

CHAPTER 30: DEPARTMENTS, BOARDS, AND COMMISSIONS

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Cross-reference:

Agricultural Advisory Board, see §§ 156.050 through 156.053

Animal Control Advisory Committee, see § 91.61

Department of Inspections, see §§ 150.50 through 150.53

Sediment Control Commission, see § 154. 74

Watershed Review Board, see §§ 151.81 through 151.87

Statutory reference:

County authority to create a Planning Board and to regulate development, see G.S. Chapter 153A, Article 18160D, § 301; § 320 et seq.

PLANNING BOARD

§ 30.01 MEMBERSHIP.

(A) The County Planning Board shall consist of 13 members. Five at large regular members chosen from geographically different areas shall be appointed by the Board of County Commissioners, at least two of whom shall be active farmers. The remaining eight members shall be the representatives of the Town Planning Boards of the towns of Canton, Clyde, Waynesville, and Maggie Valley, a representative of the Haywood County Board of Realtors, a representative of the Home Builders Association, the Haywood County Erosion Control Specialist and a representative of the Environmental Section of the Haywood County Health Department who shall each serve as ex-officio members.

(B) The five at large members appointed by the Board of County Commissioners shall be appointed as follows: one of the initial members shall be appointed for a term of one year; one member for two years; one member for three years; one member for four years; and one member for five years. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term. Faithful attendance at the meetings of the Board is considered a prerequisite for the maintenance of membership on the Board. The ex-officio members shall have all the rights, privileges, and duties of the five above-stated members. The ex-officio members of the County Planning Board who represent the town planning boards shall serve for terms coextensive with their respective appointed terms to their respective Town Planning Boards. The other ex-officio members shall serve one year terms, which may be renewed for so long as such persons remain employed by Haywood County.

(Ord. passed - -; Am. Ord. passed 6-4-79; Am. Ord. passed 9-22-97)

§ 30.02 ORGANIZATION, RULES, MEETINGS, AND RECORDS.

Within 30 days after appointment, the Planning Board shall meet and elect a Chairperson and create and fill such offices as it may determine. The term of the Chairperson and other officers shall be one year, with eligibility for re-election. The Planning Board shall adopt rules for transaction of its resolutions, discussions, findings, and recommendations, which rules shall be a public record. The Planning Board shall hold at least ten meetings per year, and all of its meetings shall be open to the public. There shall be a quorum of six members for the purpose of taking any official action required by this chapter.

Members of the Planning Board shall not vote on any advisory or legislative decision where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member shall not vote on any matter if the landowner of the property subject to a petition or text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(Ord. passed - -; Am. Ord. passed 6-4-79)

§ 30.03 POWERS AND DUTIES.

It shall be the duty of the Planning Board, in general:

(A) To acquire and maintain in current form such basic information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions;

(B) To prepare and from time to time amend and revise a comprehensive and coordinated plan for the physical development of the area;

(C) To establish principles and policies for guiding action in the development of the area;

(D) To prepare and recommend to the Board of County Commissioners ordinances promoting orderly development along the lines indicated in the comprehensive plan;

(E) To determine whether specific proposed developments conform to the principles and requirements of the comprehensive plan for the growth and improvement of the area;

(F) To keep the Board of County Commissioners and the general public informed and advised as to these matters;

(G) To perform any other duties which may lawfully be assigned to it.
(Ord. passed - -; Am. Ord. passed 6-4-79)

Statutory reference:

Planning Board duties generally, see G.S. ~~§153A-321~~160D-301

§ 30.04 BASIC STUDIES.

(A) As background for its comprehensive plan and any ordinances it may prepare, the Planning Board may gather maps and aerial photographs of man-made and natural physical features of the area, statistics of past trends and present conditions with respect to population, property values, the economic base of the area, land use, and such other information as is important or likely to be important in determining the amount, direction, and kind of development to be expected in the area and its various parts.

(B) In addition, the Planning Board may make, cause to be made, or obtain special studies on the location, condition, and adequacy of specific facilities, which may include but are not limited to studies of housing; commercial and industrial facilities; parks, playgrounds, and recreational facilities; public and private utilities; and traffic, transportation, and parking facilities.

(C) All county officials shall, upon request, furnish to the Planning Board such available records or information as it may require in its work. The Board or its agents may, in the performance of official duties, enter upon lands and make examinations or surveys and maintain necessary monuments thereon.

(Ord. passed - -; Am. Ord. passed 6-4-79)

§ 30.05 COMPREHENSIVE PLAN.

(A) The Comprehensive Plan, with the accompanying maps, plats, charts, and descriptive matter, shall be and shall show the Planning Board's recommendations to the Board of County Commissioners for the development of the territory, including, among other things, the general location, character, and extent of streets, bridges, boulevards, parkways, playgrounds, squares, parks, aviation fields, and other public ways, ground, and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation,

communication, power, and other purposes; the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of any of the foregoing buildings, grounds, open spaces, property, utilities, or terminals; the most desirable pattern of land use within the area, including areas for residential uses, for farming and forestry, for manufacturing and industrial uses, for commercial uses, for recreational uses, for open spaces, and for mixed uses.

(B) The plan and any ordinances or other measures to effectuate it shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the county which will, in accordance with present and future needs, best promote health, safety, morals, and the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities, services, and other public requirements. (Ord. passed - -; Am. Ord. passed 6-4-79)

§ 30.06 ZONING.

(A) The Planning Board shall prepare and submit to the Board of County Commissioners, for its consideration and possible adoption, a zoning ordinance for the control of the height, area, bulk, location, and use of buildings and premises in the area, in accordance with the provisions of G.S. §§ ~~153A-340 through 153A-347~~ § 160D-701 *et seq.*

(B) The Planning Board may initiate, from time to time, proposals for amendment of the zoning regulations, based upon its studies and comprehensive plan. In addition, it shall review and make recommendations to the Board of County Commissioners concerning all proposed amendments to the zoning regulations. (Ord. passed - -; Am. Ord. passed 6-4-79)

§ 30.07 SUBDIVISION REGULATIONS.

(A) The Planning Board shall review, from time to time, the need for regulations for the control of land subdivision in the area and submit to the Board of County Commissioners its recommendations, if any, for adoption or revision of the regulations.

(B) In accordance with such regulations, the Planning Board shall review and make recommendations to the Board of County Commissioners concerning all proposed plats of land subdivision. (Ord. passed - -; Am. Ord. passed 6-4-79)

Statutory reference:

*Subdivision regulations generally, see G.S. §§ ~~153A-330 through 153A-335~~ 160D-801 *et seq.**

§ 30.08 PUBLIC FACILITIES.

The Planning Board shall review with the county officials and report as recommendations to the Board of County Commissioners upon the extent, location, and design of all public structures and facilities, and on the acquisition and disposal of public properties. However, in the absence of a recommendation from the Planning Board, the Board of County Commissioners may, if it deems wise, after the expiration of 30 days from the date on which the question has been submitted in writing to the Planning Board for review and recommendation, take final action.

(Ord. passed - -; Am. Ord. passed 6-4-79)

§ 30.09 MISCELLANEOUS POWERS AND DUTIES.

(A) The Planning Board may conduct such public hearings as may be required to gather information necessary for the drafting, establishment, and maintenance of the Comprehensive Plan. Before adopting any such plan it shall hold at least one public hearing thereon.

(B) The Planning Board shall have power to promote public interest in and an understanding of its recommendations, and to that end it may publish and distribute copies of its recommendations and may employ such other means of publicity and education as it may determine.

(C) Members of the Planning Board, when duly authorized by the Planning Board, may attend planning conferences or meetings of planning institutes or hearings upon pending planning legislation, and the Planning Board may, by formal and affirmative vote, pay, within the Planning Board's budget, the reasonable travelling expenses incident to the attendance.

(D) Pursuant to G.S. Chapter ~~160A, Article 20, Part 1~~ 160D-503, the County Planning Board may enter into cooperative planning and studies with the duly appointed Town Planning Boards in the county, for the purposes of furthering a coordinated, county-wide planning program or other endeavors. In addition, the County Planning Board may enter into cooperative planning endeavors with Planning Boards in surrounding counties.

(Ord. passed - -; Am. Ord. passed 6-4-79)

§ 30.10 ANNUAL REPORT.

(A) The Planning Board shall, in February of each year, submit in writing to the Board of County Commissioners a written report of its activities, an analysis of the expenditures to date for the current fiscal year, and, for review and approval, its requested budget of funds needed for operation during the ensuing fiscal year.

(B) The Planning Board is authorized to receive contributions from private agencies and organizations, or from individuals, in addition to any sums which may be appropriated for its use by the Board of County Commissioners. It may accept and disburse the contributions for special purposes or projects, subject to any specific conditions which it deems acceptable, whether or not projects are included in the approved budget.

(C) The Planning Board is authorized to appoint such committees, and to authorize such expenditures, as it may see fit, subject to limitations of funds provided for the Planning Board by the Board of County Commissioners in the county's annual budget.

(Ord. passed - -; Am. Ord. passed 6-4-79)

§ 30.11 ADVISORY COUNCIL AND SPECIAL COMMITTEES.

(A) The Planning Board may seek the establishment of an unofficial Advisory Council and may cooperate with this Advisory Council to the end that its investigations and plans may receive fullest consideration, but the Planning Board may not delegate to the Advisory Council any of its official prerogatives.

(B) The Planning Board may set up special committees to assist it in the study of specific questions and problems.

(Ord. passed - -; Am. Ord. passed 6-4-79)

CHAPTER 90: ADDRESSING AND ROAD NAMING

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*ADDRESSING***§ 90.01 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADDRESS COORDINATOR. The official of the county charged with the administration of this subchapter, including any authorized agent(s) or delegate(s).

BUILDING. Any structure having a roof supported by columns or walls and intended for shelter, housing, or enclosure of persons, animals, chattels, or equipment. When separated by division walls from the ground up without openings, each portion of the building may be deemed a separate building. For the purpose of this subchapter, **BUILDING** may also include other manmade structures.

DRIVEWAY. Begins at the property line of a lot abutting a public road, private road, easement, or private right-of-way, and leads to a building, use, or structure on that lot. A **DRIVEWAY** only serves a single building, use, or structure.

FRONTAGE UNIT. A standard interval in feet used to assign consecutive property numbers on a street or road. The standard front unit adopted for use throughout the county is 5.28 feet. Even numbers shall always be on the right side and odd numbers on the left side of the street or road as numbers increase.

PRIVATE ROAD. A road not maintained by the State Department of Transportation which is not intended to become a public road but which shall be used for access to a particular site, group development, or business.

PUBLIC ROAD. Any road, street, highway, thoroughfare, or other way of passage that has been irrevocably dedicated to the public, or in regard to whether it is open for travel. This definition shall include any road located on a public right-of-way which either has been accepted for maintenance by the state or which has been dedicated for public travel by the recording of a plat of a subdivision with the County Register of Deeds Office.

ROADWAY. Any road, street, drive, land, cartway, tramway, easement, right-of-way, access area, thoroughfare, highway, boulevard, or any other corridor used for, or having the potential use as, a means of conveyance by a motor vehicle.

ROAD ADDRESS. The combination of numbers and road names assigned by the county which uniquely identifies a particular building or lot.
(Ord. passed 2-10-94)

§ 90.02 PURPOSE.

The purpose of this subchapter is to provide a comprehensive and uniform system of permanent road addresses for all properties and buildings throughout the county in order to facilitate provision of adequate public safety and emergency response services. It is further designed to benefit the United States Postal Service, local business owners, and individual citizens by minimizing difficulty in locating properties and buildings.

(Ord. passed 2-10-94)

§ 90.03 AUTHORITY.

This subchapter is adopted under the authority and provisions of G.S. §§ 153A-121, 153A-238, and 153A-239.1, and local modifications thereto.

(Ord. passed 2-10-94)

§ 90.04 DUTIES OF THE ADDRESSING OFFICE.

Under the authority set forth in § 90.03, the County Addressing Office, hereafter referred to as the *ADDRESSING OFFICE*, shall be responsible for assigning all numbers for properties and buildings as well as compiling a database of addresses of each property and building. It shall also recommend change of existing addresses when necessary to meet specifications established by this subchapter. When each building has been assigned its respective address, the Addressing Office, in cooperation with the United States Postal Service, shall notify the owners, occupants, or person in charge of the affected building, by letter, advising of the new address.

(Ord. passed 2-10-94)

§ 90.05 JURISDICTION.

This subchapter shall apply to all properties and buildings within the county which are located outside any incorporated municipality. Municipalities within the county may elect to allow this subchapter to be effective within their corporate limits.

(Ord. passed 2-10-94)

§ 90.06 NEW ADDRESS ASSIGNMENT.

The owner, occupant, or person in charge of any building in need of an address in the unincorporated area of the county shall apply to the Addressing Office. Addresses shall be assigned using 1000 numbers per road mile. Even numbers shall be on the right side and odd numbers on the left side as numbers increase.

(Ord. passed 2-10-94) Penalty, see § 90.99

§ 90.07 DISPLAY OF ADDRESS NUMBERS.

(A) Every owner of improved property shall purchase and display official address numbers so that they are visible from the road providing access to the property. The following criteria shall be used to properly display the number:

(1) The official address number must be displayed on the front of a building or at the entrance to a building which is most clearly visible from the road during both day and night.

(2) If a building is more than 75 feet from any road or is not visible from the road, the address number shall be displayed at the end of the driveway or easement nearest the road which provides access to the building. The number shall be attached to a fence, gate, mailbox, or the like adjacent to the road right-of-way.

(3) Numerals indicating the address number of a single-family dwelling shall be at least three inches in height and shall be posted and maintained so as to be legible from the road.

(4) Numerals for multiple dwelling units and non-residential buildings shall be at least four inches in height and shall be placed on the front of the building facing the road or on the end of the building nearest the road. Individual units shall be required to display unit numbers at least three inches in height on the front door or immediately adjacent to the door.

(5) Numerals must be of contrasting color to the background and shall be plain block numeric numbers, not alpha print. It is recommended that these numbers be reflective to ensure better visibility at night.

(6) Mobile home lots shall have sequential address numbers throughout the park. Each lot shall have a separate address number assigned. The address number of each lot must be clearly displayed on the lot by being attached to the mobile home or on the electrical utility box for each lot when the lot is vacant, consistent with § 90.07(A)(1) above. When the mobile home lot is owned by the occupant, the owner/occupant is responsible for the posting and maintenance of the address number. When the lot is leased or rented, the landlord shall be responsible for the posting and maintenance of the address number, in accordance with this section.

(7) The address shall be placed on existing buildings within 30 days from the date of the mailing of the letter of notification required under § 90.04.

(B) The Address Coordinator shall have the authority to authorize and approve alternate methods of displaying address numbers which meet the intent of § 90.07 when strict adherence to these standards cannot reasonably be met.

(Ord. passed 2-10-94) Penalty, see § 90.99

§ 90.08 ENFORCEMENT.

(A) Owners or occupants of buildings already constructed which do not comply with this subchapter shall be notified and instructed to meet the requirements of this subchapter within 60 days from the date of mailing of the notification. ~~A warning notice~~If, after 60 from the notification letter, the requirements have not been met, then a Notice of Violation shall be issued and sent by registered or certified mail ~~after the 60 days if the requirements have not been met.~~ If the owner or occupant does not comply voluntarily with this subchapter within 30 days ~~of receiving~~after delivery of ~~a warning notice by registered or certified mail or by hand delivery,~~the Notice of Violation, then enforcement action pursuant to G.S. § 153A-123 may be initiated.

(B) Final approval for a certificate of occupancy of any principal building erected or repaired after the effective date of this subchapter shall be withheld until a permanent and proper address has been displayed in accordance with the requirements outlined in this subchapter.

(C) No certificate of completion will be issued for mobile home parks until address numbers are properly displayed for each lot within the park.
(Ord. passed 2-10-94)

§ 90.09 LEGAL PROVISIONS.

(A) This subchapter may be amended by the County Board of Commissioners.

(B) Insofar as the provisions are inconsistent with the provisions of any other law except a provision of state or federal law, the provisions of this subchapter shall control.

(C) Where notice is required pursuant to this subchapter, the county shall be deemed to have complied with its duties of notification by depositing such notice in the United States Postal Service system, addressed to such address as appears upon the tax listing records of the County Tax Assessor's office for such property owner.

(Ord. passed 2-10-94)

~~§ 90.10 PUBLIC HEARING REQUIRED.~~

~~Pursuant to G.S. §153A-239.1, the Board of Commissioners shall not assign or reassign street numbers until it has held a public hearing on the matter. At least ten days before the day of the hearing, the Board of Commissioners shall cause notice of the time, place, and subject matter of the hearing to be prominently posted at the County Courthouse, in at least two public places in the township or townships where the street is located, and shall publish a notice of the hearing in at least one newspaper of general circulation published in the county.~~

ROAD NAMING**§ 90.20 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADDRESS COORDINATOR. The official of the county charged with the administration of this subchapter, including any authorized agents or delegates.

BUILDING. Any structure having a roof supported by columns or walls and intended for shelter, housing, or enclosure of persons, animals, chattels, or equipment. When separated by division walls from the ground up without openings, each portion of the building may be deemed a separate building. For the purpose of this subchapter, **BUILDING** may also include other manmade structures.

DRIVEWAY. Begins at the property line of a lot abutting a public road, private road, easement, or private right-of-way, and leading to a building, use, or structure on that lot. A **DRIVEWAY** only serves a single building, use, or structure.

PRIVATE ROAD. A road not maintained by the State Department of Transportation which is not intended to become a public road but which shall be used for access to a particular site, group development, or business.

PUBLIC ROAD. Any road, street, highway, thoroughfare, or other way of passage that has been irrevocably dedicated to the public, or in regard to whether it is open for travel. This definition shall include any road located on a public right-of-way which either has been accepted for maintenance by the state or which has been dedicated for public travel by the recording of a plat of a subdivision with the County Register of Deeds Office.

ROADWAY. Any road, street, drive, land, cartway, tramway, easement, right-of-way, access area, thoroughfare, highway, boulevard, or any other corridor used for, or having the potential use as, a means of conveyance by a motor vehicle.

ROAD ADDRESS. The combination of numbers and road names assigned by the county which uniquely identifies a particular building or lot.

STATE ROAD NUMBER. A number assigned by the State Department of Transportation; also known as the **SR** number for secondary state maintained roads.

SUBDIVISION. All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new road or a change in existing roads.

SUFFIX. The following shall be used after a roadway name: avenue, boulevard, circle, court, cove, drive, estate, gardens, heights, highway, lake, lane, loop, park, place, plaza, point, ridge, road, square, street, terrace, trace, trail, village, or way.
(Ord. passed 9-3-92; Am. Ord. passed 6-5-95)

§ 90.21 PURPOSE.

The purpose of this subchapter is to eliminate duplicate or phonetically similar road names, and to provide for the uniform marking of roads in order to facilitate provision of adequate public safety and emergency response services. It is further designed to establish an official map and listing of all roads in the county, and to establish the procedure by which a road may be named or by which an existing name may be changed.
(Ord. passed 9-3-92)

§ 90.22 AUTHORITY.

This subchapter is adopted under the authority and provisions of the G.S. §§ 153A-121, 153A-238, and 153A-239.1, and local modifications thereto.
(Ord. passed 9-3-92)

§ 90.23 DUTIES OF THE ADDRESSING OFFICE.

Under the authority set forth in § 90.22, the County Addressing Office, hereafter referred to as the **ADDRESSING OFFICE**, shall develop and maintain a list of all road names in the county as well as maintain Official County Map Booklets exhibiting the approved names and location of all roads in the county for 911 Emergency Vehicles. It shall also serve as a clearinghouse for all information regarding the names and location of roadways in the county.
(Ord. passed 9-3-92)

§ 90.24 JURISDICTION.

This subchapter shall apply to all roads within the county which are located outside any incorporated municipality. Municipalities within the county may elect to allow this subchapter to be effective within their corporate limits.
(Ord. passed 9-3-92)

§ 90.25 ~~ROAD NAMING PROCEDURES FOR PUBLIC ROADS~~ HEARING REQUIRED for naming or renaming a road.

The Addressing Office, in consultation with the Emergency Operations Coordinator, Fire Departments, and any other office or agency it deems necessary, is authorized to recommend new road

names and name changes to the County Board of Commissioners for public roads outside the corporate limits of any municipality within the county. ~~The Board of Commissioners shall not name or re-name a public road until it has held a public hearing on the matter. At least ten days before the day of the hearing, the Board of Commissioners shall cause notice of the time, place, and subject matter of the hearing to be prominently posted at the County Courthouse, in at least two public places in the township or townships where the road is located, and shall publish a notice of the hearing in at least one newspaper of general circulation published in the county.~~

Pursuant to G.S. §153A-239.1, the Board of Commissioners shall not name or rename a road until it has held a public hearing on the matter. At least ten days before the day of the hearing, the Board of Commissioners shall cause notice of the time, place, and subject matter of the hearing to be prominently posted at the County Courthouse, in at least two public places in the township or townships where the road is located, and shall publish a notice of the hearing in a newspaper of general circulation published in the county.

_(Ord. passed 9-3-92)

§ 90.26 ROAD NAMING PROCEDURES FOR PRIVATE ROADS.

(A) In the event that there are private roads which have no name on file with the Addressing Office, that department shall first determine if at least 65% of land owners adjacent to the road are in agreement as to a particular name. In the event of such agreement and upon the recommendation of the Addressing Office, the County Board of Commissioners shall have the option of declaring the newly selected name to be the official road name, after the public hearing described in (C) and it shall be placed on file in accordance with the provisions of § 90.23 above.

(B) In the event that there are private roads which have no name on file with the Addressing Office, and in the event that an agreement has not been reached by at least 65% of adjacent land owners as to a particular name, ~~that department~~the Addressing Office shall make a name recommendation to the County Board of Commissioners which ~~shall thereupon hold a will have the~~ public hearing, ~~upon at least ten days prior notice published once described in a newspaper of general circulation in the county setting forth the time, place, (C) and subject matter of then determine the public hearing. In addition, the Board of Commissioners shall cause the notice to be posted at the County Courthouse and in at least two public places in the township in which the road is located~~name.

(Ord. passed 9-3-92)

(C) Pursuant to G.S. §153A-239.1, the Board of Commissioners shall not name or rename a road until it has held a public hearing on the matter. At least ten days before the day of the hearing, the Board of Commissioners shall cause notice of the time, place, and subject matter of the hearing to be prominently posted at the County Courthouse, in at least two public places in the township or townships where the road is located, and shall publish a notice of the hearing in a newspaper of general circulation published in the county.

(D) Names may be initially assigned to new roads by recordation of an approved subdivision plat without following the procedure established by this Chapter.

§ 90.27 NOTICE OF ACTION FOR ALL ROADS.

(A) A road name shall be assigned to any public or private road, or roadway which provides access to two or more residences, businesses, industries, or combination thereof, regardless of the length of the road.

(B) The Addressing Office is authorized to determine the need for road names and name changes and to recommend such additions or changes to the County Commissioners for both private and public roads outside the corporate limits of any municipality within the county.

(C) In addition, citizens may request the Board of Commissioners to change the name of a road as described in this section. Property owners who want to have the name of a road changed must submit a petition (form to be provided by the Addressing Office) to the Address Coordinator for verification. The Address Coordinator will make recommendations to the County Board of Commissioners after the following criteria have been met:

(1) A \$75 fee for each road, to cover legal advertisement, shall accompany any petition requesting that an existing road name be changed.

(2) The petition should include the existing road name, the proposed road name, and the signatures of at least 65% of those persons owning property adjacent to the road.

(3) The Address Coordinator shall cause the request to be advertised pursuant to G.S. § 153A-239.1.

(4) In the event the Address Coordinator and the Board of County Commissioners approve the request, the petitioners shall be required, prior to installation, to pay the county for the cost of purchasing new signs and erecting them.

(D) After naming or renaming a road the Addressing Office shall cause notice of its action to be given to the Postmaster(s) with jurisdiction over the road, to the State Department of Transportation (in the case of public roads), to any city within five miles of the road, and to the following agencies: County 911 Director, Fire Department(s) with jurisdiction over the road, Land Records Office, and School Board.

(Ord. passed 9-3-92)

§ 90.28 MOBILE HOME PARKS, CONDOMINIUMS, PLANNED UNIT DEVELOPMENTS, APARTMENTS, PUBLIC HOUSING DEVELOPMENTS, AND TRAVEL TRAILER PARKS.

Where county records are incomplete, the owners of existing mobile home parks, condominiums, apartments, public housing developments and travel trailer parks shall, upon request of the Addressing Office, submit a legible and accurate map of their development, including but not limited to the location, name, and width of each roadway. Each lot or building within the development must also be identified.

(Ord. passed 9-3-92) Penalty, see § 90.99

§ 90.29 PROHIBITED ROAD NAMES.

The Addressing Office may disapprove newly proposed street names which fall under the following categories:

(A) Road names that are duplicated or deceptively similar to the name of any other public or private road in the county, including a phonetic similarity. This shall include road names that have a different suffix.

(B) Road names which have numbers as part of the name.

(C) Road names which are over fifteen characters in total length, including spaces, but not including suffixes.

(D) Road names that are similar to the name of an existing subdivision unless the road lies within that same subdivision.

(Ord. passed 9-3-92)

§ 90.30 ROAD SIGNS.

(A) All public roadways in unincorporated parts of the county shall be identified by a sign meeting the current state Department of Transportation sign specifications. These road signs shall be placed at intersections and shall identify intersecting roads.

(B) All private roadways in unincorporated parts of the county shall be identified by a sign showing the official name. These signs shall be placed at intersections and shall meet the current state Department of Transportation sign specifications, unless the County Board of Commissioners give their written consent.

(Ord. passed 9-3-92) Penalty, see § 90.99

§ 90.31 AMENDMENTS.

This subchapter may be amended further by the County Board of Commissioners.

(Ord. passed 9-3-92)

§ 90.99 PENALTY.

(A) Any violation of §§ 90.01 through 90.09 may be subject to civil remedies as set forth in G.S. § 153A-123. Nothing herein contained shall prevent the county from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. passed 2-10-94)

(B) Any person who shall violate any provision of §§ 90.20 through 90.30 or destroy, mar, remove, or deface any street sign shall be charged with Class 3 misdemeanor and upon conviction be subject to fine not to exceed \$50 or by imprisonment of not more than 30 days, as provided by G.S. § 14-4(a). Nothing herein contained shall prevent the county from taking such other lawful action as is necessary to prevent or remedy any violation. Any violation of §§ 90.20 through 90.30 may be subject to civil remedies as set forth in G.S. § 153A-123.

(Ord. passed 9-3-92)

CHAPTER 97: OFF-PREMISE SIGN CONTROL

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GENERAL PROVISIONS**§97.01 TITLE.**

This chapter shall be known and may be cited as the "Off-Premise Sign Control Ordinance of Haywood County, North Carolina."

§97.02 AUTHORITY.

This chapter is established by the Haywood County Board of Commissioners pursuant to the authority conferred in Chapter 153(A)-121(a) of the North Carolina General Statutes. The Board of Commissioners hereby ordains and enacts into law the following sections.

§97.03 JURISDICTION.

The provisions of this chapter shall apply to all unincorporated areas of Haywood County, lying outside of the corporate limits or extraterritorial jurisdiction of any incorporated town. Municipalities within Haywood County may elect to allow this chapter to be effective within their corporate limits and extraterritorial jurisdiction.

§97.04 PURPOSE.

The purpose of these sign regulations is to guide and regulate the construction and placement of off-premise signs in Haywood County. It is the intent of this chapter to preserve and maintain the scenic and aesthetic environment of the county in order to protect and promote the tourist industry and

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the quality of life of the county's residents and visitors; to improve safety for local and visiting motorists and pedestrians in Haywood County by reducing the distracting influence of uncontrolled off-premise signs; to minimize the possible adverse effect of off-premise signs on nearby public and private property; and to enable the fair and consistent enforcement of these sign regulations.

§97.05 APPLICABILITY.

(A) An off-premise sign as herein defined may be erected, placed, established, painted, created or maintained in the jurisdiction of this chapter only in conformance with the standards, procedures, exemptions and other requirements of this chapter.

(B) The effect of this chapter as more specifically set forth herein is to:

- (1) Establish a permit system to regulate the time, place and manner of the commercial use of certain types of off-premise signs subject to the standards and the permit procedures of this chapter;
- (2) Exempt from these regulations all on-premise signs as herein defined;
- (3) Prohibit all off-premise signs not expressly permitted by this chapter; and
- (4) Provide for the enforcement of the provisions of this chapter.

§97.06 DEFINITIONS.

For the purpose of this chapter, the following words and terms used herein are defined as follows:

ABANDONED SIGN. A sign which has not been utilized for a period of 180 days or more, or a sign, the contents of which no longer identifies or advertises a bona fide business, lessor, service, owner, product, or activity; or a sign, the contents of which pertains to a place, time, event or purpose which no longer exists, applies or which has occurred.

ANIMATED SIGN. Any sign that uses or incorporates flashing, blinking or strobe lighting; sound; moving parts or components that provide the sign motion or give the illusion of motion or movement.

COPY. The characters, letters or illustrations displayed on a sign face.

DWELLING UNIT. A house, mobile home, apartment, condominium or a group of dwellings occupied or intended for occupancy as separate living quarters for one or more humans.

EXEMPT SIGN. Any sign which is specifically listed as exempt from this chapter. Exempt signs are not regulated by the terms of this chapter and shall not require a permit.

FREESTANDING SIGN. Any sign which is supported from the ground and not attached to a building.

ILLEGAL SIGN. Any sign erected or maintained in violation of a preceding chapter or erected, altered, moved, repaired, maintained or replaced in violation of this chapter.

INTERSECTION. The point at which two or more public streets or roads meet and/or cross. For the purpose of this chapter, an intersection shall begin at the nearest edge of the crossing road or from the beginning of an exit ramp and the end of an acceleration ramp, whichever distance is greater.

NON-CONFORMING SIGN. Any sign in existence prior to the adoption and effective date of this chapter, or any applicable amendment thereto, which does not conform to the provisions of this chapter, as amended. An **ILLEGAL SIGN** is not a non-conforming sign.

OFF-PREMISE SIGN. Any sign used for the purpose of displaying, advertising, identifying or directing attention to a business, service, activity or place, including products or services sold or offered for sale on premises other than on the premises where such sign is displayed.

OFF-PREMISE ADVERTISING SIGN. Any sign advertising a product, service, business or activity which is sold, located or conducted elsewhere than on the premises on which the sign is located, or which said product, service, business or activity is sold, located or conducted on such premises only incidentally, if at all.

OFF-PREMISE DIRECTIONAL SIGN. Any off-premise sign indicating the location of or directions to a business, office or other activity. The sign may provide the name of the business or activity, and directions or symbols indicating directions. If a sign exceeds the maximum permitted area, it shall be construed and regulated as an off-premise advertising sign.

ON-PREMISE SIGN. Any sign used for the purpose of displaying, advertising, identifying or directing attention to a business, product, operation, service or activity sold or offered for sale, or to other information offered on the premises where the sign is located.

PORTABLE SIGN. A sign with a permanent frame and a display area for changeable copy, designed or intended to be relocated and not permanently affixed to the ground or structure. This shall include signs on wheels, trailers or any other device which is intended to be moved from one location to another.

PREMISES. A single tract of real property which is not divided by a public street or right-of-way.

PROHIBITED SIGN. Any sign, or element of a sign, which is specifically listed as prohibited in section §97.11 of this chapter.

REAL ESTATE SIGN. A sign advertising the sale, lease or rental of an interest in property.

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SETBACK. The shortest horizontal distance between a property line or the edge of the pavement or traveled surface and the closest point of a sign.

SIGHT DISTANCE TRIANGLE. The land area adjoining a road intersection that is kept clear of obstructions between three and seven feet above ground to ensure the visibility and safety of motorists and pedestrians. The protected sight distance area is the triangle created by the intersecting lines of two roads, extending 35 feet each way from the intersecting lines of the two roads.

SIGN. Any display of letters, words, numbers, figures, devices, emblems, pictures, logos or any other means whereby the same are made visible for the purpose of making anything known, whether such display be made on, or attached to, or as a part of a structure, surface or any other object whether natural or man made. The term "sign" shall include sign structure.

TEMPORARY SIGN. A sign with or without a structural frame, not permanently attached to a building, structure or the ground, and intended for a limited period of display provided, however, a temporary sign does not include a **PORTABLE SIGN** as herein defined.

YARD SALE SIGN. A temporary sign which advertises the location, date and/or time of an individual or civic yard or garage sale at a residence, place of worship or civic facility. Yard sale signs shall not include advertisements or announcements for commercial sales or flea markets.

§97.07 INTERPRETATION.

(A) Area of Signs Defined.

The area of a sign shall be considered to be that of the smallest rectilinear figure (but which shall have a continuous perimeter of not more than eight straight lines) which encompasses all lettering, wording, design or symbols, together with any background difference on which the sign is located, if such background is designed as an integral part of and related to the sign. Any cut-outs or extensions shall be included in the area of a sign, but supports and bracing (including any trim, skirt, apron or border) which are not intended as part of the sign and do not contain any advertising copy shall be excluded. In the case of a multi-faced sign, the area of the sign shall be considered to include all faces visible from one direction.

(B) Commercial Use Defined.

Commercial use of off-premise advertising signs, as used in this chapter, means and includes, without limitation, the use of signs having some or all of the characteristics and purposes listed in this section. These characteristics and purposes tend to describe the business practices and other arrangements of the persons who are engaged in the business of off-premise advertising, or of persons who use off-premise advertising in connection with their business and non-business advertising, and therefore tends to describe the types of signs intended to be regulated by this chapter.

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(1) Signs on which advertising space is sold, leased, given or otherwise made available by the sign owner to other members of the public at large for the purpose of displaying the other person's message. The sign owner may or may not, but typically does, receive revenue or other value or benefits for allowing other persons to use the advertising space. The sign owner may or may not, but typically does not, own the land occupied by the sign;

(2) Signs having as a sign site land which is owned by a person who is not the owner of the sign or who is not the person whose messages appear on the sign;

(3) Signs which do not advertise the interests of the person who owns or occupies the land on which the sign is located, but which do advertise the interests of persons elsewhere. The sign message is determined by the sign owner or his lessee without regard for, and sometimes adverse to, the interests of the owners of the sign site;

(4) Signs owned and controlled by a person other than the person who owns or controls the land on which the sign is located;

(5) Signs which advertise interests, products, events or uses not present at the location of the sign.

(C) Height of Signs Defined.

Sign height shall be measured from the elevation of the road surface of the nearest roadway to the highest point on the sign. Measurements shall be taken from the nearest edge of the traveled way, perpendicular from the location of the proposed sign.

(D) Illumination of Signs Defined.

(1) *Directly illuminated sign.* A sign designed to give forth artificial light directly (or through transparent or translucent material) from a light source within or attached to such sign.

(2) *Indirectly illuminated sign.* A sign designed to have illumination from a detached light source, shielded so that no direct rays from the light source are visible elsewhere than on the lot where said illumination occurs. If such shielding is inoperative, such sign shall be deemed to be a directly illuminated sign.

(3) *Non-illuminated sign.* A sign which has neither direct nor indirect illumination.

(E) Maintenance of Signs Defined.

For the purposes of this chapter, maintenance shall include those activities and procedures listed in sections §97.13 and §97.14 of this chapter. Work done to restore or repair a sign which is damaged or destroyed shall be considered repairs in accordance with the applicable provisions of this chapter.

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(F) No Preference for Commercial and Non-commercial Messages on Off-Premise Advertising Signs Defined.

(1) Commercial use under this section is not determined by making reference to the content of the sign message to determine whether the sign advertises a commercial message or a non-commercial message. Non-commercial messages are those usually considered to be, for example, ideological, religious or political in nature. A non-commercial message does not cause an off-premise advertising sign to no longer be a "commercial use" under this section.

(2) Commercial use is determined by making reference to the overall practices and arrangements of the sign owners and sign site owners in making the sign available to others.

(3) Nothing in this section shall be construed to allow a commercial message any preference or greater protection over a non-commercial message, or to allow one non-commercial message any preference or greater protection over another non-commercial message. Any reference to the message content of an off-premise advertising sign, to the limited extent such reference is necessary, is made for the sole purpose of classifying and segregating the two basic types of signs regulated in this section:

(a) Signs subject to the requirements of this section and which are known and defined as off-premise advertising signs;

(b) Signs defined as on-premise signs in this chapter and exempt from the terms of this chapter.

(G) Noncommercial Messages.

Any sign, display or device allowed under this chapter may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale or lease, and that complies with the size, height, spacing, setback, lighting and other requirements of this chapter.

(H) Value of Signs Defined.

The value of an existing sign shall be the value for tax purposes of any sign so listed. If the tax value is not available, the value shall mean the original cost of the sign. In the absence of information as to the original cost submitted by the sign owner, the Sign Enforcement Officer shall estimate the original cost based upon the best information reasonably available.

REGULATIONS**§97.08 SIGN REGULATIONS.**

Except as specifically exempted, prohibited or regulated but not requiring a permit in this section, all off-premise signs or sign components constructed, reconstructed, placed, relocated or maintained shall require a permit in accordance with the provisions of this chapter. All off-premise signs permitted by this chapter shall be constructed and erected in accordance with the North Carolina State Building Codes, as amended.

§97.09 SIGNS EXEMPTED.

The following off-premise signs are exempted from this chapter:

(A) Government signs including, but not limited to, traffic warning or regulatory signs or signals, building identification, directional, information and welcome signs.

(B) Trade names and graphics which are located on newspaper, soft drink, gasoline pumps and similar vending devices.

(C) Flags or insignia of any governmental or non-profit organization when not displayed as an advertising device.

(D) Warning signs posted by utility or construction companies.

(E) Commemorative tablets, markers or monuments constructed by or with the permission of the Haywood County Board of Commissioners.

(F) Signs on operational motor vehicles indicating the name of a business, when the vehicle is not intended solely for a display of signs.

(G) Signs required by law, statute or ordinance.

(H) Decorations or displays of a temporary nature which are associated with any national, local or religious holiday or celebration.

(I) Political signs.

(J) Yard Sale signs.

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§97.10 SIGNS REGULATED BUT NOT REQUIRING A PERMIT.

The following off-premise signs are regulated under this chapter but do not require a permit.

(A) Off-premise directional signs as herein defined provided such signs shall not exceed a maximum of 32 square feet in area per directional flow of traffic and 10 feet in height. Not more than four directional signs shall contain directions or reference the same activity or business. Off-premise directional signs shall be non-illuminated and located outside of any sight distance triangle.

(B) Off-premise real estate signs not exceeding a maximum of four square feet in area.

(C) Any sign four square feet in area or smaller.

§97.11 SIGNS PROHIBITED.

The following off-premise signs and off-premise sign features or components are prohibited:

(A) Signs obstructing the view of motorists entering or exiting roads or highways, or interfering with the driver's view of approaching, merging or intersecting traffic.

(B) Animated signs and signs with direct illumination or signs with indirect illumination which directs or allows a lighting source to direct light on any residential dwelling or at any portion of a roadway with an intensity which may impair a driver's vision.

(C) Any non-governmental sign resembling a public safety warning or traffic signal.

(D) Signs, whether temporary or permanent, within any road or highway right-of-way, with the exception of governmental signs.

(E) Signs constructed or maintained upon trees and utility poles or painted or drawn upon natural rock formations or other natural features.

(F) Signs containing words or graphics that are obscene, as defined in Chapter 15 of the North Carolina General Statutes.

(G) Off-premise advertising signs along federal or State scenic byways, and local scenic byways designated by the county commissioners.

§97.12 OFF-PREMISE ADVERTISING SIGN REGULATIONS.

The following regulations shall be applicable to all off-premise advertising signs as herein defined. Any sign not specifically allowed is prohibited.

(A) Size.

(1) No off-premise advertising sign permitted by this chapter shall exceed the following maximum sign area:

(a) A maximum of 300 square feet (excluding any trim, apron, skirt or border provided it not contain any advertising copy) per directional flow of traffic on roads with four or more lanes.

(b) A maximum of 75 square feet (excluding any trim, apron, skirt or border provided it not contain any advertising copy) per directional flow of traffic on all other roads.

(2) A maximum of two faces per sign structure is allowed, positioned either back to back or v-shaped, such that only one face is allowed per side. Both sides of a double-faced or v-shaped sign shall be of equal size. In no case shall there be more than one face per directional flow of traffic.

(B) Height.

(1) No off-premise advertising sign permitted by this chapter shall exceed the following maximum sign height.

(a) A maximum height of 30 feet for signs 200 square feet in area or larger.

(b) A maximum height of 20 feet for signs smaller than 200 square feet in area.

(C) Spacing.

(1) The minimum spacing between off-premise advertising signs adjacent to highways as measured along either side of any roadway centerline shall be as follows:

(a) Highways with four or more lanes, spacing shall be a minimum of 1,500 linear feet.

