functions of the Swannanoa River ecosystem.
- (6) The right to be free of activities, practices, and any other manmade obstructions that interfere with or infringe upon the rights set forth in this section.

The Swannanoa River ecosystem includes the watershed of the Swannanoa River, including both its mainstem and tributaries, and all species and ecosystems found in those areas or dependent on species and ecosystems found in the watershed.

⁴ Town of Black Mountain. (2016, January 1). *Upper Swannanoa River Watershed Management Plan*. Prepared by Equinox Environmental.

https://files.nc.gov/ncdeq/Water%20Quality/Planning/NPU/205J/2014/6285_UpperSwannanoaRWMP.pdf

⁵ Ibid.

⁶ United States Census Bureau.

<https://www.census.gov/quickfacts/fact/table/blackmountaintownnorthcarolina/POP060210>

The rights of the Swannanoa River Watershed Ecosystem protected in this Article shall not be interpreted to confer liabilities, duties, obligations, or responsibilities on the Swannanoa River Watershed Ecosystem except as expressly set forth herein.

Section 1.2 - Exercise of powers

The corporate powers of the Town of Black Mountain shall be vested in and exercised by a mayor, town council, ~~and~~ town manager, and ecosystem advocate as hereinafter provided, subject to such limitations as may be hereinafter imposed. All powers of the town, whether expressed or implied, shall be exercised in the manner prescribed by this charter, or, if not prescribed therein, then in the manner provided by ordinance or resolution of the town council or initiated by the people.

(New article)

Article V. - RIGHTS OF NATURE

Section 5.1 - Definitions

“Swannanoa River Watershed Ecosystem” or “the Ecosystem” shall include all natural water features, communities of organisms, soil as well as terrestrial and aquatic sub ecosystems that are part of the Swannanoa River and its watershed. This community includes the entire land area draining into the Swannanoa River and its tributaries, and the interdependent community of microbes, plants and animals (including humans) living within the cycling water, soil and air.

“A Healthy Ecosystem” is a community of interacting organisms and their physical environment which is fully capable of sustaining its own productivity, organization, and resilience over time.

“Ecosystem’s interests” means the Swannanoa River Watershed Ecosystem’s inherent rights as described in this Article, as well as other laws that protect the Ecosystem. While people are an integral part of the Ecosystem (see “Swannanoa River Watershed Ecosystem” and “resident”), the Ecosystem’s interests only include residents’ interests when residents act in support of the Ecosystem’s rights.

“Resident” means a natural person who resides or dwells at least nine (9) months annually within the Ecosystem and whose primary domicile is located within the Town of Black Mountain’s jurisdiction.

“Natural person”, according to current law, refers to a living human being.

“Person”, according to current law, means a natural person, firm, partnership, limited partnership, partnership association, syndicate, joint-stock company, unincorporated association, trust or trustee except where the trust was created or the trustee designated by law or judicial authority or by a will, and a corporation or limited liability company organized under the laws of any state, federal or any foreign government, or any political subdivision of a state, federal or

foreign government.

Section 5.2. - Rights of the people of the Town

All residents of the Town possess the right to a healthy, flourishing Swannanoa River ecosystem, including pure water, clean air, and a stable climate.

Section 5.3 - Rights of Indigenous peoples

Nothing in this Article shall abrogate the collective or individual rights of Indigenous people residing in the Town, including, but not limited to, members of the tribes and bands identified in Chapter 71A of the General Statutes.

Section 5.4 - Rights of the Ecosystem

Ecosystems are rights-bearing entities with specific rights, and are entitled to damages for violation of those rights. The Swannanoa River Watershed Ecosystem within the Town of Black Mountain's jurisdiction has rights, but not liabilities. The Ecosystem can sue, but not be sued. The Ecosystem can contract only to the extent needed to effectuate its rights. The Ecosystem cannot own property, but can be the beneficiary of property held in trust, such as damages paid by a violator to be used for Ecosystem restoration.

