

## REQUEST FOR COMMITTEE ACTION

### HENDERSON COUNTY TECHNICAL REVIEW COMMITTEE

**Meeting Date:** May 6, 2008

**Subject:** Rezoning #R-2008-08 and Text Amendment #TX-2008-02

**Staff Contact:** Matthew Cable, Planner

**Attachments:**

1. Staff Memorandum
2. Flood Area Reduction Map
3. Flood Area Expansion Map
4. Proposed Text Amendments to Chapter 200A, LDC

#### **SUMMARY OF REQUEST:**

Rezoning #R-2008-08 and Text Amendment #TX-2008-02, which were initiated by Henderson County Planning Staff on April 2, 2008, request that the County adopt the finalized Flood Insurance Rate Maps (FIRMs) and make the necessary associated amendments to the flood damage prevention regulations of Chapter 200A, Land Development Code. The adoption of the new FIRMs and text amendments will be under procedures outlined by FEMA, the State of North Carolina, and Chapter 200A, Land Development Code. Technical Review Committee action to recommend that the Board of Commissioners approve Rezoning #R-2008-08 and Text Amendment #TX-2008-02 would be appropriate.

#### **TECHNICAL REVIEW COMMITTEE ACTION REQUESTED:**

##### **Suggested Motion:**

I move that the Committee recommend approval of Rezoning #R-2008-08 and Text Amendment #TX-2008-02, to adopt the finalized Flood Insurance Rate Maps (FIRMs) and amended flood damage prevention regulations of the Land Development Code necessary to reflect regulation changes associated with the new FIRMs and changes made to the State Model Flood Damage Prevention Ordinance.

And,

I further move that these recommendations of approval are consistent with the recommendations of the Henderson County 2020 Comprehensive Plan.

**HENDERSON COUNTY**  
**Planning Department**

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Phone 828-697-4819 • Fax 828-697-4533

**MEMORANDUM**

**TO: Henderson County Technical Review Committee**

**FROM: Planning Staff**

**DATE: May 6, 2008**

**SUBJECT: Rezoning #R-2008-08 and Text Amendment #TX-2008-02**

The development of new Flood Insurance Rate Maps (FIRMs) is a multistep process that began for Henderson County in August 2005. These FIRMs were reviewed publicly and, following a formal appeals process, were finalized. On April 2, 2008 the County received the Letter of Final Determination for the FIRMs. In addition, the flood damage prevention regulations of the Land Development Code have been amended to reflect: (1) regulation changes associated with the new FIRMs, (2) changes made to the State Model Flood Damage Prevention Ordinance since the original adoption of the regulations in 2005, and (3) organization of regulations within Chapter 200A.

The County has six (6) months in which to adopt the new FIRMs and text amendments (a deadline of October 2, 2008); however, FEMA recommends adoption within four (4) months (a deadline of August 4, 2008) in an effort to:

- Prevent suspension from the National Flood Insurance Program (NFIP),
- Allow Federal agencies to approve loans and grants within the 100-year floodplain,
- Make State and Federal disaster assistance available for flood-damaged structures, and
- Comply with the North Carolina Flood Act of 2000.

The adoption of the new FIRMs and text amendments will be under procedures outlined by FEMA, the State of North Carolina, and Chapter 200A, Land Development Code. The adoption is consistent with the Henderson County 2020 Comprehensive Plan which supports “minimizing the potential for damage to personal property, infrastructure, and life due to flooding” (2020 CCP, Pg. 75)