(b) Highways with less than four lanes, spacing shall be a minimum of 1500 linear feet.

(2) Additional spacing for off-premise advertising signs is required as follows:

(a) 300 feet from the intersection of two or more public roads; and 300 feet from any bridge more than 50 feet in length;

(b) 500 feet from the nearest point of any dwelling unit on an adjacent parcel; church or any place of worship; and the property boundary of any school, cemetery or public park located within 600 feet of a public right-of-way.

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(D) Setbacks.

Off-premise advertising signs shall meet the following setback requirements:

(1) The setback shall be ten feet from the right-of-way of any adjacent road but shall be no closer than 25 feet from the edge of the traveled way of any road.

(2) All off-premise advertising signs shall be located at least five feet from any abutting property lines and outside of all sight visibility triangles.

(E) Extensions.

No off-premise advertising sign shall have any extensions that cause the sign to exceed the maximum size, height or setback.

(F) Illumination.

Off-premise advertising signs may be indirectly illuminated or non-illuminated. No off-premise advertising sign shall contain any form of direct illumination.

MAINTENANCE

§97.13 MAINTENANCE.

All signs and their structures shall be maintained in good repair and safe condition and shall conform to the standards in this section. Maintenance carried out in accordance with this section shall not require a sign permit, provided the sign is not enlarged, moved or altered in any manner which would create or increase a non-conforming condition. Any sign violating these requirements shall be repaired or removed as required.

(A) No sign shall be allowed to have more than 20% of its total surface area covered with disfigured, cracked, ripped or peeling paint or poster paper, or any combination of these conditions for more than 30 consecutive days.

(B) No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts which cause the sign to stand more than 15 degrees from the perpendicular for more than 30 consecutive days.

(C) No sign shall be allowed to have weeds, vines or other vegetation growing on more than 20% of the sign face for more than 30 consecutive days.

(D) No illuminated sign shall be allowed to stand with only partial illumination for more than 30 consecutive days.

§97.14 UNLAWFUL CUTTING OF TREES OR SHRUBS.

No person may, for the purpose of increasing or enhancing the visibility of any sign, damage, trim or remove any trees, shrubs or other vegetation located within any public road or highway right-of-way, except where a legal permit has been obtained from the North Carolina Department of Transportation.

PERMITS, FEES AND NON-CONFORMING SIGNS

§97.15 PERMITS.

All signs, except as otherwise provided in sections §97.09, §97.10, and §97.11 of this chapter, shall require a sign permit prior to being constructed, moved, altered, placed or repaired. Sign permits shall be issued by the Sign Enforcement Officer of Haywood County. No sign requiring a building permit shall be issued such permit until a valid sign permit has been issued in accordance with this section. If a sign permit is denied, the decision may be appealed to the Haywood County Planning Board within 30 days of the decision. All appeals shall be submitted in writing to the Sign Enforcement Officer.

§97.16 PERMIT APPLICATION.

No permit shall be issued until an application for each separate sign is completed, submitted and approved by the Sign Enforcement Officer. The initial permit shall be valid until revoked by the Sign Enforcement Officer.

§97.17 PERMIT AND PERMIT EMBLEM.

A permit, along with a permit emblem, shall be issued upon proper application and approval. New sign construction shall not commence until a permit and emblem are issued. The sign must be completely constructed and erected, with the permit emblem affixed, within 180 days from the date of the permit issuance. During the 180 day period, newly permitted signs shall be considered to be in existence for the purpose of spacing signs. The permit emblem shall be placed on sign structures in such a position as to be visible from the nearest adjacent road.

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§97.18 PLANS, SPECIFICATIONS AND DATA REQUIRED FOR PERMIT.

The application shall be accompanied by complete information as required on forms provided by the Sign Enforcement Officer and shall include, without being limited to, a site plan and elevation drawings of the proposed sign, indicating the proposed location of the sign, setbacks, height, illumination, dimensions and square footage of the proposed sign, and any other data as the Sign Enforcement Officer may determine is necessary for review of the application. The Sign Enforcement Officer shall not issue a sign permit unless the plans, specifications and intended use of such sign conform in all respects to the applicable provisions of this chapter.

§97.19 PERMIT FEES.

Initial fees are required to be paid for permitting the construction of all new signs. Existing signs are exempt from the initial permit fee. A fee schedule shall be determined by the Haywood County Board of Commissioners and posted in the Haywood County Inspections Department.

§97.20 PERMIT TRANSFERS.

Valid sign permits may be transferred to new sign owners, provided that the Sign Enforcement Officer is given notice of the transfer of ownership within 30 days of the actual transfer.

§97.21 PERMIT REVOCATIONS.

Valid sign permits for new signs may be revoked for any one of the following reasons:

- (A) Misrepresenting material facts by the applicant on the permit.
- (B) Failing to construct the sign and affix the permanent emblem within 180 days from the permit issue date.
- (C) Altering, enlarging or relocating a permitted sign or a non-conforming sign, except in conformance with the requirements of this chapter.
- (D) Allowing a sign to remain blank for a period of 180 consecutive days or reaching a state of dilapidation or disrepair as determined by the Sign Enforcement Officer.
- (E) Any violation of section §97.22 of this chapter.

§97.22 NON-CONFORMING SIGNS.

(A) All non-conforming signs in existence prior to the effective date of this chapter are permitted to continue, provided that no such sign shall be:

- (1) Changed, altered or expanded in any way which increases the sign's non-conformity; or replaced by another non-conforming sign, except that copy may be changed on an existing sign;
- (2) Relocated, except in conformance with the requirements of this chapter;
- (3) Reestablished after it has been removed or has been abandoned for 180 days or more.

(B) If the existence of a sign prior to the adoption of this chapter is questioned, the issue will be determined by the Sign Enforcement Officer with the advice of the Haywood County Planner and the sign owner using a county roadway video tape made on March 18, 1997. Signs found to be in violation shall be removed at the owner's expense.

§97.23 NOTICE GIVEN FOR REFUSING TO ISSUE PERMIT.

The Sign Enforcement Officer shall refuse to issue a permit for a proposed sign that will not conform to this chapter and shall notify the owner of the proposed sign by first class mail as to why the proposed sign does not comply.

§97.24 RECONSTRUCTION OF DAMAGED SIGNS.

(A) Any conforming sign which has been damaged may be repaired and used as before, provided all repairs are initiated within 30 working days and completed within 60 working days of such damage. However, if the sign should be declared unsafe by the Sign Enforcement Officer, the owner of the sign, or the owner of record of the real property whereon the sign is located, shall immediately correct all unsafe conditions to the Sign Enforcement Officer's satisfaction.

(B) As a courtesy to the sign owner, if the Sign Enforcement Officer discovers that a sign is damaged or is in an unsafe condition, the Sign Enforcement Officer will promptly notify either the sign owner or the owner of record of the real property whereon the sign is located. The affirmative duty and liability shall, however, remain with the owner of the sign to keep each sign in a safe and undamaged condition in accordance with the terms of this chapter.

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ADMINISTRATION, ENFORCEMENT, APPEALS, PENALTIES

§97.25 ADMINISTRATION.

The Haywood County Planning Department shall be responsible for the administration and enforcement of this chapter. The Planning Director shall appoint a Sign Enforcement Officer to administer and enforce this chapter. The Sign Enforcement Officer shall have the following authority:

(A) To issue a Violation Notice. A Violation Notice shall be delivered by certified mail, return receipt requested, or by such other method as allowed by law, to the owner of the sign in violation of the chapter. Whenever the owner of the sign cannot be located and notified, said notice shall be delivered to the owner of record of the real property whereon the sign is located. The time period provided herein shall commence upon receipt of such Violation Notice. The Violation Notice shall identify the sign and shall describe the nature of the violation, refer to the section of the chapter violated, specify in detail what action must be taken to correct the violation, and specify a reasonable time limit of up to 30 working days within which the violation must be corrected.

(B) To issue a Compliance Order for any sign not corrected within the time allotted under the Violation Notice, or for a prohibited sign as established by this chapter. A Compliance Order shall be delivered to the sign owner or to the owner of record of the real property whereon the sign is located in the same manner as set out for a Violation Notice and shall not be effective until received. The Compliance Order recipient shall be allowed 30 calendar days to remove the subject sign at his expense. The Compliance Order shall identify the sign and refer to the section of the chapter violated.

(C) To issue an Unsafe Sign Notice. Should any sign become imminently unstable or in danger of falling or otherwise unsafe, an Unsafe Sign Notice shall be delivered to the sign owner or to the owner of record of the real property whereon the sign is located in the same manner as set out for a Violation Notice, except that the recipient of the notice shall immediately, in the case of imminent danger, secure or remove the sign in a manner to be approved by the Sign Enforcement Officer in conformance with the provisions of this chapter. If the condition prompting the notice is not corrected within 24 hours after receipt of the notice, the Sign Enforcement Officer shall have the authority to remove the sign at the recipient's expense.

§97.26 APPEALS.

(A) Violation Notices, Compliance Orders and other decisions issued by the Sign Enforcement Officer may be appealed to the Haywood County Planning Board. Appeals shall be made in writing and submitted to the Sign Enforcement Officer within 30 ~~working~~ days of receipt of notice, and in accord with N.C.G.S. 160D-405. Pending appeal, the time limits set out in the notice or order shall be suspended. The Planning Board shall conduct its proceedings in accord with N.C.G.S. 160D-406. If the Planning Board finds that the action of the Sign Enforcement Officer has been taken for good cause and in accordance with this chapter, it shall so declare and the time period for compliance shall

run from the issuance of that board's findings. If the Planning Board sustains the appeal of the petitioner, no further action will be taken by the Sign Enforcement Officer.

(B) An appeal of the Planning Board's decision may be made to the Haywood County Board of Commissioners, provided said appeal is made in writing within 30 days of the Planning Board's decision, with the Commissioners' proceedings to be held in accord with N.C.G.S. 160D-406.

§97.27 VIOLATIONS AND PENALTIES.

After due notice and order as provided above for any violation of the terms of this chapter, the Sign Enforcement Officer may issue a citation imposing a penalty of not more than one hundred dollars (\$100) on the owner of the sign in question or on the owner of record of the real property whereon the sign is located whenever the owner of the sign cannot be located and notified of said citation. In the case of continuing violation, each 24 hour period in which the violation exists shall constitute a separate violation. In addition to the above described penalty, Haywood County may enforce this chapter by any one or more of the remedies authorized by Chapter 153A-123 of the General Statutes, with the exception of 153A-123(b).

LEGAL PROVISIONS

§97.28 CONFLICT WITH OTHER LAWS.

Whenever the regulations of this chapter conflict with the requirements of another statute, the more restrictive standard shall govern.

§97.29 VARIANCES.

(A) The Haywood County Planning Board is hereby empowered to vary or adapt the strict application of the requirements of this chapter. A variance may be appropriate whereby reason of exceptional narrowness, shallowness, or shape or by reason of other exceptional topographic conditions or other extraordinary and exceptional situation or conditions on a piece of property, the strict application of the following regulations enacted under this chapter would result in peculiar, exceptional and undue hardship on the owner of such property: sign setback and sign height. The following regulations enacted in this chapter are not to be considered for a variance and are not appealable: maximum allowable sign area, sign spacing, total number of sign faces per directional flow of traffic, sign illumination and regulations that protect public safety.

(B) Upon denial of a sign permit by the Sign Enforcement Officer, a property owner or sign contractor may apply to the Planning Board for a variance. The Planning Board will conduct its proceedings for the consideration of the variance in accord with N.C. G.S. 160D-406. No variance in

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Control

the strict application of the provisions of this chapter shall be granted by the Planning Board unless it finds that the strict application of the provisions would cause exceptional hardship to the property owner, and that the hardship shall not be the result of the applicant's own actions. In general, the power to authorize a variance from the terms of this chapter shall be sparingly exercised. It is the intent of this chapter that the variance be used only to overcome some exceptional physical condition of a parcel of land which poses practical difficulty and prevents the owner from obtaining the full use and purpose of the sign as intended by this chapter. Any variance granted shall be the minimum adjustment necessary for the reasonable use of the sign.

(C) The applicant must prove that the variance will not be contrary to the public interest and that practical difficulty and unnecessary hardship will result if it is not granted. The Planning Board may prescribe any safeguard that it deems necessary to secure substantially the objectives of the regulations or provisions to which the variance applies.

(D) Appeal from the Planning Board denial of a variance may be made to the Superior Court of Haywood County in accord with N.C.G.S. 160D-406(k).

§97.30 SEPARABILITY.

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

§97.31 EFFECTIVE DATE.

This chapter shall take effect and be enforced on and after the date of its adoption by the Haywood County Board of Commissioners, this 1st day of May 1997.

CHAPTER 114: JUNKYARDS AND OTHER FACILITIES

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(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.01 DEFINITIONS.

For the purposes of this Chapter, certain terms and words are hereby defined; words used in the present tense shall include the future; words used in the singular number shall include the plural number, and the plural the singular; and the word "shall" is mandatory and not directory.

ACTIVITY. The use of a land parcel or facility for a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

AUTOMOBILE GRAVEYARD. More than 10 vehicles meeting the definition of junk motor vehicle as defined in this chapter located upon a land parcel that has not been issued a permit as a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

BUILDING. Any structure having a roof supported by columns or walls, and designated or intended for the shelter, support, enclosure or protection of persons, animals or chattels.

ENCLOSED BUILDING. A permanent structure located on a parcel of land configured so as to prevent its contents from being visible from the public road or adjacent land parcel of another.

ENFORCEMENT OFFICER. Duly sworn employees of the Planning Office and Haywood County Sheriff's Office and such other persons as may be authorized by the Haywood County Board of Commissioners. The Enforcement Officer is also referred to as the "Officer" in this chapter.

ESTABLISHMENT. Any real property on which, or in which, there is operated or maintained any commercial, industrial, or service business or activity.

FACILITY. A structure used for a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

FARM OR BONAFIDE FARM. One or more contiguous land parcels under common or separate ownership on which agricultural operations are conducted as the primary use and which meets the definition of agricultural land or horticultural land under G.S. § 105-277.2 (1) and (3). For the purposes of this chapter, farm operations include the cultivation of crops, forest products, or the husbandry of livestock, poultry, or fish.

FENCE. A continuous, opaque, unperforated barrier extending from the surface of the ground to a uniform height of not less than six feet from the ground at any given point, constructed of dirt, wood, stone, steel or other metal, or any substance of a similar nature and strength.

GARAGE. An establishment which is maintained and operated for the primary purpose of making mechanical and/or body repairs to motor vehicles.

GATE. A door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which, when closed, forms a continuous barrier as a part of the fence to which it is attached.

HEALTH NUISANCE OR SAFETY HAZARD VEHICLE. A motor vehicle, used machinery or other used materials may be declared to be a health nuisance or safety hazard when it is found to be:

- (1) A breeding ground or harbor for mosquitoes or other insects, snakes, rodents or other pests; or
- (2) A point of collection of pools or ponds of water; or
- (3) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor; or
- (4) One which has areas of confinement which cannot be operated from the inside such as trunks, hoods, etc. or is a source of danger from exposed surfaces of metal, glass or other rigid materials; or
- (5) So located that there is a danger of the vehicle falling or turning over; or

(6) A point of concentration of car radiators, batteries or other materials that pose either immediate or long-term danger of environmental degradation.

HOUSING UNIT. A house, an apartment, a group of rooms, or a single room occupied or intended for occupancy as separate living quarters.

JUNK. Scrapped copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, iron, steel, or other scrap ferrous or non-ferrous materials; or wrecked, dismantled or uninhabitable mobile homes.

JUNK MOTOR VEHICLE. A motor vehicle or other motorized equipment or parts thereof that:

- (1) Is fully or partially dismantled or wrecked; or
- (2) Cannot be self-propelled in its present condition; or
- (3) Does not display a current license plate.

JUNKYARD. Any land parcel which is maintained, operated, or used for storing, keeping, buying or selling junk, or junk motor vehicles. The term "junkyard" shall not include any county-operated landfills, collection, or recycling facilities.

JUNKYARD CONTROL ACT. G.S. § 136-141 through 155 (Article 12) which delegates to the N.C. Department of Transportation the responsibility to regulate "junkyards" and "automobile graveyards" located on interstate and federal-aid primary system highways.

LAND PARCEL. A tract of land which is separately described by the Haywood County Land Records/GIS Office.

MOTOR VEHICLE. Any machine designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

MOTOR VEHICLE STORAGE AREA. One or more contiguous land parcels under common or separate ownership where junk motor vehicles are stored.

OPAQUE. Impervious to light.

RECYCLING FACILITY. A temporary or permanent site at which glass, aluminum cans, paper, plastic, clothes or similar materials commonly collected for recycling are collected and moved off site or kept on site in enclosed buildings, storage bins, solid waste containers, truck trailers or other rolling stock.

SERVICE STATION. An establishment which is maintained and operated for the purpose of making mechanical repairs, servicing and/or washing of motor vehicles.

USED CAR LOT. An establishment which is maintained and operated for the purpose of selling used automobiles under a license issued by North Carolina Division of Motor Vehicles.

VECTOR. An organism that carries pathogens from one host to another.

VEGETATION. All season or evergreen vegetation including evergreen trees with leaves or foliage at all seasons of the year. Examples are white pine, southern yellow pine, hemlock and spruce trees.

WIRE FENCE. A continuous, translucent, perforated barrier extending from the surface of the ground to a uniform height of not less than six feet from the ground at any given point, constructed of wire, steel or nylon mesh, or any substance of a similar nature and strength, but which perforations or openings are no larger than 16 square inches.

WRECKER SERVICE. A land parcel which is used for the purpose of storing motor vehicles.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.02 FINDINGS, PURPOSES AND OBJECTIVES.

It is hereby found that automobile graveyards and health nuisance or safety hazard vehicles are inherently dangerous and should be prohibited and that junkyards, service stations, garages, used car lots, wrecker services, or motor vehicle storage areas should be regulated.

The purposes and objectives of this chapter include the following:

- (1) To promote the health, safety and welfare of the citizens of Haywood County;
- (2) To protect citizens and residents;
- (3) To promote or enhance the protection of property values throughout the county;
- (4) To attract tourists and promote the prosperity, economic well-being and general welfare of the county;
- (5) To protect surface and groundwater quality; and
- (6) To preserve and protect the natural environment in Haywood County.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.03 GEOGRAPHIC COVERAGE.

These regulations shall be in effect in all unincorporated portions of Haywood County which are not under the jurisdiction of any municipality.

(Am. Ord passed 08-21-06)

§ 114.04 GENERAL STANDARDS.

(A) All junkyards which are established from and after the effective date of this chapter (November 1, 1997) and any service station, garage, used car lot, wrecker service, or motor vehicle storage area shall meet the following standards:

(1) A minimum setback of 30 feet from any public or private road surface and outside the right of way of any public or private road; and

(2) Screened as herein provided, or not visible from the main-traveled way and adjacent properties at any season of the year, or fenced, or fenced and screened and maintained as provided for in § 114.07, subsection (B); and

(3) Not be located closer than 500 feet of a residence, school or business; and

(4) Have a 50 foot vegetative buffer from all perennial streams or water bodies as shown on the U.S.G.S. topographic map.

(B) The following criteria shall be applicable to pre-existing junkyards which are registered within 180 days of November 1, 1997, the original effective date of this chapter and service stations, garages, used car lots, wrecker services, or motor vehicle storage areas that are registered within 30 days of May 1, 2000 and no portion of any such junkyard, service station, garage, used car lot, wrecker service, or motor vehicle storage area shall be operated, maintained or expanded, except those meeting at least one of the following conditions:

(1) Those which are screened by natural land features or vegetation, berms, plantings, fences or other appropriate means which sufficiently preserves the policy and intent of this chapter, or are screened and/or fenced in accordance with § 114.07; or

(2) Those which are located where the topography and terrain of adjacent lands is such that screening would be ineffective or useless. In these instances, the Enforcement Officer may waive all or part of the fencing or screening requirements, but shall require fencing and screening insofar as is practical and feasible, at all points where such fencing and/or screening shall be necessary to screen or partially screen the view of the property or a health nuisance or safety hazard vehicle as defined by this chapter.

(C) Automobile graveyards are prohibited.
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.05 ADDITIONAL STANDARDS.

All junkyards, service stations, garages, used car lots, wrecker services, and motor vehicle storage areas which are established from and after the effective date of this chapter (November 1,

1997), or that have been issued a current valid permit to establish, operate or maintain a junkyard, as provided in § 114.10 hereof shall meet the following additional standards:

(1) **JUNKYARDS** that store more than ten junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(2) **SERVICE STATIONS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(3) **GARAGES** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(4) **USED CAR LOTS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(5) **WRECKER SERVICES** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(6) **MOTOR VEHICLE STORAGE AREAS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(Ord. Passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.06 EXEMPTIONS.

The following are exempted from regulation by this chapter:

(1) Recycling facilities using enclosed structures or solid waste containers, bins, truck trailers and rolling stock to store materials and equipment; or

(2) Any bona fide farm; or

(3) Motor vehicles that are not visible from outside an enclosed building and are listed as taxable personal property in the Haywood County Tax Assessors Office; or

(4) Abandoned vehicles as defined in G.S. § 153A-132.

(Ord. Passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.07 FENCING AND SCREENING REQUIREMENTS.

All new and pre-existing facilities, land parcels, or activities regulated in accordance with this chapter shall be operated subject to the following fencing and screening conditions:

(A) New land parcels created, activities commenced or facilities established after the effective date of this chapter shall comply with the chapter by registering, obtaining a permit, meeting the requirements of § 114.04 (A) and meeting the following fencing and screening requirements of this section:

(1) The facility, parcel, or activity shall be entirely surrounded by:

(a) an opaque fence at least six feet in height; or

(b) by either a woven or welded wire (14 gauge minimum) fence at least six feet in height; or

(c) chain link fence a minimum of six feet in height.

With respect to (b) and (c) above, there shall be vegetation that is at least three feet high and no more than six feet apart when planted. The vegetation shall be planted at the time the facility begins operation, or at the next appropriate planting time. The fence and vegetation shall surround the minimum area necessary for the facility to not be visible from a point at the same elevation as the facility. The vegetation shall be planted on the outbound side of the fence, contiguous to, and not more than eight feet from the fence. The vegetation shall be maintained as a continuous, unbroken hedgerow for the period the property is used as a regulated facility. Each owner, operator, or maintainer of a facility shall utilize good horticultural techniques such as pruning, mulching and proper fertilization, so that the vegetation will have maximum density and foliage. Dead or diseased vegetation shall be replaced at the next appropriate planting time.

(2) All operations, equipment, junk and/or junk motor vehicles shall be kept within the confines of the fence or enclosed building at all times.

(B) Pre-existing activities regulated and operating with a proper business license or valid tax number from the North Carolina Department of Revenue on the effective date of this chapter (November 1, 1997) shall comply with this chapter by obtaining a permit as provided in § 114.09 and meeting the requirements for pre-existing service stations, garages, used car lots, wrecker services, junkyard, or motor vehicle storage areas, as set forth in § 114.04, General Standards, subsections B(1) or B(2), or meeting one of the following conditions:

(1) Remove all junk, vehicles or equipment that may be located within 15 feet of a public or private road surface to an area further than 15 feet from the road surface; and install a fence with an all-season vegetation screening between junk materials and property lines; or

(2) Screen and fence the junkyard in accordance with the screening and fencing provisions of § 114.07 (B) for new junkyards; provided, however, if topography renders fencing and screening useless and ineffective, the Enforcement Officer may waive all or part of the fencing and screening requirements as provided in § 114.04 (B)-(3) of this chapter; or

(3) Place in an enclosed building all items regulated by this chapter.
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.08 MAINTENANCE.

All junkyards, service stations, garages, used car lots, wrecker services, or motor vehicle storage areas shall be maintained to protect the public from health nuisances and safety hazards. The Enforcement Officer shall inspect each facility once each year to determine that the chapter provisions are being followed. The Enforcement Officer may call upon the health department for advice and consultation as needed regarding vector or rodent problems. Should vectors be identified, the owner/operator/maintainer shall be notified of a violation in writing. Within 30 days of the receipt of the letter, the owner/operator/maintainer shall submit satisfactory evidence to the health department that vectors have been eliminated. Failure to comply with this section may result in revocation of the permit as well as other penalties and remedies for violation as provided for in § 114.13.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.09 REGISTRATION AND PERMITTING OF PRE-EXISTING JUNKYARDS, SERVICE STATIONS, GARAGES, USED CAR LOTS, WRECKER SERVICES, AND MOTOR VEHICLE STORAGE AREAS.

All owners, operators or maintainers of junkyards existing on the effective date of this chapter (November 1, 1997) shall register same with the Enforcement Officer within a period of 180 days beginning with the effective date of this chapter. All owners, operators or maintainers of service stations, garages, used car lots, wrecker services, and motor vehicle storage areas shall register same with the Enforcement Officer within 30 days from May 1, 2000. All existing junkyards, service stations, garages, used car lots, wrecker services, and motor vehicle storage areas that have not been registered within the stated time shall be in violation of this chapter. Following registration, a permit shall be applied for and obtained as provided for in § 114.11.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.10 NON-CONFORMING PRE-EXISTING JUNKYARDS, SERVICE STATIONS, GARAGES, USED CAR LOTS, WRECKER SERVICES, AND MOTOR VEHICLE STORAGE AREAS.

(A) All existing junkyards at the effective date of this chapter, registered in accordance with the preceding section, shall be granted a compliance period of 12 months from the effective date of registration to conform to the chapter. All existing junkyards that have not registered within this period shall be in violation of this chapter. The Enforcement Officer shall monitor such facility at least annually.

(B) All service stations, garages, used car lots, wrecker services, and motor vehicle storage areas existing at the effective date of this chapter, registered in accordance with § 114.09, shall be granted a compliance period of 90 days from the effective date of registration to conform to the chapter. All existing facilities that have not registered within this period shall be in violation of this chapter. The Enforcement Officer shall monitor each facility at least annually. (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.11 PERMIT REQUIRED.

No person, firm or business entity shall establish, operate or maintain a junkyard, service station, garage, used car lot, wrecker service, or motor vehicle storage area at any single location without obtaining a permit for that location. Application for the permit shall be made to the Enforcement Officer, on such forms as he shall prescribe. A plan prepared by the applicant shall be submitted as part of the permitting process.

The plan shall indicate setbacks, location of road rights-of-way, all proposed or existing structures, driveways, entrances, fencing, screening, types of fencing, types of screening, dimensions, gross acreage, owner(s) names(s), address(es), preparer of plan name(s) and address(es). Plans may be drawn to scale or freehand with distances marked, on paper large enough to show details. Three (3) copies shall be submitted.

No expansion, whether pre-existing or newly permitted, may be undertaken until a permit as a new facility is first obtained in accordance with this Section. (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.12 ENFORCEMENT PROVISIONS.

This chapter shall be enforced by the Enforcement Officer. The Officer may call upon other agencies, departments, or offices as necessary to assist in the enforcement of this chapter.

In addition, whenever the Officer receives a written complaint alleging a violation of this chapter, the Officer shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken. The complainant shall provide their name, address, and telephone number upon making a written complaint.

The owner, tenant or occupant of any building or land or part thereof and agent or other person who participates in, assists, directs, creates, or maintains any junkyard, service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area that is contrary to the requirements of this chapter, shall be held responsible for the violation of this chapter and shall suffer the penalties and be subject to the remedies herein provided.

The following procedure shall apply upon discovery of a violation:

- ~~(1) (1) — If the Officer finds that any provision of this chapter is being violated, he~~
~~The Enforcement Officer shall sendgive a written notice of violation to the person~~
~~responsible for such violation, indicating party, in accordance with the provisions of~~
~~N.C. G.S. Chapter 160D-404. In an appropriate case, the nature of Enforcement~~
~~Officer may issue a stop-work order in accordance with N.C. G.S. Chapter 160D-~~
~~404(b) and seek the violation, ordering remedies of Chapter 160D-404(c).~~
- ~~(1)(2) Appeals from the action necessary to correct it, and advising decisions of~~
~~the violator of Enforcement Officer may be made to the number of days within~~
~~which the violation shall be corrected. The violator shall be informed of his right to~~
~~appeal to the County Board of Commissioners in accordance with Chapter 160D-~~
~~405 and -406.~~

~~———— (2) Notwithstanding the foregoing, in cases when delay would seriously threaten the~~
~~effective enforcement of this chapter or pose a danger to the public health, safety or welfare, the~~
~~Enforcement Officer may seek enforcement without prior written notice by invoking the penalties~~
~~authorized in this section.~~

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.13 PENALTIES AND REMEDIES FOR VIOLATIONS.

Violations of the provisions of this chapter or failure to comply with any of its requirements, including violations of any conditions and safeguards established, shall constitute a misdemeanor, punishable by a fine of up to \$50.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.

Any act constituting a violation of the provisions of this chapter or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$25.00 per violation. Each day shall constitute a separate violation. If the offender fails to pay this penalty within 10 days after being served with a notice of violation, the penalty may be recovered by the county in a civil action in the nature of a debt.

This chapter may also be enforced by appropriate equitable action. Such remedy may include court order of abatement as part of a judgment in the cause. The abatement order may include actions required to make the facility, land parcel or activity comply with the provisions of this chapter at the owner's expense.

Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this chapter. In addition to the foregoing enforcement provisions, this chapter may be enforced by any remedy provided in G.S. § 153A-123, including, but not limited to, all appropriate equitable remedies provided in G.S. § 153A-123(d) and particularly the remedy of injunction and order of abatement as allowed in G.S. §153A-123(e).

Any building permit(s) associated with property that has a permit may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit holder

fails to develop or maintain the property in accordance with the plans submitted, the requirements of this chapter, or any additional requirements lawfully imposed.

Before such other permit(s) may be revoked, the permit holder shall be given 10 days written notice of intent to revoke a permit. The notice shall inform the holder of the reasons for the revocation and of his right to obtain an informal hearing on the allegations before the County Manager. If any permit is revoked, the Enforcement Officer shall provide to the permittee a written statement of the decision and the reasons why the action has been taken.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.14 APPEALS AND VARIANCES.

~~(A)~~ ~~(A)~~—Unless otherwise provided, appeals from any action taken by the Enforcement Officer shall be filed with the Board of Commissioners within 10 days of receipt of notice of such action. The Board of Commissioners shall consider the matter in accordance with the provisions of G.S. 160D-406 as a quasi-judicial proceeding.

The Board of Commissioners may authorize relief from these provisions when, in its opinion, undue hardship may result from strict compliance.

In considering the matter, the Board of Commissioners shall be governed by the conflict of interest provisions of G.S. 160D-109.

(B) The Board of Commissioners may authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in practical difficulty or unnecessary hardship. Such variance may be granted as a quasi-judicial decision in individual cases upon a finding by the Board of Commissioners that the following conditions exist:

(1) There are extraordinary and exceptional conditions pertaining to the particular place or property in question because of its size, shape or topography, that are not applicable to similar facilities governed by this chapter;

(2) Granting the variance requested will not confer upon the applicant any special privileges that are denied to operators of similar facilities governed by this chapter;

(3) A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other operators of similar facilities governed by this chapter;

(4) The requested variance will be in harmony with the purpose and intent of this chapter and will not be unduly injurious to the neighborhood or to the general welfare; and

(5) The variance requested is the minimum variance that will make possible a reasonable legal use of the land in question.

A copy of the decision by the Board of Commissioners shall be prepared and furnished to the applicant within 10 days of its rendition. In granting any variance, the Board of Commissioners may prescribe appropriate conditions and safeguards to insure conformity with this chapter. Violation of such condition and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

(C) Decision of the Board of Commissioners may be appealed. ~~A petition for a writ to the Superior Court of eertiorari may be filed~~ Haywood County in accordance with the County Clerk provisions of Court G.S. 160D-406(k) and these provisions within 30 days after the later of the following occurrences:

(1) A written copy of the Board of Commissioners decision has been filed in the office of the Enforcement Officer; and

(2) A written copy of the Board of Commissioners decision has been delivered, by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy prior to or at the hearing of the case.

A copy of the petition for writ of certiorari shall be served upon the county through the office of the County Manager.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.15 SEVERABILITY.

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

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

CHAPTER 115: WIRELESS TELECOMMUNICATIONS FACILITIES

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GENERAL PROVISIONS**§ 115.01 AUTHORITY AND PURPOSE.**

This chapter is enacted pursuant to the general police powers granted to Haywood County by North Carolina General Statutes § 153A-121 and ~~Article 18 of~~ Chapter ~~153A~~160D-932.

(A) The Haywood County Board of Commissioners finds the following facts and circumstances justify and warrant the exercise of those powers with respect to wireless telecommunications facilities in order to protect the health, safety and welfare of its citizens:

(1) Haywood County is blessed with a distinctive mountain topography and natural beauty that defines its cultural identity and provides a special sense of place, and

(2) Haywood County is home to a number of exemplary scenic and recreational resources of national significance located on Federal lands including the nation's oldest and longest scenic byway, the Blue Ridge Parkway, as well as the Appalachian Trail, Great Smoky Mountains National Park, and the Pisgah National Forest; that these scenic and recreational resources draw countless visitors from throughout the nation and drive the economic engine of Haywood County's economy, and

(3) The unregulated and uncoordinated proliferation of telecommunications towers across the region degrades the aforementioned values and qualities, detracts from the natural beauty of the mountains, and is detrimental to the health, safety and welfare of the citizens of Haywood County, and

(4) The protection of the mountains of Western North Carolina was officially recognized as an important public policy by Executive Order 74 signed on March 27, 1995 by the Governor of the State of North Carolina creating the Year of the Mountains Commission, and

(5) The Chairman of the Year of the Mountains Commission challenged local governments in Western North Carolina to protect and improve the beauty, charm and advantages of the mountains and to guide the region's long-term growth, development and destiny through sound planning, and

(6) On February 8, 1996 the President of the United States signed the Telecommunications Act of 1996 into law and Section 704 of that Act (42 U.S.C. 332(c)(7)), with limited exceptions, expressly preserves the authority of State and local governments and instrumentalities thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities, and

(7) The Presidential Memorandum signed by the President of the United States on August 10, 1995 and the General Services Administration Guidelines implementing Section 704(c) of the Telecommunications Act of 1996 published on March 29, 1996 specifically mandate that antenna siting on Federal properties shall comply with all state and local laws and regulations.

(B) In order to accommodate the wireless communication needs of residents, businesses and visitors while protecting the health, safety and welfare of its citizens, the Haywood County Board of Commissioners finds that enactment of this chapter is necessary and advisable in order to:

(1) Facilitate the provision of wireless telecommunications services to residents, businesses and visitors in Haywood County;

(2) Regulate in an orderly manner the placement, construction, modification, maintenance and removal of wireless telecommunication facilities;

(3) Provide a uniform and comprehensive framework for evaluating proposals for wireless telecommunication facilities;

(4) Preserve the scenic and visual character of Haywood County by encouraging the location, design and architectural treatment of wireless telecommunication facilities to minimize their visibility from public places, to avoid intrusion into public vistas, to avoid disruption of the natural and built environment, and to insure harmony and compatibility with surrounding land use patterns;

(5) Encourage the use of existing and approved structures to accommodate wireless telecommunications infrastructure prior to approving additional structures; and

(6) Avoid potential injury to persons and properties from tower failure through structural standards and setback requirements.

§ 115.02 JURISDICTION.

This chapter shall regulate the placement, construction and modification of wireless telecommunications facilities on private and public lands throughout Haywood County, except that it shall not be enforced within any incorporated municipality in the County (or within any municipality's extraterritorial jurisdiction where such jurisdiction is being exercised with respect to wireless telecommunication facilities). The following types of installations are excluded from the scope of this chapter:

(A) Amateur radio facilities with antennas mounted on supporting structures less than 100 feet in height.

(B) Television, AM radio and FM radio broadcast transmitting antennas and towers.

(C) Residential antennas for receiving television, AM radio or FM radio broadcast signals.

(D) Customer premise antennas for receiving microwave or satellite signals, provided such antennas are less than one meter (39.4 inches) in height or diameter and are mounted on a support structure less than twelve feet in height.

§ 115.03 DEFINITIONS.

The following words, terms and phrases shall have the specific meaning ascribed to them herein. All other words, terms and phrases shall have their ordinary meaning of common usage in the English language.

ALTERNATIVE STRUCTURE. A structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. Alternative structures include, but are not limited to, buildings, silos, water tanks, pole signs, lighting standards, steeples, billboards and electric transmission towers.

ANTENNA. Any exterior transmitting or receiving device which radiates or captures electromagnetic waves (excluding radar signals).

ANTENNA, DUAL-BAND/MULTI-BAND. An antenna with separate elements for two or more commercial wireless service frequency bands (example: Cellular and PCS or Specialized Mobile Radio).

CO-LOCATION. The placement of additional antennas or antenna arrays on an existing or approved telecommunications tower (or alternative structure), the sharing of an antenna or antenna array, or otherwise sharing a common location by two or more FCC licensed providers of personal wireless services. Co-location includes antennas, transmitters, receivers and related electronic equipment, cabling, wiring, equipment enclosures and other support equipment or improvements located on the tower site.

COMMERCIAL WIRELESS SERVICE PROVIDER. Persons who operate radio systems requiring an FCC license and who employ those facilities to provide fixed wireless (including microwave) or mobile wireless communication services to third parties for compensation. Commercial wireless service providers include, but are not limited to, Cellular, Personal Communication Services (PCS), Specialized Mobile Radio (SMR), Enhanced Specialized Mobile Radio (ESMR), paging, and Competitive Local Exchange Carriers (CLEC) utilizing point-to-multipoint microwave.

DISCERNIBLE. Capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower.

ELECTRIC DISTRIBUTION TOWERS. Metal or wooden towers and poles used to suspend wires transporting electricity between substations at the terminus of transmission lines and individual customer premises.

ELECTRIC TRANSMISSION TOWERS. Metal or wooden towers and poles used to suspend wires transporting electricity between generating plants and substations supplying electricity to distribution and feeder lines.

EQUIPMENT ENCLOSURE. A building, cabinet or shelter used to house transmitters, receivers and other electronic equipment and accessories at a wireless telecommunication facility.

FAA. Federal Aviation Administration.

FALL ZONE. An area around the base of a telecommunication tower required to be kept clear of buildings, other than equipment enclosures associated with the wireless telecommunication facility, to contain debris in the event of a tower structural failure.

FCC. Federal Communications Commission.

FUNCTIONALLY EQUIVALENT SERVICES. FCC-licensed providers of Commercial Mobile Radio Services (CMRS) classified as Cellular, Personal Communication Services (PCS), Paging, Specialized Mobile Radio (SMR) and Enhanced Specialized Mobile Radio (ESMR).

GOVERNMENTAL USER. Federal, State or local governments, or agencies or instrumentalities thereof, volunteer fire departments or rescue squads which operate radio systems (including microwave) requiring an FCC license and which employ those facilities exclusively for intra-governmental or inter-governmental public service, public safety or administrative purposes.

MAXIMUM CREDIBLE EARTHQUAKE. The maximum earthquake predicted to affect a given location based on the known lengths of the active faults in the vicinity.

MODIFICATION. The addition, removal, repositioning (other than downtilt adjustments), alteration or other material change in the number or type of antennas employed in a wireless telecommunications facility; changes in the height, size, shape or appearance of telecommunications towers; and increases in the number or size of equipment enclosures or other improvements at an existing or approved wireless telecommunication facility.

ORDINANCE ADMINISTRATOR. Person designated by the Board of Commissioners to oversee and administer review and approval of applications and permits for wireless telecommunication facilities.

PERSON. Any individual, partnership, limited partnership, company, corporation, trust, estate, agency, association or other legal entity and their successors and assigns.

PRIVATE BUSINESS USER. Persons who operate radio facilities (including microwave) requiring an FCC license solely for intra-company communications and who do not employ those facilities to offer fixed or mobile wireless communication services to third parties for compensation.

PROTECTED MOUNTAIN RIDGE. A ridge at or above 3,000 feet with an elevation of five hundred (500) feet or more above the elevation of an adjacent valley floor.

REPLACEMENT TOWER. A telecommunications tower intended to replace an existing approved tower where such replacement tower is (1) at or within 50 feet of the existing tower base, and (2) no higher than the existing tower.

RIDGE. The elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.

TELECOMMUNICATIONS TOWER. Any tower, pole or similar structure twenty (20) feet or more in height, used to support one or more antennas including self-supporting lattice-framed towers or monopoles and guyed towers.

TEMPORARY FACILITY. A vehicle-mounted or portable wireless telecommunications facility including portable towers, antennas, equipment enclosures, generators and associated electronics, cabling, wiring and hardware.

TOWER BASE. The foundation, usually concrete, on which the telecommunications tower is situated. For measurement calculations, the tower base is the actual or geometric center of the tower.

TOWER HEIGHT. The vertical distance measured from the tower base to the highest point on a telecommunications tower, including any antennas or other equipment affixed thereto, but excluding any lightning protection rods extending above the tower and attached equipment.