The Ecosystem has specific rights to:

- (1) Naturally exist, flourish, regenerate, and evolve: no governmental agency, non-natural person or corporate entity may intentionally or negligently harm the Ecosystem, nor make plans, issue permits, or otherwise take actions that would harm the Ecosystem, nor contribute to cumulative effects that lead or are leading to the Ecosystem's destruction, nor reduce the Ecosystem's ecological health or ecological integrity, nor decrease its ability to flourish.
- (2) Full restoration, recovery, and preservation: no governmental agency, non-natural person or corporate entity may impair, including by cumulative effect, the Ecosystem's preservation, rehabilitation, or restoration.
- (3) Abundant, pure, clean, unpolluted environment, including the right to natural surface water flow and recharge and groundwater recharge: no governmental agency, non-natural person or corporate entity may pollute the Ecosystem, with "air pollution" and "water pollution" as defined in Article 21, Section 143-213 of the NC General Statutes. This provision complements and expands upon existing regulatory laws and rules by the State of North Carolina, the United States, and their agencies. No governmental agency, non-natural person or corporate entity may impair, including by cumulative effect, adequate instream flow to sustain native fish and amphibian populations and aquatic biodiversity, nor the diversity of instream and riparian habitats and biodiversity, nor hydrogeological processes including but not limited to horizontal and longitudinal connectivity, flooding outside designated urban areas, movement and deposition of sediments.

(4) The right to a healthy natural environment and natural biodiversity: no governmental agency, non-natural person or corporate entity may impair the Ecosystem's health, meaning generally, but not limited to, the integrity and resilience of the Ecosystem as a biodiverse community of interacting organisms and physical environment. No governmental agency, non-natural person or corporate entity may own or control species' genetics within the Ecosystem, or taken from species within the Ecosystem, nor inhibit the capacity of the Ecosystem to increase its biodiversity, species richness, or complexity, or sustain itself through self-organization. A healthy ecosystem fosters nutrient and mineral cycling, carbon storage, sedimentation control, flourishing biodiversity, favorable water quality, steady soil formation, vibrant wildlife corridors, water storage and filtration, aquifer recharging, flood control, and reduced vulnerability to disease and invasive species. These benefits are also essential to humanity's cultural, environmental, and economic well-being.

(5) The right to carry on all natural functions of the Swannanoa River ecosystem.

(6) The right to be free of activities, practices, and any other human-made obstructions that interfere with or infringe upon the rights set forth in this section.

These rights are self-executing as described in this Article and require no further implementing legislation. The Ecosystem Advocate, as described below, is authorized to create procedural rules to effectuate this Article.

When there is danger of serious or irreversible damage, the lack of scientific certainty or full evidence should not be used as a reason to delay the adoption of protective, effective, and opportune measures to prevent potential violation of an ecosystem's rights.

Any person or any government found to have violated these rights is liable to the Ecosystem in the amount necessary to restore the ecosystem, plus attorney fees and costs awarded to the Ecosystem Advocate. A person, government, or any corporate or governmental agent who knew or should have known of a repeated violation of these rights may be liable for punitive damages to deter future violations.

The Ecosystem's rights and interests, as represented by the human communities that are an intrinsic part of the Ecosystem, are to be protected as a primary objective, and any profit and property interests are secondary to the Ecosystem's interests. This government shall realize to the fullest extent the intent of this Article and the ecosystem rights established herein and shall defend them from challenges such as corporate special interests.

Section 5.5 - Ecosystem Advocate

The Ecosystem asserts its interests through the Ecosystem Advocate. Any party wishing to take action that may violate the Ecosystem's rights must first show cause to the Ecosystem Advocate for why the proposed action will not violate the Ecosystem's rights.

Section 5.6 - Ecosystem Advocate powers and responsibilities

The Ecosystem Advocate must act to protect the Ecosystem's interests. The Ecosystem Advocate is authorized to represent the Ecosystem's interests in any legal proceeding, before other governments, and in any other formal or informal forums. The Ecosystem Advocate, a resident representative of the community of people, which is an intrinsic part of the Ecosystem, shall have legal standing to represent the interests of both.

The Ecosystem Advocate has independent authority to bring claims in the name of the Ecosystem, or advocate for the Ecosystem's interests in any way. The Town Council must provide the Ecosystem Advocate with a budget of at least 1% of the Town of Black Mountain's general fund revenue. The Ecosystem Advocate will submit an annual budget for review following the same guidelines as other town departments. The Ecosystem Advocate has complete discretion over choosing staff for the office of the Ecosystem Advocate, including choosing legal counsel for the ecosystem, and may select outside counsel paid for by the Town of Black Mountain even if in-house counsel is available.