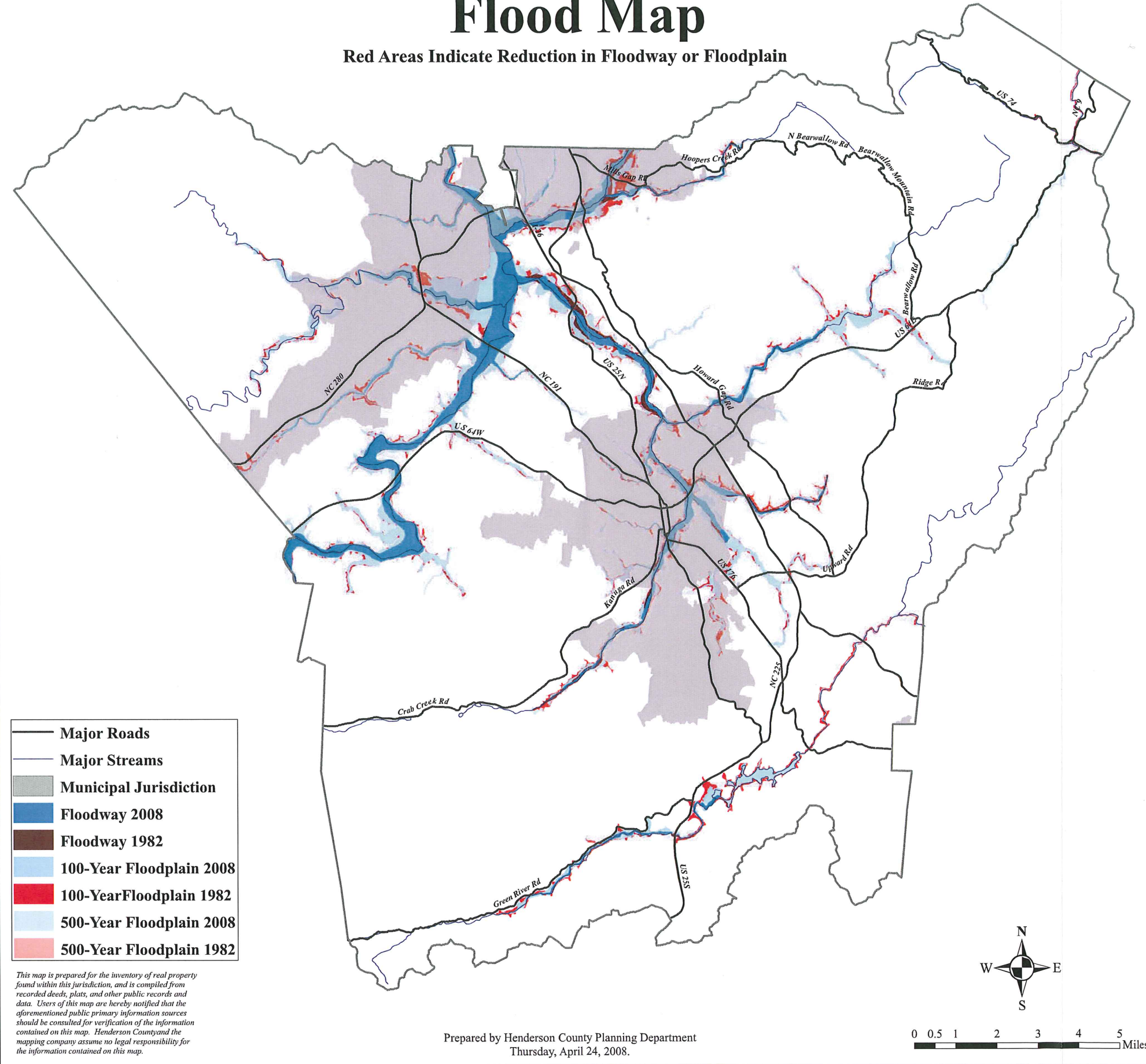
Attached for your review are maps showing where the FIRMs have resulted in a flood area reduction (Attachment 2, Flood Area Reduction Map) and where the FIRMs have resulted in a flood area expansion (Attachment 3, Flood Area Expansion Map). Flood Area Reduction and Expansion Maps which are divided into Quadrants are available at: [www.hcplanning.org](http://www.hcplanning.org). FIRM panels may be reviewed in the office of the Floodplain Administrator or by visiting the North Carolina Floodplain Mapping Site (<http://www.ncfloodmaps.com/default.htm.asp#>). Table 1, below, provides a comparison of 1982 and 2008 floodplain and floodway acreage which fall within the County’s jurisdiction. Overall the regulated area will be reduced by over 32 acres.

<b>Table 1. Floodway and Floodplain within Henderson County’s Jurisdiction: Comparing Existing and New FIRMs</b>			
<b>Acreage in</b>	<b>Year</b>		<b>Change in Acreage</b>
	<b>1982</b>	<b>2008</b>	
Floodway	3,884.71	3,909.73	25.02
100 Year Floodplain	5,675.64	5,618.18	-57.46
500 Year Floodplain	655.52	689.26	33.74
Regulated Area (Floodway & 100 Year Floodplain)	9,560.35	9,527.91	-32.44

Also attached for your review are proposed revisions to Chapter 200A, Land Development Code text which are necessary for the adoption of the new FIRMs (Attachment 4). The attached document includes only pertinent sections which have been modified.