TOWER SITE. The land area which contains, or will contain, a proposed telecommunications tower, and related equipment enclosures and other improvements.

VEGETATIVE CANOPY. Trees which create a roof-like layer of spreading branches.

VISIBLE. Capable of being seen by the unaided eye in daylight.

WIRELESS TELECOMMUNICATION FACILITY. Equipment at a single location used by a private business user, governmental user or commercial wireless service provider to transmit, receive or relay electromagnetic signals (including microwave). Such facility includes antennas or antenna arrays, telecommunications towers, support structures, transmitters, receivers, base stations, combiners, amplifiers, repeaters, filters or other electronic equipment; together with all associated cabling, wiring, equipment enclosures and other improvements.

WIRELESS TELECOMMUNICATION FACILITIES

§ 115.20 SPECIAL USE PERMIT REQUIRED.

It shall be unlawful for any person to place, construct or modify any wireless telecommunication facility within the jurisdiction of this chapter without first obtaining a Wireless Telecommunication Facility Special Use Permit. Permits shall be regulated as follows:

(A) Applications for Special Use Permits will be classified and processed in one of the following categories depending on the characteristics of the proposed installation:

- (1) Installations utilizing existing structures
- (2) Telecommunications towers
- (3) Modifications to approved facilities

(B) Special Use Permits for wireless telecommunication facilities shall be valid for an initial period of five (5) years. Upon application by the holder of a Special Use Permit within sixty (60) days prior to the expiration of the initial permit period, a review shall be conducted to determine whether and under what conditions the Special Use Permit may be renewed for successive five-year periods. Costs associated with the review process shall be borne by the permittee. Grounds for nonrenewal or revocation include:

(1) The use involved is no longer allowed or fails to comply with the relevant requirements of this chapter or any subsequently enacted land use regulations in effect at the time of renewal and the permittee has failed to supply reasonable assurances to the Ordinance Administrator that the facility will be brought into compliance within ninety (90) days of the initial permit's expiration; or

(2) The permittee has failed to comply with the conditions of approval contained in its Special Use Permit; or

(3) The facility has not been properly maintained; or

(4) The facility has not been upgraded to minimize its impact, including community aesthetics, to the greatest extent permitted by the technology that exists at the time of renewal; or

(5) The permittee has ceased to operate the facility for a continuous period of ninety (90) days or more.

(C) Changes in Special Use Permit conditions at each five-year review shall be limited to changes in tower height. Tower height may not be reduced to such an extent that it displaces a wireless telecommunication facility co-located on the tower.

(D) If a Special Use Permit is not renewed prior to its expiration, it shall automatically become null and void without notice and hearing five (5) years after it is issued or upon cessation of use for more than ninety (90) days, whichever comes first. Within ninety (90) days after expiration or revocation of a Special Use Permit, or the abandonment or cessation of operations of a facility, all installed above-ground improvements (not including any part of the foundation) shall be removed from the property.

(E) A Special Use Permit shall become null and void if the permitted facility is not constructed and placed in service within one year of the date of the County's approval provided, however, that the permit may be extended one time for six (6) months upon payment of an additional \$250 fee if the Ordinance Administrator determines that substantial construction has commenced before expiration of the initial year.

(F) Nonconforming telecommunication towers in existence on the date of enactment of this chapter shall be exempt from the Special Use Permit requirements of this section. However, any increase in height of such a nonconforming tower shall be subject to the provisions of this section.

§ 115.21 APPLICANT'S CERTIFICATIONS.

An application for a Special Use Permit for a wireless telecommunication facility shall not be deemed complete until the applicant certifies that:

(A) it has not constructed, maintained, operated or modified any wireless telecommunication facility within Haywood County without the approval of Haywood County; and

(B) if it has constructed, maintained, operated or modified any wireless telecommunication facility within Haywood County without the approval of Haywood County that it has ceased operating and has removed all above-ground portions of such facilities (not including any part of the foundation); and

(C) the proposed wireless telecommunication facility complies with and at all times will be maintained and operated in accordance with, all applicable FCC rules and regulations with respect to environmental effects of electromagnetic emissions; and

(D) any telecommunication tower to be constructed as part of the proposed wireless telecommunications facility is not required to be lighted or painted by rules and regulations of the Federal Aviation Administration; and

(E) all improvements constructed as part of the wireless telecommunication facility shall comply with the Uniform Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, Uniform Fire Code, and structural standards of the Electronic Industries Association/Telecommunications Industry Association, where applicable.

§ 115.22 FCC LICENSE REQUIRED.

The applicant for a wireless telecommunication facility Special Use Permit must currently be licensed by the FCC to provide fixed or mobile wireless communication services or, if the applicant is not such an FCC licensee, must demonstrate that it has binding commitments from one or more FCC licensees to utilize the proposed wireless telecommunication facility. An application for a Special Use Permit shall not be deemed complete unless it is accompanied by a copy of each applicant's or tenant's FCC license and, if the applicant is not an FCC licensee, the Ordinance Administrator shall verify that the applicant holds executed leases from each FCC licensee proposing to locate wireless facilities at the site. If a copy of an FCC license has previously been supplied to the Ordinance Administrator in conjunction with an application for a wireless telecommunication facility, the Applicant may certify that such license remains valid in lieu of submitting an additional copy of such license.

§ 115.23 ELECTROMAGNETIC EMISSIONS COMPLIANCE.

Wireless telecommunication facilities shall at all times comply with FCC standards for radio frequency emissions.

§ 115.24 LIABILITY INSURANCE.

Prior to the issuance of a Special Use Permit the applicant shall be required to provide certificates of insurance demonstrating it has a minimum of \$1,000,000 in general liability insurance covering any liability arising out of its construction or operation of the wireless telecommunication facility. The applicant shall be required to maintain such coverage in full force and effect until such time as all above-ground portions of the facility (not including any part of the foundation) have been removed and all other conditions of its Maintenance/Removal Agreement have been satisfied.

§ 115.25 PUBLIC PROPERTY PREFERENCE.

Applicants shall first be encouraged to consider properties owned by Haywood County, or instrumentalities thereof, before considering private properties as locations for wireless telecommunication facilities. Public properties shall be subject to the same restrictions and standards of appropriateness as private properties.

§ 115.26 INSTALLATIONS UTILIZING EXISTING STRUCTURES.

It is the policy of Haywood County to encourage use of existing structures and co-location. In furtherance of these policy objectives, wireless telecommunication facilities which do not require the placement or construction of a telecommunications tower, increases in tower height, or increases in height of alternative structures, and which otherwise meet the requirements of this chapter, shall enjoy a streamlined approval process. For purposes of this chapter, existing telecommunication towers or alternative structures requiring an increase in height to accommodate a wireless telecommunication facility shall be treated the same as applications for a new or additional telecommunication tower.

(A) Approval process. Applications for Special Use Permits for wireless telecommunication facilities which do not require a new or additional telecommunications tower, increases in tower height, or increases in height of alternative structures, may be approved by the Ordinance Administrator without public hearing. Applications shall be in a form and shall contain such information as required by this chapter and, in addition, such other information as the Ordinance Administrator shall deem necessary and appropriate. An application shall not be deemed complete until the application fee and maintenance/removal bond have been received by the County.

(B) Application fee. Payment of a \$500 nonrefundable application fee shall be required. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the application fee.

(C) Maintenance/Removal bond. An applicant for a Special Use Permit for a wireless telecommunication facility that does not include a new or additional telecommunication tower, or require an increase in tower height or heights of alternative structures, shall be required to post a \$5,000 cash bond, or other security satisfactory to the County, to secure the costs of maintaining the exterior appearance of the facility if the wireless provider fails to continually do so, or removing such facility in the event the applicant shall fail to do so within 90 days of abandonment or cessation of operation of the facility. The applicant shall be required to continue such bond or other security until such time as all above-ground portions of the facility (not including any part of the foundation) have been removed and all other requirements of its Maintenance/Removal Agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the maintenance/removal bond.

§ 115.27 MAINTENANCE/REMOVAL AGREEMENT.

An application for a Special Use Permit shall be accompanied by those portions of an executed copy of a lease requiring the applicant to remove all above-ground portions of wireless telecommunication facilities (not including any part of the foundation) no later than ninety (90) days after cessation of operations. In addition, each applicant for a wireless telecommunication facility Special Use Permit shall execute a standard facility maintenance/removal agreement prior to issuance of the Special Use Permit. Said agreement shall bind the applicant and the applicant's successors-in-interest to properly maintain the exterior appearance of and ultimately remove the facility in compliance with the provisions of this chapter and any conditions of approval. It shall further bind them to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the County for all costs incurred to perform any work required of the applicant by the agreement that the applicant fails to perform. Such costs shall include, but not be limited to, administrative and job supervision costs. It shall also specifically authorize the County and/or its agents to enter onto the property and undertake said work so long as the Ordinance Administrator has first provided the applicant the following written notices at the applicant's last known address:

(A) An initial compliance request identifying the work needed to comply with the agreement and providing the applicant at least thirty (30) days to complete the work; and

(B) A follow-up notice of default specifying the applicant's failure to comply with the work within the time period specified and indicating the County's intent to commence the required work within ten (10) days.

§ 115.28 ABANDONMENT AND REMOVAL.

Abandoned or unused wireless telecommunication facilities shall be removed as follows:

(A) All abandoned or unused wireless telecommunication facilities located above ground (not including any part of the foundation) shall be removed within ninety (90) days of the cessation of operations.

(B) In the event that all above ground portions of a wireless telecommunication facility (not including any part of the foundation) are not removed within ninety (90) days of the cessation of operations, the facility may be removed as provided in the applicant's Maintenance/Removal Agreement by the County and the costs of removal recovered from the applicant's bond or other security.

§ 115.29 NONCONFORMING USES.

Any wireless telecommunication facility in existence on the date of enactment of this chapter which does not comply in all respects with the provisions of this chapter shall be deemed a nonconforming use. Such pre-existing facilities may not be increased in height without complying with the provisions of this chapter. In the event such facility shall be destroyed, or suffer damage in excess of 50% of the tax value of the facility's improvements, such facility shall not be repaired or replaced and shall be removed unless any replacement facility complies in all respects with the provisions of this chapter. Except in the case of destruction or damage in excess of 50% of the tax value of the facility's improvements, technological upgrades of electronics and antennas are permitted.

TELECOMMUNICATION TOWERS**§ 115.40 APPLICATIONS FOR TELECOMMUNICATION TOWERS.**

In addition to the general requirements set forth in sections § 115.20 through § 115.29 above for wireless telecommunication facilities, applications for Special Use Permits for wireless telecommunication facilities requiring a new or additional telecommunications tower, increases in tower height, or increases in height of alternative structures, shall comply with the provisions of sections § 115.40 through § 115.52. Such applications shall be reviewed and processed in accordance with the following provisions:

(A) Approval process. Applications for telecommunications towers, increases in tower height, or increases in height of alternative structures, shall be submitted in writing to the Ordinance Administrator and shall contain all information required by this chapter as well as any additional information the Ordinance Administrator deems necessary and appropriate. A quasi-judicial public hearing shall be required before the Board of Commissioners before any decision to grant or deny an

application. Public notice of the application and hearing shall be in accordance with G.S. 160D-405-406 and the notice provisions set forth below.

(B) Application fee. Applications for a telecommunications tower Special Use Permit shall require payment of a nonrefundable \$2500 application fee. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the application fee.

(C) Retention of consultants. The County may elect to retain outside consultants or professional services to review the application and make determinations and recommendations on relevant issues including, but not limited to, verification of the applicant's due diligence, analysis of alternatives, and compliance with State and Federal rules and regulations at the applicant's sole expense (subject to a \$5,000 maximum). Any expense for consulting or professional services in excess of \$5,000 shall be borne equally by the applicant and the County. A \$5,000 cash bond, or other security satisfactory to the County, guaranteeing payment of such expenses shall be required. An application shall not be deemed complete until the application fee and bond or other security have been received by the County. The County shall require any consultants to disclose any potential conflicts of interest and to hold confidential any proprietary information supplied by the applicant. The Ordinance Administrator shall arrange an informal consultation with the applicant to review the consultant's report prior to any public hearing on the application. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.

(D) Maintenance and removal bond. An applicant for a Special Use Permit for a wireless telecommunication facility that includes a new or additional telecommunication tower, increases in tower height, or for increases in height of alternative structures, shall be required to post a \$10,000 cash bond, or other security satisfactory to the County, to secure the costs of removing all above ground portions of a wireless telecommunication facility (not including any part of the foundation) in the event the applicant shall fail to do so within ninety (90) days of cessation of operation of the facility. The applicant shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of its Maintenance/Removal Agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.

(E) Public Notice. Notice of an application for a proposed telecommunication tower shall comply with the provisions of G.S. ~~§153A-323 and §153A-343 as amended~~ 160D-601 and, at a minimum, shall comply with the following:

(1) Newspaper notice. The Ordinance Administrator shall cause a notice of any public hearing to be published as a legal advertisement in a newspaper of general circulation in Haywood County once a week for two consecutive weeks, the first publication of which shall not appear less than ten (10) days or more than twenty-five (25) days prior to the date set for public hearing. The notice shall include the date, time, and place of the hearing as well as information about the proposed telecommunication tower including its type, height, location and any other information the Ordinance Administrator shall deem necessary or appropriate.

(2) Notice to affected property owners. The applicant shall mail notice to affected property owners in accordance with the following provisions, and shall provide the Ordinance Administrator with a signed certification of compliance listing the names, addresses and means of notification before any public hearing shall be conducted:

(a) Adjacent or abutting property owners. Notice of any public hearing shall be sent by certified mail (return receipt requested) to the owners of all parcels of land adjacent to or abutting the site of the proposed telecommunication tower at the last address listed for such owners in the County property tax records.

(b) Notice to other affected property owners. Notice to all other owners of properties within a one-quarter mile radius of the proposed telecommunication tower site shall be sent by first-class mail with proper postage affixed at the last address listed for such owners in the County property tax records.

(c) Timeliness of notice. Any notices required under the above subsections shall be mailed at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing.

(3) Posted notice. A sign advertising the application for a proposed telecommunication tower, and any scheduled public hearings, shall be posted by the Ordinance Administrator in a prominent location on or near the parcel containing the proposed telecommunication tower, or on a nearby public road. Such signs shall be posted at least ten (10) days prior to any public hearings.

(4) Additional notice regarding material changes. In the event the applicant shall seek to increase the height of a proposed telecommunication tower, or move its location more than fifty (50) feet laterally, from that stated in the original notices required above, additional notice shall be required to be given in accordance with the above provisions and all required time periods shall run from the date of supplemental notification.

§ 115.41 APPLICANT'S BURDEN.

The applicant for a telecommunications tower shall bear the burden of demonstrating by substantial evidence in a written record that a *bona fide* need exists for the proposed telecommunication tower and that no reasonable combination of locations, techniques or technologies will obviate the need for, or mitigate the height or visual impact of, the proposed telecommunications tower.

§ 115.42 ELECTRIC TRANSMISSION TOWERS.

It is the policy of Haywood County to encourage the use of electric transmission towers to deploy wireless infrastructure. In furtherance of that policy objective:

(1) No telecommunications tower shall be approved if an electric transmission tower is located above or no less than twenty-five (25) feet below the ground elevation of and within a one quarter

mile radius (1320 feet) laterally of the proposed telecommunications tower site and if road access and necessary utilities can be obtained within a one quarter mile radius (1320 feet) of the existing electric transmission tower, unless the applicant can demonstrate that sufficient easements or other interests in real property cannot be obtained to accommodate the wireless telecommunication facility, or that the electric utility owning the electric transmission tower is unwilling to allow its use for wireless facilities.

(2) Electric transmission towers less than one hundred (100) feet in height may be replaced by pressure-treated wooden or metal electric transmission towers up to one hundred (100) feet in height. Such replacement shall be at the discretion of the electric utility which owns or operates the electric transmission tower, taking into account safety, service disruptions, structural capacity and structure life or duty cycle. For purposes of this chapter, such replacement electric transmission tower shall be deemed to be an existing structure.

§ 115.43 PRESUMPTION FAVORING EXISTING STRUCTURES.

A proposal for a new or additional telecommunication tower shall not be approved unless the Board of Commissioners finds that the equipment planned for the proposed tower cannot be accommodated on existing or approved towers, buildings or alternative structures more than thirty (30) feet in height (after first considering electric transmission towers) within a one-quarter mile search radius (1320 feet) of the proposed telecommunication tower site due to one or more of the following reasons:

(A) The planned equipment would exceed the structural capacity of the existing or approved tower, building or structures, as documented by a qualified and licensed North Carolina professional engineer, and the existing or approved tower, building or structure cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.

(B) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower, building or other structure as documented by a qualified and licensed North Carolina engineer and the interference cannot be prevented at a reasonable cost.

(C) Existing or approved towers, buildings or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed North Carolina professional engineer.

(D) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower, building or other structure.

§ 115.44 TOWER HEIGHT LIMITATIONS.

The height of any telecommunication tower shall be limited in accordance with the following provisions:

(A) Protected mountain ridges. Telecommunication towers located on a protected mountain ridge shall not exceed 100 feet in height and shall be subject to the following further limitations:

(1) Where the tower site is surrounded by a dense vegetative canopy within 100 feet of the tower site, the tower shall not extend more than thirty (30) feet higher than the average height of the vegetative canopy found within 500 feet of the site in the case of a single-user tower, or forty (40) feet higher in the case of a tower designed for the co-location of two or more wireless telecommunication facilities. The 100 foot maximum height may be exceeded to the extent necessary to allow these canopy clearances. If any antenna extends more than two feet from the side of the support structure, the portion of the tower extending above the vegetative canopy shall be camouflaged to appear like the top of a coniferous tree with all antennas concealed within simulated foliage.

(2) Where no vegetative canopy exists within 100 feet of the tower site, the maximum tower height shall be 60 feet. The entire tower shall be camouflaged like a coniferous tree, with all antennas concealed within simulated foliage, and the Board of Commissioners may require equipment enclosures to be placed underground or to be otherwise disguised or camouflaged to simulate structures that typically occur on landscapes similar to the proposed location.

(B) Towers visible from public roads or publicly-owned properties. Telecommunication towers that are visible from any public road, or publicly-owned property within a one-half mile radius of the proposed tower site (not including a publicly-owned parcel which is proposed as the site for the wireless facility), and which are not located on a protected mountain ridge, shall not exceed 80 feet in height, except:

(Ord. passed 2-23-98; Am. Ord. passed 11-30-98)

(1) Where the tower site is surrounded by a dense vegetative canopy within 100 feet of the tower site, the tower may extend sixty (60) feet higher than the average height of the vegetative canopy found within 500 feet of the site. If any antenna extends more than two feet from the side of the support structure, the portion of the tower extending above the vegetative canopy shall be camouflaged to appear like the top of a coniferous tree.

(Ord. passed 2-23-98; Am. Ord. passed 11-30-98)

(2) Telecommunication towers proposed for location within North Carolina Department of Transportation highway rights-of-way at or near highway interchanges, rest areas and weigh stations where two or more lighting towers exist within 500 feet of each other may be approved at a height greater than sixty (60) feet if the applicant demonstrates to the satisfaction of the Board of Commissioners that such telecommunication towers will simulate the lighting towers in height and appearance and will be clustered amidst the lighting towers so as to be unobtrusive. In no event shall such telecommunication towers exceed 100 feet in height.

(3) If any portion of a structure located within a North Carolina Department of Transportation right-of-way is used to mount cameras, instruments or sensors for governmental use, and the same structure supports or incorporates commercial wireless facilities, the governmental use shall be deemed incidental or accessory to the commercial use and the entire facility shall be treated as a commercial use for purposes of this chapter. Such structures shall be limited to sixty (60) feet in height unless they qualify as simulated lighting structures as provided above.

(4) Telecommunication towers that simulate objects that typically occur upon landscapes similar to the proposed location (except billboards, electrical transmission or telecommunication towers) may exceed sixty (60) feet in height if, in the opinion of the Board of Commissioners, the proposed structure would appear in context on the particular landscape, is aesthetically acceptable, and would be a preferable alternative to an undisguised telecommunication tower. In no event shall such telecommunication towers exceed 100 feet in height.

(C) Towers not visible from public roads or publicly-owned properties. Telecommunication towers that are not visible from any public road or publicly-owned property (not including a publicly-owned parcel which is proposed as the site of a wireless facility) within a one-half mile radius of the proposed tower site, and which are not located on a protected mountain ridge, shall not exceed 199 feet in height provided the type or height of the proposed structure, or its location, will not require painting or lighting under any FAA rule or regulation. The burden of demonstrating that a telecommunication tower is not visible from any of these vantage points shall be on the applicant.

§ 115.45 PROTECTED FEDERAL LANDS.

If a proposed telecommunication tower is to be located within one mile of Great Smoky Mountains National Park, the Appalachian Trail, or the Blue Ridge Parkway the applicant shall be required to submit a copy of its application to the appropriate Federal land manager for review and comment and shall provide a copy of its transmittal letter to the Ordinance Administrator to verify its compliance with this provision. The responsible Federal land manager shall have sixty days to review the application prior to its consideration by the Board of Commissioners.

§ 115.46 CO-LOCATION REQUIREMENTS.

To minimize cumulative visual impacts, it is the policy of Haywood County to encourage co-location of new wireless telecommunication facilities with existing and planned facilities whenever feasible and aesthetically desirable. All wireless telecommunications towers erected, constructed, or located within Haywood County shall comply with the following co-location requirements:

(A) A proposal for a new commercial wireless telecommunication tower shall not be approved unless the Board of Commissioners find that the telecommunications equipment planned for the proposed tower cannot be accommodated on existing or approved towers or alternative structures more than thirty (30) feet in height within a one-quarter mile search radius of the proposed location due to one or more of the following reasons:

(1) The planned equipment would exceed the structural capacity of the existing or approved towers, buildings or other structures, as documented by a qualified and licensed North Carolina professional engineer, and the existing or approved structure cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost;

(2) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost;

(3) Existing or approved towers, buildings or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed North Carolina professional engineer; or

(4) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower, building or other structures.

(B) Except in the case of a telecommunications tower on a protected mountain ridge, any proposed wireless telecommunication tower over sixty (60) feet in height shall be designed structurally, electrically, mechanically and in all respects to accommodate both the applicant's antennas and comparable antennas for at least one additional user. In the case of wireless telecommunication facilities placed on an electric transmission tower, co-location may not be required if the electric utility owning the tower determines that for structural, safety or operational reasons the tower cannot accommodate additional users. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

(C) Antennas or antenna arrays employed as part of a wireless telecommunication facility operated by a private business user, governmental user or commercial wireless service provider may not be co-located on a tower or other support structure used by an amateur radio operator.

(D) An application for a Special Use Permit for a wireless telecommunication facility requiring a new or additional telecommunications tower, increases in tower height, or increases in height of an alternative structure, shall not be deemed complete until the applicant provides a letter of intent agreeing to make all of its wireless telecommunication facilities (including existing facilities) within the jurisdiction of this chapter available to providers of functionally equivalent services at commercially reasonable rates. The Ordinance Administrator shall verify that the applicant has an executed lease for the property that allows the land owner and/or the permittee to enter into leases or subleases with other wireless service providers.

§ 115.47 TOWER AND ANTENNA DESIGN REQUIREMENTS.

No Special Use Permit shall be approved for a telecommunication tower, increase in tower height, or increase in height of an alternative structure, unless the Board of Commissioners finds that the design standards of this section have been met. Proposed or modified towers and antennas shall meet the following design requirements:

(A) Towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment.

(B) Guyed towers are prohibited. Commercial wireless telecommunication towers shall be of a monopole design unless the Board of Commissioners determines that an alternative design would better blend in to the surrounding environment.

(C) Use of polarized antennas which electronically combine the functions of transmit and receive antennas (rather than spatial diversity antenna arrays which rely on antennas being physically separated) and dual-band/multi-band antennas (allowing two or more providers of different types of commercial wireless services to share a common antenna) is encouraged.

(D) Antennas shall be mounted on telecommunication towers so as to present the smallest possible silhouette, profile, or cross-section. Preferred antenna mounting scenarios are, in order of descending preference:

(1) compact polarized antennas in a cylindrical unicell arrangement less than 22 inches in diameter mounted atop the tower;

(2) panel antennas flush-mounted against the tower;

(3) antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.

(E) No telecommunication tower shall have constructed thereon, or attached thereto, in any way, any platform, catwalk, crow's nest, triangular framework, climbing devices, or like structures or equipment, except during periods of construction or repair. Curved or straight davit arms or brackets used for antenna mounting shall be connected to the tower at the base of the arms or brackets only and such arms or brackets (and any antennas or hardware mounted thereon) shall not be physically interconnected with any similar arm or bracket.

(F) All equipment enclosures and other improvements accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall be maintained in good appearance and repair. No equipment enclosure may exceed ten (10) feet in height. Ground mounted equipment shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.

(G) To the greatest extent possible, wireless telecommunication facilities shall be designed to survive a natural disaster without interruption in operation. Toward this end, the following measures shall be implemented:

(1) Non-flammable exterior wall and roof covering shall be used in the construction of equipment enclosures;

(2) Openings in all equipment enclosures shall be protected against penetration by fire and windblown embers;

(3) The telecommunication tower when fully loaded with antennas and other equipment and camouflaging shall be designed to withstand the forces expected during the “maximum credible earthquake.” All equipment mounting racks and equipment shall be anchored in such a manner that such a quake will not tip them over, throw equipment off shelves, or otherwise act to damage equipment; and

(4) Reasonable measures shall be taken to keep the facility operational in the event of a natural disaster or other catastrophe.

(H) Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages and for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.

(I) Telecommunication towers, equipment enclosures and other improvements shall be enclosed within a security fence consisting of chain link fencing at least eight (8) feet in height. The fence may be topped with barbed wire. The Board of Commissioners may require as a condition of approval that the fencing be screened by appropriate landscaping or other means.

§ 115.48 FALL ZONES AND SETBACKS.

Towers shall conform with each of the following minimum setback requirements:

(A) A fall zone clear of any buildings on the parcel containing the tower site (other than equipment enclosures associated with the wireless telecommunication facility) equal to one-half the height of the tower shall be required. The fall zone shall have a minimum twenty-five (25) foot setback from all lot lines. If buildings (other than equipment enclosures associated with the wireless telecommunication facility) are located on an abutting property within a distance equal to the tower height, a combined fall zone and setback equal to the tower height shall be required.

(B) A tower’s setback may be reduced or its location in relation to a public street varied, at the sole discretion of the Board of Commissioners, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, electric transmission tower, or similar structure.

§ 115.49 TOWER LIGHTING.

(A) No tower shall be of a type or height, or placed in a location, that the Federal Aviation Administration would require the tower to be lighted or painted.

(B) Towers shall not be illuminated by artificial means and shall not display strobe lights or other warning lighting unless, in a particular instance, the Board of Commissioners requires a tower to be lit. The applicant shall be required to certify that the proposed telecommunication tower is not required to be painted or illuminated by any FAA rule or regulation.

(C) When incorporated into the approved design of a tower, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.

(D) A wireless telecommunication facility may utilize a security light controlled by a motion-detection sensor at or near the entrance to the facility.

§ 115.50 SIGNAGE.

Signage at any telecommunication tower site shall conform to the following provisions:

(A) A sign listing the name of the wireless telecommunication service provider operating the site, the site name or number and an emergency telephone number shall be posted at or near the entrance to the site so as to be readily visible to persons outside the site's security fencing.

(B) Equipment hazard warning and informational signs are permitted.

(C) The posting of any other signs or advertising is prohibited at any wireless telecommunication facility or upon any telecommunication tower.

§ 115.51 SITE DEVELOPMENT PLANS.

A site development plan shall be prepared by a North Carolina registered land surveyor, landscape architect or professional engineer and shall contain the following information:

(A) The name, address and telephone number of the applicant and the property owner, tax parcel identification number, scale, north arrow, a copy of the section of the 1:24,000 USGS quadrangle showing the proposed site and latitude and longitude coordinates.

(B) The name, address, telephone number, signature and seal of the professional preparing the site development plan.

(C) All identifiable structures located on the parcel, all private and public roads, highways and underground and overhead utilities.

(D) Surveyed boundary lines of the parcel containing the proposed telecommunication tower construction and its fall zone.

(E) All existing towers on the property or any towers whose fall zone encroaches onto the property.

(F) Description of adjacent land use and all property owner names, tax parcel numbers and mailing addresses.

(G) The ground elevation of the proposed tower's base, all proposed support structures, property corners, and a permanent site bench mark. All elevations shall be determined using the National Geodetic Vertical Datum of 1929 or other appropriate vertical datum.

(H) A preliminary tower design plan prepared by a registered North Carolina Registered Professional Engineer containing a plan depicting the tower and all proposed support structures, buildings and other improvements and access roads and utility connections within and to the proposed site. Such plan shall contain the following information:

1. The names, addresses and telephone numbers of the applicant and the property owner.
2. The plan scale, a North arrow and a vicinity map.
3. Tax parcel identification number for any parcel of land containing the tower site and the tower's latitude and longitude coordinates.
4. The name, address, signature and seal of the person who prepared the site plan.
5. The surveyed boundary lines of any parcel, or portion thereof, that will contain the proposed tower.
6. The general location of boundary lines of any parcel or portion thereof within a radius from the tower base equal to the proposed tower height.
7. The names and tax parcel identification numbers of all owners of property immediately adjacent to any parcel containing the tower site.
8. All identifiable buildings and other structures (including existing towers) roads and perennial streams located on the parcel containing the tower site and within a radius from the tower base equal to the tower height.
9. The tower base and the foundations for all support structures, all proposed buildings, accessory structures and any other proposed improvements, including roads and utilities serving the proposed site.
10. The ground elevation of the base of the proposed tower, to the nearest foot.
11. A structural engineering certification, signed and sealed by an active, registered North Carolina professional engineer, certifying the structural integrity of the tower and the tower base. The

Ordinance Administrator may accept, in lieu of the above, other documentation evidencing the structural integrity of the tower and the tower base.

§ 115.52 TEMPORARY FACILITIES.

Temporary wireless telecommunication facilities shall be permitted as follows:

(A) Temporary facilities may be placed at or near the location of an existing, proposed or approved wireless telecommunication facility for periods up to seventy-two (72) hours for equipment testing purposes or where the existing facility is unavailable due to scheduled or unscheduled maintenance.

(B) In the event of a natural disaster, catastrophic event or public emergency that either renders an existing wireless telecommunication facility unusable, or creates an urgent need for supplemental capacity to manage the emergency, temporary facilities may be placed for periods of up to one week. Permits for the temporary facilities may be extended for successive one week periods for the duration of the emergency as determined by the Ordinance Administrator.

(C) Permits may be issued for up to one week for temporary facilities needed in conjunction with scheduled special events at specific locales that are likely to generate a need for additional capacity at the event which is expected to exceed existing installed capacity.

(D) Permits for temporary facilities shall be issued by the Ordinance Administrator upon proof of eligibility and payment of a \$50 permit fee.

MODIFICATIONS TO APPROVED FACILITIES

§ 115.70 MINOR MODIFICATIONS.

Minor modifications shall include:

(A) The addition, removal, repositioning (other than downtilt adjustments), alteration or other change in the number or type of antennas employed in a wireless telecommunication facility by a single permittee if, in the opinion of the Ordinance Administrator, such changes do not result in a significant increase in the facility's silhouette or other substantial visual or aesthetic impacts, or:

(B) Increases in the number or size of equipment enclosures of a single permittee which do not increase the footprint of such equipment by more than 20%.

§ 115.71 MAJOR MODIFICATIONS.

Major modifications shall include:

(A) Increases in the height, size, shape or appearance of a telecommunication tower other than minor modifications as defined above; or

(B) Other modifications by a single permittee which, in the opinion of the Ordinance Administrator, substantially exceed the scope of any approval of a facility or which will result in a substantial increase in aesthetic or visual impacts.

(C) Placement of an additional wireless telecommunication facility operated by a different entity than the permittee on an existing structure that does not require an increase in height of the support structure shall be processed in accordance with section § 115.20 through § 115.29 of this chapter.

§ 115.72 PROCESSING AND FEES.

Applications for a minor modification to a wireless telecommunication facility shall be in a form and contain such information as the Ordinance Administrator shall deem necessary and appropriate and shall be accompanied by a \$100 fee. Minor modification permits may be issued by the Ordinance Administrator. Major modifications require the approval of the Board of Commissioners and shall be processed in accordance with the provisions of section § 115.20 through § 115.29 or section § 115.40 through § 115.52 of this chapter for new wireless telecommunication facilities or telecommunication towers, as appropriate.

ANNUAL PERMITS**§ 115.75 ANNUAL PERMIT REQUIRED.**

An annual Wireless Telecommunication Facility Permit shall be required for each wireless telecommunication facility within the jurisdiction of this chapter. Applications for an annual Wireless Telecommunications Facility Permit shall include such technical information about the facility as the Ordinance Administrator deems reasonable and appropriate. Such information shall be in a form designated by the Ordinance Administrator.

§ 115.76 APPLICANT'S CERTIFICATIONS.

Before an annual Wireless Telecommunication Facility Permit shall be issued or renewed, the applicant must certify that:

(A) It currently holds an FCC license to provide commercial wireless services and that such license is in good standing or, if the permittee is not an FCC licensee, that the license of each of its FCC tenants is in good standing.

(B) The wireless telecommunication Facility continues to be operated by the applicant and that it has a continuing need for the facility to meet the requirements of its FCC license.

(C) That the facility complies with all FCC rules and regulations currently in effect relating to environmental effects of electromagnetic radiation.

(D) That the facility as currently constructed, maintained or operated is in compliance with all FAA rules and regulations.

(E) That the applicant currently has liability insurance in force covering the wireless telecommunication facility in an amount deemed adequate by the Ordinance Administrator.

(F) That the applicant has not constructed, maintained, modified or operated any wireless telecommunication facility within the jurisdiction of this chapter without the approval of Haywood County or, if it has done so, that it has ceased operating and has removed all above-ground portions of such facilities (not including any part of the foundation).

(G) That any bond or other security to secure removal of the wireless telecommunication facility remains in full force and effect and that the applicant is in full compliance with its Maintenance/Removal Agreement and other terms and conditions of its Special Use Permit. Nonconforming telecommunication towers in existence on the date of enactment of this chapter shall be exempt from certifications with respect to Maintenance/Removal Agreements and bonds or other security therefor.

§ 115.77 ANNUAL PERMIT FEE.

Payment of a \$150 fee shall be required before an annual Wireless Telecommunication Facility Permit shall be issued. Such fees may be adjusted from time to time by resolution of the Board of Commissioners. Permits shall be issued for calendar years beginning with 1998. Permit fees shall not be pro-rated. Persons operating wireless telecommunication facilities on the effective date of this chapter shall have sixty (60) days from the effective date to comply with the permit requirement. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the fee.

§ 115.78 COMPLIANCE.

Failure to obtain an annual permit for a wireless telecommunication facility within sixty (60) days after the commencement of the annual permit period shall result in the wireless telecommunication facility being deemed abandoned and subject to removal by the County at the expense of the owner or

operator thereof, with such expenses to be recovered in accordance with the applicant's Maintenance/Removal Agreement, as well as subjecting the responsible person(s) to any other penalties set forth in this chapter.

VARIANCES

§ 115.80 VARIANCES.

Variations are to be discouraged, strictly construed against the applicant, and are only to be granted in extraordinary circumstances. The burden shall be on the applicant for a variance to overcome a presumption that variations should not be granted. Variations shall only be granted according to the following:

(A) Governmental users. Governmental users which operate wireless telecommunication facilities for public service, public safety or administrative purposes may be granted a variance if the restrictions and limitations contained in this chapter impose constraints that are contrary to the public interest. The burden shall be on the governmental user to demonstrate to the satisfaction of the Board of Commissioners that it cannot serve the public interest within the constraints of this chapter. Any variance granted to a governmental user shall be the minimum required to accomplish its public service mission.

(B) Non-governmental providers. In order to qualify for a variance, private business users and commercial wireless providers must demonstrate to the satisfaction of the Planning Board and the Board of Commissioners that unique technical reasons not shared by other providers of functionally equivalent services prohibit their ability to provide personal wireless services. In order to be granted a variance, applicants must demonstrate that no combination of locations, techniques or technologies generally known in the industry, can resolve their technological deficiency at a reasonable cost.

(C) Exceptions. The Board of Commissioners may grant a variance in a particular instance when, in its opinion, a proposed variance would result in further mitigation of adverse visual and other environmental impacts than would otherwise be possible. Hearings on variance requests shall be conducted in accordance with G.S. Chapter 160D-406. When conducting the hearing, the Board shall be governed by the conflict-of-interest provisions of G.S. 160D-109.

§ 115.81 PUBLIC HEARING AND NOTICE.

Any person requesting a variance from the terms of this chapter shall submit a written request for a variance justifying the request to the Ordinance Administrator. The Ordinance Administrator may request the applicant to supply such additional information as he or she deems necessary before forwarding the request, together with any staff recommendations, to the Board of Commissioners. A quasi-judicial public hearing before the Board of Commissioners shall be required on any request for

a variance- in accordance with G.S. 160D-406. Public notice of the variance request and public hearing shall be in accordance with section § 115.40(E) of this chapter.

MISCELLANEOUS PROVISIONS

§ 115.90 PENALTIES.

In addition to the penalties and other provisions for the revocation of any Special Use Permit set forth in this chapter, any person who violates this chapter shall be subject to the penalties, enforcement provisions, and other equitable, civil and criminal remedies provided in G.S. § 153A-123.

§ 115.91 VALIDITY OF INDIVIDUAL SECTIONS.

If any clause, sentence, provision or section of this chapter is for any reason held to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining clauses, sentences, provisions or sections of this chapter. It is hereby declared to be the intent of the Board of County Commissioners that the remaining provisions of this chapter would have been adopted had such unconstitutional, illegal or invalid clause, sentence, provision or section not been included in this chapter.

§ 115.92 HEADINGS AND CAPTIONS.

Headings and captions are inserted for convenience only and shall not effect any interpretation of this Agreement.

§ 115.93 EFFECTIVE DATE, REPEALERS AND REVIVAL OF MORATORIUM.

The County Board of Commissioners declares that this is a public emergency ordinance necessary for the protection of public health, safety, and welfare and shall be effective upon adoption. Upon the effective date of this chapter, the moratorium upon the issuance of permits for wireless telecommunication facilities established by resolution on June 16, 1997 is repealed provided, however, that if this chapter or any clause, sentence, provision or section in this chapter is held to be unconstitutional, invalid or void for any reason, the moratorium established on June 16, 1997 shall be immediately reinstated for a period of six months to allow the County time to formulate and pass new regulations.

Adopted and effective February 23, 1998.

CHAPTER 150: BUILDING REGULATIONS

Section

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Cross-reference:

Planning Board, see §§ 30.01 through 30.11

Statutory reference:

State Building Code, see G.S. Chapter 143, Article 9

ADOPTION OF REGULATORY CODES BY REFERENCE**§ 150.01 SCOPE.**

(A) The provisions of the regulatory codes herein adopted shall apply to the following:

(1) The location, design, materials, equipment, construction, reconstruction, alteration, repair, maintenance, moving, demolition, removal, use, and occupancy of every building or structure or any appurtenances connected or attached to the building structure, including, but not limited to, mobile homes and manufactured buildings;

(2) The installation, erection, alteration, repair, use, and maintenance of plumbing systems consisting of house sewers, building drains, waste and vent systems, hot and cold water supply systems, and all fixtures and appurtenances thereof;

(3) The installation, erection, alteration, repair, use, and maintenance of heating and air conditioning systems and appurtenances thereof;

(4) The installation, erection, alteration, repair, use, and maintenance of electrical systems and appurtenances thereof;

(B) The codes herein adopted by reference shall constitute a resolution within the meaning of G.S. Chapter ~~153A, Article 18, Part I and IV, 160D-1101 et seq.~~, making the regulatory codes herein adopted applicable to dwellings and out-buildings used in connection therewith.

(Ord. passed 11-21-77)

§ 150.02 COMMERCIAL CONSTRUCTION CODE.

The current edition of the *North Carolina State Building Code, Volume I, General Construction*, as adopted by the State Building Code Council and as revised, is adopted by reference as fully as though set forth herein as the Commercial Construction Code of the county.

(Ord. passed 11-21-77)

§ 150.03 COMMERCIAL PLUMBING CODE.

The current edition of the *North Carolina State Building Code, Volume II, Plumbing*, as adopted and published by the State Building Code Council and as revised, is adopted by reference as fully as though set forth herein as the Commercial Plumbing Code of the county.
(Ord. passed 11-21-77)

§ 150.04 HEATING, AIR CONDITIONING, REFRIGERATION AND VENTILATION CODE.