The Ecosystem Advocate has all other powers necessary for protecting the Ecosystem's interests.

Section 5.7 - Ecosystem Advocate qualifications, appointment, and appointment appeal

Any resident may apply to be an Ecosystem Advocate for the Ecosystem within the Town of Black Mountain's legal jurisdiction, by submitting an application of qualifications to the Town Council and providing full disclosure of all connections to non-natural persons, corporate entities and governmental agencies.

The Town Council shall appoint a resident to serve as an Ecosystem Advocate to advocate for the ecosystem's interests within sixty days of certification of this Charter Amendment. The Ecosystem Advocate shall be selected based on qualifications that demonstrate an ability to protect the Ecosystem, not based on balancing the Ecosystem's interests against other governmental or stakeholder interests. An Ecosystem Advocate shall embody or be informed by local Indigenous knowledge as well as independent ecological science.

If any resident believes the Town Council did not appoint an Ecosystem Advocate who will best advocate for the Ecosystem's interests or deems that a different Ecosystem Advocate applicant would better protect the Ecosystem's interests, then the resident may trigger selection of the Ecosystem Advocate by a vote of the Town of Black Mountain electorate, by submitting a petition with 100 resident-electoral signatures at least 100 days before the next regular or general election. The Town Council shall have only a ministerial duty to place the measure on that next regular or general election ballot, and no discretion to decline performance of this duty.

Section 5.8 - Ecosystem Advocate advisory commission

A Swannanoa River Ecosystem Advisory Commission will support the Ecosystem Advocate in protecting the Ecosystem's interests, and may create its own bylaws to effectuate its purpose. All Advisory Commission members shall be selected based on their demonstrated advocacy for the ecosystem. Commission positions shall include, but are not limited to, one neighborhood

representative from each police district, elected by the residents of their respective district, and three Indigenous representatives selected by local Indigenous organizations. The Black Mountain Town Council may appoint one additional at-large member of the Swannanoa River Ecosystem Advisory Commission by the same procedure, including appeal to the electorate, as appointment of the Ecosystem Advocate.

The Ecosystem Advisory Commission is responsible for providing updates to the Ecosystem Advocate regarding the status of the Ecosystem within their district or anywhere in the Swannanoa River Watershed. If projects or permits are applied for within or outside the Swannanoa River Watershed Ecosystem, the advisory commission is responsible for providing timely data and information to the Ecosystem Advocate on proposals, all attempts to secure permits, all exploratory or preparatory activities, and how the project could impact or affect the Ecosystem.

Section 5.9 - Procedure for initiating an enforcement action

The Ecosystem Advocate may commence enforcement of the Ecosystem's interests by:

1. Providing a notice letter to an alleged violator or potential violator that describes the violative action, orders that the violator avoid, cease and desist the violative action, and which outlines the necessary steps to remedy the violation;
2. Publishing the notice letter as broadly as would be done for a public hearing;
3. Providing the alleged violator with 60 days from receipt of the notice letter to remedy the violation or mediate a resolution with the Ecosystem Advocate.

If the violator does not remedy the violation, the Ecosystem Advocate may take any legal action to remedy the violation, including enforcement through Ecology Court, state court, or federal court. Where circumstances warrant immediate action, the Ecosystem Advocate may shorten the above timeline or waive the mediation option.

Section 5.10 - Enforcement through Ecology Court

The Ecosystem Advocate may convene an Ecology Court to adjudicate a violation. The Ecology Court shall consist of thirteen residents, selected at random from the Buncombe County Municipal Court jury pool, voluntarily serving without coercion, and screened for conflicts of interest by the Ecosystem Advocate and by the alleged violator, with conflicts resolved by a Buncombe County Municipal Court Judge who chairs the proceeding until the jury appoints a new chair. The thirteen residents select one of their members to chair the proceeding, and the other twelve members act as jury, although they retain the power to recall the chair and appoint a new chair by a vote of at least nine members. The chair does not vote as part of the jury. The Ecology Court hears evidence and argument by the Ecosystem Advocate, the alleged violator, and any fact and expert witnesses called by the Ecosystem Advocate, the alleged violator, the chair, or by the jury by a vote of at least four members.