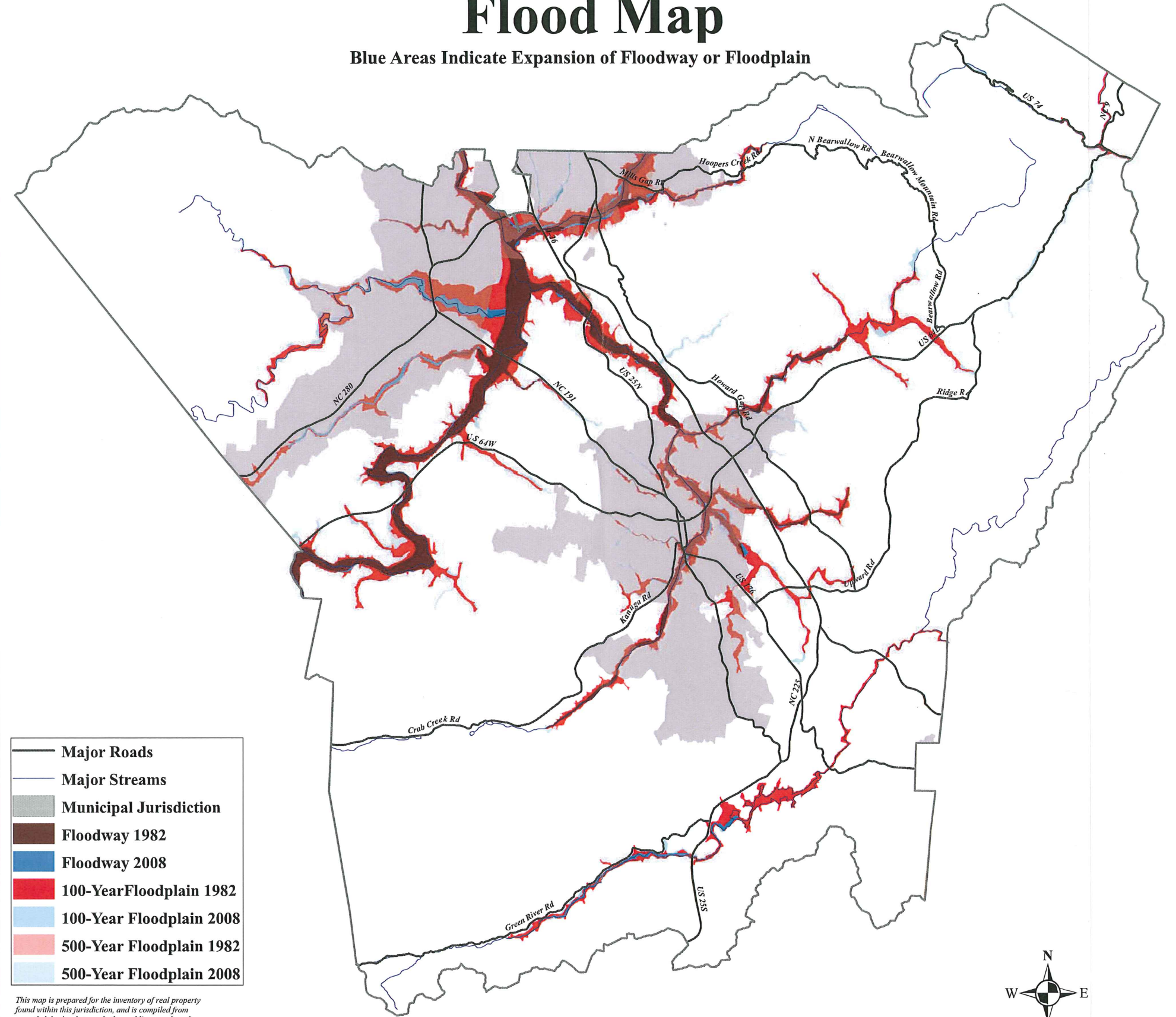
# Henderson County, North Carolina Flood Map

Red Areas Indicate Reduction in Floodway or Floodplain



# Henderson County, North Carolina Flood Map

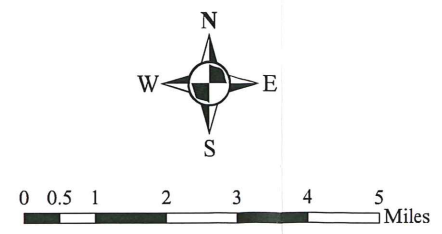
Blue Areas Indicate Expansion of Floodway or Floodplain



- Major Roads
- Major Streams
- Municipal Jurisdiction
- Floodway 1982
- Floodway 2008
- 100-Year Floodplain 1982
- 100-Year Floodplain 2008
- 500-Year Floodplain 1982
- 500-Year Floodplain 2008

*This map is prepared for the inventory of real property found within this jurisdiction, and is compiled from recorded deeds, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained on this map. Henderson County and the mapping company assume no legal responsibility for the information contained on this map.*

Prepared by Henderson County Planning Department  
Thursday, April 24, 2008.



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HENDERSON COUNTY, NORTH CAROLINA  
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## ARTICLE VIII NATURAL RESOURCES

This Article reflects and incorporates the Flood Damage Prevention, Water Supply Watershed Protection, Perennial and Intermittent Surface Water Buffers, Protected Mountain Ridges, and Soil Erosion and Sedimentation Control Ordinances previously adopted by the County. The purpose of this Article is to consolidate these existing ordinances into one article of the Land Development Code.

### Subpart A. Flood Damage Prevention

#### §200A-200. Statutory Authorization, Findings of Fact, Purpose and Objectives

The following sections are incorporated herein by reference and considered to be a part of the regulations of this Article VIII, Subpart A: §200A-275 (Henderson County Flood Damage Prevention Board), §200A-279 (Henderson County Floodplain Administrator), §200A-318 (Floodplain Development Permit), §200A-323 (Special Fill Permit), §200A-336 (Variances (Flood Damage Prevention)), §200A-346 (Violations of Article III (Natural Resources) Subpart A (Flood Damage Prevention)), §200A-347 (Appeals), and §200A-359 (Definitions).