The current edition of the *North Carolina State Building Code, Volume III, Mechanical*, as adopted and published by the State Building Code Council and as revised, is adopted by reference as fully as though set forth herein as the Heating, Air Conditioning, Refrigeration, and Ventilation Code of the county.
(Ord. passed 11-21-77)

§ 150.05 ELECTRICAL CODE.

The current edition of the *North Carolina State Building Code, Volume IV, Electrical*, as adopted by the State Building Code Council by reference to the National Electrical Code of the National Fire Protection Association and as revised, is adopted by reference as fully as though set forth herein as the Electrical Code of the county.
(Ord. passed 11-21-77)

§ 150.06 FIRE PREVENTION CODE.

The current edition of the *North Carolina State Building Code, Volume V, Fire Prevention*, as adopted and published by the State Building Code Council and as revised, is adopted by reference as fully as though set forth herein as the Fire Prevention Code of the county.
(Ord. passed - -)

§ 150.07 GAS CODE.

The current edition of the *North Carolina State Building Code, Volume VI, Gas*, as adopted and published by the State Building Code Council and as revised, is adopted by reference as fully as though set forth herein as the Gas Code of the county.
(Ord. passed - -)

§ 150.08 RESIDENTIAL CONSTRUCTION CODE.

The current edition of the *North Carolina State Building Code, Volume VII, Residential*, as adopted and by the State Building Inspectors Associations and as published by the State Building Code Council and as revised, is adopted by reference as fully as though set forth herein as the Residential Construction Code of the county for one and two family residential buildings.

(Ord. passed 11-21-77)

§ 150.09 MODULAR CONSTRUCTION.

The current edition of the *North Carolina State Building Code, Volume VIII, Modular Construction Regulations*, as adopted and published by the State Building Code Council and as revised, is adopted by reference as fully as though set forth herein as the Modular Construction Regulations for the county.

(Ord. passed - -)

§ 150.10 EXISTING BUILDINGS CODE.

The current edition of the *North Carolina State Building Code, Volume IX, Existing Buildings*, as adopted by the State Building Code Council and the North Carolina Department of Insurance, and as revised, is adopted by reference as fully as though set forth herein as the Existing Buildings Code of the county.

(Ord. passed - -)

§ 150.11 ENERGY CODE.

The current edition of the *North Carolina State Building Code, Volume X, Energy*, as adopted by the State Building Code Council, effective January 1, 1996, and as revised, is hereby adopted by reference as fully as though set forth herein as the Energy Code of the county.

(Ord. passed - -)

§ 150.12 MANUFACTURED/MOBILE HOMES REGULATIONS.

The 1995 edition of the *State of North Carolina Regulations for Manufactured/Mobile Homes*, as adopted and published by the Commissioner of Insurance and as revised, is hereby adopted by reference as fully as though set forth herein as the Manufactured/Mobile Homes Regulation of the county.

(Ord. passed - -)

§ 150.13 HANDICAPPED ACCESSIBILITY CODE.

The current edition of the *North Carolina State Building Code, Volume I-C, Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped*, as adopted by the State Building Code Council, and as revised, is hereby adopted by reference as fully as though set forth herein as the Handicapped Accessibility Code of the county.

(Ord. passed - -)

§ 150.14 ADMINISTRATION AND ENFORCEMENT.

The current edition of the *North Carolina State Building Code, Volume I-A, Administration and Enforcement Requirements*, as adopted by the State Building Code Council, and as revised, is adopted by reference as fully as though set forth herein as the Administration and Enforcement Requirements of the county.

(Ord. passed - -)

§ 150.15 COPIES OF CODES KEPT ON FILE.

An official copy of each regulatory code adopted herein, and official copies of all amendments thereto, shall be kept on file in the office of the Board of Commissioners. Such copies shall be the official copies of the codes and the amendments.

(Ord. passed 11-21-77)

§ 150.16 AMENDMENTS.

Amendments to the regulatory codes adopted by reference herein, which are from time to time adopted and published by the agencies or organizations referred to herein, shall be effective in the county at the time the amendments are filed with the Clerk to the Board of Commissioners as provided in § 150.09.

(Ord. passed 11-21-77)

§150.17 COMPLIANCE WITH CODES.

(A) All buildings or structures which are hereafter placed, manufactured, constructed, reconstructed, erected, altered, extended, enlarged, repaired, demolished, or moved shall conform to the requirements, minimum standards, and other provisions of either Volume I, "General Construction" or Volume VII, "Residential" of the *North Carolina State Building Code*, whichever is applicable, or both if both are applicable.

(B) Every building or structure intended for human habitation, occupancy, or use shall have plumbing; plumbing fixtures installed, constructed, altered, extended, repaired, or reconstructed in accordance with the minimum standards, requirements, and other provisions of the North Carolina Plumbing Code (*North Carolina State Building Code, Volume II, Plumbing*).

(C) All electrical wiring, installations, and appurtenances shall be erected, altered, repaired, used, and maintained in accordance with the minimum standards, requirements, and other provisions of the North Carolina Electrical Code (*North Carolina State Building Code, Volume IV, Electrical*).

(D) All heating, air conditioning, refrigeration, and ventilation installations and appurtenances shall be erected, altered, repaired, used, and maintained in accordance with minimum standards, requirements, and other provisions of the *North Carolina State Building Code Volume III, Heating*.

(E) Every building or structure intended for human habitation, occupancy or use shall have a Certificate of Occupancy issued before the building or structure may be occupied, unless specified portions of the building or structure are permitted to be occupied by the Building Inspector. (Ord. passed 11-21-77) Penalty, see §10.99

PERMITS

§ 150.20 BUILDING PERMIT REQUIRED.

No person, firm, or corporation, shall commence or proceed with construction, reconstruction, alteration, placement, enlargement, removal, moving, or demolishing of any building, manufactured home, or other structure, or any part thereof in the county or the extra-territorial jurisdiction of any municipality of which the County Building Inspections Department has code enforcement authority without first securing a separate written permit for each building, manufactured home, or structure from the Building Inspections Department. The elevation of the building at the first habitable floor level shall be recorded on all building permits.

(Ord. passed 5-5-75; Am. Ord. passed 4-3-00) Penalty, see § 10.99

§ 150.20A REQUIREMENTS FOR OBTAINING BUILDING PERMIT.

The person, firm, or corporation requesting a permit shall provide the Building Inspections Department with the following documentation:

- a) A completed application for the specific type of permit requested.
- b) A sanitary sewage system permit from the County Health Department or written approval from the sanitary district to which the structure will be connected.

c) A set of blueprints or plans relative to the proposed structure as deemed necessary by the Building Inspections Department.

d) An approval from the County Planning Department for construction on a mountain ridge, within a floodway or watershed area or before the placement of any off-premises sign.
(Am. Ord. passed 4-3-00)

§ 150.21 REVIEW OF BUILDING PERMITS.

The County Planner shall review all permit applications for new construction or substantial improvements to determine whether proposed building sites are in a location that has a flood hazard and to check the elevation of structures. The County Planner shall report such information to the Building Inspections Department. Any proposed new construction or substantial improvement (including prefabricated and mobile homes) must:

(A) Be designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure.

(B) Use constructive materials and utility equipment that are resistant to flood damage, and

(C) Use construction methods and practices that will minimize flood damage.
(Ord. passed 5-5-75) Penalty, see § 10.99

§ 150.22 REVIEW OF SUBDIVISION PROPOSAL.

The County Planning Board shall review all subdivision proposals and other proposed new developments to assure that:

(A) All such proposals are consistent with the need to minimize flood damage,

(B) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage, and

(C) Adequate drainage is provided so as to reduce exposure to flood hazards.

(D) County Pre-Development Ordinance requirements are met.
(Ord. passed 5-5-75)

§ 150.23 REVIEW OF WATER SUPPLY AND SANITARY SYSTEMS.

The County Health Department shall require new or replacement water supply systems and/or sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the

system and discharges from the system into flood waters and require on-site waste disposal systems to be located so as to avoid impairment of them and contamination from them during flooding.
(Ord. passed 5-5-75)

§ 150.24 RECORDS AND REPORTS OF BUILDING PERMITS.

The County Building Inspections Department shall keep records of all building permits issued and shall submit copies to the County Manager, Tax Supervisor, Health Department, and other offices and agencies of the county as the Board of Commissioners may require or as may be provided by law.

RATES AND CHARGES

§150.40 PERMIT AND INSPECTION FEES.

(A) *Generally.* Fees for permits shall be charged at the time of approval of the application and shall be collected at the time of the issuance of the permit. Each contractor or his or her agent shall be responsible for the permit fees charged to enable him or her to perform the work for which the permit is issued.
(Ord. passed 11-5-92)

(B) *Schedule of Fees.* The schedule of fees as adopted by the Board of County Commissioners and as revised, is adopted by reference as fully as though set forth herein as the Building Permit and Inspection Fee Schedule. The Board of Commissioners shall establish and revise the schedule of fees from time to time by resolution not part of this chapter.
(Am. Ord. passed 7-12-99)

DEPARTMENT OF INSPECTIONS

§ 150.50 ORGANIZATION OF DEPARTMENT.

An Inspections Department, known officially and designated as the Department of Inspections, is established pursuant to G.S. Chapter ~~153A, Article 18, Parts I and IV, 160D-1101 et seq.~~ and may consist of a Building Inspector, a Plumbing and Heating Inspector, an Electrical Inspector, a Fire Inspector and such other personnel as may be authorized by the Board of Commissioners. The Board of Commissioners may designate a Department Head.
(Ord. passed 11-21-77)

§ 150.51 GENERAL DUTIES OF THE DEPARTMENT AND INSPECTORS.

(A) It shall be the duty of the Department of Inspections to enforce all of the provisions of the regulatory codes adopted herein; and to make all inspections necessary to determine whether or not the provisions of the codes are being met.

(B) The North Carolina State Building Code, Volume I, General Construction, the North Carolina Uniform Residential Building Code and the State of North Carolina Regulations for Mobile Homes shall be enforced by the Building Inspector. The North Carolina Plumbing Code shall be enforced by the Plumbing Inspector. The North Carolina Heating Code shall be enforced by the Heating-Air Conditioning Inspector. The North Carolina Electrical Code shall be enforced by the Electrical Inspector.

(Ord. passed 11-21-77)

§ 150.52 CONFLICTS OF INTEREST.

~~— No officer or employee of the Department of Inspections shall be financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building or any part or system thereof, or in the making of plans or specifications therefor, or in the subdivision and development of land unless he or she is the owner of the building or land. No officer or employee of the Department of Inspections shall engage in any work which is inconsistent with his or her duties or with the interests of the county.~~

~~(Ord. _____ The Department of Inspections employees and agents shall comply with N.C. G.S. Chapter 160D-1108 and 160D-109(c) (Ord. passed 11-21-77)~~

§ 150.53 REPORTS AND RECORDS.

The Department of Inspections and each employee shall keep complete, permanent, and accurate records in convenient form of all applications received, permits issued, inspections and reinspections made, and all other work and activities of the Department of Inspections. Written monthly reports shall be submitted to the Tax Supervisor and to other agencies, as required.

(Ord. passed 11-21-77)

CHAPTER 152A: SUBDIVISION AND PRE-DEVELOPMENT

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GENERAL PROVISIONS

§ 152A.01 TITLE.

This chapter shall be known and cited as the Pre-Development and Subdivision Control Ordinance of Haywood County, North Carolina, and may be referred to as the Subdivision Regulations.

§ 152A.02 AUTHORITY AND ENACTMENT.

Pursuant to the authority and provision conferred by the General Statutes of the State of North Carolina, Chapter ~~§153A-Article 18-121~~, ~~Chapter 160D-201~~, and Chapter 970, 1986 Session Laws as amended by Chapter 282 of the 1993 Session Laws, the Board of County Commissioners of the County of Haywood hereby ordain and enact into law this chapter.

§ 152A.03 JURISDICTION.

This chapter shall apply to every subdivision or development in Haywood County which is located outside the corporate limits and planning and zoning jurisdiction of all municipalities as they exist from time to time.

§ 152A.04 PURPOSE.

The purpose of this chapter shall be:

(A) To guide and regulate the subdivision and development of land in such a manner as to meet the following requirements for orderly and harmonious growth:

(1) Land to be subdivided shall be of such character that it can be used safely without danger to health or peril from fire, flood, erosion, air and/or water pollution, or other menace.

(2) Proper provisions shall be made for drainage, water supply, sewerage, water quality, sedimentation control and other appropriate utilities.

(3) The proposed roads shall provide a safe, convenient and functional system for vehicular circulation and shall be of such width, grade, and location as to accommodate prospective traffic. Roads shall be so arranged as to afford adequate access for emergency vehicles and services.

(4) Land shall be subdivided and developed with due regard to topography so that the natural beauty of the land and vegetation shall be protected.

(B) To provide the County Commissioners, Planning Board, Planning Department, Tax Assessor, Land Records Office, and other local government agencies and officials with information regarding land development taking place in Haywood County. This information will assist county officials in projecting the need for various public programs and facilities, in estimating population growth, and in projecting revenues and expenditures.

§ 152A.05 SUBDIVISION DEFINED.

(A) A subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new road or a change in existing roads, and includes any unified residential development; however, the following are not included within this definition and are not subject to any regulations enacted pursuant to this chapter:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;

(2) The division of land into parcels each of which is greater than 10 acres if no road right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for widening or opening roads or highways or for public transportation system corridors;

(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no road right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations;

(5) The division of ~~land for a tract into parcels in accordance with~~ the ~~purpose~~ terms of ~~conveying a single lot a probated will or parcel to each tenant in common, all in accordance with intestate succession under Chapter 29 of who jointly inherited the land by intestacy or by will~~ General Statutes;

(6) The division of land into two or more parcels for the purpose of conveying all the resulting parcels or lots, with the exception of parcels retained by the grantor, to a grantee or grantees who are in any degree of lineal kinship or to a grantee or grantees within three degrees of collateral kinship to the grantor, such division to be known as a *FAMILY SUBDIVISION*;

(7) The division of land pursuant to an order of a court of the General Court of Justice;

(8) The division of land for cemetery lots or burial plots;

(9) The division of land into no more than two parcels for the purpose of combining one of the parcels with an adjacent tract of land if the adjacent tract of land is in compliance with all the provisions of the county ordinance adopted pursuant to this act and the combining of the parcel and adjacent tract results in a newly created single ‘parcel’ for land records purposes; and

(10) The division of a tract in common ownership the entire area which is less than five acres.

§ 152A.06 OTHER DEFINITIONS.

For the purpose of this Ordinance, certain words or terms used herein are defined as follows:

ALL-WEATHER SURFACE ROAD. A roadbed that supports routine vehicular traffic and has a minimum thickness of six inches (6") of compacted crushed rock or stone, including dust.

COMMUNITY SANITARY SEWER SYSTEM. A sanitary sewer system subject to the rules and regulations of the NC Department of Environment and Natural Resources.

COMMUNITY WATER SYSTEM. A water system subject to the rules and regulations of the NC Department of Environment and Natural Resources.

CUL-DE-SAC. Local roads with one (1) end open for vehicular access and the other end terminating in a vehicular turnaround. The length of the cul-de-sac road shall be measured along the center line from its intersection with the center line of the road from which it runs to the center of the cul-de-sac turnaround.

DEVELOP. To convert land to a new purpose so as to use its resources, or to use the land for residential, commercial, or industrial purposes.

DEVELOPER. ~~Any person, firm, corporation, or duly authorized agent who is engaged in the subdivision and/or development of real estate~~ A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized to undertake development on that property.

~~— ***DEVELOPMENT.*** The improvement of a tract of land involving land disturbing activity or the improvement of a tract of land for any purposes other than agriculture, forestry, or mining.~~

DEVELOPMENT. Unless the context clearly indicates otherwise, the term means: (a) the construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure; (b) excavation, grading, filling, clearing, or alteration of land; (c) the subdivision of land as defined in G.S. 160D-802; or (d) the initiation or substantial change in the use of land or the intensity of use of land. However, development on land owned or managed by the federal government or the state or its political subdivisions is not included within this definition and is not subject to the provisions of this chapter.

DEVELOPMENT APPROVAL. An administrative or quasi-judicial approval, made pursuant to G. S. 160D that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, site plan approvals, and variances. The term also includes all other regulatory approvals required by regulations adopted pursuant to G.S. 160D or local ordinances, including plat approvals, permits issued and building permits issued.

DEVELOPMENT REGULATION. A unified development ordinance, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, housing code, State Building Code enforcement, or other regulation adopted pursuant to N.C. G.S. 160D or local ordinance or act that regulates land use or development.

DRIVEWAY. Begins at the property line of a lot abutting a public road, private road, easement, or private right-of-way, and leads to a building, use, or structure on that lot. A **DRIVEWAY** only serves a single building, use, or structure.

DWELLING. Any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith except for the purposes of Article 12 of Chapter 160D (Minimum Housing Codes) it does not include any manufactured home, mobile home, or recreational vehicle used solely for seasonal vacation purpose.

DWELLING UNIT. A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

EASEMENT. A grant by the property owner for the use by the public, a corporation, or person(s) of a strip of land for specified reasons.

FAMILY SUBDIVISION. The division of land into two or more parcels for the purpose of conveying all the resulting parcels or lots, with the exception of parcels retained by the grantor, to a grantee or grantees who are in any degree of lineal kinship or to a grantee or grantees within three degrees of collateral kinship to the grantor, both as described under G.S. §104A-1. By way of example, such degrees of kinship would include children, grandchildren, great-grandchildren, parents, grandparents, brothers and sisters, uncles and aunts, and nieces and nephews.

FINAL PLAT. A complete and exact plan of a development or subdivision prepared for final official review which, if approved, will be submitted to the Haywood County Land Records/GIS Office for approval and then to the Haywood County Register of Deeds for recording.

FLOODWAY. The channel of a river or other watercourse and the adjacent land areas which must be reserved in order to discharge the base flood (100-year flood) without cumulatively increasing the water surface elevation.

IMPROVEMENTS. Streets, roads and utilities.

LAND-DISTURBING ACTIVITY. Any activity as defined in G.S. Section §113A-52(6) that is undertaken on a tract comprising more than one (1) acre, if more than one-half (1/2) aggregated acre is uncovered; however, those land-disturbing activities for which the NC Sedimentation Control Commission is authorized to exercise exclusive regulatory jurisdiction pursuant to G.S. Section §113A-56(a) are not included within this definition and are not subject to any regulations enacted pursuant to this act.

LOT. A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or for development, or both. The word "lot" includes "plot", "parcel" or "tract."

LOT OF RECORD. A lot which has not been recombined or merged that is a part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds of Haywood County prior to adoption of this chapter (152A), or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter (152A) unless the lot has been recombined or merged thereafter.

MAJOR SUBDIVISION. A proposed subdivision where eleven (11) or more lots will result after the subdivision is complete.

MINOR SUBDIVISION. A proposed subdivision of land where four (4) to ten (10) lots will result after the subdivision is complete. One phase of planned development cannot be considered a minor subdivision unless the entire development does not exceed ten (10) lots.

PLAT. Includes the term map, plan, or replat; a map or plan of a parcel of land which is to be or which has been developed or subdivided.

PRELIMINARY PLAT. A proposed development plan or subdivision plat prepared for review and consideration prior to preparation of a final plat or plan.

PRIVATE STREET OR ROAD. An undedicated private right-of-way which affords access to abutting properties and requires a subdivision streets disclosure statement in accordance with G.S. §136-102.6.

PUBLIC STREET OR ROAD. A subdivision street or road dedicated to the public to provide ingress and egress to lots or parcels which have been laid out for the purpose of providing home sites, or other purposes, and such street or road shall be constructed according to the minimum construction

standards of the Division of Highways, with the intent of requesting that it be added to the state maintained system.

SITE PLAN. ~~A development layout showing the location of all improvements and land disturbing activities proposed as part of the development, which is subject to review prior to initiation of any development activity.~~ A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include, but is not limited to, site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, utility lines and locations, parking, access points, roads and stormwater control facilities that are depicted to show compliance with all legally required development regulations applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision. A site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision.

SPECIAL SUBDIVISION. A proposed subdivision of ten (10) acres or less where three (3) or fewer lots on a new or existing private road will result after the subdivision is complete.

SUBDIVIDER. Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision.

TECHNICAL REVIEW COMMITTEE. A review committee consisting of the County Planner, environmental health specialist supervisor, erosion control specialist, and other appointees.

APPROVAL OF SUBDIVISION PLATS

§ 152A.20 APPROVAL OF SUBDIVISION PLATS AND PLANS REQUIRED.

(A) Plats shall be prepared and approved pursuant to the provisions of this chapter whenever land is subdivided or otherwise developed. A final plat must be prepared, approved, and recorded pursuant to this chapter whenever a subdivision of land occurs or a plan prepared and approved whenever the development of land takes place. **Contracting for the sale of land does not require plat approval so long as such contract requires compliance with this ordinance prior to the transfer of title to the land and such requirement is a condition to enforceability of such contract.**

(B) No land disturbing or construction activity carried out in conjunction with development shall be commenced until the preliminary plat or plan is approved by the Planning Board of Haywood County or the Haywood County Planning Department. A building permit for work done in conjunction with a development or a lot in a subdivision shall not be issued until the final plat or plan is approved by the Planning Board of Haywood County or the Haywood County Planning Department.

The Register of Deeds shall not file or record a plat of a subdivision or development subject to this chapter that has not been approved in accordance with these provisions and approved by the Haywood County Land Records/GIS Office.

§ 152A.21 PROCEDURE FOR REVIEW OF SITE PLANS.

(A) Preliminary Plan Submission and Review. The procedure for obtaining preliminary plan approval is as follows:

(1) The developer shall submit to the Haywood County Planning Department two (2) copies of a preliminary plan containing the requested information required in Section §152A.22 of this chapter.

(2) The Planning Department may request reports from the Haywood County Health Department, the Haywood County Inspections Department, the Haywood County Soil and Water Conservation District, and other county, state, or federal officials or agencies as deemed necessary.

(3) The Planning Department shall review the preliminary plan for general compliance with the requirements of this chapter and any other applicable county, state, or federal regulations, and shall discuss with the developer or his agent any changes deemed advisable in the proposed development, or any additional information necessary for approval of the site plan.

(4) The Planning Department shall approve, approve conditionally, or disapprove the preliminary plan and shall notify the developer of its decision regarding approval within ten (10) working days after the preliminary plat is submitted for review.

(B) Final Plan Submission and Review. Upon approval of the preliminary plan by the Planning Department, the developer may proceed with the preparation of the final plan and the installation of or arrangement for required improvements such as roads and utilities in accordance with the approved preliminary plan and the requirements of this chapter. Prior to approval of the final plan, the developer shall have installed the improvements specified in this chapter or guaranteed their installation as provided herein.

(1) The developer shall submit ~~four (4)~~such copies of the final plan ~~in hard copy or electronically as required by~~ the Planning Department. ~~The three (3) copies shall be prints, and furnish~~ a final copy ~~will be presented~~ to the Haywood County Health Department (Environmental Health Section) and the Haywood County Addressing Office.

(2) The Planning Department shall approve or disapprove the final plan and shall notify the developer of its decision regarding final approval within ten (10) working days after the plan is submitted for review.

(3) The final plan can be prepared by a registered land surveyor, landscape architect or can be hand drawn by the developer.

(C) At the Planning Director's discretion a preliminary or final plan may be submitted to the Haywood County Planning Board for its review and recommendation.

§ 152A.22 SPECIFICATIONS FOR PRELIMINARY AND FINAL SITE PLANS.

The preliminary and final plans shall depict or contain the following information. An "*" indicates that the information is required for preliminary plan approval only. Where "proposed/actual" is noted, the proposed information shall be shown on the preliminary plan and the actual information shall be shown on the final plan. Preliminary and final plans shall be clearly and legibly drawn at a scale of not less than two hundred feet (200') to one inch (1").

(A) Title Block

- name and address of owner of record
- name of development
- location (township, county, state)
- date(s) of plan(s)
- graphic scale and written scale
- parcel identification number and/or deed book and page

(B) Roads

- existing and platted roads on abutting properties and in the proposed subdivision
- rights-of-way, location and dimensions (proposed/actual)
- road name(s)

(C) Utilities

- utility and other easements of record on and abutting to the development
- transmission lines
- approximate location of natural gas lines
- sanitary sewers, location and size if community systems are proposed (proposed/actual)
- water lines, location and size, if community systems are proposed (proposed/actual)
- storm sewers, culverts, detention ponds, and other drainage facilities, if any (proposed/actual)
- community well (2 or more connections) location showing 100' radius on the property or recorded easement for encroachment on adjacent property

(D) Site Calculations

- acreage in total tract to be developed
- acreage in phase if different from total acreage

(E) Other Details

- sketch vicinity map showing the relationship between the proposed development and surrounding area
- north arrow
- the location and name of all water courses, as identified on U.S.G.S. 7.5 minute series (topographic) maps
- any natural features affecting the site
- the location of the special flood hazard area (floodway and 100-year flood boundaries), if applicable
- note all lots or building sites with an elevation of 3,000 feet above sea level or greater
- the location of any cemetery
- existing buildings or structures, railroads, and bridges on the land to be developed
- approximate lot lines and distances, and unit numbers (*)
- names of adjacent property owners
- the existing uses of the land within the proposed development
- proposed parks or open spaces
- the accurate location and description of all monuments, reference markers and property and lot corners

(F) A written statement from the NC Department of Environment and Natural Resources permitting plans for the community sanitary sewer system, if applicable (*).

(G) A copy of the erosion control plan and a written statement from the Haywood County Erosion Control Office stating that an erosion control plan has been submitted and approved for the project, if applicable (*).

(H) A written statement from the NC Department of Environment and Natural Resources approving and permitting plans for a community water system, if applicable (*).

(I) For developments, which are not served by municipal sewer, the Planning Department shall request reports from the Haywood County Health Department. These reports must indicate that each structure can be served by a ground absorption sewage disposal system, or other state approved sewage disposal system, and has a potential potable water supply. If a dwelling with an existing septic system is present on any proposed lot then a record of the system must be validated which indicates the system is in compliance with the rules that were in force at the time the system was installed. All existing systems shall have 100% repair (reserve) area. Any non-compliant system must be evaluated by the Health Department and the appropriate permit issued.

(J) A written statement from the District Engineer of the Division of Highways of NC Department of Transportation certifying approval of any proposed public road and highway plans, if applicable.

(K) Any other information considered by the developer, the Planning Board, and/or Planning Director to be pertinent to the review of the plan (*).

(L) A certificate for approval, to read as follows:

“I hereby certify that this plan was reviewed and approved by the Haywood County Planner for recording in the Register of Deeds Office of Haywood County.

Haywood County Planner Date”

OR

“I certify that the plan shown hereon complies with the Watershed Protection Ordinance and is approved by the Watershed Administrator for recording in the Register of Deeds office.

Watershed Administrator Date

NOTICE: This property is located within a Public Water Supply Watershed – development restrictions may apply.”

§ 152A.23 PROCEDURE FOR REVIEW OF SPECIAL, MINOR AND MAJOR SUBDIVISIONS.

(A) Preliminary Plat Submission and Review. The procedure for obtaining preliminary plat approval is as follows:

(1) The subdivider shall submit to the Haywood County Planning Department two (2) copies of a preliminary plat containing the requested information required in Section §152A.25 of this chapter.

(2) The Planning Department may request reports from the Haywood County Health Department, the Haywood County Inspections Department, the Haywood County Soil and Water Conservation District, and other county, state, or federal officials or agencies as deemed necessary.

(3) The Planning Department shall review the preliminary plat for general compliance with the requirements of this chapter and any other applicable county, state, or federal regulations, and shall discuss with the developer or his agent any changes deemed advisable in the proposed development, or any additional information necessary for approval of the special, minor or major subdivision.

(4) The Planning Department shall approve, approve conditionally, or disapprove the preliminary plat and shall notify the developer of its decision regarding approval within ten (10) working days after the preliminary plat is submitted for review.

(B) Final Plat Submission and Review. Upon approval of the preliminary plat by the Planning Department, the developer may proceed with the preparation of the final plat and the installation of or arrangement for required improvements such as roads and utilities in accordance with the approved preliminary plat and the requirements of §152A.40 through §152A.41 of this chapter. Prior to approval of the final plat, the subdivider shall have installed the improvements specified in this chapter or guaranteed their installation as provided herein.

(1) The developer shall submit ~~four (4)~~such copies of the final plat to the Planning Department. ~~One (1) copy of the final plat as it shall be on reproducible permanent material, which will be returned to the developer with the stamp of require, in hard copy or electronically. The Planning Department shall affix its approval affixed(physically or electronically) to the said final plat, and three (3) copies shall be prints.~~ A final copy will be presented to the Haywood County Health Department (Environmental Health Section) and the Haywood County Addressing Office.

(2) The Planning Department shall approve or disapprove the final plat and shall notify the developer of its decision regarding final approval within ten (10) working days after the plat is submitted for review.

(3) The final plat shall be prepared by a professional land surveyor currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in G.S. §47-30 as amended, and as set forth in the Standards of Practice for Land Surveying in North Carolina, and in Section §152A.25 of this chapter.

(C) At the Planning Director's discretion a preliminary or final plat may be submitted to the Haywood County Planning Board for its review and consideration.

§ 152A.24 CERTIFICATES FOR SPECIAL, MINOR AND MAJOR SUBDIVISIONS.

The following signed certificates shall be shown on the original tracing and all copies of the final plat:

(A) Certificate of Ownership and Dedication

I (we) hereby certify that I am (we are) the owner(s) of the property located within the subdivision-regulation jurisdiction of Haywood County as shown and described hereon, and that I (we) hereby adopt this plan of subdivision with my (our) free consent, and dedicate all roads and other sites and easements to public or private use as noted in the Disclosure of Private Roadways, where applicable.

DATE

OWNER(s)

Haywood County Planner Date”

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

Watershed Administrator Date

NOTICE: This property is located within a Public Water Supply Watershed – development restrictions may apply.”

(F) Review Officer Certificate

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

I, _____, Review Officer of Haywood County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording for which the review officer has responsibility as provided by law.

Review Officer Date

(G) Such approval shall be **VOID** unless the final plat is offered for filing and recording in the Office of the Register of Deeds of Haywood County within ninety (90) days from the date of Planning Department approval.

(H) If the Planning Department fails to act on the preliminary or final plat, in writing, within ten (10) working days the subdivider may seek approval of the preliminary or final plat at the next regularly scheduled meeting of the Planning Board.

§ 152A.25 SPECIFICATIONS FOR PRELIMINARY AND FINAL PLATS.

The preliminary and final plats shall depict or contain the following information. An "*" indicates that the information is required for preliminary plat approval only. Where "proposed/actual" is noted, the proposed information shall be shown on the preliminary plat and the actual information shall be shown on the final plat. Preliminary and final plats shall be clearly and legibly drawn at a scale of not less than two hundred feet (200') to one inch (1") and shall be drawn ~~on~~at a sheet-size of mylar and in such a format as acceptable to the Register of Deeds of Haywood County for recording in that office.

(A) Title Block

- name and address of owner of record
- name of subdivision
- location (township, county, state)
- date(s) of survey(s)
- graphic scale and written scale
- name, address, license number, and seal of professional land surveyor
- parcel identification number and/or deed book and page

(B) Roads

- existing and platted roads on abutting properties and in the proposed subdivision
- rights-of-way, location and dimensions (proposed/actual)
- road name(s)

(C) Utilities

- utility and other easements of record on and abutting to the subdivision
- transmission lines
- approximate location of natural gas lines
- sanitary sewers, location and size if community systems are proposed (proposed/actual)
- water lines, location and size, if community systems are proposed (proposed/actual)
- storm sewers, culverts, detention ponds, and other drainage facilities, if any (proposed/actual)
- community well (2 or more connections) location showing 100' radius on the property or recorded easement for encroachment on adjacent property

(D) Site Calculations

- acreage in total tract to be subdivided
- total number of lots
- linear feet in roads
- area of each lot in acres

(E) Other Details

- sketch vicinity map showing the relationship between the proposed subdivision and surrounding area
- exact boundaries of the tract, shown with bearings and distances as required by G.S. §47-30, as amended (proposed/actual)
- north arrow
- the location and name of all water courses, as identified on U.S.G.S. 7.5 minute series (topographic) maps
- any natural features affecting the site
- the location of the special flood hazard area (floodway and 100-year flood boundaries), if applicable
- note all lots or building sites with an elevation of 3,000 feet above sea level or greater
- the location of any cemetery
- existing buildings or structures, railroads, and bridges on the land to be subdivided
- approximate lot lines and distances, and lot numbers (*)
- lot lines with bearings and distances and lot numbers
- names of adjacent property owners
- the existing uses of the land within the proposed subdivision
- proposed parks or open spaces
- location of control corners
- the accurate location and description of all monuments, reference markers and property and lot corners

(F) A written statement from the NC Department of Environment and Natural Resources permitting plans for the community sanitary sewer system, if applicable (*).

(G) A written statement from the NC Department of Environment and Natural Resources approving and permitting plans for a community water system, if applicable (*).

(H) A copy of the erosion control plan and a written statement from the Haywood County Erosion Control Office stating that an erosion control plan has been submitted and approved for the project, if applicable (*).

(I) For subdivisions, which are not served by municipal sewer, the Planning Department shall request reports from the Haywood County Health Department. These reports must indicate that each

lot can be served by a ground absorption sewage disposal system, or other state approved sewage disposal system, and has a potential potable water supply. (Final Plat Only)

If a dwelling with an existing septic system is present on any proposed lot then a record of the system must be validated which indicates the system is in compliance with the rules that were in force at the time the system was installed. All existing systems shall have 100% repair (reserve) area. Any non-compliant system must be evaluated by the Health Department and the appropriate permit issued.

(J) A subdivision roads disclosure statement prepared in accordance with G.S. §136-102.6(f) shall be presented with both the preliminary and final plat.

(K) A written statement from the District Engineer of the Division of Highways of NC Department of Transportation certifying approval of any proposed public road and highway plans, if applicable.

(L) Any other information considered by the subdivider, the Planning Board, and/or Planning Director to be pertinent to the review of the plat (*).

(M) All certifications required in Section §152A.24 of this chapter.

§ 152A.26 PHASED DEVELOPMENT.

If a developer proposes that a subdivision or development will be constructed in phases, the following procedure shall apply:

(A) A master plan showing the entire proposed subdivision or development and the phases of development, proposed density, proposed type and location of utilities, and proposed development timetable shall be submitted to the Planning Department for approval.

(B) Each phase of development shall be preceded by submission and approval of a preliminary plat or plan. The master plan may be submitted prior to or simultaneously with submission of the preliminary plat or plan for the first phase of development.

(C) As each phase is completed, a final plat or plan must be submitted and approved for that phase.

(D) Approval of the master plan need not be renewed unless significant design changes or density increases are proposed.

§ 152A.27 RESUBDIVISION PROCEDURES.

For any replatting or resubdivision of land, the same procedures, rules, and regulations shall apply as prescribed in Section §152A.23 (A).

DEVELOPMENT STANDARDS**§ 152A.40 GENERAL REQUIREMENTS.**

(A) Conformity to Existing Maps or Plans. The plat of a subdivision shall conform to any official map or plan adopted by the Board of County Commissioners, existing on the date of enactment of this chapter, or thereafter adopted.

(B) Continuation of Adjoining Road Systems. The proposed road or road layout shall be coordinated with the existing road system of the surrounding area. Where possible, proposed roads shall be the extension of existing roads.

(C) Road Names. Proposed roads which are obviously in alignment with existing roads should be given the same name. In assigning new names, duplication shall be avoided and in no case shall the proposed name be phonetically similar to existing names irrespective of the use of a suffix such as road, drive, place, court, etc. All proposed road names and signs shall be approved by the Haywood County Addressing Coordinator.

(D) Private Roads. Private roads may be platted in any subdivision and shall conform to the standards set forth in this chapter. Private roads shall be set out in protective covenants, deeds, or on plats or any combination of those methods, and shall clearly state that the State and/or County will not be obligated to take over or maintain the road.

(E) Lots. Lot size shall be regulated only to the extent required by the Haywood County Health Department.

(F) Flood Damage. All subdivision proposals shall be consistent with the need to minimize flood damage as provided for in the Haywood County Flood Damage Prevention Ordinance. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems shall be located and constructed so as to minimize damage to utilities from flooding.

(G) Subdivision Name. The subdivision name shall be approved by the Planning Department. There shall be no duplication or direct conflict with an existing subdivision name.

§ 152A.41 ROAD AND DESIGN STANDARDS FOR MINOR AND MAJOR SUBDIVISIONS.

The Subdivision Roads Minimum Construction Standards are as set forth in this chapter and as shown in Schedule I.

NOTE: Special Subdivisions as defined in this chapter shall not be required to comply with §152A.41 (Road and Design Standards)

NOTE: The combination or recombination of portions of previously subdivided and recorded lots shall not be required to comply with §152A.41 (Road and Design Standards) (Am. Ord. passed 12-15-03)

NOTE: Private roads constructed to the minimum standards of this chapter WILL NOT meet NC Department of Transportation minimum subdivision road requirements. As a result, the NC Department of Transportation MAY NOT accept these roads without additional improvement(s).

(A) Road Standards. Subdivision roads may be designated public or private.

(1) Public subdivision roads shall be built to minimum construction standards of the NC Department of Transportation as required by G.S. §136-102.6. The public subdivision road standards are contained in NC Division of Highways Subdivision Roads Minimum Construction Standards.

(2) All minor and major subdivision roads intersecting a state maintained road shall have a stop sign that conforms with NC Department of Transportation specifications, installed by the developer and maintained by the developer or homeowners association. After the North Carolina Department of Transportation accepts the subdivision road(s), the developer or homeowners association shall not be responsible for the maintenance of road name and stop signs.

(3) Private minor and major subdivision roads shall be built to minimum construction standards set forth in Schedule I of this chapter.

(4) No road in an area subject to flooding shall be approved if it is more than two feet (2') below the elevation of a 100-year flood. The Haywood County Planner and/or Planning Board may require, where necessary, profiles and elevations of roads for areas subject to flooding. Fill may be used for roads provided such fill does not increase flood heights. Drainage openings for roads in areas subject to flooding shall be provided and shall be so designed as to not restrict the flow of water and increase flood heights.

(5) Every road shall be designed to accommodate a ten (10) year storm water run-off by natural or artificial means.

(B) Road Design. Private subdivision roads shall meet the following minimum road design standards:

(1) New Road Right-of-Way Width. All subdivision roads shall have a minimum right-of-way of forty-five feet (45') unless the road is completed prior to filing the final plat for approval, then a thirty foot (30') right-of-way along the centerline shall be permitted. **NOTE: NC Department of Transportation requires a fifty foot (50') minimum right-of-way for a dead-end road more than 2,500 feet in length or a loop road more than one (1) mile in length.**

(2) Previously Platted Road Right-of-Way Width. Where a right-of-way less than forty-five feet (45') was recorded or platted prior to the adoption of this chapter and a forty-five foot (45') right-of-way is not now obtainable for the purpose of accessing the subdivision of land for either a minor or major subdivision, the following minimum standards shall be met by the developer:

(a) The developer or his assignee shall submit a copy of the recorded plat or deed describing and identifying the right-of-way.

(b) The access road shall be a minimum twelve foot (12') all-weather surface road for a minor subdivision or an eighteen foot (18') all-weather surface road for a major subdivision unless the recorded right-of-way will not allow these minimum standards.

(c) A disclosure statement shall be placed on the final plat stating "This subdivision is accessed by a road which does not have a forty-five foot (45') minimum right-of-way and/or does not have the minimum recommended roadbed width. Access to homes within the subdivision may be limited. The NC Department of Transportation is unlikely to accept and maintain roads within the subdivision as public road(s)."

(3) Cul-de-sacs. The required turnaround on a dead-end road in a subdivision shall have an unobstructed roadway radius of not less than twenty-five feet (25'). If the road length does not exceed fifteen hundred feet (1,500') and if construction difficulties will not permit a turnaround, the use of a modified "Y" or a "T" with one (1) extension extending at least twenty-five feet (25') and the other extending a minimum of fifty feet (50') and a maximum of one hundred feet (100') which will allow a vehicle with a wheel base of at least twenty-five feet (25') to complete a turning movement with a maximum of one (1) backing movement, shall be permitted.

(4) Roads Grades. Maximum road grades shall be twenty percent (20%). In extreme cases, where the terrain prohibits a lesser grade to attain access to a nearby area, a maximum grade of twenty-five percent (25%) is permissible if a professional engineer, currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors, designs and certifies grade and slope stability of the portion from 20.01% to 25%. For any road containing grade(s) exceeding twenty percent (20%), the following minimum standards shall be met by the developer:

(a) The developer shall submit a report by a professional engineer, with civil engineering qualifications, or professional land surveyor currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors, stating that there are no reasonable alternative routes to access the adjacent area which do not exceed twenty percent (20%) grade.