The jury decides both matters of fact and matters of law, and is to decide by a vote of at least seven members and by the preponderance of the evidence, whether the alleged violator violated the Ecosystem's interests, and if so, order an appropriate remedy.

Appeal of the Ecology Court's decision may be made one time, in which case a second Ecology Court jury will be seated, which will review the proceeding of the first Ecology Court and also consider any new evidence or defense brought before it, and may choose, by a vote of at least ten members, to issue a new order that would supersede the prior jury's order.

Section 5.11 - Civil penalties

Any business or government entity that violates any provision of this Article shall be subject to a civil penalty of up to ten thousand dollars (\$10,000) for a single occurrence, or up to five hundred dollars (\$500.00) per day of a continuing occurrence, with each day constituting a separate offense under this Article. These penalties shall be tripled in cases where the violation is found to be willful.

Section 5.12 - Damages

Any business or government entity that violates any provision of this act shall be liable for any natural resource damages caused to the Swannanoa River Watershed Ecosystem as a result of the violation. The measure of damages shall be the cost of fully restoring the Swannanoa River ecosystem to its state prior to the violation and shall be paid to the Town to be used exclusively for the restoration of the ecosystem.

Section 5.13 - Implementation

Natural resource management agencies shall not conduct, authorize, license, permit, or fund any public or private activities, practices, or operations that are inconsistent with, or which will or may violate or infringe upon, the rights or provisions of this act.

No later than [insert date here], natural resource management agencies shall: a) Review existing and proposed activities, practices, or operations, as well as agency laws, policies, rules, or regulations, to identify any potential or ongoing violations of the rights or provisions of this Article. b) Develop recommendations for remedying any potential or ongoing violation of law identified in this section and submit a report of those recommendations to the Ecosystem Advocate and town officials. c) No later than [insert date here], complete full restoration of all areas of the Swannanoa River ecosystem identified by the assessment required by sub-subdivision (b.) of this section.

Section 5.14 - Effective Date and Existing Permit Holders

This law shall be effective immediately on the date of its enactment, at which point the law shall apply to any and all actions that would violate this law regardless of the date of any applicable local, state, or federal permit.

Section 5.15 - Severability

All provisions of this act are severable.

///

Note

All language related to the “proxy ecosystem advocate” positions has been removed. (Find the original description of this position in the ORBOR, linked at top). This section had included citizens’ rights to request information regarding the status of enforcement actions by the Advocate (but didn’t specify whether they had a right *to* that information), as well as right to sit in on mediations. (This involvement is what allowed citizens to judge the Advocate’s actions as inadequate and step into a proxy position). Consider whether such rights should be included in future drafts, regardless of the existence of the proxy advocate.

Loose ends

1. Rewrite Ecosystem Advocate description to be an elected position, not appointed by town council. Describe whether this is full-time, part-time, on-call, etc. Describe whether this is paid or volunteer.
2. Come up with a specific percentage (of TBM annual budget) or dollar amount to be allocated to the Advocate and Court. Include a provision for increasing or lowering this budget. Perhaps delineate what this funding might be used for, but don’t use exclusive language. The annual town budget is available online and can be a helpful reference.
3. Decide the structure of a Commission Member position. Unpaid and voluntary? Part-time? Make this clear in the language.
4. In general, review all document language to “anticipate mischief” either by Town Council (at any point in the future) and/or industry.
5. Decide how to represent all parts of Black Mountain when selecting for the Advisory Commission. Sub-basins? Look at voting precinct maps and neighborhoods
6. Add provisions for recall of the Ecosystem Advocate. The NC general statutes do not provide for recall of elected officials. Some towns in NC do. This will be a whole other section we have to add to the charter [Asheville and Chapel Hill have recall provisions and could be models] in order to be able to provide for recall of the Ecosystem Advocate. Ben’s brainstorming for some of this languaging: “Recall power may be initiated according to the charter, *except*, full-time residents [as defined in definitions sections with months and “natural person” stipulations] *may* initiate a recall.” Recall provision must include signature requirements for petition and circulation time. UNKNOWN