##### §200A-200.1. Statutory Authorization.

The Legislature of the State of North Carolina has in Part 6 of Article 21 of Chapter 143; Parts 3 and 4 of Article 18 of Chapter 153A; and Article 6 of Chapter 153A of the North Carolina General Statutes (*NCGS*), delegated to *local governmental units* the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

##### §200A-200.2. Findings.

- A. The flood prone areas within the jurisdiction of Henderson County are subject to periodic inundation which results in loss of life, 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 *floodplains* causing increases in flood heights and velocities and by the occupancy in *flood prone areas* of *uses* vulnerable to floods or other hazards.

##### §200A-200.3. Objectives.

The objectives of this Subpart A are to:

- A. Protect human life, safety and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business losses and interruptions;
- E. Minimize interruptions and disruptions of family life caused by flooding;

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- F. Minimize damage to public facilities and utilities (i.e. water and gas mains; electric, telephone and sewer lines; and roads/bridges located in floodplains;
- G. Help maintain a stable tax base by providing for the sound use and development of flood prone areas;
- H. Permit and encourage the retention of open land uses which will be so located and designed as to constitute a harmonious and appropriate part of the physical development of the community and which will not impede the flow of flood waters;
- I. Prevent victimization by ensuring that potential land, home and business buyers are notified that property is located in an identified flood hazard area; and
- J. Prevent increased flood levels caused by unwise floodplain development.

#### **§200A-200.4. Purpose.**

It is the purpose of this Subpart A to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- A. Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in increases in erosion, flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- D. Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- E. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

#### **§200A-201. General Provisions**

##### **§200A-201.1. Lands to Which this Article VII, Subpart A Applies.**

The provisions of this Subpart A shall apply to all *Special Flood Hazard Areas* within (1) the unincorporated areas of Henderson County lying outside the extraterritorial jurisdiction of any municipality, and (2) the incorporated areas and extraterritorial jurisdiction of any municipality specifically requesting its enforcement by Henderson County upon the agreement of the Henderson County Board of Commissioners, both in accordance with the *Flood Hazard Boundary Map* (FHBM) or *Flood Insurance Study* (FIS) and its accompanying flood maps such as the *Flood Insurance Rate Map(s)* (FIRM) and/or the *Flood Boundary Floodway Map(s)* (FBFM), for Henderson County dated \_\_\_\_\_, and subsequent amendments thereto. (In making such a request, the municipality must comply with the requirements of NCGS §160A-360). Unless otherwise provided herein, in no instance shall this subpart apply to any area which is not duly established and identified as a *Special Flood Hazard Area*, either by the methods listed in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas), or as shown on with the *Flood Hazard Boundary Map* (FHBM) or *Flood Insurance Study* (FIS) and its accompanying flood maps such as the *Flood Insurance Rate Map(s)* (FIRM) and/or the *Flood*



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*Boundary Floodway Map(s) (FBFM)*, for Henderson County dated [REDACTED]. Said map and all explanatory matter thereon accompanies and is hereby made a part of this Chapter. The Chapter and map shall be on file in the office of Henderson County **Floodplain Administrator**.

#### **§200A-201.2. Basis for Establishing the Special Flood Hazard Areas.**

A. The *Special Flood Hazard Areas* are those identified under the **Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA** in its *Flood Insurance Study (FIS)* and its accompanying *Flood Insurance Rate Map(s) (FIRM)*, for Henderson County dated [REDACTED], which are adopted by reference and declared to be a part of this Chapter. The initial *Flood Insurance Rate Map(s)* are as following for the jurisdictional areas at the initial date: Henderson County Unincorporated Area, dated **March 1, 1982 (initial date)**. *Special Flood Hazard Areas* also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the *FIRM*. This includes, but is not limited to:

- (1) Detailed flood data generated as a requirement of **§200A-279 (Henderson County Floodplain Administrator) A (Powers and Duties Pursuant to this Chapter) (14), (17), and (18)**;
- (2) Preliminary *FIRMs* where more stringent than the effective *FIRM*; or
- (3) Post-disaster Flood Recovery Maps

NOTE: If detailed topographic mapping or surveying shows that a building site adjacent to a *Special Flood Hazard Area* is below the *Base Flood Elevation*, it must be regulated as being within the *Special Flood Hazard Area*, even if not shown within the boundaries of the *Special Flood Hazard Area* shown in the *FIRM* or any accompanying maps. For regulatory purposes, flood elevations are the ruling guideline.

B. Delineation of *Floodway*: For the purposes of delineating the *floodway* and evaluating the possibility of flood damages, the *Floodplain Administrator* may:

- (1) Request technical assistance from the competent federal agencies, including the US Army Corps of Engineers, the Soil Conservation Service, and the US Geological Survey, or successor agencies, and
- (2) Utilize reports and data supplied by federal and State agencies in delineating *floodways* and evaluating the possibilities of flood damages.

#### **§200A-201.3. Establishment of Floodplain Development Permit.**

A Floodplain Development Permit shall be required in conformance with the provisions of this Subpart A **and §200A-318 (Floodplain Development Permit)** prior to the commencement of any development activities within *Special Flood Hazard Areas* as determined in **§200A-201.2 (Basis for Establishing the Special Flood Hazard Areas)**.

#### **§200A-201.4. Compliance.**

No *structure* or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this subpart and other applicable regulations.