(b) Any road exceeding fifteen percent (15%) grade shall meet NC Department of Transportation minimum construction and paving (bituminous) specifications for the length exceeding fifteen percent (15%) grade plus an additional three hundred feet (300') on each side of the length exceeding fifteen percent (15%) grade or until the road grade reaches eight percent (8%) over a fifty foot (50') section. The least distance shall be enforced. A professional engineer, with civil engineering qualifications, or registered land surveyor currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors shall identify on the plan(s) the road(s) which have grades exceeding fifteen percent (15%), the point(s) where the fifteen percent (15%) grade begins and terminates, and the additional three hundred foot (300') segments to be paved on each side. Should it be necessary to go beyond property lines to reach a distance of three hundred feet (300') or for the purpose of measuring or determining the existence of an average grade of eight percent (8%) over a fifty foot (50') section of road, only that portion of the road within the subject property is required to be paved.

(Am. Ord. passed 12-15-03)

(c) A disclosure statement shall be placed on the final plat stating "This subdivision contains roads which exceed fifteen percent (15%) grade(s). Access to homes within the subdivision may be limited. The NC Department of Transportation is unlikely to accept and maintain roads within the subdivision as public road(s)."

(C) Connections with State Road System. If a new subdivision road to be dedicated as public or private will connect to a state system road, a permit authorizing construction on state right-of-way may be required from the Division of Highways before beginning construction. If required, applications shall be made to the District Engineer of the NC Department of Transportation having jurisdiction in this area.

(D) Intersections. When a new subdivision road connects to a state maintained road, the design standards of the NC Department of Transportation for intersections shall be required.

SCHEDULE I

DESIGN CRITERIA FOR PRIVATE ROADS

Minimum Road Right of Way Width Shoulder Section	45'
(If road is completed prior to filing final plat)	30'
Minimum Road-Bed Width for Eleven (11) Lots or More Shoulder Section	18'
Minimum Road-Bed Width for Ten (10) Lots or Less Shoulder Section	12'
Maximum Grade (NC DOT Classification-Hill Terrain)	20%
(Designed and certified by Professional Engineer)	25%
Minimum Shoulder Width Shoulder Section	2'
Minimum Cul-de-Sac Radius Right of Way Shoulder Section	50'
Minimum Cul-de-Sac Radius for Roadbed Turning Radius Shoulder Section	25'

***Any road exceeding fifteen percent (15%) grade shall meet NC Department of Transportation minimum construction and paving (bituminous) specifications for the length exceeding fifteen percent (15%) grade plus an additional three hundred feet (300') on each side of the length exceeding fifteen percent (15%) grade or until the road grade reaches eight percent (8%) over a fifty foot (50') section.
(Am. Ord. passed 12-15-03)**

*INSTALLATION OF IMPROVEMENTS***§ 152A.50 PERMANENT REFERENCE POINTS.**

Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with G.S. sections 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended.

(A) Monuments. With each block of a subdivision at least two (2) monuments designated as control corners shall be installed. The surveyor shall install additional monuments as required. All monuments shall be constructed of concrete and shall be four inches (4") in diameter or square at the top and six inches (6") at the bottom and not less than three feet (3') in length. Each monument shall have imbedded in its top, or attached by suitable means, a non-corroding metal plate which is marked plainly with the point, the surveyor's registration number, the month and year it was installed and the word "monument" or "control corner." A monument shall be set at least thirty inches (30") in the ground with at least six inches (6") exposed above the ground unless this requirement is impractical.

(B) Property Markers. A steel or wrought iron pipe or the equivalent, not less than three-fourths inch (3/4") in diameter and at least thirty inches (30") in length, shall be set at all corners where practical or where the ground will allow, except those located by monuments or natural corners.

§ 152A.51 IMPROVEMENTS.

Approval of the final plat shall be subject to the subdivider having guaranteed, to the satisfaction of Haywood County through the ordinance administrator, the installation of said improvements. Haywood County through the ordinance administrator reserves the right to inspect, reject, stop, or otherwise cease the construction of all service facilities or improvements in the event the same are not being constructed in accordance with the plans, specification standards, policies, or other requirements of this chapter.

(A) Grading. All roads shall be graded to their full roadbed width of eighteen feet (18'), or twelve feet (12') for subdivisions with four (4) to ten (10) lots and for an additional two feet (2') on each side of the roadbed. Finished grade, cross section, and profiles shall be certified by a professional land surveyor or professional engineer, with civil engineering qualifications, currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors.

(1) Preparation. Before grading is started, the required roadbed width area shall be first cleared of all stumps, roots, brush and other objectionable materials.

(2) Cuts. All tree stumps, boulders, and other obstructions within the proposed roadbed width shall be removed to a depth of one foot (1') below the subgrade.

(3) Fill. All suitable material from roadbed cuts may be used in the construction of fills, approaches, or at other places as needed. The fill shall be installed and compacted.

(B) Installation of Utilities. All public or private water and sewerage systems shall be installed and shall meet the requirements of the Haywood County Health Department or other governmental authorities having jurisdiction thereof.

(C) Roadbed Base. After preparation of the subgrade, the roadbed shall be surfaced with material of no lower classification than crushed rock, stone, or gravel. The size of the crushed rock or stone shall be from one and one-half inches (1 1/2") down, including dust. Spreading of the stone shall be done uniformly over the area to be covered by means of appropriate spreading devices and shall not be dumped in piles. The stone shall be rolled until thoroughly compacted. The compacted thickness of the stone roadbed shall be no less than six inches (6"). Finished roadbed base shall be certified by a professional land surveyor or professional engineer.

§ 152A.52 STORM WATER DRAINAGE.

The subdivider shall provide disposal of surface water by natural or artificial means subject to the following standards of the NC Department of Transportation, as reflected in Handbook for the Design of Highway Surface Drainage Structures, (1973) subject to review by the Planning Board:

(A) No surface water shall be channeled or directed into a sanitary sewer.

(B) Where feasible, the subdivider shall connect to an existing storm drainage system.

(C) Where an existing storm drainage system cannot feasibly be provided for the subdivision, a surface drainage system shall be provided to protect the development from water damage.

(D) Anyone constructing a dam or impoundment within the subdivision must comply with the NC Dam Safety Law of 1967 and the NC Administrative Code Title 15, Subchapter 2K.

(E) In all areas of special flood hazards, all subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

§ 152A.53 GUARANTEE OF IMPROVEMENTS.

Where the required roadbed and utility improvements have not been completed prior to the submission of the final plat for approval, the approval of said plat shall be subject to the subdivider guaranteeing the installation of the improvements within a period of time specified by the Planning Director after consulting with the developer or his engineer(s). Either of the methods described below may be used to guarantee improvements:

(A) Filing a performance or surety bond or an irrevocable standby letter of credit in the amount of one hundred twenty-five percent (125%) of the cost to complete the work as determined by a

professional engineer with civil engineering qualifications currently licensed in the State of North Carolina or a North Carolina State licensed grading contractor, at the developer's expense.

(B) Depositing or placing in escrow, a certified check or cash in an amount equal to one hundred twenty-five percent (125%) of the amount in Section §152A.53 (A). Portions of the deposit may be released as work progresses as specified by the Planning Director after consulting with the developer and his engineer.

LEGAL PROVISIONS

§ 152A.60 GENERAL PROCEDURE FOR PLAT APPROVAL.

(A) After the effective date of this chapter, no plat of a subdivision of land or plan of a development within Haywood County's jurisdiction shall be filed or recorded until it has been submitted to and approved by the Haywood County Planning Board and/or the Planning Director, and until this approval is entered in writing on the face of the plat by the Chairman of the Planning Board or the Planning Director.

(B) The Register of Deeds shall not file or record a plat of a subdivision of land located within the planning jurisdiction of the county that has not been approved in accordance with these provisions and approved by the Haywood County Land Records/GIS Office.

(C) Approval of a special, minor or major preliminary subdivision plat by either the Planning Department or the Planning Board shall be effective for a period not to exceed one (1) year and thereafter expire and be considered null and void. A six (6) month extension may be granted by the Planning Department or Planning Board when reasonable cause is shown.

§ 152A.61 ADMINISTRATOR.

The Haywood County Planning Department by and through the Haywood County Planning Director is hereby designated a planning agency pursuant to G.S. ~~§153A-321~~Chapter 160D-301 and is appointed to serve as the subdivision administrator.

§ 152A.62 ADMINISTRATION FEE.

A fee for reviewing and approving subdivisions and major subdivisions may be established by the Haywood County Commissioners and posted in the Planning Department.

§ 152A.63 VARIANCES.

Where, because of severe topographical or other conditions peculiar to the site, strict adherence to the provisions of this chapter would cause an unnecessary hardship, the Planning Board may authorize a variance, if such variance can be made without destroying the intent of this chapter. Any variance thus authorized is required to be entered in writing in the minutes of the meeting of the Planning Board and the reasoning on which the departure was justified set forth.

The acts of the Planning Board in considering and determining a request for a variance shall be quasi-judicial proceedings, to be conducted in accordance with N.C. G.S. 160D-406 and the provisions of this Chapter.

(A) No hearing shall be held by the Board unless written notice thereof is filed within thirty (30) days after the interested party or parties receive the decision or by the Subdivision and Pre-Development Ordinance Administrator or the aggrieved party or parties receive constructive notice to the decision. Applications shall be filed with the Subdivision and Pre-Development Ordinance Administrator, who shall act as Clerk for the Board in receiving this notice; it shall be the duty of the Administrator to notify all the Board members as soon as possible of the application. All applications for a variance shall be made on the form entitled “Application for a Variance from the Haywood County Code of Ordinances, Chapter 152A: Subdivision and Pre-Development”, as set forth in Appendix A. All information required on the form shall be complete before an application shall be considered as having been filed.

(B) After receipt from the Subdivision and Pre-Development Ordinance Administrator of the completed Application for a Variance, the Chairman shall schedule the time for the hearing, which shall be at the next regularly scheduled meeting. The application must be filed a minimum of fourteen (14) days prior to the next regularly scheduled meeting in order to be placed on that agenda.

The Clerk shall give notice of the hearing by mailing notices of the hearing to adjoining property owners and other parties to the action at least five (5) days prior to the hearing.

(1) Conduct of Hearing: Parties or their attorney shall appear in person at the hearing. The order of business for each hearing shall be as follows:

(a) The Chairman, or such person as he shall direct, shall give a preliminary statement of the case.

(b) At the discretion of the Chairman, witnesses will be sworn in.

- (c) The applicant shall present the arguments and support of his case or application. Witnesses in favor of the applicant's request may be called and factual evidence submitted.
- (d) Applicants and proponents may be questioned by the Board.
- (e) Persons opposed to granting the application shall present their argument. Witnesses may be called and actual evidence submitted in opposition.
- (f) Opponents may be questioned by the Board.
- (g) Opponents may be allowed to cross examine all witnesses.
- (h) The applicant may be allowed to inspect all evidence offered against him/her.
- (i) Both sides will be permitted to present rebuttals to opposing testimony.
- (j) The Board may, at its discretion, view the premises and obtain additional facts of matter before arriving at a determination of the case.
- (k) The Board shall discuss the application and develop their conclusions.
- (l) Motion.

(2) Decisions:

(a) Vote: The concurring vote of four-fifths of the attending membership of the Board shall be necessary to effect any variation from terms of the Ordinance.

~~————— No board member may be excused from voting except when immediate personal or financial interests preclude impartial consideration of issues involved. A failure to vote by such a member who is present at a meeting place or who has withdrawn without being excused by a majority vote of the remaining members present shall be counted as an affirmative vote. An affirmative vote is a vote in favor of the applicant.~~

~~Members of the Planning Board shall not vote on a variance request where the outcome of the matter is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member shall also not vote where the landowner is a person with whom the member has a close familial, business or other associational relationship.~~

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

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

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

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

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

d. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the Ordinance and then comes to the Board for relief.

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

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

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

(c) In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this Haywood County Code of Ordinances Chapter 152A: Subdivision and Pre-Development.

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

1. Time: Decisions by the Board shall be made not more than thirty-six (36) days following the date of the hearing.

2. Form: Written notice of the decision and the reasons therefore in a case shall be given to the applicant by the Clerk as soon as practicable after the case has been decided. The final decision of the Planning Board shall be shown in the record of the case as entered in the Minutes of the Board, and signed by the Chairman and the Clerk upon approval of the Minutes of the Board. The

Minutes shall record the reason for the decision, the summary of the evidence introduced, and the findings of fact and conclusions of the law made by the Board.

(3) Public Record of Decisions: The decisions of the Board, as filed in its Minutes, shall be a public record, available for inspection at all reasonable times. Minutes shall be kept by the Clerk who shall make them available to the public. Every decision of the Haywood County Planning Board shall be filed in the office of the Subdivision and Pre-Development Ordinance Administrator and a written copy thereof shall be delivered to the applicant and adjacent property owners by personal service or registered mail.

(4) Decisions and Appeals: Every decision by the Planning Board regarding a variance from Haywood County Code of Ordinances Chapter 152A: Subdivision and Pre-Development shall be subject to the review by the Haywood County Board of Commissioners, to be conducted as a quasi-judicial proceeding under N.C. G.S. 160D-406. All appeals shall be taken to the Haywood County Board of Commissioners within thirty (30) days after the decision of the Planning Board is filed in the Office of the Subdivision and Pre-Development Administrator or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later.

Members of the Board of Commissioners shall not vote on a variance request where the outcome of the matter is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member shall also not vote where the landowner is a person with whom the member has a close familial, business or other associational relationship.

Any person aggrieved by the decision of the Haywood County Board of Commissioners or any taxpayer may appeal the decision to the Superior Court, to be conducted as described in N.C. G.S. 160D-406(k). All appeals shall be taken to the Superior Court within thirty (30) days after the decision of the Haywood County Board of Commissioners is filed in the Office of the Clerk or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later.

~~(C) Amendments: These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four-fifths of the Planning Board, provided that such amendment may be presented in writing at a meeting of the Board preceding the meeting at which the vote is taken.~~

§ 152A.64 PENALTIES FOR VIOLATION.

After the effective date of this chapter, any person who, being the owner or agent of the owner of any land located within the planning jurisdiction of Haywood County, subdivides or develops land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of land before the plat has been properly approved under the terms of this chapter and recorded in the Office of the Haywood County Register of Deeds, shall be guilty of a misdemeanor. **The description by metes and bounds in the instrument of transfer shall not**

exempt the transactions from this penalty. Contracting for the sale of land is not subject to this penalty so long as such contract requires compliance with this ordinance prior to the transfer of title to the land and such requirement is a condition to enforceability of such contract. Haywood County through its attorney or other official designated by the Board of County Commissioners may bring suit to enjoin any illegal subdivision, transfer, or sale of land. Further, violators of this chapter shall be subject, upon conviction, to fine and/or imprisonment as provided by G.S. §14-4. Each day that a plat or property is not in compliance with this chapter shall constitute a separate and distinct offense.

§ 152A.65 AMENDMENTS.

(A) The Board of County Commissioners may from time to time amend the terms of this chapter, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the Planning Board for review and recommendation. The Planning Board shall have thirty (30) working days from the time the proposed amendment is submitted to it within which to submit its recommendation to the County Commissioners. If the Planning Board fails to submit a report within the specified time, it shall be deemed to have recommended approval of the amendment.

(B) No amendment shall be adopted by the Board of County Commissioners until they have held a public hearing on the amendment. Notice of the hearing shall be published in a newspaper of general circulation in Haywood County at least once a week for two (2) successive calendar weeks prior to the hearing in accordance with G.S. §153A-323.

§ 152A.66 VALIDITY.

Should any section or provision of this chapter be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this chapter as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

§ 152A.67 ABROGATION.

It is not intended that this chapter repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations, or permits previously adopted or issued pursuant to law. However, where this chapter imposes greater restrictions, the provisions of this chapter shall govern.

§ 152A.68 REPEAL OF EXISTING PRE-DEVELOPMENT ORDINANCE.

This chapter in part carries forth by re-enactment some of the provisions of the Pre-Development Ordinance of Haywood County, previously adopted, and it is not the intention to repeal but rather re-enact and continue in force such existing provisions so that all rights and liabilities that have accrued

thereunder are preserved and may be enforced. All provisions of the Pre-Development Ordinance, which are not re-enacted herein, are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of the Pre-Development Ordinance heretofore in effect, which are now pending in any courts of the State of North Carolina or United States of America, shall not be abated or abandoned by reason of the adoption of this chapter, but shall be prosecuted to their finality the same as if this chapter had not been adopted; and all violations of the existing chapter, prosecutions for which have not been instituted, may be hereafter construed as to abandon, abate, or dismiss any litigation or prosecution now pending and/or which may heretofore have been instituted or prosecuted.

Passed and adopted by the Haywood County Commissioners this 7th day of October 2002.

APPENDIX A

Application for a Variance from the Haywood County Code of Ordinances, Chapter 152A: Subdivision and Pre-Development

Date _____ Application No. _____

Applicant’s Name: _____ Phone: _____

Address: _____

PIN: _____

Directions to the property from Waynesville: _____

Applications shall contain the following:

- 1. A complete and detailed description of the proposed variance, (see the rest of this form), together with any other pertinent information which the applicant feels would be helpful to the Haywood County Planning Board in considering the application.

TO THE HAYWOOD COUNTY PLANNING BOARD:

I, _____ (Owner/Agent), hereby petition the Haywood County Planning Board for a variance from the literal provisions of Chapter 152A: (Subdivision and Pre-Development) Haywood County Code of Ordinances because I am prohibited from using the parcel of land described in this form in a manner demonstrated within this application. I request a variance from the following provisions of the Ordinance (cite sections):

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Haywood County Planning Board shall reach three conclusions as a prerequisite to the issuance of a variance:

(a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance,

(b) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit, and

(c) that in granting the variance the public safety and welfare have been assured and substantial justice has been done.

In the space provided below, indicate the facts that you intend to show and the arguments that you intend to make to convince the Planning Board that it can properly reach these three required conclusions:

(1) THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE. The courts have developed three rules to determine whether in a particular situation “practical difficulties or unnecessary hardships” exist. State facts and arguments in support of each of the following:

(a) If he/she complies with the provisions of the ordinance, the property owner can secure no reasonable return from or make no reasonable use of his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

(b) The hardship of which the applicant complains results from unique circumstances related to the applicants land. (Note: hardships suffered by the applicant in common with his neighbors do not justify a variance. Also, unique personal family hardships are not relevant since a variance, if granted, runs with the land.)

(c) The hardship is not the result of the applicant’s own actions.

(2) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES THE SPIRIT. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

(3) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.

Signature

Date: _____

Transmitted by

Date: _____

Received by (Clerk to the Board)

Date: _____

IN THE EVENT THAT ANY DISCREPANCIES EXIST BETWEEN THE CRITERIA OUTLINED ON THIS FORM AND CHAPTER 152A (SUBDIVISION AND PRE-DEVELOPMENT) OF THE HAYWOOD COUNTY CODE OF ORDINANCES, CHAPTER 152A SHALL PREVAIL.

CHAPTER 154: EROSION AND SEDIMENT CONTROL

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(Ord. passed –88; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

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GENERAL PROVISIONS**§ 154.01 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCELERATED EROSION. Any increase over the rate of natural erosion as a result of landdisturbing activities.

ACCESS AND HAUL ROADS. All roadways either permanent or those to be obliterated after completion of land-disturbing activities; used for private travel, construction vehicles, earth moving or heavy equipment or other machinery, and constructed and used in conjunction with landdisturbing activities which require a permit under this chapter.

ACT. The State Sedimentation Pollution Control Act of 1973, being G.S. §§ 113A-50 through 113A-66 and all rules and orders adopted pursuant to it.

ADEQUATE SEDIMENTATION AND EROSION CONTROL MEASURES, STRUCTURES, OR DEVICES. A device, structure, or measure which controls the soil material within the land area under control of the person conducting the land-disturbing activity.

AFFILIATE. A person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control of another person (reference 17 Code of Federal Regulations §240.12(b)-2 (1 June 1993 Edition)).

APPROVED SEDIMENT CONTROL PLAN. A written course of action including maps, drawings, calculations, or assumptions, found by the Inspector or other duly appointed agent to satisfy all requirements of this chapter which details the timing and proper installation of erosion control measures or devices which have a reasonable probability, if implemented, of restraining accelerated erosion and off-site sediment damage associated with a land-disturbing activity.

APPLICANT. Any person, whether the person financially responsible for the land-disturbing activity or his/her duly appointed agent, who submits a formal application, to the Inspector or duly appointed agent, for a permit to conduct land-disturbing activities controlled by this chapter, or who files with the Sediment Board, a motion to appeal a decision by the Inspector or his or her agent as contained in this chapter.

BEING CONDUCTED. A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

BORROW. Fill material required for on-site construction obtained from other locations.

BUFFER ZONE. The strip of land adjacent to a lake or natural watercourse.

CHAPTER. The County Erosion and Sediment Control ordinance as approved by the governing board of the county and included townships.

COMPLETION OF CONSTRUCTION OR DEVELOPMENT. No further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

CONTINUING VIOLATION. Those violations of this chapter or an approved sediment control plan which are occurring after the date for compliance as set forth in a notice of violation served upon the person responsible for a land-disturbing activity covered under this chapter.

DEPARTMENT. The North Carolina State Department of Environment and Natural Resources.

DETENTION STORAGE. Any structure or device which acts to retard the volume of storm water runoff and prevent increased storm flow as a result of a land-disturbing activity.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

DIRECTOR. The Director of the Division of Land Resources of the Department of Environment and Natural Resources.

DISCHARGE POINT. That point at which runoff leaves a tract of land.

DISTRICT. The Haywood County Soil and Water Conservation District created pursuant to G.S. Chapter 139.

DISTURBED AREAS. Any area of land or water that is subject to a land-disturbing activity as defined in this chapter.

ENERGY DISSIPATOR. A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

EROSION. The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

FINAL OBJECTIVE. The type of structure or use resulting from the land-disturbing activity.

FOREST LANDS. All land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

FOREST PRACTICES. Any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber.

GROUND COVER. Any natural vegetative growth or other materials which render the soil surface stable against accelerated erosion.

HIGH-QUALITY WATERS. Those classified as such in 15A NCAC 2B .0101(e)(5) - General Procedures, which is incorporated herein by reference to include further amendments incorporated herein by reference.

HIGH-QUALITY WATER (HQW) ZONES. Areas in the Coastal Counties that are within 575 feet of High Quality Waters and for the remainder of the state areas that are within one mile and drain to HQW's.

INSPECTOR. An individual or group of individuals designated by the Haywood County Commissioners and charged with upholding the provisions of this chapter, and having the power to enter all lands at reasonable times to insure that these provisions are being carried out.

LAKE OR NATURAL WATERCOURSE. Any stream, river, brook, swamp, branch, creek, run, waterway, and any reservoir, lake, or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulations of sediment.

LAND-DISTURBING ACTIVITY. Any use of the land by any person for residential, industrial, educational, institutional, or commercial development, and highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

LAND-DISTURBING PERMIT (hereafter "PERMIT"). The document issued by the county which allows grading or other land-disturbing activity or operations to commence and proceed in accordance with the requirements of this chapter of the Haywood County Code of Ordinances.

LOCAL GOVERNMENT. Any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and/or cities, acting through a joint program pursuant to the provisions of the North Carolina Sedimentation and Erosion Control Act, being G.S. §§ 113A-50 through 113A-66.

NATURAL EROSION. The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

OFF-SITE SEDIMENT DAMAGE. The removal or transport of sediment across the boundaries of a land-disturbing activity, resulting in deposition of such materials in any lake or natural watercourse or any lands public or private not owned by the person responsible for the landdisturbing activity.

PARENT. An affiliate that directly, or indirectly through one or more intermediaries, controls another person (see 17 Code of Federal Regulations §240.12(b)-2 (1 June 1993 Edition))

PERSON. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

PERSON RESPONSIBLE FOR THE VIOLATION.

- (1) The developer or other person who has or holds himself or herself out as having financial or operational control over the land-disturbing activity; and/or
- (2) The landowner or person in possession or control of the land when he/she has directly or indirectly allowed the land-disturbing activity or has benefited from it or he/she has failed to comply with any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act as imposes a duty upon them.

PERSON CONDUCTING LAND-DISTURBING ACTIVITIES. Any person who may be held responsible for a violation of this chapter unless expressly provided otherwise in this chapter or the Sedimentation Pollution Control Act of 1973, being G.S. §§ 113A-50 through 113A 66, as amended, or any order adopted pursuant to this chapter or the Act.

PHASE OF GRADING. One of two types of grading, rough or fine.

PLAN. Erosion and Sediment control plan.

PUBLIC ROAD. A road or street which is maintained by the North Carolina Department of Transportation for use by the public and/or roads that are in actual open use as public vehicular areas, or dedicated or offered for dedication to the public use as a road, highway, street, or avenue, by a deed, grant, map, or plat, and that has been constructed and is in use by the public.

SEDIMENT. Solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

SEDIMENT BOARD. The Haywood County Sediment Control Board as organized by this chapter..

SEDIMENTATION. The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

SILTATION. Sediment resulting from accelerated erosion which is settleable or removable by properly designed, installed, and maintained erosion and sedimentation control measures and devices, and which has been transported from its point of origin within the site of a land-disturbing activity, and which has been deposited, or is in suspension in water.

STORM DRAINAGE FACILITY. The system of inlets, conduits, channels, ditches, and appurtenances which serve to collect and convey storm water through and from a given drainage area.

STORM WATER RUNOFF. The direct runoff of water resulting from precipitation in any form.

SUBSIDIARY. An affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

TEN-YEAR STORM. The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

TRACT. All contiguous land and/or bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

TWENTY-FIVE YEAR STORM. The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.

UNCOVERED. The removal of ground cover from, on, or above the soil surface.

UNDERTAKEN. The initiation of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

VELOCITY. The average velocity of flow through the cross-section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of the flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

VIOLATION. Any land-disturbing activity covered under the provisions of this chapter which is planned or carried out without regard to all the contents and responsibilities thereof or an approved erosion and sediment control plan.

WASTE. Surplus materials resulting from on-site construction and disposed of at other locations.

WASTE AREAS. Areas used for the stockpiling or burial of surplus materials resulting from on-site construction and disposed of at other locations.

WORKING DAYS. Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activities to be undertaken.
(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

§ 154.02 AUTHORITY.

(A) Soil erosion and sedimentation are considered major public problems; therefore the Commissioners of the county enact the following chapter under the authority of the appropriate State Law, being G.S. Chapter 113A, Article 4, as amended.

(B) This chapter shall be cited as the Haywood County Erosion and Sediment Control ordinance.

(C) This chapter shall be effective on August 1, 1988.
(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

§ 154.03 GOVERNING BODY.

The governing body of this chapter is the Haywood County Sediment Control Board, as created in § 154.74, hereafter referred to as the Sediment Board.
(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

§ 154.04 PURPOSE.

This chapter is adopted for the purposes of:

- (A) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation.
- (B) Protecting public and private lands from accelerated erosion due to increases in storm water runoff.
- (C) Preventing continued accelerated erosion of existing areas which are unprotected and not in compliance with this chapter at the time of its adoption.
- (D) Establishing procedures through which these purposes can be fulfilled. Ord. passed --88; Am. Res. passed 1-7-93; Ord. passed 7-23-07)

§ 154.05 SCOPE AND EXCLUSIONS.

(A) *Scope.*

- (1) This chapter shall apply to all land-disturbing activities as defined in G.S. § 113A52(6) undertaken by any person, with the exclusion of those defined in divisions (B)(1) through (3) of this section.
- (2) In addition, a permit, contingent upon an approved plan, shall be required for all landdisturbing activities comprising one-half (21,780 square feet) or greater acres, including both temporary or permanent access and haul roads, borrow pits, waste areas, or other associated activities, undertaken by any person within the limits of the county. Also, a permit contingent upon an approved plan shall be required for all land-disturbing activities comprising less than one-half acres (<21,780 square feet) including both temporary and

permanent access and haul roads, borrow pits, waste areas, or other associated activities, undertaken by any person within the limits of the county for any house site subject to a permit from the Haywood County Buildings Inspections Office (construction or placement) which are less than one-half acre in disturbed area; and commercial sites

subject to a permit from the Haywood County Building Inspections Office which are less than onehalf acre in disturbed area.

(B) *Excluded land-disturbing activities.*

(1) Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:

(a) Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.

(b) Dairy animals and dairy products.

(c) Poultry and poultry products.

(d) Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.

(e) Bees and apiary products.

(f) Fur producing animals.

(2) Land disturbing activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department, but not including development activities such as clearing land or cutting timber.

(3) Activities for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.

(4) Land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. § 113A-56(a), as amended from time to time.

(5) For the duration of an emergency, activities essential to protect human life. ((1993 (Reg. Sess., 1994), c. 776, s 2; 1997, c. 84, s.1.))

(C) *Jurisdiction.* This chapter may apply within the incorporated areas of municipalities upon proper resolution by the governing bodies of the respective municipalities and agreement by the Haywood County Board of Commissioners.

(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

REQUIREMENTS**§ 154.20 GENERAL REQUIREMENTS.***(A) Persons conducting land-disturbing activities.*

- (1) Persons conducting land-disturbing activities shall take all reasonable measures to prevent damage to public and private property resulting from those activities. In addition, they will be held responsible for knowing and following the requirements of this chapter.
- (2) It is the responsibility of the person conducting the land-disturbing activity to apply to the Inspector or his or her agent for any permit required and receive the permit contingent upon an approved sediment control plan, before beginning any land-disturbing activity which uncovers ~~one-half~~one-half or greater acres; and any house site subject to a permit from the Haywood County Building Inspections Office (construction or placement) which is less than one-half acre in disturbed area; or commercial sites subject to a permit from the Haywood County Building Inspections Office which are less than one-half acre in disturbed area.
- (3) Permit.
 - (a) If any land-disturbing activity requires a permit as defined in this chapter, none of the following documents or permits, where applicable, shall be issued until an erosion control plan has been approved by the Inspector:
 1. A septic tank permit.
 2. A building permit.
 - (b) Any of the above permits may be applied for at the same time as the permit required by this chapter.
- (4) Requests for a permit to conduct land-disturbing activities shall contain an erosion and sediment control plan.
- (5) Applications shall be submitted at least 30 calendar days prior to the planned initiation of the land-disturbing activity.
- (6) No person shall initiate any land-disturbing activity which uncovers one-half or greater acres without having an erosion and sediment control plan approved by the Inspector.
- (7) Whenever conflicts exist between federal, state, or local laws, ordinances, or rules, the more restrictive provision shall apply.

(B) **MANDATORY STANDARDS.** No land-disturbing activity subject to this chapter shall be undertaken except in accordance with the following mandatory requirements:

(1) *Buffer zone.*

(a) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Director may approve plans which include land-disturbing activity along trout waters when the duration of the disturbance would be temporary and the extent of the disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(b) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area with the 25% of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(c) The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.

(d) Where a temporary and minimal disturbance is permitted as an exception by G.S. §113A-57(1) land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of 10% of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.

(e) No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15A Adm. Code 2B.011 "Fresh Surface Water Classification and Standards", as amended.

(2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with a ground cover, device, or structure sufficient to restrain erosion.

(3) *Ground cover.* Whenever land-disturbing activity is undertaken on a tract subject to permitting requirements of this chapter, the person conducting the land-disturbing

activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in § 154.23(B)(5) of this chapter, provision for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 90 calendar days following completion of construction or development, whichever is shorter.

- (4) *Prior plan approval.* No person shall initiate any land-disturbing activity if one-half (1/2) acre or more is uncovered unless a sediment control plan is filed 30 or more days prior to initiation of the activity and the plan is approved by the Inspector.

(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

- (5) Any land-disturbing activity for which a plan is required by this chapter shall be conducted in accordance with the approved erosion and sedimentation control plan.

§ 154.21 STORM WATER DRAINAGE PROTECTION.

- (A) *Statement of purpose.* The purpose of this section is to protect the public health, safety, and welfare from property damage caused by storm water runoff. To accomplish this, projects that fall under the provisions of this chapter shall take into consideration the following two basic objectives:

- (1) Protect the absorptive, purifying, and retentive functions of natural systems that exist on the site of a proposed development; and
- (2) Provide for post development storm water runoff characteristics that resemble the conditions that existed before the site's alteration.

- (B) *Regulations.*

- (1) *Post-construction velocity.*

- (a) Persons shall conduct land-disturbing activity so that the post-construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

1. The velocity established by the table in division (B)(5) below; or
2. The velocity of the 10-year storm runoff in the receiving watercourse prior to development.

- (b) If conditions (B)(1)(a) 1. or 2. cannot be met, then the receiving watercourse to, and including, the discharge point shall be designed and constructed to withstand

the expected velocity anywhere the velocity exceeds the "prior to development" velocity by 10%. (2) *Performance standard.*

(a) The disturbing activity shall be planned and conditions such that the velocity of storm water runoff in the receiving watercourse at the point of discharge resulting from 10-year storm after development shall not exceed the greater of:

1. The critical velocity acceptable in the receiving watercourses as determined from division (B)(5) of this rule; or
2. The velocity in the receiving watercourse determined for the 10-year storm prior to development.

(b) If conditions (B)(2)(a) 1. or 2. of this section cannot be met, the channel below the discharge point shall be designed and constructed to withstand the expected velocity.

(3) *Acceptable management measures.* Measures applied alone, or in combination, to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. Innovative techniques and ideas will be considered and may be used when shown to have the potential for successful results. Some alternatives are to:

- (a) Avoid increases in surface water runoff volume and velocity by including measures which promote filtration or detention and to compensate for increased runoff from areas rendered impervious.
 - (b) Avoid increases in storm water discharge velocities by using vegetated or roughened swales or waterways or detention storage in lieu of closed drains and high-velocity paved sections.
 - (c) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures.
 - (d) Protect watercourses subject to accelerated erosion by providing improved crosssections or linings resistant to erosion such as rip-rap or gabions.
- (4) *Exception.* This rule shall not apply where it can be shown that storm water discharge velocities will not create an accelerated erosion problem in the receiving watercourse.
- (5) *Maximum permissible velocity.* The following is a table for maximum permissible velocities for storm water discharges:

<i>Material</i>	<i>Maximum Permissible</i>	
	<i>F.P.S.</i>	<i>M.P.S.</i>
Fine sand	2.5	.8
Sandy loam	2.5	.8
Silt loam	3	.8
Firm loam	3.5	.9
Fine gravel	5	1.1
Still clay	5	1.5
Graded loam to cobble	5	1.5
Graded silt to cobble	5.5	1.5
Alluvial silts (non-colloidal)	3.5	1.1
Alluvial silts (colloidal)	5	1.5
Coarse gravel	6	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6	1.8
Source – adapted from recommendations by Special Committee on Irrigation Research, ASCE, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by .95 for slightly sinuous, by .9 for moderately sinuous channels, and by .8 for highly sinuous channels.		

- (6) *Storm water runoff permit.* A storm water runoff permit is required where:
 - (a) A sediment control plan is required, and;
 - (b) The parcel is over two acres in area, and;
 - (c) The impervious surface of the new construction, including buildings, roads, sidewalks, recreational facilities, and the like, is over 50% of the acreage. For the purposes of this section, impervious surfaces include gravel, asphalt, concrete, tennis courts, and the like. (Note: Wooden slated decks and the water area of a swimming pool are considered pervious.)

- (7) *Design standards.* The first one inch of rainfall shall be required to percolate on the site. This shall be accomplished through best management practices such as buffer areas, grassed swales, filter strips, porous pavement, infiltration basins and trenches, water quality inlets, retention ponds, extended detention ponds and other measures.

- (8) *Storm water drainage plan.* A storm water drainage plan is required for all developments meeting the requirements of division (B)(6) above. It shall be prepared by a registered engineer, landscape architect or, to the extent permitted by law, a registered land surveyor and shall contain the following general elements:

- (a) A general site plan showing all impervious surfaces, the location and size of all storm water drainage structures (if any), best management practice measures, and infiltration areas;
- (b) Topographic features (finished grade);
- (c) General or typical cross sectional drawings of all storm water drainage structures, if any;
- (d) The total number of square feet of impervious surfaces and its relative percentage of the total lot;
- (e) Any other information deemed necessary by the Erosion Control Specialist.

- (9) *Operation and maintenance.* It shall be the responsibility of the property owner to insure that whatever storm water management devices or measures are installed are kept in good working order.

(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Ord. passed 7-23-07) Penalty, see § 154.99

§154.22 BASIC CONTROL OBJECTIVES.

An erosion and sediment control plan may be disapproved pursuant to § 154.40 of this chapter if the plan fails to address the following control objectives:

(A) *Control off-site sediment damage.* All land-disturbing activities are to be planned and conducted to confine sediment produced within the boundaries of the property upon which landdisturbing activities are being carried out.

(B) *Limit the time of exposure.* All land-disturbing activities are to be planned and conducted to limit exposure of disturbed areas to the shortest possible time. When discrete segments of the land-disturbing activity are completed, these should be stabilized quickly to avoid additional accelerated erosion hazards.

(C) *Limit the exposed areas.* All land-disturbing activities are to be planned and conducted to limit the size of the areas to be exposed at any one time.

(D) *Control surface water.* Surface water runoff originating from or upgrade of disturbed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(E) *Identify critical areas.* On-site areas subject to severe erosion and off-site areas subject to damage from accelerated erosion and/or sedimentation are to be identified and receive special attention.

(F) *Manage storm water runoff.* When the increase in the velocity of storm water runoff resulting from land-disturbing activities is sufficient to cause accelerated erosion in the receiving watercourse, plans are to include measures to control the velocity at the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

§ 154.23 DESIGN AND PERFORMANCE STANDARDS.

(A) Except as provided in division (B)(2) below of this section, erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak of runoff from the ten-year storm. Runoff rates shall be calculated using procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures.

(B) In High Quality Water (HQW) zones the following design standards shall apply:

(1) Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.

(2) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed, and constructed to provide protection from the runoff of the 25year storm which produces the maximum peak rate of runoff as calculated according to procedures in the US Department of Agriculture Soil Conservation Service's "National Engineering Field Manual from Conservation Practices" or according to procedures adopted by any other agency of this state or the federal government or any generally recognized organization or association.

(3) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.4 mm) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the US Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the federal government or any generally recognized organization or association.

(4) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes not steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices, or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(5) Ground cover sufficient to restrain erosion must be provided for any portion of a landdisturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.

(Ord. passed - -88; Am. Res. passed 1-7-93; Ord. passed 7-23-07) Penalty, see § 154.99

PLANS

§ 154.40 EROSION AND SEDIMENT CONTROL PLANS.

- (A) A sediment control plan shall be prepared for all land-disturbing activities subject to this chapter whenever the proposed activity is to be undertaken on a tract comprising one-half or greater acres, if one-half or greater acres is to be uncovered. A sediment control plan shall be prepared for all land-disturbing activities for any house site subject to a permit from the Haywood County Building Inspections Office (construction or placement) which is less than one-half acre in disturbed area; and commercial sites subject to a permit from the Haywood County Building Inspections Office which are less than one-half acre in disturbed area.
- (B) Persons conducting land-disturbing activities on a tract which cover one-half or greater acres, shall file two copies of the erosion and sediment control plan with the Inspector at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. The Inspector will forward one copy of the plan to the District office upon receipt of a filed plan. If the Inspector, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the Inspector will require a revised plan. Pending the preparation of a revised plan, permits to conduct land-disturbing activities may be rescinded and work stopped or allowed to continue under conditions outlined by the Sediment Board.
- (C) Erosion and sediment control plans shall be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his or her attorney in fact. The statement shall include the mailing and street address of the principal place of business of the person financially responsible and of the owner of the land or the owner's registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, this chapter or rules or orders adopted or issued pursuant to this chapter. If the applicant is not the owner of the land to be disturbed, the draft erosion and sediment control plan must include the owner's written consent for the applicant to submit a draft erosion and sediment control plan and to conduct the anticipated land-disturbing activity.
- (D) Where prior approval of an erosion and sediment control plan is required, the applicant shall submit a copy to the Haywood County Soil and Water Conservation District. The District, within 20 days of receipt of any plan, shall review the plan and submit its comments and

recommendations to the Sediment Board or the Inspector. Failure of the District to submit its comments and recommendations within the 20 days will not delay final action on the plan. The parties may agree to a period of time less than 20 days.