#### **§200A-201.5. Abrogation and Greater Restrictions.**

The yellow highlighted text indicates sections of the Flood Damage Prevention regulations which have been modified.

- A. Subpart A is not intended to repeal, abrogate, or impair any existing *easements*, covenants, or deed restrictions. However, where this Subpart A and another regulation conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- B. The following may impose additional regulations for land *uses* and *structures* located in any portion of a *floodplain* and are hereby adopted and incorporated into this Subpart A by reference as though they were copied herein fully. However, where this Subpart A and another regulation conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
  - (1) The International Building Code, as adopted by the Building Code Council and enforced by State and local code enforcement officials, and including all volumes.
  - (2) The Southern Building Code Congress International “SBCCI Standard for Floodplain Management” SSTD 4-89,
  - (3) The US Army Corps of Engineers “Flood Proofing Regulations” – EPI 1651-2-314, December 15, 1995.
  - (4) Federal Emergency Management Agency “Managing Floodplain Development in Approximate Zone A Areas,” April, 1995.

#### **§200A-201.6. Other Approval Required.**

- A. The granting of a permit under the provisions of this Subpart A and §200A-318 (Floodplain Development Permit) or §200A-323 (Special Fill Permit) shall in no way affect any other type of approval required by any other statute or ordinance of the State or any political subdivision of the State, or of the United States, but shall be construed as an added requirement.
- B. No permit for the construction of any *structure* to be located within a *floodplain* shall be granted unless the *applicant* has first obtained the permit required by this Subpart A.

#### **§200A-201.7. Interpretation.**

In the interpretation and application of this Subpart A, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under State statutes.

#### **§200A-201.8. Warning and Disclaimer of Liability.**

The degree of flood protection required by this Subpart A is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. Subpart A does not imply that land outside the *Special Flood Hazard Areas* or *uses* permitted within such areas will be free from flooding or flood damages. Subpart A shall not create liability on the part of Henderson County or by any officer or employee thereof for any flood damages that result from reliance on this Subpart A or any administrative decision lawfully made hereunder.

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## §200A-202. Administration

The provisions of Subpart A, related to administration can be found in the following sections:

- A. Designation, Duties and Responsibilities of Floodplain Administrator. (See §200A-279 (Floodplain Administrator)).
- B. Floodplain Development Permit Application Requirements and Fees. (See §200A-318 (Floodplain Development Permit)).
- C. Special Fill Permit Procedures and Fees. (See §200A-323 (Special Fill Permit)).
- D. Variance Procedures. (See §200A-336 (Variances (Flood Damage Prevention))).
- E. Appeal Procedures. (See §200A-337 (Appeals)).
- F. Corrective Procedures and Penalties for Violation. (See §200A-346 (Violations of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention))).

## §200A-203. Flood Hazard Reduction

### §200A-203.1. General Standards.

In all *Special Flood Hazard Areas* the following provisions are required.

- A. In the *floodway fringe* area as indicated on the *FBFM*, no fill whatsoever shall be allowed except on parcels of land, the boundaries of which are of record in the Henderson County Registry as of the original date of adoption of these regulations (July 30, 2005), and then only upon no more than 20 percent of the total of the *floodway fringe* area contained in each such parcel, except that additional fill may be permitted in the *floodway fringe* pursuant to a *special fill permit* (See §200A-323 (Special Fill Permit)).
- B. All new *construction* and *substantial improvements* shall be:
  - (1) Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the *structure*.
  - (2) Constructed with materials and utility equipment resistant to flood damage.
  - (3) Constructed by methods and practices that minimize flood damages.
- C. All new utility equipment, substations, lines and other materials used in the provision of services to the public such as telephone, electricity, natural gas, and cable television shall be located outside a *floodplain*, unless no viable alternative exists.
- 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 to the *Regulatory Flood Protection Elevation*. These include but are not limited to HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electrical/gas meter panels/boxes, utility/cable boxes, appliances (i.e. washers, dryers, refrigerator, etc.), hot water heaters, electric outlets/switches.
- E. All new and replacement *water supply systems* shall be located outside the *Special Flood Hazard Area*, unless no other viable alternative exists, and designed to minimize or eliminate infiltration of flood waters into the system, and also to meet all other applicable State and local requirements.

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- F. All new and replacement sanitary sewage and on-site waste disposal systems shall be located outside the *Special Flood Hazard Area*, unless no other viable alternative exists, and designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and also to meet all other applicable state and local requirements.
- G. On-site waste disposal systems constructed near or adjoining *Special Flood Hazard Areas* shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- H. No new private wells shall be located within the *Special Flood Hazard Area* unless no viable alternative exists and that such wells meet all other applicable state and local requirements. Private wells constructed near or adjoining *Special Flood Hazard Areas* shall be located and constructed to minimize or eliminate infiltration of flood water into the system.
- I. Any alteration, repair, reconstruction, or improvements to a *structure* which is in compliance with the provisions of this Subpart A, shall meet the requirements of *new construction* as contained in this Subpart A.
- J. Any fill material on which a *structure* is located shall:
  - (1) Be extended to grade ten (10) feet beyond the limits of the *structure* foundation;
  - (2) Be graded to drain;
  - (3) Be protected against *erosion*;
  - (4) Have a side *slope* no steeper than two (2) feet horizontal to one (1) foot vertical;
  - (5) Not contain any contaminated, toxic or hazardous materials; and
  - (6) Be approved before placement.
- K. *Nonconforming structures* or other development may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this Subpart A. Provided, however, nothing in this subpart shall prevent the repair, reconstruction, or replacement of a *structure* existing on the original effective date of these regulations (July 5, 2005) and located totally or partially within the *floodway*, *non-encroachment area*, or stream *setback*, provided that the bulk of the *structure* below the *regulatory flood protection elevation* in the *floodway*, *non-encroachment area*, or stream *setback* is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this Subpart A, and nothing in this Subpart A shall prevent the permitted maintenance, repair, reconstruction or replacement of *agriculture-related water diversion structures* where the permit for the same is granted by other than Henderson County. No permit shall be required from Henderson County to reconstruct agricultural development which pre-exists the original effective date of these regulations (July 5, 2005).
- L. The following are permitted *uses* for the *floodway fringe*: all *uses* otherwise permitted by the applicable land *use* regulations, so long as such *uses* are in compliance with the terms of this Subpart A.

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- M. New *solid waste disposal facilities and sites*, *hazardous waste management facilities*, *solid waste sites*, *salvage yards*, and *chemical storage facilities* shall not be permitted in *Special Flood Hazard Areas*, except by *variance* as specified in Subpart A and §200A-336 (Variances (Flood Damage Prevention)). A *structure* or tank for chemical or fuel storage incidental to an allowed *use*, including but not limited to *agriculture*, or to the operation of a water treatment plant or *wastewater* treatment facility may be located in a *Special Flood Hazard Area* only if the *structure* or tank is either elevated or floodproofed to at least the *regulatory flood protection elevation* and certified according to §200A-318 (Floodplain Development Permit) C (2) (Certification Requirements).
- N. All *subdivision and other* development proposals shall:
- (1) Be consistent with the need to minimize flood damage;
  - (2) Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
  - (3) Have adequate drainage provided to reduce exposure to flood hazards; and
  - (4) Have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- O. When a *structure* is partially located in a *Special Flood Hazard Area*, the entire *structure* shall meet the requirements for *new construction* and *substantial improvements*.
- P. When a *structure* is located in multiple flood hazard zones or in a flood hazard risk zone with multiple *Base Flood Elevations (BFEs)*, the provisions for the more restrictive flood hazard risk zone and the highest *Base Flood Elevation (BFE)* shall apply.

### §200A-203.2. Specific Standards.

In all *Special Flood Hazard Areas* where *BFE* data has been provided, as set forth in this Subpart A, the following provisions in addition to those required in §200A-203.1 (General Standards) are required:

- A. Residential Construction. New construction and *substantial improvement* of any residential *structure* (including *manufactured/mobile homes*) shall have the *reference level*, including *basement*, elevated no lower than the *regulatory flood protection elevation*.
- B. Nonresidential Construction. New construction or *substantial improvement* of any nonresidential *structure* shall have the *reference level*, including *basement*, elevated no lower than the *regulatory flood protection elevation*. *Structures* located in **A, AE, and AO Zones** may be floodproofed to the *regulatory flood protection elevation* in lieu of elevation provided that all areas of the *structure*, together with attendant utility and sanitary facilities, below the required flood protection 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. For AO Zones, the floodproofing elevation shall be in accordance with §200A-203.7 (Standards for Areas of Shallow Flooding (Zone AO)). A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the *Floodplain Administrator* as set forth

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in §200A-318 (Floodplain Development Permit) C (2) (Certification Requirements), along with operational and maintenance plans.

C. Manufactured/Mobile Homes. No *manufactured/mobile homes* shall be permitted except replacement *manufactured/mobile homes* in an existing *manufactured home park*, existing *manufactured home subdivision*, or replacement *manufactured/mobile homes* on an individual parcel, provided the following conditions are met:

- (1) *Manufactured/mobile homes* shall be elevated so that the *reference level* of the *manufactured/mobile home* is no lower than the *regulatory flood protection elevation*.
- (2) *Manufactured/mobile homes* shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement in accordance with the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS §143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation system. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.
- (3) All enclosures or skirting shall be in accordance with §200A-203.2 (Specific Standards) D (Elevated Structures).
- (4) An evacuation plan must be developed for evacuation of all residents of all substantially improved or substantially damaged *manufactured/mobile home parks* or *subdivisions* located within *flood prone areas*. This plan shall be filed with and approved by the *Floodplain Administrator* and the local Emergency Management coordinator.