- (E) The Inspector will review each complete plan submitted and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve or disapprove a complete sediment control plan or a revised sediment control plan within 30 days of receipt shall be deemed approval. Denial of a plan must specifically state in writing the reasons for denial. The Inspector must approve, approve with modification, or deny a revised plan within 15 days of receipt, or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved plan, the Inspector determined that the plan is inadequate to meet the requirements of this chapter, the Inspector may require such revisions as are necessary to comply with this chapter. Failure to approve, approve with modification or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan.
- (F) Any plan submitted for a land-disturbing activity for which an environmental document is required by the State Environmental Policy Act (G.S. § 113A-1 et seq.) shall be deemed incomplete until a complete environmental document is available for review. The Inspector shall promptly notify the person submitting the plan that the 30-day time limit for review for the plan pursuant to § 154.60(C)(5) of this chapter shall not begin until a complete environmental document is available for review.
- (G) The sediment control plan required by this section shall contain such architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter. Plans submitted to the Inspector shall contain such forms or worksheets as supplied and approved by the Inspector or at minimum:
 - (1) A description of the final objective of the land-disturbing activity.
 - (2) A specific time schedule for various stages of the land-disturbing activities.
 - (3) Maps showing the following features should also be supplied:
 - (a) A true scale of not greater than one inch equals 200 feet and a contour interval of five feet or such interval sufficient to describe the topography. Not-to-scale sketches are not acceptable.
 - (b) Exact boundaries of the site including interior lines or easements, relations to nearest streets, roads, or highways, scale and north arrow, total acreage, and boundaries of the areas to be disturbed, as well as accurate estimates of their size, shall be shown.
 - (c) Existing conditions including buildings, creeks, or other bodies of water, culverts and bridges, road grades, areas of special environmental concern or those subject to severe erosion or flooding hazard, or other information which may be pertinent in evaluation of the plan.

- (d) The location of access and haul roads, borrow pits, proposed structures, areas of cuts and fill, culverts, ditches, stream relocations, sediment basins, and other structural erosion control measures, and any non-vegetative ground covers such as paving, rip-rap, or other surfaces.
- (4) Supporting documentation used for design of erosion control measures. including but not limited to:
 - (a) Runoff and drainage calculations, soil test results, velocity and discharge computations.
 - (b) Specifications for establishment and maintenance of vegetative ground covers including species to be used, lime and fertilizer application rates, time and method of planting, and type of mulch.
- (H) A sediment control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:
 - (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by Haywood County pursuant to the Sedimentation Pollution Control Act and has not complied with the notice within the time specified in the notice;
 - (2) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time payment is due;
 - (3) Has been convicted of a misdemeanor pursuant to G.S. § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act or;
 - (4) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.
 - (5) For purposes of § 154.40(H), an applicant's record may be considered for only the two years prior to the application date.
 - (6) Has submitted an erosion control or sediment control plan if implementation of the plan would result in a violation of rules adopted by the environmental management commission to protect riparian buffers along surface waters.
- (I) The Inspector may require additional information from the applicant, at his or her discretion, to aid in determining the suitability of a submitted erosion and sediment control plan.
- (J) Any person engaged in land-disturbing activity who fails to file a plan in accordance with this chapter, or conducts a land-disturbing activity except in accordance with provisions of an approved erosion and sediment control plan shall be deemed in violation of this chapter.

(K) Amendment to a plan.

(a) Application for an amendment to a plan may be made at any time in written or graphic form under the same conditions as the original application. Until the proposed amendment is approved by the Inspector, subject to all criteria set forth in this chapter, the permit holder may not proceed except in accordance with the original plan as approved.

(b) When an amendment is approved, the Inspector shall issue a new permit for the remaining time on the old permit plus the additional time as requested on the amendment.

(L) Reference to sediment control plan shall be deemed to be intended to be identical to and the same as references to erosion and sediment control plan, when appearing in this ordinance or in the General Statutes of North Carolina.

(M) Haywood County and/or the Commission shall condition approval of a draft erosion and sediment control plan upon the applicant's compliance with federal and state water quality laws, regulations and rules.

(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

(N) The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1. Any deviation from the approved erosion and sediment control plan that more than a minor field adjustment must be approved by the inspector prior to construction.

§ 154.41 PLAN REVISION AFTER INITIATION.

(A) Whenever the Inspector determines that significant sedimentation is occurring as a result of land-disturbing activities, despite application and maintenance of protective measures, the person conducting the land-disturbing activities will be required to and shall take additional protective action.

(B) If deemed appropriate by the Inspector the person conducting the land-disturbing activities shall submit an amendment or revision within the time specified by the Inspector. If an amendment or revised plan is neither approved or disapproved within 15 days after receipt by the Inspector, it is deemed approved.

(Ord. passed - -88; Am. Res. passed 1-7-93; Ord. passed 7-23-07) Penalty, see § 154.99

§ 154.42 RESPONSIBILITY FOR MAINTENANCE.

- (A) *Maintenance during development.* The person conducting land-disturbing activities shall be responsible for maintaining and installing all temporary and permanent erosion control measures and vegetative covers as required by an approved sediment control plan or other provision of this chapter, the Act, or orders adopted pursuant to this chapter or the Act, during development of the site. After development is completed, the responsibility for installation and maintenance of all permanent erosion and sediment control measures, structures, or devices shall lie with the owner or person in possession or control of the property.

(B) *Maintenance after project completion.*

(1) Failure to properly maintain permanent erosion control measures after completion of the project constitutes a violation of this chapter unless located within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(2) If maintenance of existing structures, measures, or devices are deemed inadequate by the Inspector, written notice of violation shall be served upon the landowner detailing the specific items of violation and setting a reasonable time frame for corrective action. Notices of violation shall be sent by registered or certified mail or other means. It shall further warn that failure to correct the violation in the time period specified will result in the assessment of a civil penalty or other enforcement action.

(Ord. passed - -88; Am. Res. passed 1-7-93; Ord. passed 7-23-07) Penalty, see § 154.99

§ 154.43 BORROW AND WASTE AREAS.

When the person conducting the land-disturbing activities is also the person conducting the borrow and waste disposal activities, areas from which borrow is obtained and which are not regulated by the Mining Act of 1971, being G.S. §§ 74-46 through 74-68, and waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the landdisturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

(Ord. passed - -88; Am. Res. passed 1-7-93; Ord. passed 7-23-07)

§ 154.44 ACCESS AND HAUL ROADS.

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity. (Ord. passed- -88; Am. Res. passed 1-7-93; Ord. passed 7-23-07)

§ 154.45 OPERATIONS IN LAKES OR NATURAL WATERCOURSES.

Land-disturbing activities in connection with construction on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in a streamflow's characteristics except when justification for a significant alteration to flow characteristic is provided.

(Ord. passed - -88; Am. Res. passed 1-7-93; Ord. passed 7-23-07) Penalty, see § 154.99

*PERMITS***§ 154.60 PERMITS TO CONDUCT LAND-DISTURBING ACTIVITY.**

- (A) No person shall undertake any land-disturbing activity subject to this chapter without first obtaining a permit from the Inspector except that no permit shall be required for any land-disturbing activity:
- (1) For the purpose of fighting fires.
 - (2) That does not exceed 21,780 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.
 - (3) For the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage.
- (B) The plan review fee charge is \$350 for each acre or parts of acres of land to be disturbed. An additional 10% of the total fee will be charged for any land-disturbing activity in areas of the county that may impact classified trout waters. Plan review fees shall be double the normal fee amount when land-disturbing activity begins before a Land-Disturbing Permit is obtained from the County. For a third or more plan review(s) as part of a submission, an additional fee of \$100 per acre or parts of an acre shall be charged. The plan review charge is \$50 per plan submission for any house site subject to a permit from the Haywood County Building Inspections Office (construction or placement) that is less than one-half acre in disturbed area. The plan review charge is \$50 per plan submission for commercial sites subject to a permit from the Haywood County Building Inspections Office which are less than one-half acre in disturbed area.
- (1) To obtain a land-disturbing permit, the following is required for disturbed sites of one-half or more acres (21,780 square feet or more):
 - (a) the completed form of financial responsibility and ownership,
 - (b) the completed and signed erosion and sediment control plan design checklist,
 - (c) the correct plan review fee,
 - (d) an approved erosion and sediment control plan (two copies),
 - (e) the completed affidavit for land-disturbing activities.
 - (2) If the intent is to disturb one-half acre or more on a tract of land regardless of time frame, a land-disturbing permit must be obtained prior to beginning the land-disturbing activity.

(C) *Applications for permits.*

- (1) Clear lines of communication between the Inspector and the person conducting the land-disturbing activities are essential not only for the success of the program outlined in this chapter, but to avoid costly delays and resubmittal of applications by the developer as well. This section outlines procedures which will insure speedy processing of applications for permits to conduct land-disturbing activities.
- (2) The person conducting the land-disturbing activity shall submit the application to the Inspector for review and approval at least 30 days prior to initiating any land-disturbing activity covered by this chapter. Only applications received through registered or certified mail, or hand delivered, will be accepted. In addition, all applications must contain an erosion and sediment control plan which meets all requirements set forth in § 154.40 of this chapter.
- (3) Prior to submitting a formal application for a permit, persons conducting landdisturbing activities may notify the Inspector, briefly describing the planned activity, persons responsible for design of sediment control measures, a tentative schedule of activities, and a request for application forms. A pre-application conference is strongly suggested to identify specific areas of concern to both the applicant and the Inspector. A permit will not be issued based upon a notification of intent.
- (4) Forms, application requirements, and plan assistance are available upon request from the Inspector's office. All requests for pre-development planning, submission of plans and applications, and requests for assistance will be handled through the office of the Inspector.
- (5) The Inspector shall review the application and accompanying plan for completeness and compliance with this chapter.
 - (a) Applications found to meet all requirements of this chapter shall be approved, and a permit to conduct land-disturbing activities will be issued by the Inspector within 30 days after receipt of the application.
 - (b) After review, applications which do not meet all requirements of this chapter shall be approved with modifications, approved with performance reservations, or disapproved. The application shall be returned to the applicant in writing detailing specific areas where the standards of this chapter have not been met. The applicant shall be notified within 30 days after receipt by the Inspector that the plan has been disapproved. If the application is disapproved, the applicant may resubmit the application after performing the necessary changes, for additional review. If the application is disapproved, no permit to conduct land-disturbing activities will be issued.
 - (c) For applications found to be partially complete, the Inspector shall request specific additional information by registered mail. If sufficient information is

provided and the plan meets all requirements of this chapter, a permit to conduct land-disturbing activities shall be issued. When deemed necessary by the inspector, a permit may be issued with performance reservations or approved contingent upon modifications to the plan. Under no circumstances shall the 30-day time period for approval or disapproval be extended by a request for additional information.

- (d) Failure to approve or disapprove a properly submitted application for a permit to conduct land-disturbing activities within 30 days of receipt by the Inspector shall be deemed approval. A submitted revision to a previously disapproved application must be approved or disapproved within 15 days of receipt by the Inspector, or it is deemed approved.
 - (e) If, following commencement of a land-disturbing activity pursuant to an approved plan, the Inspector determines that the plan is inadequate to meet the requirements of this chapter, he or she may require such revisions as are necessary to comply with this chapter.
- (6) If the submitted plan is approved by the Inspector, a permit to conduct land-disturbing activities shall be issued in the name of the applicant.
- (a) Permits shall be issued for the specific time frame requested or for incremental time periods if requested on the application. The permit shall lapse at the end of the time frame specified. It may be reissued by the Inspector at the written request of the permit holder, when deemed necessary. Written request for an extension of a permit to conduct land-disturbing activities must be made in writing at least ten days prior to expiration of the existing permit.
 - (b) Permits shall be prominently displayed on the site until the project is certified complete by the Inspector or the release of all applicable surety. In addition, a copy of the approved sediment control plan shall be kept on hand at the job site at all times for inspection.

(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

ADMINISTRATION AND ENFORCEMENT

§ 154.70 INSPECTIONS AND INVESTIGATIONS.

(A) The Inspector will periodically inspect the sites of land-disturbing activities to determine whether the activity is being conducted in accordance with the plan, the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter and to determine whether the measures required by the plan are effective in controlling erosion and sediment resulting from land-disturbing activities.

For this purpose, he or she may enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion and sediment control plan.

(B) The Inspector shall conduct on-site inspections of the work authorized by the permit to insure that the work is done in accordance with the approved erosion and sediment control plan and meets all requirements of this chapter. If violation of the approved plan or other requirements of this chapter is found, the Inspector will serve upon the person responsible, by registered or certified mail or other means (including posting a notice on the site), reasonably calculated to give actual notice, a notice of violation of this chapter and shall revoke the issued permit to conduct land-disturbing activities. The notice may be served by any means authorized under G.S. § 1A-1, Rule 4. The specific violations, measures necessary to achieve compliance, and the time frame for correction of those items shall be set forth in the notice of violation. However, no time period for compliance need be given for obstructing, hampering, or interfering with an authorized representative while in the process of carrying out his or her official duties. If the items are not corrected in the specified time frame, enforcement action shall be initiated or a civil and criminal penalty imposed as provided in G.S. § 113A-64, effective from the date of receipt of the notice of violation.

(C) The Sediment Board shall have the power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. No person shall refuse entry or access to any authorized representative or agent of the Inspector or the Sediment Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representatives while in the process of carrying out their official duties.

(D) The Inspector shall also have the power to require written statements or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activities.

(E) The Inspector, as employed and approved by the County Commissioners, shall be responsible to and act under the authority of the County Commissioners in consultation with the Sediment Board. The Inspector shall be responsible for all inspections, plan review and approval, initiation of penalties, and other responsibilities as outlined in this chapter.

(Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

§ 154.71 EXISTING UNCOVERED AREAS.

(A) All uncovered areas existing on the effective date of this chapter resulting from landdisturbing activities covered under this chapter which contain one or greater acre in size, and are causing off-site sediment damage, and are subject to continued accelerated erosion shall be required to provide a ground cover or other adequate erosion control and sedimentation devices, measures, or structures sufficient to restrain accelerated erosion and control off-site sediment damage.

(B) If the person in possession or control of the property or the owner fails to comply with the provisions of this chapter:

(1) The Inspector will serve upon the landowner or other person in possession or control of the land written notice of violation by registered or certified mail return receipt requested, or other means reasonably calculated to give actual notice which shall include the specific items of violation and set a reasonable time frame for compliance. In determining the measures required and the time allowed for compliance, the economic feasibility, technology, and quantity of work required shall be considered.

(2) The Inspector reserves the right to require the preparation and approval of a sediment control plan in any instance where extensive control measures are required. (Ord. passed - - 88; Am. Res. passed 1-7-93; Ord. passed 7-23-07)

§ 154.72 COMPLIANCE.

(A) Injunctive relief.

(1) Whenever the Inspector has reasonable cause to believe that any person is violating or threatening to violate any provision of this chapter, or any term or condition of an approved sediment control plan, he or she may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the county for injunctive relief to restrain the violation or threatened violation. The action will be brought in the Superior Court of Haywood County by the County Attorney.

(2) Upon determination by the court that an alleged violation is occurring or is threatened, it will enter such orders or judgments as necessary to halt the violation or prevent the threatened violation. The institution of an action for injunctive relief will not relieve any party to such proceedings from any civil or criminal penalties prescribed for violations of this chapter.

(B) If after the time specified in the notice of violation the site is not in compliance with an approved erosion and sediment control plan or all requirements of this chapter, the Inspector shall present written demand for payment upon the person in violation. The demand for payment shall detail the specific areas where the responsible person is in violation of this chapter.

(C) Civil penalties collected pursuant to this chapter shall be used or disbursed as directed by G.S. § 113A-64(a), and if not otherwise provided, such penalties shall be used in the administration of this chapter by the county.

(D) The period of time set in the notice of violation, as issued by the Inspector, for the site to come into compliance with this chapter is not exempt from accrual of civil penalties toward the person responsible for the land-disturbing activity.

(Ord. passed - -88; Am. Ord. passed 6-1-90; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-19-01; Ord. passed 7-23-07) Penalty, see § 154.99

§ 154.73 SURETY.

(A) Application for a permit to disturb five or more acres shall require the posting of a security bond, with the Inspector, in the form of an escrow account, an account guaranteed by an established surety company or other instruments satisfactory to the County Attorney, in an amount of \$2500 per acre or parts of acres of disturbed area as set forth in the approved erosion and sediment control plan, to cover the costs of installation of sufficient erosion and sediment control measures and devices on the site in accordance with this chapter. Such surety shall be valid until the land-disturbing activity is completed in accordance with the approved sediment control plan and released by the Inspector as discussed in the following subsections.

(B) Land-disturbing activities not in compliance with this chapter or an approved sediment control plan for 31 calendar days after notice of violation is received through registered mail or certified mail or other means detailing specific items of violation, shall be subject to forfeiture of all applicable surety.

(C) Forfeiture of applicable surety shall in no way relieve responsible parties of penalties, fines, or other requirements of this chapter.

(D) Forfeited surety shall be used to establish erosion control structures or ground covers in accordance with an approved sediment control plan. Any monies in excess of cost of establishing protective measures shall be refunded to the person responsible for the land-disturbing activity.

(E) Upon completion of improvements as required by this chapter, written notice shall be given by the applicant, through registered or certified mail, to the county which shall perform an inspection of the improvements. If the conditions of this chapter are met, the county shall, within 30 calendar days of the date of notification of completion, authorize in writing the release of applicable surety. (Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

§ 154.74 APPEALS; HAYWOOD COUNTY SEDIMENT CONTROL BOARD.

(A) *Creation.* In order to provide a procedure for appeals, as outlined in division (C) of this section, the Haywood County Sediment Control Board (hereafter "Sediment Board") is created. The Sediment Board shall be a five-member board composed of the following appointees:

(1) Two supervisors from the District Board, nominated by that board. An additional District Supervisor shall serve as an alternate.

(2) The Chairman of the Board of County Commissioners or his or her appointee.

(3) One appointee of the County Commissioners from each of the following groups or organizations:

- (a) Haywood County Home Builders Association, or a private organization with similar functions.
 - (b) A licensed general contractor.
- (4) All members shall be appointed to staggered four-year terms with all elected officials serving only during the duration of their office.
 - (5) Individuals nominated for the Sediment Board shall be approved by the Haywood County Board of Commissioners, who shall make the final appointments.
 - (6) In the event that qualified individuals from the designated organizations or groups are unavailable, the County Commissioners shall appoint members at large.

(7) Prior to undertaking their duties on the Sediment Board, members shall qualify by taking an oath of office pursuant to N.C.G.S. Chapter 160D-309.

- (B) *Responsibilities.* In addition, consistent with this chapter, the Sediment Board shall be responsible for providing direction and policy for the sediment control program in general. In addition, the Sediment Board shall make decisions in matters concerning forfeiture of surety, civil and criminal penalties, or injunctions against individuals in violation of this chapter, after consultation with the County Attorney.

Members of the Sediment Board shall not vote on any decision where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Board member shall not vote on any matter if the property owner or financially responsible party is a person with whom the Board member has a close familial, business or other associational relationship.

- (C) *Opportunities for appeal.*

- (1) Except as provided in division (C)(2) of this section, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:
 - (a) The disapproval or modification of an application for a permit to conduct ~~land disturbing~~ land disturbing activities by the Inspector will entitle the applicant to appeal to the Sediment Board, which shall consider the matter in accordance with N.C.G.S. Chapter 160D-405.
 - (b) The determination of forfeiture of applicable surety shall be subject to appeal to the Sediment Board, which shall consider the matter in accordance with N.C. G.S. Chapter 160D-405.
 - (c) A notice of violation for failure to maintain existing sediment-control structures or ground covers after completion of the project or a notice of violation for existing uncovered areas subject to continued erosion at the time of passage of

this chapter shall be subject to appeal before the Sediment Board, which shall consider the matter in accordance with N.C. G.S. Chapter 160D-405.

- (2) The Inspector shall advise the applicant and the Sediment Board in writing as to the specific reason(s) that the plan was disapproved. The applicant may appeal the Inspector's disapproval of the plan pursuant to § 154.40(H) directly to the Sediment Board, which shall consider the matter in accordance with N.C. G.S. Chapter 160D-405.
- (D) Appeal hearings will be conducted within 30 calendar days after written request for appeal is received by the Sediment Board. Only written requests for appeal received within 15 days of any action by the Inspector which qualify for appeal will be considered. If the appeals hearing is not conducted within the specified time frame, the appeal is deemed upheld.
- (E) If the Sediment Board upholds the action by the Inspector in the case of disapproval or modification of a submitted sediment control plan, the person submitting the appeal shall then be entitled to appeal the Sediment Board's decision to the Haywood County Board of Commissioners as provided by G.S. § 113A-61 (C) ~~and~~, Title 15 Adm. Code 4 (B) .0018b. and N. C. G.S. Chapter 160D-406. Judicial review of the final action of the Haywood County Board of Commissioners shall be to the Superior Court of Haywood County, upon appeal by an aggrieved party: in accordance with N.C.G.S. Chapter 160D-406(k).
- (F) Any fines levied during the appeal period shall accrue and be payable by the responsible individuals so long as the violations remain. Upon conclusion of the appeals process, either the responsible party must pay all applicable fines or if the appeal is upheld, all applicable fines shall be forfeited by the county and returned to the successful appellant.
- (Ord. passed - -88; Am. Res. passed 1-7-93; Am. Ord. passed 6-17-93; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Ord. passed 7-23-07)

§ 154.99 PENALTY.

Any person conducting land-disturbing activities who does not apply for a permit as specified in this chapter, or who conducts land-disturbing activities except in accordance with an approved erosion and sediment control plan shall be in violation of this chapter and subject to applicable penalties as follows:

- (A) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this chapter, or rule or order adopted or issued pursuant to this chapter, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion and sediment control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a misdemeanor punishable by imprisonment not to exceed 90 days, or a fine not to exceed \$5000, or both, in the discretion of the court.
- (B) *Civil penalties.*

- (1) Any person who initiates or continues a land-disturbing activity without an approved erosion and sediment control plan, or violates any of the provisions of this chapter, or orders or rules adopted pursuant to this chapter, or conducts land-disturbing activities except in accordance with an approved erosion and sediment control plan, shall be subject to a civil penalty other than a violation of a stop-work order issued under G.S. § 113A-65.1 of not more than \$5,000. The maximum civil penalty for a violation is \$5,000. A civil penalty may be assessed for the date of the initial violation. Each day of a continuing violation is a separate violation and subject to an additional \$5,000 fine. No additional civil penalty shall be assessed until the person alleged to be in violation has been notified as provided in G.S. § 113A-61.1(b). The notice shall describe the violation with reasonable time frames for corrective action specified, and warn that failure to correct the violations within the period specified will result in the assessment of a civil penalty or other enforcement action. If after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date of the violation. However no time period for compliance need be given for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties.
- (2) *Civil penalty assessment for the date of the initial violation.*

For each acre of land disturbed on a tract which has no approved erosion and sediment control plan required by Chapter 154 of the Haywood County Code of Ordinances, the civil penalty assessment shall be \$500 per acre for the date of the initial violation. If an acceptable sediment and erosion control plan is submitted to the County within a reasonable time from the date of the initial violation (for this application and analysis, the date of the initial violation will be considered as “day one”), 45% of the civil penalty may be forgiven. If acceptable or reasonable measures are installed on the tract in violation before or by the end of the fifth day from the date of the initial violation (for this application and analysis, the date of the initial violation will be considered as “day one”), fortyfive percent (45%) of the civil penalty may be forgiven. In any circumstance, if the violation for the “no approved plan” condition is committed knowingly and willfully, the civil penalty shall be no less than 100% of the total civil penalty for the date of the initial violation.

- (3) The civil penalty may be \$100 plus \$1 for each linear foot of buffer zone violated for failure to retain along a lake or natural watercourse a buffer zone of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity.
- (4) The civil penalty shall be \$100 and may include an additional \$5 for each linear foot of streamside buffer zone violated for failure to provide along trout waters an undisturbed buffer zone twenty-five feet wide or of sufficient width to confine visible siltation by natural or artificial means within 25% of that portion of the buffer zone nearest the land-disturbing activity, whichever is the greater width.
- (5) A minimum civil penalty of \$50 per day may be assessed for each applicable violation listed below. The applicable daily civil penalties shall continue and accrue for each

day the tract is in violation of the Chapter until the site is deemed by the County to be in compliance with this Chapter:

\$50 per day for no approved plan, § 154.20(A)(6) and § 154.20(B)(4) of this Chapter; G.S. 113A54(d)(4), G.S. 113A-57(4) and 15 NCAC 04B.0107.

\$50 per day for failure to follow approved plan, § 154.70(A), (B) and § 154.42(a) of this Chapter; G.S. 113A-61.1(a) and 15A NCAC 04B.0113.

\$50 per day for “revised plan required”, § 154.41(A) and (B) of this Chapter; G.S. 113A-54.1(b) and 15A NCAC 04B.0118(a).

\$50 per day for failure to provide adequate ground cover, § 154.20(B)(2) and (3) or (if in HQW zone) § 154.23(B)(5) of this Chapter; G.S. 113A-57(3) and 15A NCAC 04B.0107(b) or (if in HQW zone) 15A NCAC 04B.0124(e).

\$50 per day for insufficient measures to retain sediment on site, § 154.20(B)(3) of this Chapter; G.S. 113A-57(3).

\$50 per day for “failure to take all reasonable measures,” § 154.20(A)(1) of this Chapter; 15A NCAC 04B.0105.

\$50 per day for “inadequate buffer zone,” § 154.20(B)(1) of this Chapter; G.S. 113A-57(1).

\$50 per day for “graded slopes and fills too steep,” § 154.20(B)(2) and (if in HQW zone) § 154.23(B) of this Chapter; G.S. 113A-57(2) and (if in HQW zone) 15A NCAC 04B.0124(d).

\$50 per day for “unprotected exposed slopes,” § 154.20(B)(2) of this Chapter; G.S. 113A-57(2).

\$50 per day for failure to maintain erosion control measures, § 154.42(A)(B) of this Chapter; 15A NCAC 04B.0113.

\$50 per day for failure to secure from the County a valid Land-Disturbing Permit prior to conducting a land-disturbing activity, § 154.60 of this Chapter.

\$50 per day for failure to comply with the design and performance standards for High Quality Water Zones (HQW’s), § 154.23 of this Chapter.

(6) *Restoration of areas affected by failure to comply.*

The County may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by § 154.20(B)(3) of this Chapter (and G.S. 113A-64.1), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil penalty or injunctive relief authorized under this Chapter. ((1993 (Reg. Sess., 1994), c. 776, s.12.))

(7) *Severability.*

If any section or sections of this Chapter is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

(Ord. passed - - 88; Am. Ord. passed 6-1-90; Am. Res. passed 1-7-93; Am. Ord. passed 2-12-96; Am. Ord. passed 2-7-00; Am. Ord. passed 2-19-01; Am. Ord. passed 7-23-07)

CHAPTER 155: FLOOD DAMAGE PREVENTION

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GENERAL PROVISIONS**§ 155.01 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY STRUCTURE. Sheds, detached garages, and the like.

ADDITION (TO AN EXISTING BUILDING). Any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.

APPEAL. Request from a review of the local administrator's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING. A designated AO or VO zone on a community's flood insurance rate map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

AREA OF SPECIAL FLOOD HAZARD. The land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

BASE FLOOD. The flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT. That lowest level or story which has its floor subgrade on all sides.

BREAKAWAY WALL. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system. A breakaway wall shall have a design safe loading resistance of not less than ten and no more than 20 pounds per square foot. A wall with loading resistance of more than 20 pounds per square foot requires an architect or professional engineer's certificate.

BUILDING. Any structure built for support, shelter, or enclosure for any occupancy or storage.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

ELEVATED BUILDING. A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns, (posts and piers), shear walls, or breakaway walls.

EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured home is to be affixed (including at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) is completed before the effective date of this chapter.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of the additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).

FLOOD or FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters: and,
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

FLOOD HAZARD BOUNDARY MAP (FHBM). An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY. The official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

FLOOR. The top surface of an enclosed area in a building (including basement); for example, top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

FUNCTIONALLY DEPENDENT FACILITY. A facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

HISTORIC STRUCTURE. Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the United States Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places;

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified:

(a) By an approved state program as determined by the Secretary of Interior, or

(b) Directly by the Secretary of Interior in states without approved programs.

LEVEE. A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LEVEE SYSTEM. A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

LOWEST FLOOR. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that the enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

MANUFACTURED HOME. A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, park model RV's and other transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL. The average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the flood plain. For purposes of this chapter, the term is synonymous with National Geodetic Vertical Datum (NGVD).

NATIONAL GEODETIC VERTICAL DATUM (NGVD). As corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the flood plain.

NEW CONSTRUCTION. Structures for which the **START OF CONSTRUCTION** commenced on or after the effective date of this chapter.

NEW MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs) is completed on or after the effective date of this chapter.

NON-CONFORMING BUILDING OR USE. Any legally existing building or use which fails to comply with the provisions of the chapter.

RECREATIONAL VEHICLE. A vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and,
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

RECREATIONAL VEHICLE SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more recreational vehicle lots for sale.

REMEDY A VIOLATION. To bring the structure or other development into compliance with state or local flood plain management regulations or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other

affected development from flood damages, implementing the enforcement provisions of the chapter, or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

START OF CONSTRUCTION. (For other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348, being generally 16 USC 3501 et seq.)), includes substantial improvements and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparations such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

STRUCTURE. A walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank, or other man-made facilities or infrastructures.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of **SUBSTANTIAL IMPROVEMENT**.

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, or improvement of a structure, within any 12 month period, where the cost equals or exceeds 50 percent of the market value of the structure, either: before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, **SUBSTANTIAL IMPROVEMENT** is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either: any project for improvement of a structure to comply with existing state and local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

SUBSTANTIALLY IMPROVED EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. Where the repair, reconstruction, rehabilitation, or improvement of the streets, utilities, and pads equals or exceeds 50 percent of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement commenced.

VARIANCE. A grant of relief to a person from the requirements of this chapter which permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

VIOLATION. The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §§ 155.30 through 155.33 and §§ 155.50 through 155.53 is presumed to be in violation until such time as that documentation is provided.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

§ 155.02 STATUTORY AUTHORIZATION.

The Legislature of the state of North Carolina has in G.S. Chapter 143, Article 21, Part 6; G.S. Chapter 153A, Article ~~13, Parts 3 and 46~~; Chapter 160A, Article 8; G.S. Chapter 160D, Articles 7, 9 and 11; and G.S. §§ 153A-121 through 153A-123, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the County Board of Commissioners of the county does ordain this chapter.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

§ 155.03 FINDINGS OF FACT.

(A) The flood hazard areas of the county are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(B) These flood losses are caused by the cumulative effect of obstructions in flood plains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

§ 155.04 STATEMENT OF PURPOSE.

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(A) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(B) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(C) Control the alteration of natural flood plains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;

(D) Control filling, grading, dredging, and other development which may increase erosion or flood damage; and,

(E) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

§ 155.05 OBJECTIVES.

The objectives of this chapter are:

(A) To protect human life and health;

(B) To minimize expenditure of public money for costly flood control projects;

(C) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) To minimize prolonged business interruptions;

(E) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, and streets and bridges located in flood plains;

(F) To help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize flood blight areas; and,

(G) To insure that potential home buyers are notified that property is in a flood area.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

§ 155.06 LANDS TO WHICH CHAPTER APPLIES.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the county. Jurisdiction shall include all lands outside municipal corporate limits and their extraterritorial jurisdiction, as well as areas within municipal corporate limits and their extraterritorial jurisdiction where by Joint Resolution, jurisdiction to enforce the ordinance has been relinquished and granted to the County pursuant to relevant provisions of G.S. §160A-360.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91; Am. Ord. passed 4-3-06)

§ 155.07 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

The areas of special flood hazard identified by the Federal Emergency Management Agency in its flood insurance rate study, dated July 16, 1984, with accompanying maps and other supporting data, and any revision thereto are adopted by reference and declared to be a part of this chapter. (Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

§ 155.08 ESTABLISHMENT OF DEVELOPMENT PERMIT.

A development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities. (Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

§ 155.09 COMPLIANCE.

No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this chapter and other applicable regulations. (Ord. passed 8-7-87; Am. Ord. passed 3-21-91) Penalty, see § 155.99

§ 155.10 ABROGATION AND GREATER RESTRICTIONS.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

§ 155.11 INTERPRETATION.

In the interpretation and application of this chapter all provisions shall be:

- (1) Considered as minimum requirements;
 - (2) Liberally construed in favor of the governing body, and;
 - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.
- (Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

§ 155.12 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the county or by any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.
(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

FLOOD HAZARD REDUCTION**§155.30 GENERAL STANDARDS.**

In all areas of special flood hazard the following provisions are required:

- (A) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;
- (B) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (C) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (D) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (G) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding; and,
- (H) Any alteration, repair, reconstruction, or improvements to a structure which is in compliance with the provisions of this chapter shall meet the requirements of new construction as contained in this chapter.

(I) Non-conforming buildings or uses may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this chapter. Provided, however nothing in this chapter shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this chapter and located totally or partially within the Floodway Zone, provided that the bulk of the building or structure below base flood elevation in the Floodway Zone is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this chapter.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91) Penalty, see § 155.99

§ 155.31 SPECIFIC STANDARDS.

In all areas of special flood hazard where base flood elevation data has been provided, as set forth in § 155.07, or § 155.50(B)(10), the following provisions are required:

(A) *Residential construction.* New construction or substantial improvements of any residential structure shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided.

(B) *Non-residential construction.* New construction or substantial improvement of any commercial, industrial, or non-residential structure shall have the lowest floor, including basement, elevated no lower than one foot above the level of the base flood elevation. Structures located in A-zones may be flood-proofed in lieu of elevation provided that all areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this division are satisfied. Such certification shall be provided to the official as set forth in §155.51(E).

(C) *Manufactured homes.*

(1) Manufactured homes that are placed or substantially improved on sites outside a manufactured home park or subdivision; in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or, in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated no lower than one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(2) Manufactured homes that are to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of § 155.31(C)(1) of this chapter must be elevated so that the lowest floor of the manufactured home is elevated no lower than one foot above the base flood elevation, and be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement.

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(3) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. For the purpose of this requirement, manufactured homes must be anchored to resist flotation, collapse, or lateral movement in accordance with the *Regulations for Mobile Homes and Modular Housing* adopted by the Commissioner of Insurance pursuant to G.S. § 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis at least 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

(4) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved, or substantially damaged manufactured home parks or subdivisions located within flood-prone areas. This plan shall be filed with and approved by the local administrator and the local Emergency Management Coordinator.

(D) *Recreational vehicles.* A recreational vehicle is ready for highway use if it is on wheels or a jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions. Recreation vehicles placed on sites shall either:

(1) Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use; or

(2) Meet the requirements of §§ 155.51, 155.30, and 155.31(C).

(E) *Elevated buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

(1) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

(a) Provide a minimum of two openings having a total net area of not less than one square-inch for every square foot of enclosed area subject to flooding;

(b) The bottom of all openings shall be no higher than one foot above grade; and,

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(2) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(3) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).

(4) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.

(F) *Temporary structures.* Prior to the issuance of a development permit for a temporary structure, the following requirements must be met:

(1) All applicants must submit to the local administrator a plan for the removal of such structure(s) in the event of a hurricane or flash flood notification. The plan must include the following information:

(a) The name, address, and phone number of the individual responsible for the removal of the temporary structure;

(b) The time frame prior to the event at which a structure will be removed;

(c) A copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and

(d) Designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.

(2) The above information shall be submitted in writing to the local administrator for review and written approval.

(G) *Accessory structure.* When accessory structures (sheds, detached garages, and the like) with a value of \$3,000 or less, are to be placed in the floodplain the following criteria shall be met:

(1) Accessory structures shall not be used for human habitation;

(2) Accessory structures shall be designed to have low flood damage potential;

(3) Accessory structures shall be firmly anchored in accordance with § 155.30(A); and

(4) Service facilities such as electrical and heating equipment shall be elevated in accordance with § 155.30(D).

(H) *Floodways.* Located within areas of special flood hazard established in § 155.07, are areas designated as floodways. The floodway is an extremely hazardous area, due to the velocity of flood waters which carry debris and potential projectiles, and has erosion potential. The following provisions shall apply within such areas:

(1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless certification (with supporting technical data) by a registered

professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.

(2) If § 155.31(H)(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of §§ 155.30 through 155.33.

(3) No manufactured homes shall be permitted, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of § 155.30(B) and the elevation standards of § 155.31(A) are met.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91) Penalty, see § 155.99

§ 155.32 STANDARDS FOR STREAMS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS AND/OR FLOODWAYS.

Located within the areas of special flood hazard streams established in § 155.07 are small streams where no base flood data has been provided or where no floodways have been identified. The following provisions apply within such areas:

(A) No encroachments, including fill, new construction, substantial improvements, or new development shall be permitted within a distance of the stream bank equal to 20 feet each side from top of bank unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(B) If § 155.32(A) is satisfied and base flood elevation data is available from other sources, all new construction and substantial improvements within such areas shall comply with all applicable flood hazard chapter provisions of §§ 155.30 through 155.33 and shall be elevated or flood-proofed in accordance with elevations established in accordance with §155.50(B)(10). When base flood elevation data is not available from a federal, state, or other source, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91) Penalty, see § 155.99

§ 155.33 STANDARDS FOR SUBDIVISION PROPOSALS.

(A) All subdivision proposals shall be consistent with the need to minimize flood damage;

(B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and,

(D) In unnumbered A zones, when the base flood elevation data has not been determined, and when the development is greater than 50 lots or five acres, then the developer is responsible for providing 100 year flood elevation data.

(E) No recreational vehicle subdivisions shall be permitted in flood hazard areas. (Ord. passed 8-7-87; Am. Ord. passed 3-21-91) Penalty, see § 155.99

ADMINISTRATION AND ENFORCEMENT

§ 155.50 DESIGNATION OF LOCAL ADMINISTRATOR; DUTIES AND RESPONSIBILITIES.

(A) The County Planner is appointed to administer and implement the provisions of this chapter and shall be sometimes referred to herein as the ***LOCAL ADMINISTRATOR*** or the ***ADMINISTRATOR***.

(B) Duties of the County Planner shall include, but not be limited to:

(1) Review all development permits to assure that the permit requirements of this chapter have been satisfied;

(2) Advise permittee that additional federal or state permits may be required, and if specific federal or state permits are known, require that copies of the permits be provided and maintained on file with the development permit.

(3) Notify adjacent communities and the State Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of the notification to the Federal Emergency Management Agency.

(4) Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished.

(5) Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of § 155.30 through 155.33 are met.

(6) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, in accordance with §155.51(E).

(7) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been flood-proofed, in accordance with § 155.51(E).

(8) When flood-proofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with § 155.31(B).

(9) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this chapter.

(10) When base flood elevation data or floodway data has not been provided in accordance with § 155.07, obtain, review, and reasonably utilize any base flood elevation data and floodway data developed pursuant to § 155.33(D), in order to administer the provisions of this chapter.

(11) Make on-site inspections of projects in accordance with § 155.52.

(12) Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with § 155.52.

(13) All records pertaining to the provisions of this chapter shall be maintained in the office of the local administrator and shall be open for public inspection.

(14) Provide the State Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program with two copies of the maps delineating new corporate limits within six months from date of annexation or change in corporate boundaries.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

§ 155.51 DEVELOPMENT PERMIT AND CERTIFICATION REQUIREMENTS.

(A) Application for a development permit shall be made to the local administrator on forms furnished by him or her prior to any development activities. The development permit may include, but not be limited to plans in duplicate drawn to scale showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; and the location of fill, materials storage areas, and drainage facilities. Specifically the information in divisions (B) through (F) of this section is required.

(B) Where base flood elevation data is provided in accordance with § 155.50(B)(10), the application for a development permit within the Zone A on the flood insurance rate map shall show:

(1) The elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, and

(2) If the structure has been floodproofed in accordance with § 155.31(B), the elevation (in relation to mean sea level) to which the structure was floodproofed.

(C) Where the base flood elevation data is not provided, the application for a development permit must show construction of the lowest floor at least two feet above the highest adjacent grade.

(D) Where any watercourse will be altered or relocated as a result of proposed development, the application for a development permit shall include: a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation.

(E) When a structure is floodproofed, the applicant shall provide a certificate from a registered professional engineer or architect that the nonresidential flood-proofed structure meets the flood-proofing criteria in § 155.31(B).

(F) A floor elevation or flood-proofing certification is required after the lowest floor is completed. Within 21 calendar days of establishment of the lowest floor elevation, or flood-proofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the local administrator a certification of the elevation of the lowest floor, or floodproofed elevation, whichever is applicable, as built, in relation to mean sea level. The certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood-proofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by the same. Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The local administrator shall review the floor elevation survey data submitted. Deficiencies detected by the review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make the corrections required shall be cause to issue a stop-work order for the project.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

§ 155.52 ADMINISTRATIVE PROCEDURES.

(A) *Inspections of work in progress.* As the work pursuant to a permit progresses, the local administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local chapter and the terms of the permit. In exercising this power, the Administrator has a right, upon presentation of proper credentials, to enter any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.

(B) *Stop orders.* Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this chapter, the administrator may order the work to be immediately stopped. The stop order shall be in writing and directed to the person doing the work. The stop order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop order constitutes a misdemeanor.