D. Elevated Structures. Enclosed areas, of new construction or substantially improved *structures*, which are below the *regulatory flood protection elevation* shall:

- (1) Not be designed to be used for human habitation, but shall only be used for parking of *vehicles*, *structure* access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of *vehicles* (*garage door*) or limited storage of maintenance equipment (standard exterior door). Or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas;
- (2) Be constructed entirely of flood resistant materials at least to the *regulatory flood protection elevation*;
- (3) Include, in Zones A, AO, and AE, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
  - a. Provide a minimum of two (2) openings on different sides of each enclosed area subject to flooding;

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- b. The total net area of all openings must be at least one (1) square inch for each square foot of each enclosed area subject to flooding;
- c. If a **structure** has more than one (1) enclosed area, each area must have **flood** openings to allow floodwaters to **automatically** enter **and exit**;
- d. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade; and,
- e. **Flood openings** may be equipped with screens, louvers, or other opening coverings or devices provided they permit the automatic flow of floodwaters in both directions.

Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood skirting, regardless of structural status, is considered an enclosure and requires openings as outlined above.

E. Additions/Improvements.

- (1) *Additions* and/or improvements to *pre-FIRM structures* where the *addition* and/or improvements in combination with any interior modifications to the existing *structure* are:
  - a. Not a *substantial improvement*, the *addition* and/or improvements must be designed to minimize flood damages and must not be any more *nonconforming* than the existing *structure*.
  - b. A *substantial improvement*, both the existing *structure* and the *addition* and/or improvements must comply with the standards for *new construction*.
- (2) *Additions* to *post-FIRM structures* with no modifications to the existing *structure* **other than standard door in the common wall** shall require only the *addition* to comply with the standards for *new construction*.
- (3) *Additions* and/or improvements to *post-FIRM structures* where the *addition* and/or improvements in combination with any interior modifications to the existing *structure* are:
  - a. Not a *substantial improvement*, the *addition* and/or improvements only must comply with the standards for *new construction*.
  - b. A *substantial improvement*, both the existing *structure* and the *addition* and/or improvements must comply with the standards for *new construction*.
- (4) **Where a fire wall or independent perimeter load-bearing wall is provided between the addition and the existing structure, the addition(s) shall be considered a separate structure and only the addition must comply with the standards for new construction.**

F. **Recreational Vehicles. Recreational vehicles (RVs) shall either:**

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- (1) Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a *recreational vehicle* is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached *additions*); or
  - (2) Meet all the requirements for *new construction*.
- G. Temporary Nonresidential Structures. Prior to the issuance of a Floodplain Development Permit for a *temporary structure*, *applicants* must submit to the *Floodplain Administrator* a plan for the removal of such *structure(s)* in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the *Floodplain Administrator* for review and written approval:
- (1) A specified time period for which the *temporary use* will be permitted, *time specified* may not exceed three (3) months, renewable up to one (1) year;
  - (2) The name, address, and phone number of the individual responsible for the removal of the *temporary structure*;
  - (3) The time frame prior to the event at which a *structure* will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
  - (4) A copy of the *contract* or other suitable *with the entity responsible for physical removal of the structure* insuring the availability of removal equipment when needed; and
  - (5) Designation, accompanied by documentation, of a location outside the *Special Flood Hazard Area* to which the *temporary structure* will be moved.
- H. **Accessory Structures.** When *accessory structures* (sheds, detached garages, etc.) are to be placed within a *Special Flood Hazard Area*, the following criteria shall be met:
- (1) *Accessory structures* shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
  - (2) *Accessory structures shall not be temperature controlled*;
  - (3) *Accessory structures* shall be designed to have low flood damage potential;
  - (4) *Accessory structures* shall be constructed and placed on the *building* site so as to offer the minimum resistance to the flow of floodwaters;
  - (5) *Accessory structures* shall be firmly anchored in accordance with §200A-203.1 (General Standards) B(1);
  - (6) All service facilities such as electrical and heating equipment shall be installed in accordance with §200A-203.1 (General Standards) B(2);
  - (7) *Flood openings to facilitate automatic equalization of hydrostatic flood forces* shall be provided below *regulatory flood protection elevation* in conformance with §200A-203.2 (Specific Standards) D (Elevated Structures) (3);
  - (8) An *accessory structure* with a *footprint* less than 150 square feet does not require an elevation or *floodproofing* certificate (a Floodplain Development Permit is still required. Elevation or *floodproofing* certifications are required for all other



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*accessory structures* in accordance with §200A-318 (Floodplain Development Permit) C (2) (Certification Requirements).

### §200A-203.3. Subdivisions, Manufactured Home Parks, Manufactured Home Subdivisions, And Other Residential Development.

No new *manufactured home parks* or *manufactured home subdivisions* shall be allowed within a *Special Flood Hazard Area* (except that where real estate located within a *Special Flood Hazard Area* which is a part of such *manufactured home park* or *subdivision* and upon which no development has occurred can be considered as “*open space*” within such *park* or *subdivision*). In addition, *manufactured home parks* and *manufactured home subdivisions* existing on the date of original enactment (July 30, 2005) of this Subpart A may not be expanded. All other *subdivisions* or other *residential development* located wholly or in part within a *Special Flood Hazard Area* shall:

- A. Be consistent with the need to minimize flood damage;
- B. Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- C. Have adequate drainage provided to reduce exposure to flood hazards; and,
- D. Have *Base Flood Elevation (BFE)* data provided if development is greater than the lesser of five (5) acres or 50 lots / *manufactured/mobile home sites*. Such *Base flood elevation (BFE)* data shall be adopted by reference in accord with §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas) in implementing this Subpart A.