(C) *Revocation of permits.* The local administrator may revoke and require the return of the development permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications, for refusal or failure to comply with the requirements of state or local laws, or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.

(D) *Periodic inspections.* The local administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials to enter any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(E) *Violations to be corrected.* When the local administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall each immediately remedy the violations of law in the property he or she owns.

(F) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the administrator shall give him or her written notice, by certified or registered mail to his or her last known address or by personal service, that:

(1) The building or property is in violation of the Flood Damage Prevention ordinance;

(2) A hearing will be held before the local administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,

(3) Following the hearing, the local administrator may issue such order to alter, vacate, or demolish the building or to remove fill as appears appropriate.

(G) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the administrator shall find that the building or development is in violation of the Flood Damage Prevention ordinance, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation, within such period as the administrator determines to be feasible, but not less than 60 days; provided that where the administrator finds that there is imminent danger to life or property, he or she may order that corrective action be taken in such lesser period as may be feasible.

(H) *Appeal.* Any owner who has received an order to take corrective action may appeal from the order to the ~~local elected governing body~~ Board of Commissioners by giving notice of appeal in writing to the administrator and the clerk within ten days following issuance of the final order. The appeal shall be conducted as a quasi-judicial proceeding in accordance with G.S. 160D-406 et seq. In the absence of an appeal, the order of the administrator shall be final. The ~~local governing body~~ Board of Commissioners shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

- (I) ~~(H)~~ *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he or she shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

(J) Conflict of interest of local administrator. The local administrator shall be governed by the conflict-of-interest provisions of G.S. 160D-109(c).

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

§155.53 VARIANCE PROCEDURES.

- (A) ~~(A)~~ The County Board of Commissioners as established by the county shall hear and decide appeals and requests for variances from the requirements of this chapter.

The county commissioners shall be governed by the conflict-of-interest provisions of G.S. 160D-109(a).

(B) Any person aggrieved by the decision of the County Board of Commissioners or any taxpayer may appeal the decision to the Superior Court of Haywood County, as provided in G.S. ~~Chapter 7A.160D-406(k).~~

(C) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this section.

(D) In passing upon such applications, the County Board of Commissioners shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of the damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

(11) The costs of providing the governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(E) Upon consideration of the factors listed above and the purposes of this chapter, the Board of Commissioners may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(F) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(G) Conditions for variances.

(1) Variances may not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

(2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(3) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship; and,

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud upon or victimization of the public, or conflict with existing local laws or ordinances.

(4) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk

resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.

(5) The local administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.
(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

§ 155.99 PENALTY.

Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 3 misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50 or imprisoned for not more than 30 days, or both. Each day the violation continues shall be considered a separate offense. Nothing herein contained shall prevent the county from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. passed 8-7-87; Am. Ord. passed 3-21-91)

CHAPTER 156: FARMLAND PRESERVATION

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GENERAL PROVISIONS**§ 156.001 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADVISORY BOARD. The County Agricultural Advisory Board.

BOARD OF COMMISSIONERS. The Board of Commissioners of the County.

CHAIRMAN. Chairman of the County Agricultural Advisory Board.

DISTRICT. A voluntary agricultural district established under the terms and conditions of this program by the Board of Commissioners.
(Ord. passed 8-11-94)

§ 156.002 TITLE.

This chapter, adopted by the Board of Commissioners of the county shall be known as the Haywood County Farmland Preservation Program Ordinance.
(Ord. passed 8-11-94)

§ 156.003 AUTHORITY.

The subchapters and sections of this chapter are adopted pursuant to authority conferred by G.S. §§ 106 735 through 106-744.
(Ord. passed 8-11-94)

§ 156.004 PURPOSE.

The purpose of this chapter is to promote the health, safety, rural agricultural values, and general welfare of the county, and more specifically, increase identity and pride in the agricultural community and its way of life; encourage the economic and financial health of farming; increase protection from undesirable, non-farm development and increase the protection of farms from nuisance suits and other negative impacts on properly managed farms.

(Ord. passed 8-11-94)

Agriculture, agricultural and farming practices are defined by the G.A. 106-581.1 as the:

- (1) cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants;
- (2) the planting and production of trees and timber;
- (3) dairying and the raising, management, care and training of livestock including horses, bees, poultry, deer elk and other animals for individual and public use, consumption and marketing;
- (4) aquaculture as defined in G.S. 106-758
- (5) the operation, management, conservation, improvement and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation;
- (6) when performed on the farm the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm. (1991, c. 81, s. 1; 2005-390, s. 18; 2006-255, s. 6.)

(Amendment passed 3-19-07)

§ 156.005 JURISDICTION.

The jurisdiction of the County Farmland Preservation Program chapter shall be the unincorporated areas of the county.

(Ord. passed 8-11-94)

QUALIFICATIONS AND CERTIFICATION OF FARMLAND

§ 156.020 REQUIREMENTS.

In order for farmland to qualify for participation under the terms of this program, it shall meet the following requirements:

(A) The farmland shall be real property.

(B) The farm property shall be participating in the farm present-use-value taxation program established by G.S. §§ 105-277.2 through 105-277.7 or is otherwise determined by the county to meet all the qualifications of this program set forth in G.S. § 105-277.3.

(C) The property, if highly erodible land exists on the farm, is managed in accordance with the Soil Conservation Service defined erosion control practices that are addressed to the highly erodible land.

(D) The property is the subject of a conservation agreement, as defined in G.S. § 121-35, between the county and the owner of the land that prohibits non-farm use or development of the land for a period of at least ten years, except for the creation of not more than three lots that meet applicable county watershed and subdivision regulations, or the regulations of any municipality which apply to the farm property. The property owner may voluntarily revoke this conservation agreement by submitting a written request to the board in accordance with § 156.039.

(Ord. passed 8-11-94)

(Amended 3-19-07)

§ 156.021 CERTIFICATION.

The owner of the farm seeking to qualify his or her property for participation in the farmland preservation program shall submit written evidence that the property conforms with the requirements of § 156.020 of this program. This written information shall be submitted to the Chairman of the Advisory Board or the designated staff person on forms provided by the Board. The certification may be submitted at the same time the owner applies for inclusion in a district.

(Ord. passed 8-11-94)

VOLUNTARY AGRICULTURAL DISTRICTS

§ 156.035 CREATION OF VOLUNTARY AGRICULTURAL DISTRICTS.

In order to implement the purposes stated in § 156.004, this program provides for the creation of voluntary agricultural districts which meet the following standards:

(A) The district, when initially established, shall contain a minimum of 25 contiguous acres of qualified farmland, or, two or more qualified farms which contain a minimum of 25 acres and are located within a mile of each other.

(B) The landowner(s) requesting inclusion in the district shall execute an agreement with the county to sustain agriculture in the district in accordance with § 156.020(E) of this program. The agreement shall be in a form which is reviewed and approved by the Advisory Board.

(C) For each district created under the terms of this program, one of the existing Advisory Board members shall be assigned to represent the district.
(Ord. passed 8-11-94)

§ 156.035A CREATION OF ENHANCED VOLUNTARY AGRICULTURE DISTRICTS

A. In addition to meeting requirements set forth by Chapter 156.035, ‘Creation of Voluntary Agriculture Districts’, landowners who are interested in pursuing a stronger option of Farmland Preservation must also meet the following:

(1) Would develop an irrevocable agricultural term easement between the Haywood County Agriculture Advisory Board, held by the Haywood County Soil and Water Conservation District and agriculture producer that cannot be revoked for ten years.

(2) Automatically renewed every three years unless written notice is given from landowner to the Haywood Soil and Water Conservation District within 30 days before term expires.
(Amended 3-19-07)

§ 156.036 APPLICATION TO PARTICIPATE.

A landowner may apply to participate in the program by making application to the chairman of the Advisory Board or a designated staff person. The application shall be on forms provided by the Advisory Board. The application to participate in a district may be filed with the certification for qualifying farmland.
(Ord. passed 8-11-94)

§ 156.037 APPROVAL PROCESS.

Upon review by the staff of the written certification and application submitted by the property owner, the Board shall meet within 30 days to approve or disapprove the application. The chairman shall notify the applicants by first class mail of the approval or disapproval of participation in the district. The Board shall be governed by the conflict-of-interest provisions of G.S. 160D-109. The Board shall consider the matter pursuant to the provisions of G.S. 160D-405 and -406.
(Ord. passed 8-11-94)

§ 156.038 APPEAL.

If an application is denied by the Agricultural Advisory Board, the petitioner has 30 days to appeal the decision to the County Board of Commissioners. The appeal shall be presented in writing. ~~The decision of the Board of Commissioners is final.~~

The Board of Commissioners shall consider the appeal in accordance with the provisions of G.S. 160D-406 as a quasi-judicial matter. The Board shall be governed by the conflict-of-interest provisions of G.S. 160D-109. The decision of the Board of Commissioners shall be subject to judicial review in accordance with the provisions of G.S. 160D-406(k).

(Ord. passed 8-11-94)

§ 156.039 REVOCATION OF CONSERVATION AGREEMENTS.

By written notice to the Board, a landowner of qualifying farmland may revoke the preservation agreement formulated pursuant to § 156.020(E) of this program, or the Board may revoke same preservation agreement based on noncompliance by the landowner. The revocation shall result in loss of qualifying farm status, and consequently, loss of eligibility to participate in a voluntary agricultural district and the benefits thereof. If a portion of a district is removed for any reason after being established by this program, the remaining qualified farms may remain in the programs provided they meet all other requirements except the minimum area requirements of § 156.035(A).

(Ord. passed 8-11-94)

AGRICULTURAL ADVISORY BOARD

§ 156.050 CREATION.

In accordance with G.S. §106-739, the Board of Commissioners establishes an Agricultural Advisory Board to implement the provision of this program.

(Ord. passed 8-11-94)

§ 156.051 APPOINTMENTS AND MEMBERSHIP.

(A) *Membership.* The Agricultural Advisory Board shall consist of seven members appointed by the County Board of Commissioners.

(B) *Requirements.*

(1) Each Agricultural Advisory Board member shall be a county resident and registered to vote in the county.

(2) Five of the seven members shall be actively engaged in farming.

(3) The five members actively engaged in farming shall be selected for appointment by the Board of Commissioners from the names of individuals submitted to the Board of Commissioners by the Soil and Water Conservation District, the Cooperative Extension Service, the Agricultural Stabilization Conservation Service Committee, and the County Farm Bureau, with an effort to have the broadest geographical representation possible. The members shall take oath prior to undertaking their duties as provided in G.S. 160D-309.

(C) *Tenure.* The members are to serve for terms of three years, except that the initial board is to consist of two appointees for a term of one year, two appointees for terms of two years, and three appointees for terms of three years. Thereafter, all appointments are to be for terms of three years, with reappointments permitted.

(D) *Vacancies.* Any vacancy on the Agricultural Advisory Board is to be filled by the Board of Commissioners for the remainder of the unexpired term.

(E) *Removal for cause.* Any member of the Agricultural Advisory Board may be removed for cause by the Board of Commissioners upon written charges and after a public hearing.
(Ord. passed 8-11-94)

§ 156.052 PROCEDURES.

The Board shall adopt rules of procedure which are consistent with the enabling legislation and other applicable statutes.
(Ord. passed 8-11-94)

§ 156.053 DUTIES.

The Agricultural Advisory Board shall:

- (A) Review and approve applications for qualified farmland and voluntary agricultural districts.
- (B) Hold public hearings pursuant to §§ 156.070 and 156.071.
- (C) Advise the Board of Commissioners on projects, programs, or issues affecting the agricultural economy or activities within the county that will affect agricultural districts.
- (D) Perform other related tasks or duties assigned by the Board of Commissioners.
(Ord. passed 8-11-94)

PUBLIC HEARINGS ON CONDEMNATION OF FARMLAND

§ 156.070 PURPOSE.

The purpose of this section is to provide the procedures for hearings pursuant to G.S. § 106-740, which provides that no state or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmlands within a voluntary agricultural district until the agency or unit has requested the Advisory Board hold a public hearing on the proposed condemnation. (Ord. passed 8-11-94)

§ 156.071 PROCEDURES.

(A) *Establish public hearing.* Upon receipt of a request for a public hearing, the Agricultural Advisory Board shall have 30 days to set a date for a public hearing on the proposed condemnation pursuant to G.S. § 106-740. No formal initiation of condemnation shall be initiated while the proposed condemnation is properly before the Board within the time limitations set forth in this section.

(B) *Notice of public hearing.* The Advisory Board shall run a notice of the public hearing in a newspaper having general circulation in the county at least ten days prior to the date established for the hearing. The notice shall contain the date, time, and place of the hearing and shall provide the name of the agency requesting the hearing and the purpose of the condemnation.

(C) *Public hearing.*

(1) The Advisory Board shall conduct the public hearing and receive information and comments from the agency requesting the condemnation action and the citizens of the county. Additionally, the Advisory Board shall address the following questions:

(a) Has the need for the project requiring the condemnation been satisfactorily established by the agency requesting the action?

(b) Has a financial impact analysis been conducted by the agency seeking the action?

(c) Have alternatives been considered to the proposed action that are less disruptive to the agricultural activities and farmland base of the voluntary agricultural district within which the proposed action is to take place?

(2) The Advisory Board shall consult with the county Cooperative Extension agent, USDA Soil Conservation Service District Conservationist, the ASCS, and may consult with any other individuals, agencies, or organizations, public or private, necessary to the Advisory Board's review of the proposed action.

(D) *Findings and notification.* Within ten days after the public hearing, the Advisory Board shall make a report containing its findings and recommendations regarding the proposed action. The report shall be conveyed to the decision-making body of the agency proposing acquisition and made available to the public for comment.

(Ord. passed 8-11-94)

LAND USE INCENTIVES

§ 156.085 PURPOSE.

The purpose of this subchapter is to help meet the needs of agriculture as an industry and prevent conflicts between voluntary agricultural district participants and non-farm landowners in proximity to districts.

(Ord. passed 8-11-94)

§ 156.086 PROCEDURE FOR NOTIFICATION AND LANDOWNER BENEFITS.

(A) *Generally.* The Advisory Board, in cooperation with the county, shall provide notification of property owners, residents, and other interested persons in, and adjacent to, any designated agricultural district. The purpose of such notification is to inform all current and potential residents and property owners in, and adjacent to, an agricultural district, that farming and agricultural activities may take place in this district any time during the day or night. These activities may include, but are not limited to the following: pesticide spraying, manure spreading, machinery and truck operations, livestock operations, sawing, and similar activities.

(B) *Types of notification.*

(1) Signs identifying approved agricultural districts may be placed along the rights-of-way of major roads.

(2) Maps identifying approved districts shall be provided to the Register of Deeds Office, the Soil Conservation Office, the Cooperative Extension Office, the ASCS, the Inspections Department, the County Land Records Office, and the County Planning Department.

(3) The following notice shall be posted in the Office of the Register of Deeds and in the Land Records Office of the County Courthouse:

**"Notice to Real Estate Purchasers in Haywood County
Haywood County Agricultural Districts**

Haywood County has established agricultural districts to protect and preserve agricultural lands and activities. These districts have been developed and mapped by the county to inform all purchasers of real property that certain agricultural activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operations, livestock operations, sawing, and similar activities, may take place in these districts any time during the day or night. Maps and information on the

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location and establishment of these districts can be obtained from the Cooperative Extension Office, Register of Deeds Office, County Planning Office, Soil Conservation Service, and the ASCS (Agricultural Stabilization and Conservation Service) Office. "

(4) Upon the recordation of maps in the County Land Records Office and the Register of Deeds Office pursuant to § 156.086(B)(2), the County Tax Assessor's Office shall set forth in the general remarks' section of the parcel detailed appraisal inquiry, real estate inquiry functions, within the County Land Records computer program, a notation that subject property is located in a farmland preservation district, and such notation will also be placed upon the maps of property maintained in the County Land Records Office.

(Ord. passed 8-11-94)

(C) Other Landowner benefits for the VOLUNTARY AGRICULTURE DISTRICT include:

- (1) Recognition and public education about agriculture,
- (2) Increased protection from nuisance suits by signs on property,
- (3) and waiver of water and sewer assessments.
 - a. A county that has adopted an ordinance under this Part may provide by ordinance that its water and sewer assessments be held in abeyance, with or without interest, for farms, whether inside or outside of a voluntary agricultural district, until improvements on such property are connected to the water or sewer system for which the assessment was made.
 - b. The ordinance may provide that, when the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.
 - c. Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.
 - d. If an ordinance is adopted under this section, then the assessment procedures followed under Article 9 of Chapter 153A of the General Statutes or Article 10 of Chapter 160A of the General Statutes, whichever applies, shall conform to the terms of this ordinance with respect to qualifying farms that entered into conservation agreements while such ordinance was in effect.
 - e. Nothing in this section is intended to diminish the authority of counties to hold assessments in abeyance under G.S. 153A-201 or G.S. 160A-237. (1985 (Reg. Sess., 1986), c. 1025, s. 1; 2005-390, ss. 3, 15.)

(Amended 3-19-07)

156.086A ENHANCED VOLUNTARY AGRICULTURE DISTRICT INCENTIVES

- A. In addition to receiving incentives from the Voluntary Agriculture District as defined in Chapter 156.086, landowners will also receive the following:
- (1) up to 25% of its gross sales from the sale of nonfarm products and still qualify as a bona fide farm that is exempt from zoning regulations under the G.S. 153A-340(b),
 - (2) And waiver of utility assessments during the ten year conservation agreement.
 - a. In the ordinance establishing an enhanced voluntary agricultural district under this Part, a county may provide that all assessments for utilities provided by that county are held in abeyance, with or without interest, for farmland subject to a conservation agreement under G.S. 106-743.2 that remains in effect until improvements on the farmland property are connected to the utility for which the assessment was made.
 - b. The ordinance may provide that, when the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.
 - c. Statutes of limitations are suspended during the time that any assessment is held in abeyance under this section without interest.
 - d. If an ordinance is adopted by a county under this section, then the assessment procedures followed under Article 9 of Chapter 153A or Article 10 of Chapter 160A of the General Statutes, respectively, shall conform to the terms of this ordinance with respect to qualifying farms that entered into conservation agreements while such ordinance was in effect.
 - e. Nothing in this section is intended to diminish the authority of counties to hold assessments in abeyance under G.S 153A-201 and G.S. 160A-237. (2005-390, s. 5.)

Whereas, in addition to the above mentioned incentives, the landowner may also receive the following:

- (1) a higher percentage of cost share funds under the NC State Agriculture Cost Share Program, NC Division of Soil and Water Conservation, pursuant to Part 9 of Article 21 of Chapter 143 of the General Statutes,
- (2) priority consideration for grants from state departments, institutions or agencies
(Amended 3-19-07)

§ 156.087 EXPENDITURE OF COUNTY FUNDS FOR NON-FARM USES.

Prior to initiating condemnation proceedings which would convert land in a voluntary agricultural district to non-farm uses, the county or any other local unit of government shall submit to the Advisory Board that the governmental unit has considered alternatives. Such consideration shall include the criteria listed in § 156.071(C)(1)(a) through (c).

(Ord. passed 8-11-94)

§ 156.088 NO DISTRICTS IN DESIGNATED GROWTH CORRIDORS.

At such time as the county might establish designated growth corridors, agricultural districts will not be permitted in designated growth corridors, as delineated on the official county planning map without the approval of the Board of Commissioners. Districts located in growth corridors designated after the effective date of this program may remain, but shall not be expanded within the growth corridor area without the approval of the Board of Commissioners. Districts located in growth corridors designated after the effective date of this program may expand to include adjoining property purchased by a landowner presently participating in the County Voluntary Farmland Preservation Program. The approval of the Board of Commissioners will be on a case-by-case basis.

(Ord. passed 8-11-94) Penalty, see §10.99

AGENCY NOTIFICATION**§ 156.100 CONSULTATION WITH STATE DEPARTMENT OF AGRICULTURE AND OTHER AGENCIES.**

The Board shall consult with the Cooperative Extension office, the County Soil Conservation Service office, the ASCS, the State Department of Agriculture, and any other such agency the Board deems necessary to properly conduct its business.

(Ord. passed 8-11-94)

§ 156.101 RECORDING THE PROGRAM.

(A) An official copy of this chapter shall be recorded with the State Commissioner of Agriculture's office after adoption.

(B) At least once a year, the county shall submit a written report to the Commissioners of Agriculture, including the status, progress, and activities of the county's farmland preservation program, and voluntary agricultural districting information regarding:

- (1) Number of landowners enrolled.

(2) Number of acres applied.

(3) Number of acres certified.

(4) Number of acres denied.

(5) Date certified.

(Ord. passed 8-11-94)

CHAPTER 158: SLOPE ORDINANCE

Section

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GENERAL PROVISIONS

§ 158.01 TITLE.

This chapter shall be known and cited as the Slope Ordinance of Haywood County, North Carolina, and may also be referred to as the Slope Rules or the Slope Regulations.

§ 158.02 AUTHORITY AND ENACTMENT.

The General Statutes of North Carolina provides in G.S. § 153A-121 (a) “A county may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances.” Therefore, enabled as aforesaid, the Board of Commissioners of Haywood County does hereby ordain and enact into law this chapter of the Code of Ordinances of Haywood County.

§ 158.03 PREAMBLE.

This chapter herein recognizes that development within the county has important, positive economic benefits to the citizens of Haywood County. However, adverse effects from improperly planned development activities can pose a threat to the well being of Haywood County residents living in or visiting steeper developed areas; and may threaten long-term sustainability of associated activities. Economic pressures, unknown site conditions, inadequate or inappropriate design and / or inexperienced land-disturbers can inadvertently or deliberately adversely affect the quality, safety, and / or stability of the design or construction of development activities, including the creation of graded slopes and fills. In order to provide for the creation of reasonably stable artificial slopes on developed land, the county hereby deems that disturbed land herein identified shall be developed so as to contain graded slopes and fills that will remain stable for a reasonable life span. It is also deemed that land-disturbing activity resulting in the construction of safe, stable properties is an important, valuable economic consideration for property owners, as well as to the citizens of Haywood County. It is the intent of this chapter to implement reasonable, effective control standards for improved construction and development practices that will result in higher levels of safety and stability on developed land, while decreasing the potential for damage to natural resources and properties adjoining tracts containing artificial slope construction.

§ 158.04 JURISDICTION.

This chapter shall apply to all private property in Haywood County, North Carolina that is located outside the corporate limits and planning and zoning jurisdictions of all municipalities, as they exist from time to time, subject to enlargement thru the action of the County and its municipalities.

§ 158.05 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Terms used within this chapter, which are not herein defined, may carry the same definition as referenced in other Haywood County Ordinances, state or federal regulations or nationally accepted engineering methods, standards or designs.

APPLICANT. Any person whether the person financially responsible for the artificial slope construction or repair or his or her duly appointed agent who submits a formal application to the

Engineering Coordinator or duly appointed agent for a permit required by this chapter to conduct artificial slope construction or repair; or a person who files with the Engineering Review Board, a motion to appeal a decision by the Engineering Coordinator or his or her agent as contained in this chapter.

APPROVAL. Means the proposed slope work or completed slope work appears to conform reasonably to the requirements of this chapter.

ARTIFICIAL SLOPE CONSTRUCTION OR REPAIR. Any land-disturbing activity that proposes to create any slope or change any slope; or any land-disturbing activity that creates or changes any slope.

BEDROCK. In place or “in situ” solid rock underneath top horizon soil layers.

BELOW-GRADE WALL. Any artificial grade separation constructed as a part of a building.

BENCH. A relatively long, narrow linear step or break that is excavated or built into consolidated earth material of a slope which generally runs with the contour.

CHAPTER. This Ordinance as approved by the governing board of the county.

CIVIL ENGINEER. A professional person licensed or registered in the State of North Carolina to practice in the field of civil works.

CIVIL ENGINEERING. The application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil works.

COMPACTION. The densification of an earth material by mechanical means.

CRITICAL SLOPE. Any cut slope, or fill slope, or retaining wall where mass instability (failure) would likely be a hazard to life and limb or endanger adjoining occupied structures or the safety and use of a public road or a natural watercourse.

CUT SLOPE. Any area of ground subject to a land-disturbing activity forming an artificial incline, expressed as the ratio of horizontal to vertical projection; an area of ground where earth material is to be or has been removed by excavation or other methods used by man, and that exposes lower horizons of earth material in situ, and where any face of the excavated area lies in repose at any angle other than a horizontal plane.

DESIGN PROFESSIONAL. A civil engineer, soils engineer, soil scientist, a licensed/registered professional land surveyor, geotechnical engineer, architect, landscape architect, or engineering geologist as currently licensed, registered or certified by the State of North Carolina.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

DISTURBED AREAS. Any area subject to a land-disturbing activity.

EARTH MATERIAL. Any rock, natural soil or fill or any combination thereof.

ENGINEERING COORDINATOR. An individual or group of individuals designated by the Haywood County Commissioners and charged with enforcing the provisions of this chapter, and having the power to enter all lands at reasonable times to insure that these provisions are being carried out. This position will serve as clerk to the Engineering Review Board, and this position will be the administrator for the Slope Ordinance. The Engineering Coordinator should be a licensed professional engineer in the State of North Carolina.

ENGINEERING REVIEW BOARD. Also known as the Haywood County Engineering Review Board as organized by this chapter, and is a group of knowledgeable, professional people charged with policymaking and enforcement conditions of this chapter.

EXCAVATION. The mechanical removal of, placement of, or the mechanical manipulation of earth material; a land-disturbing activity.

EXISTING GRADE. The grade prior to any land-disturbing activity.

FACTOR OF SAFETY. The results of a stability analysis normally expressed as a numerical value of a factor of safety; specifically, 1) The ratio of stabilizing forces/moments to disturbing forces/moments, or 2) The ratio of the shear strength available to the shear stress required for equilibrium of the slope.

FILL. A deposit of earth material placed by artificial means.

FILL SLOPE. Any area of placed earth material that has been or will be subject to a land-disturbing activity forming an artificial incline, expressed as the ratio of horizontal to vertical projection; an area where soil is to be or has been placed by excavation or other methods used by man, and where any face of the excavated area lies in repose at any angle other than a horizontal plane.

FINISH GRADE (FINISHED GRADE). The final grade of the site, and that the topography of which will conform to the approved plan.

GROUND COVER. Any natural vegetative growth or other materials that render the soil surface stable against accelerated erosion.

KEY. A designed, compacted fill placed in a trench excavated in earth material beneath the toe of a proposed slope.

LAND-DISTURBER. Any person who is or has been a participant in performing or helping perform a land-disturbing activity.

LAND-DISTURBING ACTIVITY. Means any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

LAND-DISTURBING PERMIT. The document issued by the county which allows grading or other land-disturbing activity or operations to commence and proceed in accordance with the requirements of Chapter 154 of the Haywood County Code of Ordinances.

MAJOR SUBDIVISION. A proposed subdivision of land where eleven (11) or more lots will result after the subdivision is complete.

MASS INSTABILITY OF A SLOPE. Failure of a slope by large movements of the slope.

MECHANICALLY STABILIZED EARTH (MSE). A retaining wall that depends on internal reinforcement to resist mass instability.

MINOR SUBDIVISION. A proposed subdivision of land where four (4) to ten (10) lots will result after the subdivision is complete. One phase of planned development cannot be considered a minor subdivision unless the entire development does not exceed ten (10) lots.

NATURAL EROSION. The wearing away of the earth's surface by water, wind, ice, gravity or other natural agents under natural environmental conditions undisturbed by man.

PERSON. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

PERSON CONDUCTING LAND-DISTURBING ACTIVITIES. Any person who may be held responsible for a violation of this chapter unless expressly provided otherwise in this chapter or the Sedimentation Pollution Control Act of 1973, being G.S. §§ 113A-50 through 113A-66, as amended, or any order adopted pursuant to this chapter or the Act.

PERSON RESPONSIBLE FOR THE VIOLATION.

(A) The developer or other person who has or holds himself or herself out as having financial or operational control over the slope construction or slope repair activity; and / or,

(B) The landowner or person in possession or control of the land when he/she has directly or indirectly allowed the slope construction or slope repair activity or has benefited from it or he/she has failed to comply with any provision of this chapter.

PHASE OF GRADING. One of two types of grading, rough or fine.

PLAN. Slope construction plan, slope repair plan, or slope stabilization plan.

PROFESSIONAL INSPECTION. An inspection required by this chapter to be performed by a design professional currently licensed, registered, or certified by the State of North Carolina. A professional inspection shall address the conditions or proposed conditions of the site in question.

REINFORCED SOIL SLOPE (RSS). Any slope that depends on internal reinforcement to resist mass instability.

RETAINING WALL. Any manmade (artificial) grade separation that is not a slope. A retaining wall may also be defined as a structure or device placed on the face of a cut slope or fill slope that covers the slope face and that holds the earth material in place by use of properly designed external and internal structural components.

ROUGH GRADE. The condition of grading, excavation or land-disturbing activity up to the condition that approximately conforms to the approved plan or plan.

SHEAR STRENGTH. The mechanical strength of an earth material. In geotechnical engineering, a stability analysis of a slope can be made using either effective stress shear strength or total stress shear strength. In effective stress analyses, the shear strength of the soil is related to the effective normal stress on the potential slip surface by means of effective stress shear strength parameters. In effective stress analyses, pore water pressures within the earth material must be known and are a part of the information required for analysis. In total stress analyses, the shear strength of the soil is related to the total normal stress on the potential slip surface by means of total stress shear strength parameters. In total stress analyses, pore water pressures within the earth material need not be known and are not required as input for analysis.

SITE. Any tract where grading, excavation, land-disturbing activity or artificial slope construction or repair is being planned, performed, permitted or being conducted.

SLOPE. An inclined ground or earth material surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

SLOPE CONSTRUCTION PERMIT. The document issued by the county which allows slope construction and / or slope repair to commence and proceed in accordance with the requirements of Chapter 158 of the Haywood County Code of Ordinances.

SOIL. Naturally occurring superficial deposits of earth material overlying bedrock.

STABLE. For the purposes relating to this chapter, “stable” shall mean adequately and reasonably resistant to change of position or condition. A stable slope shall have a factor of safety equal to or greater than that defined in Section §158.10(C)(1), Table 1.

TERRACE. A relatively long, narrow linear step or break that is excavated or built into unconsolidated earth material of a slope, which generally runs with the contour. It is built to control runoff, reduce erosion, and provide for maintenance of the slope.

UNCOVERED. The removal of ground cover from, on, or above the soil surface.

UNDERTAKEN. The initiation of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

VIOLATION. Any slope construction or slope repair activity regulated by the provisions of this chapter that is planned or carried out without regard to all the contents and responsibilities thereof or an approved slope stabilization plan.

§ 158.06 PURPOSE.

(A) This chapter is established for the following purposes:

(1) To provide effective requirements for the following: site planning and the design of, the construction of, and/or the repair of cut slopes and/or fill slopes on land by any practice considered a “land-disturbing activity” as defined in N.C.G.S. 113A-52(6); and,

(2) To balance: a) slope construction of safe, stable heights and inclination; and, b) provide rules that will lead to the construction or repair of artificial slopes that are stable; and,

(3) To provide elevated levels of safety to properties and natural resources adjoining tracts containing artificially constructed slopes, repaired slopes, or repairable slopes by reducing the likelihood of slope failures on developed or disturbed land; and,

(4) To safeguard life, limb, property, natural resources, and the public welfare by regulating slope construction and slope repair subject to land-disturbing activity; and,

(5) To consider the cost effectiveness of required measures.

§ 158.07 EXCLUDED ACTIVITIES.

Exemption from the requirements of this chapter shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this chapter or any other laws or ordinances of this jurisdiction or those of any local, state, or federal agency. Permission to construct an artificial slope is not required for the following:

(A) Cemetery graves.

(B) Landfill activities controlled by other local, state or federal agencies.

(C) Excavations for wells or tunnels.

(D) Any mining activity subject to N.C.G.S. Title 15A, Chapter 5, Mining: Mineral Resources, providing such operations do not affect the lateral support or increase the stresses in or pressure upon any adjacent or contiguous property.

(E) Exploratory excavations not requiring a building permit that are less than one-half acre of disturbed area under the direction of registered engineers, registered sanitarians (test pits only), or other registered professionals deemed competent by the Engineering Review Board.

(F) Land-disturbing activities named exempt by the Sedimentation Pollution Control Act of 1973, as amended.

(G) Natural slope failures such as but not limited to landslides.

(H) Underground storage tanks and ditches exempt from OSHA regulations.

(I) Artificial slope construction for below grade portions of a residential or commercial structure that has a current building permit and is in compliance with all applicable local, state, and federal regulations, including but not limited to the North Carolina State Building Code as adopted and amended.

§ 158.08 SCOPE; GENERAL REQUIREMENTS.

(A) This chapter sets forth rules and regulations to control the aspects of land-disturbing activity, grading, excavation and earthwork construction known as cut slopes and fill slopes also known as graded slopes and fills; and establishes the administrative procedure for approval and permitting of artificial slope construction activities and slope repair; and provides guidelines for inspections, investigations, and enforcement procedures and other remedies for violations of this chapter.

(B) The county recognizes that there is an inherent element of instability in all slopes, including natural slopes. The county recognizes that the construction of stable slopes is an issue that may be associated with several different aspects of development and that requirements contained in this chapter may not be adequate to produce stable slopes in every situation. Many factors should be considered when slopes are constructed such as soil types, hydrology, geology, weather patterns, natural slope, aspect, surrounding uses, planned use, historic use, depth to bedrock, quality of construction and other factors that either may be unseen, undetected, or in combination could lead to unstable slopes.

(C) Any person who undertakes artificial slope construction shall be responsible for adequate site assessment, planning, designing, and the construction of stable artificial slopes.

§ 158.09 SLOPE INCLINATIONS; REQUIREMENTS.

(A) References in determining stable slope inclinations are based upon guidelines used historically by the State of North Carolina and other professionals experienced in the design, construction and repair of artificial slopes. These provisions may not be adequate for slope stabilization in every situation, or they may be too restrictive, depending upon site-specific conditions. Proper assessment of site conditions is the responsibility of the landowner or the person financially responsible for the slope activity.

(B) Site- Specific Slope Measurement:

Site-Specific Slope measurement shall be taken by the following methods:

(1) On residential lots, the average slope will be determined by triangulating the line of the highest natural elevation to the lowest natural elevation in relation to the horizontal. However, if elements of topographic condition are evident such as bulging slopes, drop-offs or climbs, signs of failure such as but not limited to slope creep, then horizontal lines may be adjusted to more specifically describe slope in areas of concern; and,

(2) On roadwork, the average slope will be determined from the toe of the fill to the top of the cut plus any areas of concern above or below the roadwork area, this triangulated against the horizontal; and,

(3) Slope steepness may be measured by using standard engineering methods approved for use in the State of North Carolina, other methods approved by the Engineering Review Board, and to a standard approved by the Engineering Review Board. The Engineering Coordinator shall consult the Engineering Review Board or other appropriate authorities in these issues in an effort to develop consistent, fair, standard operating procedures for accurately measuring slope steepness.

(C) Slope Height Limitations:

(1) Any slope or contiguous series of graded or filled slopes forty feet (40') in vertical height or taller, and steeper than 1:1 for cut slopes and / or steeper than 1.5:1 for fill slopes, shall not be allowed unless a variance is granted by the Engineering Review Board. In considering a variance request, the Board shall consider whether other alternatives exist, slope factor of safety, stability, and likelihood of failure among other items. A variance will not be granted for this condition in any case where the Financially Responsible Person has not obtained a professional inspection.

§ 158.10 ADDITIONAL STANDARDS.

(A) The Financially Responsible Person shall provide credible proof to the Engineering Coordinator that all minor subdivision roads and shoulders or major subdivision roads and shoulders shall be compacted by methods developed by the Engineering Review Board as standard operating procedure.

(B) Cut slopes steeper than 1:1 (h:v) or fill slopes steeper than 1.5:1 (h:v) and greater than fifteen feet (15') in vertical height may require a professional inspection stating that slopes meet the criteria

of engineering standards approved for use in the State of North Carolina, if so determined by the engineering coordinator.

(C) Cut slopes, Fill slopes and Retaining walls:

(1) Fill slopes, cut slopes, or retaining walls subject to the requirements of this chapter shall be designed, constructed, or repaired in such a manner that they will be stable. A stable slope or retaining wall shall have a factor of safety against mass instability that is greater than or equal to the factors of safety shown in Table 1.

Table 1 – Minimum Factors of Safety Against Mass Instability

Type of Slope	Minimum Factor of Safety		
	Long-term (effective stress conditions)	End-of-Construction (total stress conditions)	Pseudo-static conditions
Critical Slope	1.5	1.2	1.2
Slope	1.3	1.1	1.1

Pseudo-static conditions are based on long-term (effective stress) conditions with the application of a pseudo-static coefficient. The pseudo-static coefficient is based on a design earthquake as one-half the peak ground acceleration (pga) from the USGS peak acceleration map for the eastern United States, with a two percent probability of ~~exceedence~~ ~~exceedance~~ in 50 years. In lieu of a site-specific value a default value of 0.15g (i.e., an acceleration of 15 percent of one standard gravity) may be used. Pseudo-static analyses should not be performed for sites evaluated with a Seismic Site Classification of “E” or “F” as defined by the North Carolina Building Code, as a more detailed assessment of seismic stability would be needed.

(2) All fill slopes shall be compacted by methods developed by the Engineering Review Board as standard operating procedure

(3) The Engineering Coordinator, in consultation with the Engineering Review Board, shall have the power to require written statements or the filing of reports under oath with respect to pertinent questions relating to artificial slope construction, slope stabilization, or slope repair.

(4) Refusal on the part of the landowner, the person financially responsible for the land-disturbing activity, or the land-disturber to cooperate in making requested repairs, providing professional inspections, providing engineering designs or any other officially requested information or action by the Engineering Coordinator shall constitute a violation of this chapter.

(5) Stabilized ditches or other methods shall be used to prevent the uncontrolled runoff of storm water over artificially constructed or repaired slopes.

(D) Upon completion of the cut and / or fill activity, the slope plan design professional must provide verification the slope work was completed in accordance with this chapter, the permitted plans and drawings, and criteria of engineering standards approved for use in the State of North Carolina. Failure by the owner or person financially responsible to submit the required certification to Haywood

County within sixty (60) days of work completion shall be considered a violation of this chapter. Certification shall be site-specific in description and shall address application of methods, requirements, and criteria of engineering standards approved for use in the State of North Carolina.

(E) Subdivision plats will not be approved by the Planning Office or recorded until all subdivision roads are completed and field verified, and compaction requirements have been achieved and the data has been checked for authenticity.

(F) A Certificate of Occupancy will not be issued until all site plan details are field verified, and compaction requirements, in accordance with engineering standards approved for use in the State of North Carolina, have been achieved and the data has been checked for authenticity.

§ 158.11 TERRACES.

Fill slopes which have a slope length of forty feet (40') or greater on the face shall be constructed with terraces that are adequate to protect the slope and convey runoff in a non-erosive manner to stable outlets away from the slope face, and the terraces should be wide enough to also provide for maintenance activities. The terraces shall be stabilized.

§ 158.12 SETBACK REQUIREMENTS.

(A) Slope construction or slope repair shall not be allowed within setbacks, as determined by the engineering review board, on any adjoining property line, natural resource, lake, natural watercourse, or public right-of-way unless a setback is provided.

(B) The Engineering Review Board will be responsible for establishing a standard operating procedure for determining setbacks. Storm water diversions within a setback should protect disturbed areas from upslope runoff and should be of sufficient width so as to contain measures, structures, or other devices adequate to divert and carry runoff subject to crossing the slope, over, under, through, around or away from the slope face in a safe and non-erosive manner. All diversions shall be stabilized. The diversions shall be constructed to carry the runoff from the twenty-five year storm using calculations approximating the maximum urbanization of the watershed contributing runoff based upon runoff data contained within the North Carolina Erosion and Sediment Control Planning and Design Manual. Diverted flows should be directed to and exit upon or into stabilized areas, channels, or mitigated to the closest natural watercourse.

§ 158.13 PLAN REQUIRED.

(A) Persons conducting development on any property creating artificial slopes steeper than 1:1 cut and 1.5:1 fill and greater than fifteen feet (15') in vertical height shall submit a slope construction plan, slope repair plan or slope stabilization plan for the activity. This plan shall contain such architectural and engineering drawings, maps, assumptions, calculations, analysis, and narrative

statements as needed to adequately describe the slope development, construction or repair activity, and the measures planned to comply with the requirements of this chapter using methods, requirements, and criteria of engineering standards approved for use in the State of North Carolina. Plans submitted to the Engineering Coordinator shall consider such forms or worksheets as follows:

- (1) A description of how the work will be accomplished.
- (2) A specific time schedule for various stages of the slope development or repair.
- (3) Maps showing the following site-appropriate features shall also be supplied:

(a) A true scale of at least one inch equals 60 feet (100' maximum), and a contour interval not to exceed five feet. Not-to-scale maps or measures will not be acceptable.

(b) Boundaries, interior lines or easements, relation to streets, roads, or highways, proposed location and height of all retaining walls, delineation of all cut and fill slopes, length of slope, shape of slope, steepness of slope, placement within slope of structures or appurtenances, scale and north arrow, proposed drainage easements, road locations and centerlines, as well as accurate estimates, cross-sectional views, and surface area calculations.

(c) Existing surrounding conditions including buildings, septic tank and drain field locations, driveways, creeks, or other bodies of water, wetlands, seeps, springs, culverts, bridges, road grades, areas of special environmental concern or those subject to any hazard from slope failure from the activity, or other information which may be pertinent in evaluation of the plan.

(d) Soils, soil types, soil analysis, rock types, analysis of the strike and dip of rock formations, stability and load bearing capability of rock and soil formations from the standpoint of strength of the material, compaction of fills, compacted or engineered lifts, water bearing formations and hydrology, aspect, benches, terraces, drainage patterns and topographic conditions, base preparation, other criteria as specified by the designer, proposed ground cover, proposed methods for intercepting storm water runoff, and ground water conditions so as to protect the slope from unstable saturation, the geomorphology of the area relating to soil stability and mass wasting, and any other item of consideration that may be important in addressing site-specific slope stabilization.

(e) Delineation of cut slopes and fill slopes, proposed soil densities, waste areas, ditches, measures and structures, existing and proposed ground cover.

(f) Supporting documentation, calculations, yardage estimates and proposed methods used for slope development design or slope repair plans shall be submitted as part of the plan.

(g) Nothing in this ordinance automatically requires persons meeting threshold standards (cut slopes steeper than 1:1 and fill slopes steeper than 1.5:1 and greater than fifteen feet (15') in vertical height) to secure the services of a professional licensed engineer prior to inspection by the engineering coordinator. Such a requirement may be necessary if the engineering coordinator determines standards of this ordinance have not been met.

(B) This type of plan will be referred to as a slope stabilization plan, and the plan shall be prepared by a design professional.

(C) Each slope stabilization plan shall be site-specific for each slope subject to the conditions of this chapter.

(D) Persons conducting regulated slope construction, stabilization, or repair activities shall file three copies of the plan with the Engineering Coordinator. If the Engineering Coordinator, either upon review of such plan or upon inspection of the job site, determines that a significant risk of failure exists, in consultation with the Engineering Review Board, the Engineering Coordinator will have the authority to require a revised plan. Pending the preparation of a revised plan, permits to conduct slope construction or slope repair activities may be rescinded and work stopped or allowed to continue under conditions outlined by the Engineering Review Board.

(E) Plans for slope construction, slope stabilization, or slope repair will be disapproved unless accompanied by an authorized statement of financial responsibility and ownership, and a performance commitment approved by the County Attorney to guarantee compliance with the provisions of this chapter. The person financially responsible for the slope development activity or his or her attorney shall sign the statement of financial responsibility and ownership. The property owner shall also sign the statement. The statement shall include the mailing and street address of the principal place of business of the person financially responsible and of the owner of the land or the owner's registered agents.

(F) If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, this chapter or rules or orders adopted or issued pursuant to this chapter.

(G) Whenever the financially responsible person dismisses, changes or replaces the agent or the principal land-disturber of the tract under development, the financially responsible person shall notify the Engineering Coordinator, or his or her agent, of the dismissal, change or replacement in agent or land-disturber within a reasonable timeframe. This requirement will help insure continuity in the line of communication between the county and the person in charge of project development, avoid possible delays in construction, and maintain control of the slope development or repair activity by making sure any new person or persons have a copy of the approved plan at the job site.

(H) The Engineering Coordinator will review each complete plan submitted and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Failure to approve or disapprove a slope construction or repair plan within 30 days of receipt shall be deemed approval, except in the following condition: if the Engineering Coordinator in his or her best judgment feels the plan will probably not succeed, even if correctly installed or constructed as submitted, the 30 day time for approval shall not begin until the submission of adequate information. In such case, the Engineering Coordinator shall notify the person financially responsible by certified mail, registered mail, or other means constituting actual notice that additional information is necessary to complete the

review process. If, following commencement of a slope construction or repair activity pursuant to an approved plan, the Engineering Coordinator determines that the plan is inadequate to meet the requirements of this chapter, the Engineering Coordinator may require such revisions as are necessary to comply with this chapter.

The county reserves the right to consult other professional opinions on any plan required by this chapter.

§ 158.14 CRITICAL SLOPES.

(A) Whenever the Engineering Review Board determines that a critical slope exists, the owner of the property upon which the critical slope is located, or other person or agent in control of said property, upon receipt of notice from the Engineering Review Board or its designate, shall within a time period as determined by the Engineering Review Board, have a professional inspection performed upon the area of concern addressing the recommendations and requirements of this chapter and provide those results to the Engineering Review Board or its designate.

(B) After review of site conditions and any professional opinions, including the professional inspection required by paragraph (A) of this section, the Engineering Review Board shall have the authority to require the owner of the property upon which the critical slope is located, or other person or agent in control of said property, to repair the slope to adequately eliminate the hazard in order to be in conformance with the requirements of this chapter, within a time period as determined by the Engineering Review Board. Notification to the person responsible or the landowner shall be by the same methods as those required for actual notice for a violation of this chapter.

§ 158.15 EMERGENCY SLOPE REPAIR.

In the event a critical slope is displaying signs of failure; or further slope failure has a high probability that it may result in a negative impact to any property containing a land-disturbing activity or to any adjacent property or natural resource; or if there is a high probability that public welfare may be negatively impacted by further failure on any property containing the critical slope, emergency repairs may be performed without approval from the county provided that:

(1) A design professional is consulted on the site during the emergency repair, or as soon as possible; and

(2) A plan is developed by a design professional for the completion, final stabilization, or endorsement of the emergency repair.

§ 158.16 UTILITIES IN ARTIFICIAL SLOPES.

Any pipe or conduit in a minor or major subdivision, which is designed to be in or placed in a fill slope, must be placed or constructed within stable fill slopes. A professional inspection shall be provided to the Engineering Coordinator and shall include a statement that the work has been designed and / or constructed in accordance with applicable standards of practice in western North Carolina at the time of design and / or construction. All reasonable technologies should be utilized in the design and construction of the fill slope so as to consider prevention of slope saturation resulting from a sewer line or water line leakage. The person financially responsible for the work will provide adequate certification of this installation or construction to the Engineering Coordinator within 60 calendar days of completion of the work.

§ 158.17 CONSTRUCTION OBSERVATION

Periodic observation by a design professional is recommended for any land-disturbing activity in or on cut slopes steeper than 1:1 (h:v) or fill slopes steeper than 1.5:1 (h:v) and greater than fifteen feet (15') in vertical height.

§ 158.18 PERMIT EXPIRATION.

(A) When work under a Slope Construction Permit or a Land-Disturbing Permit is not completed as per the approved plan or conditions of this chapter or Chapter 154 of the Haywood County Code of Ordinances within eighteen (18) months following the issuance of the Permit, the Slope Construction Permit and / or the Land-Disturbing Permit shall be deemed expired.

(B) If the county deems complete installation of the plan as originally approved will adequately stabilize the site, renewal of the permit will be given upon payment by the person financially responsible of a fee equal to 100% of current plan review fees. The fee shall be based on the size of the original area permitted upon the tract.

(C) Slope construction or slope repair activity outside the original approved limits shall be a violation of this chapter.

§ 158.19 HAYWOOD COUNTY ENGINEERING REVIEW BOARD.

(A) *Creation.* In order to provide a procedure for appeals, as outlined in division (I) of this section, the Haywood County Engineering Review Board is created. The Board shall be a seven-member board composed of the following appointees:

(1) One supervisor from the Haywood Soil and Water Conservation District Board, nominated by that board.

(2) The Chairman of the Board of County Commissioners or his or her appointee.

One appointee of the County Commissioners from each of the following groups or organizations:

(3) A licensed, registered general contractor; or an established land-disturber,

(4) A licensed, registered professional civil engineer,

(5) A licensed, registered professional land surveyor,

(6) Two persons from the following categories: geologist, soil scientist, engineering geologist, geotechnical engineer, landscape architect, engineering intern, professional engineer, or established professional environmental consultant.

(B) All members shall be appointed to staggered three-year terms with all elected officials who are appointed ex-officio, serving only during the duration of their office.

(C) Individuals nominated for the Engineering Review Board shall be approved by the Haywood County Board of Commissioners, who shall make the final appointments.

(D) In the event that qualified individuals from the designated organizations or groups are unavailable, the County Commissioners may appoint members at large who have special or unique qualifications relevant to the guidance of the policies of this chapter. In choosing members-at-large, the County Commissioners shall make selections based upon persons having the highest educational background, appropriate experience, and compliant work history.

(E) *Responsibilities.* The Engineering Review Board shall be responsible for providing direction for the administration of this chapter, recommendations as to standard operating policy, or recommending policy changes as may be needed from time to time. The Engineering Review Board shall make decisions in matters concerning forfeiture of surety, civil and criminal penalties, or injunctions against individuals in violation of this chapter, in consultation with the County Attorney. The Engineering Review Board will be sensitive at all times to the complicated nature of conditions relating to administration of this chapter, specific to the fact that coordination and communication with other boards, agencies, or peripheral control officials will be necessary in order to interface overlapping jurisdictional issues in a courteous, professional and effective manner.

(F) The Engineering Review Board may establish standard operating procedures for the administration of this chapter, including control options based upon slope classifications derived from mapping programs or other technical data, and bonding or surety requirements.

(G) The Engineering Review Board will establish civil penalties for violations of this chapter.

(H) The Board of County Commissioners may establish fees associated with the administration of this chapter.

(I) *Opportunities for appeal.*

(1) The appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

(a) The disapproval or modification of an application or a plan to conduct slope construction or repair by the Engineering Coordinator will entitle the applicant to appeal to the Engineering Review Board. The Engineering Review Board shall conduct its hearing on the appeal in accordance with N.C. G.S. 160D-406 and related provisions.

(b) The Engineering Coordinator shall advise the applicant and the Engineering Review Board in writing as to reasons that a plan is disapproved or approved with modifications. The applicant may appeal the Engineering Coordinator's disapproval or approval with modifications of the plan directly to the Engineering Review Board within 30 days of the Coordinator's written decision.

(J) Appeal hearings will be conducted within 45 calendar days after the Engineering Review Board receives written request for appeal. Only written requests for appeal received within 1430 calendar days of any action by the Engineering Coordinator that qualify for appeal will be considered. If the appeals hearing is not conducted within the specified time frame, the appeal is deemed upheld. Review Board hearings will be conducted in accordance with N.C. G. S. 160D-405.

(K) If the Engineering Review Board upholds the action by the Engineering Coordinator in the case of disapproval or modification of a submitted slope construction or repair plan, the person submitting the appeal shall then be entitled to appeal the Engineering Review Board's decision to the Haywood County Board of Commissioners- within 30 days of the Review Board's decision. An appeal to the Board of Commissioners and, later appeal to the Superior Court of Haywood County, shall be governed by the procedures of N.C. G.S. 160D-406. Judicial review of the final action of the Haywood County Board of Commissioners shall be to the Superior Court of Haywood County, upon appeal by an aggrieved party and in accordance with the provisions of N.C. G.S. 160D-406.

(L) Any fines levied during the appeal period shall accrue and be payable by the responsible individuals so long as the violations remain. Upon conclusion of the appeals process, either the responsible party must pay all applicable fines or if the appeal is upheld, all applicable fines shall be forfeited by the county and returned to the successful appellant.

§ 158.20 PENALTY.

Civil penalties assessed for any violation of this chapter by action of the Haywood County Board of Commissioners will be in addition to any other penalty fees assessed for violations of any other regulated condition.

§ 158.21 SEVERABILITY.

If any section or sections of this chapter is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

CHAPTER 159: PUBLIC HEALTH AND SOLID WASTE AWARENESS AND COMPLIANCE

Section

- 159.01 Authority
- 159.02 Purpose
- 159.03 Jurisdiction
- 159.04 Definitions
- 159.05 Applicability and General Conditions
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PUBLIC HEALTH AND SOLID WASTE AWARENESS AND COMPLIANCE

§ 159.01 Authority.

The Board of Commissioners of Haywood County does hereby ordain and enact into law this chapter of the Code of Ordinances of Haywood County pursuant to authority granted by G.S. 153A-121 "General Ordinance Making Power." and G.S. 153A-132.1 "To Provide for the Removal and Disposal of Trash, Garbage, etc."

§ 159.02 Purpose.

Haywood County through and by North Carolina general Statutes are empowered to protect the general health, safety, welfare of all citizens. The purpose of this ordinance is limited to Public Health risks.

§ 159.03 JURISDICTION

The provisions of this Ordinance shall be applicable to and shall be enforced in all areas of Haywood County not within a city or municipality, except with permission of a city or municipality pursuant to G.S. 153A-122.

§ 159.04 DEFINITIONS.

- A. SOLID WASTE-Means garbage, refuse, rubbish, trash, and other discarded solid materials, including solid waste materials resulting from industrial, commercial and agricultural operations, and from community activities, but does not include animal waste, solids, dissolved materials, or waste water effluents in domestic sewage, agricultural, or industrial operations.
- B. GARBAGE-Means all putrescible wastes, including animal and vegetable matter, animal offal and carcasses and recognizable industrial by-products, but excluding sewage and human wastes. Other discarded food containers that are not dry and clean shall be included in this definition.
- C. RUBBISH-Means non-putrescible solid wastes.
- D. PERSON-Means any individual, firm, governmental unit, organization, partnership, corporation, or company.
- E. HEALTH DIRECTOR-Means the Director of the Haywood County Health Department, or his/her authorized representative.
- F. BOARD OF COUNTY COMMISSIONERS- (BOCC) means the Haywood County Board of Commissioners
- G. SOLID WASTE COLLECTOR-Means any person who collects or transports solid wastes for compensation of any type, other than one who removes solid wastes from his own premises.
- H. PUTRESCIBLE-Means solid waste capable of being decomposed by micro-organisms, with sufficient rapidity as to cause nuisances from odors or gases, such as kitchen waste, offal, and carcasses not to include appropriately composted materials as defined in the Solid Waste rules.
- I. VECTOR-Means an insect, rodent, or other animal that transmits infectious diseases from one person or animal to another.
- J. PREMISES-Means a parcel(s) of land and the buildings on it.

§ 159.05 APPLICABILITY AND GENERAL CONDITIONS.

This ordinance shall apply to the management of solid waste prior to acceptance into the Haywood County Solid Waste collection and disposal system. Solid waste management methods and procedures implemented pursuant to this ordinance shall be based upon public health practices and procedures, including applicable epidemiological research and other scientific knowledge. All solid waste shall be stored, collected, transported, treated, utilized,

processed, reclaimed, recycled, and disposed of in a manner consistent with the requirements of federal, state and county laws and ordinances, including rules and regulations adopted by the Haywood County Board of Health and the North Carolina Commission for Health Services. As provided in G.S.153A-121(c), the provisions of this ordinance do not impair the authority of the Haywood County Board of Health to adopt rules and regulations to promote the public health. Further, the provisions of this ordinance do not impair the authority of the Haywood County Board of Health and the North Carolina Commission for Health Services to enforce such rules or rules adopted by the Commission for Health Services pertaining to applicable public health statutes which address solid waste violations.

§ 159.06 SOLID WASTE STORAGE.

A. The owner, occupant, tenant, lessee, or person in charge of any premise, shall be responsible for the sanitary storage of all solid waste accumulated at that premise.

B. Garbage shall be stored or managed to minimize putrescible odor. Containers shall be a quality leak proof container. Containers shall be stored in such a manner and of duration so as not to create a public health risk.

C. Rubbish shall be stored in such a manner to prevent:

1. Harborage for rodents; and
2. The collection or confinement of water to breed mosquitoes, flies, or other vectors.

§ 159.07 SOLID WASTE COLLECTION AND TRANSPORTATION.

Solid waste shall be collected and transported in such a manner so as not to create a public health risk. Transportation shall comply with Haywood County Solid Waste Disposal ordinance, Chapter 50 of the Haywood County Code of Ordinances.

§ 159.08 SOLID WASTE DISPOSAL.

All solid waste shall be disposed of by methods consistent with this ordinance and the Haywood County Solid Waste Disposal ordinance; and federal and state rules and regulations.

§ 159.09 PENALTY AND ENFORCEMENT.

- A. Any person who violates this ordinance or fails to comply with any of its requirements shall be guilty of a class 3 misdemeanor, as provided in G.S. 153A-123(b) and G.S. 14-4 of the General Statutes of North Carolina, and shall be punishable by a fine of up to \$50.00 per violation.
- B. Any person who violates this ordinance may be subject to an action for injunctive relief in the Superior Court of Haywood County, as provided in G.S. 153A-123(a), (c) and (d) of the General Statutes of North Carolina or civil penalty.

- C. The Haywood County Health Director, or his/her authorized representative, is hereby designated and appointed the environmental enforcement officer as provided in G.S. 153A-136(a)(6a), and may ~~seek~~issue a Notice of Violation (also called an order of abatement) directing the owner, lessee, operator or other person in control of property to take any action necessary to abate a public health nuisance . This ordinance shall not impair the authority of the Haywood County Health Director to issue an order of abatement pursuant to G.S. 130A-19(a) where he determines that a public health nuisance exists.
- D. The Haywood County Health Director or designee, as environmental enforcement officer, shall make a reasonable effort to abate the public health risk through voluntary compliance with corrective instructions to the property owner or person in lawful possession of the property. If denied permission to enter the property by the property owner or person in lawful possession of the property, the Health Director, acting as environmental enforcement officer, shall first apply for and obtain an administrative search warrant before entering the premises. Thereafter the Health Director shall proceed with formal abatement procedures giving the person a period of at least 30 days to comply with such corrective instructions. If the person fails to comply, the Health Director shall thereafter proceed in court with an application for injunctive relief, order of abatement or prosecute such person in criminal court for violation of this ordinance.

§ 159.10 APPEAL.

Appeals concerning the enforcement of this Ordinance adopted by the Haywood County Board of Commissioners and concerning the imposition of administrative penalties by the Haywood County Health Director as environmental enforcement officer, by an aggrieved person from a penalty or enforcement action taken by the Haywood County Health Director, or his/her authorized representative, shall be in conformity with N.C.G.S. 160D-404, 405 and 406 and as follows:

- A. The aggrieved person shall give written notice to the Haywood County Health Director, or his/her authorized representative acting as environmental enforcement officer, within 30 days of the ~~challenged action~~issuance of the Notice of Violation (also called an order of abatement). The notice shall contain the name and address of the aggrieved person, a description of the challenged action and a statement of the reasons why the challenged action is incorrect.
- B. Upon filing of a notice of appeal, the Haywood County Health Director, as environmental enforcement officer, shall, within 5 working days, transmit to the each member of the Haywood County Board of Health the notice of appeal and the papers and materials upon which the challenged action was taken.

- C. The Haywood County Board of Health shall hold a hearing in accordance with N.C.G.S. 160D-405 at the next regular scheduled meeting following receipt of the notice of appeal. The Board of Health shall give the appealing party not less than 10 days notice of the date, time and place of the hearing.
- D. On appeal, the Haywood County Board of Health shall have authority to affirm, modify or reverse the challenged action. The local board of health shall issue a written decision based on the evidence presented at the hearing. The decision shall contain a concise statement of the reasons for the decision.
- E. A person who wishes to contest a decision of the Haywood County Board of Health made pursuant to this Section shall have a right of appeal to the Haywood County Board of Commissioners within 30 days after the date of the decision by the Board of Health in accordance with N.C.G.S. 160D-406.
- F. The Haywood County Board of Commissioners shall schedule a quasi-judicial hearing in accordance with N.C.G.S. 160D-406 within 30 calendar days following receipt of appeal. The Haywood County Board of Commissioners shall have authority to affirm, modify or reverse the challenged action. The Haywood County Board of Commissioners shall issue a written decision based on the evidence presented at the hearing. The decision shall contain a concise statement of the reasons for the decision.
- G. A person who wishes to contest a decision of the Haywood County Board of Commissioners made pursuant to this Section shall have a right of appeal to the General Court of Justice having jurisdiction, within 30 days after the date of the decision by the Board-, in accordance with N.C.G.S. 160D-406(k).
- H. Members of the Haywood County Board of Health and the County Board of Commissioners shall not vote on any decision where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member shall not vote on any matter if the subject matter involves a person with whom the member has a close familial, business, or other associational relationship.

§ 159.11 CONFLICTING REGULATIONS REPEALED.

All regulations or parts of regulations in conflict herewith are repealed, as of the effective date of these amended regulations, but only to the extent necessary to give these regulations full force and effect. **If any provision of this ordinance, or the application thereof to any person or circumstance, is held to exceed the authority of state statutes or to not be pursuant to the power and duty of the environmental enforcement officer, including the Haywood County Health Director, or his/her authorized representative, to carry out the responsibilities delegated under Section 39 of Chapter 130A of the General Statutes of North Carolina to the Board of Health to protect and promote the public health, the**

Health Director, or his authorized representative, may only proceed as necessary to enforce state statutes and rules as an agent of the state in pursuit of state actions.

Where a state statute or County ordinance provides a lesser penalty for an offense than is provided for by a violation of this ordinance, the lesser degree or class of criminal penalty shall take precedence and control.

§ 159.12 SEVERABILITY.

If any section or sections of this chapter is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

§ 159.13 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE

This revised ordinance revises and supplants the ordinance Chapter 159 which was originally enacted on January 12, 2011 and shall be effective on and after June 19, 2017.

CHAPTER 160: HIGH IMPACT DEVELOPMENT
GENERAL PROVISIONS

Chapter 160

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§ 160.01 TITLE.

This Chapter shall be known and may be cited as High Impact Development, codified as Chapter 160 of the Haywood County Code of Ordinances.

§ 160.02 AUTHORITY AND JURISDICTION.

(A) This Chapter is established by the Haywood County Board of Commissioners pursuant to the authority conferred in N.C.G.S. §153A-121, 160D-201 and ~~§153A-320~~160D-202 and -903.

(B) The provisions of this Chapter shall apply to all unincorporated areas of Haywood County lying outside of the corporate limits and the extraterritorial jurisdictions of any municipality.

§ 160.03 PURPOSE – PROTECTION OF VULNERABLE POPULATIONS.

This Chapter hereby acknowledges that high impact development within Haywood County has important, positive economic benefits to the citizens of the County. The County also recognizes that, at times, certain conditions associated with high impact activity can have adverse effects upon the health and well-being of vulnerable populations of people in close proximity. There are populations within certain facilities in Haywood County who have limited mobility, or complicated or difficult evacuation options, or limited ability to help themselves during times of emergency or evacuation; be it children

in schools or care facilities, the sick, the elderly, the mentally challenged, or the incarcerated.

It is the simple intent of this Chapter to implement limited, reasonable protection standards for minimum high impact hazards and activities named herein. The desired outcome is that higher factors of safety may be in place for vulnerable citizens in any of the following entities:

- 1- Public and private schools,
- 2- Child care institutions/facilities,
- 3- Day care centers,
- 4- Hospitals,
- 5- Nursing care homes,
- 6- Retirement and assisted living facilities,
- 7- Correctional institutions (Ex. Jail or Prison).

§ 160.04 APPLICABILITY.

(A) The provisions of this Chapter shall apply to the following uses of any land as further defined in § 160.05(B) of this Chapter:

- (1) Asphalt Plants; and,
- (2) Chemical Facility
Class I,
Class II; and,
- (3) Explosives Facility
Class I,
Class II; and,
- (4) Mining, Quarrying, or Resource Extraction; and,
- (5) Hazardous Waste Facilities
Class I,
Class II; and,
- (6) Landfills; and,
- (7) Combustible and Flammable Bulk Fuel Facilities
Class I,
Class II.

(B) The provisions of this Chapter shall not apply to any use of land arising out of or associated with *bona fide* agricultural or forestry operations as defined in G. S. § 106-701.

§ 160.05 INTERPRETATIONS AND DEFINITIONS.

(A) For the purposes of this Ordinance, certain words shall be defined or interpreted as follows:

- (1) The word “County” shall mean Haywood County, North Carolina.

(2) The words “County Commissioners” shall mean the Board of Commissioners of Haywood County, North Carolina.

(3) The word “Ordinance” or “Chapter” shall mean CHAPTER 160 of the Haywood County Code of Ordinances.

(4) Words used in the singular in this Ordinance include the plural and words used in the plural include the singular.

(5) Words used in the present tense include future tense.

(6) The word “person” includes a firm, association, organization, corporation, company, trust, and partnership as well as an individual.

(7) The words “used” or “occupied” shall mean “intended, designed, and arranged to be used by or is used/occupied by persons.”

(8) The word “lot” shall include the words “plot,” “parcel,” “site,” “acreage,” “tract,” and “premises.”

(9) The word “structure” shall include the word “building.”

(10) The word “includes” shall not limit the term to specified examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

(B) The following words shall be specifically defined as follows:

Accessory Structure - means a structure located on the same parcel of property as the principal structure and the use supports the principal structure. Garages, carports and storage sheds are common accessory structures.

Asphalt Plant – The equipment and facility necessary to produce petroleum bitumen products.

Buffer – A strip of land or an area of separation between properties or land uses measured from different property boundaries, different property uses, or surface waters.

Class 1 Chemical Facility – An establishment, business, or facility whose primary purpose is retail sales of chemical products in forms or states of matter that are hazardous, per “Emergency Planning and Community Right to Know Act (EPCRA) (42 U.S.C. § 11022 et. seq)”

Class 2 Chemical Facility - An establishment, business, or facility whose primary purpose may include wholesale transactions, transferring, production, synthesis, formation, processing, refining, manufacturing, distribution, and/or storage of chemical

products in forms or states of matter that are hazardous, per “Emergency Planning and Community Right to Know Act (EPCRA) (42 U.S.C. § 11022 et. seq)”

Commercial – Use for an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.

Class I Combustible and Flammable Bulk Fuel Storage Facility – An establishment, business, or facility such as a service station or convenience store whose purpose in storing combustible and flammable fuel in quantity less than 50,000 gallons is for small-quantity retail sales of fuel to the public. Examples of small-quantity sales would include purchases such as a tank of gasoline for an automobile; or a propane tank exchange, or propane tank filling options for a family camper or a BBQ grill.

Class II Combustible and Flammable Bulk Fuel Storage Facility – A facility whose purpose is the storage, distribution, mixing, or transfer of combustible liquids, gases, or solids, received or transferred by truck, train, tank vessel, pipelines, tank car, piping, portable tank or containers, or other methods that include, but are not limited to propane, methane, and/or other combustible or flammable fuels. A facility in this class primarily sells, transfers, or stores large quantities of fuel for wholesale distribution; or may sell truckload quantities of home heating fuel. This definition shall not include fuel stored at or on a residence, business, or other facility where use of the same is limited to on-site consumption.

Class 1 Explosives Facility - An establishment, business, or facility primarily engaged in retail sales of pre-manufactured or pre-packaged explosives.

Class 2 Explosives Facility – An establishment, business, or facility used in the manufacturing, transferring, or storage of any chemical compounds, mixtures, or devices in which the primary or common purpose is to explode. This definition includes but is not limited to dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniting cord, igniters, and display fireworks, but does not include hand-loaded small arms ammunition.

Development Permit – A permit issued by the Ordinance Administrator authorizing the construction of a new entity or facility listed in section 160.03 or section 160.04 or any modification to a pre-existing entity or facility.

Hazardous Waste (NC General Statutes, Chapter 130A Article 9, § 130A-290(a)(8)) - "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

- a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed

of or otherwise managed.

Class 1 Hazardous Waste Facility – A facility designed for collection of and or *temporary* storage of hazardous waste.

Class 2 Hazardous Waste Facility – A facility designed for processing, recovery, treatment, refining, production of and/or disposal of hazardous waste.

High Impact – A use listed in § 160.04 (A) of this Ordinance.

Landfill - (NC General Statutes, Chapter 130A Article 9, § 130A-290(a)(16) – "Landfill" means a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility. This definition does not include recycling facilities.

Mining, Quarrying, or Resource Extraction – Any activity that may include dredging, digging, extraction, mining, or quarrying of earth materials including stones, minerals, ores, sand, or soils for commercial purposes. This definition shall not include excavation or grading when conducted solely in aid of on-site construction for purposes other than mining. This definition shall not include “gem” or other mining generally operated as a business use for the general public. This definition shall not include the removal of fieldstone for commercial, construction, masonry or private use.

Ordinance Administrator – An individual or group of individuals designated by the Haywood County Board of Commissioners and charged with upholding the provisions of this chapter, and having the power to enter all lands at reasonable times to insure that these provisions are being carried out.

Perennial Stream - A constantly flowing, drought-resistant stream that is typically depicted by a thin continuous blue line on the most recent version of the USGS 1:24,000 (7.5 minute) scale topographic maps (or as determined by local government studies; or studies including determinations or classifications made by the State of North Carolina, the United States Army Corps of Engineers or other controlling authorities acceptable to the County).

Principal Use - The primary purpose for which land, buildings or other improvements is/are arranged, designed, intended or used, including the storage or use of supplies, inventory, materials, equipment or products associated therewith.

Private School - A school operated by a private, non-governmental entity. A private school provides a facility (campus) and curriculum similar to public schools.

Public School – A non-commercial, elementary, secondary, or post secondary school that is supported by public funds, that is guided by local, state, and federal

government policies and procedures, and that provides free education for children of a community or district.

Screening – The use of any device or natural growth including but not limited to fencing, walls, berms, vegetation, or any combination thereof that serves as a barrier of vision between adjoining properties. Screening may be partial or full as may be required by this Chapter.

Separation – Where separation restrictions are required, no portion of the active area on which the regulated use is located shall be situated within the stated distance from the protected use(s) whether such protected uses(s) are located within or outside Haywood County.

Setback - A continuous strip of land, or an area of land, or a specific minimum distance measured from defined, identifiable places such as property lines, streets, watercourses, or lakes that border or traverse the property (whichever is closer to the active area, principal use or building) in which no principal use is permitted. Limited development, including buffers and related development, parking lots and accessory structures and buildings, access road corridors, and interior service roads, may occur within the setback

§ 160.06 LOCATIONAL, SCREENING AND MITIGATION REQUIREMENTS.

No high impact development, as defined herein, of a parcel or parcels of land shall be permitted, constructed, operated, or maintained except in accordance with the following standards:

(A) Separation. The location of the closest point of a principle use, active area, building, structure or outdoor storage of a high impact development use shall be the minimum distance specified in § 160.07 of this Chapter from the nearest property line for any existing;

- 1- Public and private school,
- 2- Child care institution/facilities,
- 3- Day care center,
- 4- Hospital,
- 5- Nursing care home,
- 6- Retirement facility or assisted living institution,
- 7- Correctional Institution (Ex. Jail or Prison),

In order to establish permitted locations, the separation measurement shall be made in a straight line from the closest or nearest portion of the building, structure, outdoor storage, principle use, or active area of the high impact development to the nearest property line of the premises of the above listed protected facilities. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the spacing requirements of this Section.

(1) Reciprocal separation requirement. In the event that a protected entity chooses to establish a new location of operation which is within the controlled proximity of a pre-existing, regulated entity, then, the proposed, protected entity shall comply with the full separation distance requirements stated within §160.07 of this Chapter; and the full separation distance shall be upon the tract of the proposed, protected entity and not upon the pre-existing, regulated entity.

(B) Vegetative Buffer. A continuous vegetative buffer shall be maintained

along any property line of a high impact development use which is adjacent to a public right-of-way or adjacent to property on which is located a public or private school, child care institution/facilities, day care center, hospital, nursing care home, retirement facility or assisted living institution or correctional facility. The vegetative buffer strip shall not be less than twenty five feet in width at a reasonable maturity and shall be composed of evergreen trees or shrubs approved by the Ordinance Administrator and which are of a type that at planting shall be a minimum of five feet in height and which at maturity shall not be less than ten feet in height.

(C) The buffer strip should consist of three rows of evergreen trees or shrubs

planted in a staggered pattern. In each row the trees or shrubs should be spaced no more than ten feet apart (from base of tree to base of tree) and the rows should be no more than five feet apart or of a width appropriate for maturity of an approved species. Alternative spacing of trees or shrubs is acceptable to improve the growth of vegetation so long as the buffer strip is a minimum of twenty five feet in width and the density of the buffer is sufficient to provide adequate screening.

(D) Plans for buffering shall be provided with the permit application.
Plants

required in the buffer shall be carefully planted and shall be maintained in effective condition. Failure to maintain the buffer in reasonable, effective condition shall constitute a violation of this Ordinance. This planting requirement may be modified by the Ordinance Administrator where adequate buffering exists in the form of natural vegetation and or terrain.

(E) Stream Buffer. The closest point of building, structure, or outdoor storage of a high impact development use shall be set back from all surface waters, the minimum distance specified in § 160.07 of this Chapter, or at a minimum, stream buffers as mandated by the State of North Carolina for the classified body.

(F) Principal Use Setback. All buildings, structures, or other improvements constituting the principal use for any high impact development shall be set back from the property lines the minimum distances specified in § 160.07 of this Chapter.

(G) Screening. All high impact development uses shall be effectively screened. The screening may be located within any required buffer or setback. The screening may consist of the required continuous vegetative buffer described in subsection (C) of this section or, upon approval of the Ordinance Administrator, a combination of the vegetative buffer, opaque wooden fences, masonry walls, or landscaped earthen berms that are approved for use.

(H) Setback Uses. Any legal, permitted (excluding the regulated entities herein) use may be located within the building setbacks of any high impact development use located on the same parcel of land.

(I) Safety Fencing. Safety fencing shall be installed around the principal use or building containing the principal use of all regulated uses as listed in 160.04 (A). The safety fencing shall be chain link or equivalent, at least six feet in height, and gated in order that it can be secured at any time.

§ 160.07 SPECIFICATIONS FOR SEPARATIONS, SETBACKS AND BUFFERS.

Specifications for the separation distances prescribed in § 160.06(A), the stream setbacks prescribed in § 160.06(D), the principal use setbacks prescribed in § 160.06(E), and the buffer widths prescribed in § 160.06(F) for each high impact development use are set forth in the following table (Stream buffers required by the State of North Carolina are given in the NCGS regulations and the NCAC rules.):

<u>Regulated Entity</u>	<u>Separation</u>	<u>Setback</u>	<u>Buffer (Live H₂O)</u>	<u>Fencing/ Screening</u>
1) Chemical Facility				
Class I	250	25	50	NO
Class II	1000	250	100	YES
2) Asphalt Plants	750	100	100	YES
3) Explosives				
Class I	250	25	50	NO
Class II	1000	200	100	YES
4) Mining/Extraction Operations/Quarries	1000	100	100	YES
5) Hazardous Waste				
Class I	250	25	50	YES
Class II	1000	250	200	YES
6) Landfills	1000	200	100	YES
7) Combustible and Flammable Bulk Fuel storage				
Class I-	50	25	50	NO

Class II	1000	200	100	YES
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§ 160.08 APPLICATION TO EXISTING NONCONFORMING HIGH IMPACT DEVELOPMENT USES.

(A) Any high impact development use identified in this Chapter that is legally in existence on the effective date of this Chapter, which does not conform to the requirements of this Chapter, is declared non-conforming.

(B) Any non-conforming high impact development use as described above may continue so long as the use is not discontinued. In cases where repair or renovation is necessary to re-occupy a building that is part of a regulated entity, such construction must commence immediately and proceed continuously to completion and re-use.

(C) Expansion of nonconforming, high impact development uses shall comply with the standards set forth in this Ordinance.

In the event that there is no protected entity within the control distances required by this Ordinance, with the written permission of the Ordinance Administrator, the following allowances may apply: A Class I Chemical Facility, or a Class 1 Explosives Facility, or a Class I Hazardous Waste facility, or a Class I Combustible and Flammable Bulk Fuel Storage facility (underground storage only) may encroach upon the required setback distances by up to 20% (twenty percent).

In the event that a protected entity exists at the time of a proposed expansion of a regulated entity, with the written permission of the Ordinance Administrator, the following allowances may apply: A Class I Chemical Facility, or a Class 1 Explosives Facility, or a Class I Hazardous Waste facility, or a Class I Combustible and Flammable Bulk Fuel Storage facility (underground storage only) may encroach upon the required separation distances by up to 50% (fifty percent).

Vertical expansions are not allowed without written approval of the Ordinance Administrator.

(D) In cases of damage to nonconforming buildings to the extent of seventy five percent (75%) or less of the replacement value, repairs may be made, provided the original foundation footprint is maintained. If such damage exceeds seventy five percent (75%) of the replacement value, repairs may be made only if the original foundation footprint is maintained and the standards of this Ordinance are met to the extent approved by the Ordinance Administrator.

(E) Compliance with a requirement of this Ordinance is not physically practicable if compliance cannot be achieved without adding additional land to the lot where the nonconforming high impact development use is maintained or requires the movement of a substantial structure that is on a permanent foundation. Financial

hardship caused by the cost of meeting requirements does not constitute grounds for finding that compliance is not practicable. However, in such instances, consideration will be given by the County to the regulated entity in order that hardships may be mitigated; this in the effort of balance and fairness; and, if there are no objectionable secondary consequences.

§ 160.09 INSPECTIONS.

(A) The Ordinance Administrator may periodically inspect the development activities subject to the requirements of this Chapter and shall request, from the applicant, permission to inspect the high impact development during construction and thereafter.

(B) If voluntary entry is denied, the Ordinance Administrator may seek any legal means to inspect the high impact development.

(C) The Ordinance Administrator shall be responsible for all inspections, plan review and approval, enforcement, and other responsibilities as outlined in this Chapter.

§ 160.10 PERMIT REQUIRED.

(A) All new high impact development uses and any nonconforming high impact development uses which are moved, altered or enlarged shall conform to the provisions contained in this Chapter.

(B) No building, establishment, business, facility, or other structure subject to this Ordinance shall be erected, moved, or altered without a Development Permit. No building permit shall be issued except in conformity with the provisions of this Chapter.

(C) Development Permit applications shall include site plans. A site development plan shall be prepared and shall contain the following information:

(1) The name, address and telephone number of the applicant and the property owner, tax parcel identification number, scale, north arrow, a copy of the section of the 1:24,000 USGS quadrangle showing the proposed site.

(2) The name, address, telephone number, signature and seal of the professional preparing the site development plan.

(3) All structures and surface waters located on the parcel, all private and public roads.

(4) Surveyed boundary lines of the parcel.

(5) Description of adjacent land use and all property owner names, tax parcel numbers and mailing addresses.

(6) To scale sizes and locations on the lot of any buildings already existing and location of all proposed buildings or alterations.

(7) Existing and proposed uses of the buildings and land.

(8) Any additional information requested by the Ordinance Administrator.

(D) The failure to obtain any Development Permit required by this ordinance shall be a violation of this Chapter.

§ 160.11 APPEAL FROM A DECISION OF THE ORDINANCE ADMINISTRATOR.

(A) Any order, requirement, decision or determination made by the Ordinance Administrator may be appealed to and decided by the Haywood County Planning Board, in accordance with the provisions of N.C.G.S. 160D-405.

(B) Notice of an appeal to the Planning Board shall be in writing, shall state the grounds for the appeal with specificity, and shall be submitted to the Ordinance Administrator within thirty days of the receipt of the written order, requirement, decision, or determination.

(C) The Ordinance Administrator shall schedule the appeal at the next regularly scheduled meeting of the Haywood County Planning Board and give notice thereof to the parties. ~~At the meeting, any party may appear in person, by agent, or by attorney.~~ The Planning Board shall conduct its proceedings in accordance with N.C.G.S. 160D-406. The Planning Board shall give written notice of its decision to the Ordinance Administrator and to the applicant for a Development Permit. Appeals from the Planning Board decision shall be made to the Board of Commissioners and Superior Court, in accordance with N.C. G.S. 160D-406.

§ 160.12 REQUEST FOR VARIANCE.

Refer to variance procedure

§ 160.13 PENALTIES, REMEDIES AND ENFORCEMENT.

(A) A violation of any of the provisions of this Chapter shall be a misdemeanor subject to the penalties and enforcement provisions of G.S. § 153A-123.

(B) Each day's continuing violation of any of the provisions of this Chapter shall constitute a separate and distinct violation.

(C) The provisions of this Chapter may be enforced by any one or more of the remedies authorized by G.S. § 153A-123.

§ 160.14 SEVERABILITY.

If any section or sections of this Chapter is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

160.15 ADOPTION AND EFFECTIVE DATE

Upon motion by Commissioner Kirkpatrick and seconded by Commissioner Upton, the above Ordinance shall become effective upon its adoption, this 19th day of September, 2016.

s/ Mark Swanger
Mark Swanger, Chairman
Haywood County Board of County Commissioners