### §200A-203.4. Standards for Floodplains Without Established Base Flood Elevations.

Within the *Special Flood Hazard Areas* designated as *Approximate Zone A* and established in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas), where no *BFE* data has been provided by *FEMA*, the following provisions, in addition to §200A-203.1 (General Standards), shall apply:

- A. No *encroachments*, including fill, *new construction*, *substantial improvements* or new development shall be permitted within a distance of 20 feet from each side of the stream measured from the top of the bank or five (5) times the width of the stream, whichever is greater, 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. The *BFE* used in determining the *regulatory flood protection elevation* shall be determined based on one (1) of the following criteria set in priority order:
  - (1) When *BFE* data is available from other sources, such as Federal, State or other, all new construction and *substantial improvements* within such areas shall be elevated or floodproofed in accordance with standards in this §200A-203.1 (General Standards) and §200A-203.2 (Specific Standards).
  - (2) When a subdivision, manufactured home park or other development proposal is greater than five (5) acres or has more than 50 lots/manufactured home sites/spaces, *BFE* data shall be provided. Such *BFE* data shall be adopted by

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reference in accordance with §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas).

- (3) When *BFE* data is not available from a Federal, State, or other source as outlined above, the *reference level* shall be elevated to or above the *regulatory flood protection elevation* as defined in Article XIV (Definitions).

#### **§200A-203.5. Standards for Riverine Floodplains With BFE but Without Established Floodways or Non-encroachment Areas.**

Along rivers and streams where *BFE* data is provided by *FEMA* or is available from another source but neither *floodway* nor *non-encroachment areas* are identified for a *Special Flood Hazard Area* on the *FIRM* or in the *FIS reports*, the following requirements shall apply to all development within such areas:

- A. Standards outlined in §200A-203 (Flood Hazard Reduction); and
- B. Until a *regulatory floodway* or *non-encroachment area* is designated, no *encroachments*, including fill, *new construction*, *substantial improvements*, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the *water surface elevation* of the *base flood* more than one (1) foot at any point within the community.

#### **§200A-203.6. Floodways or Non-Encroachment Areas.**

Areas designated as *floodways* or *non-encroachment areas* are located within the *Special Flood Hazard Areas* established in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas). The *floodways* and *non-encroachment areas* are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in §200A-203.1 (General Standards) and §200A-203.2 (Specific Standards), shall apply to all development within such areas.

- A. No *encroachments*, including fill, new construction or substantial improvements shall be permitted unless:
  - (1) The structure is a *water dependent structure*, excluding *enclosed structures*, new water and sewer lines provided no viable alternative exists, recreational uses (excluding *enclosed structures*) and streambank restoration projects, provided the requirements of §200A-203.2 (Specific Standards) are met;
  - (2) The parcel owner first having obtained and submitted to the *Floodplain Administrator* an acceptable certification by a registered professional engineer proving that the anticipated *encroachment(s)* shall not result in any increase in the elevation of the regulatory flood during an occurrence of the *base flood*. The *Floodplain Administrator* shall require documentation of the certification which shall include either:
    - a. A completed “engineering no-rise” certification form as published by *FEMA*, or acceptable alternative form approved by *FEMA*;

The yellow highlighted text indicates sections of the Flood Damage Prevention regulations which have been modified.

- b. Technical documentation in the form of detailed site and construction plans, showing that all requirements of this Subpart A are met;
  - c. Technical documentation in the form of hydraulic analysis of the existing and proposed conditions. This documentation shall be either: complete runs of existing and proposed conditions using the HEC II/HEC-RAS step backwater analysis computer program as prepared by the US Army Corp. of Engineers for the analysis of flow plan hydraulics;
  - d. An alternative method currently approved by *FEMA* for use in the revision process for *FEMA* flood maps. In this case, the engineer shall provide a letter from *FEMA* indicating that the method used is acceptable; or
  - e. A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.
- B. If 204.6 (Floodways of Non-encroachment Areas) A is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this Subpart A.
- C. No *manufactured/mobile homes* shall be permitted, except replacement *manufactured/mobile homes* in an existing *manufactured home park* or *subdivision*, provided the following provisions are met:
- (1) The anchoring and the elevation standards of §200A-203.2 (Specific Standards) C (Manufactured/Mobile Homes); and
  - (2) The no encroachment standard of §200A-203.6 (Floodways of Non-encroachment Areas).

#### **§200A-203.7. Standards for Areas of Shallow Flooding (Zone AO).**

Located within the *Special Flood Hazard Areas* established in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas) designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to §200A-203.1 (General Standards) and §200A-203.2 (Specific Standards), all *new construction* and *substantial improvements* shall meet the following requirements:

- A. The *reference level* shall be elevated at least as high as the depth number specified on the *FIRM*, in feet, plus a *freeboard* of two (2) feet, above the *highest adjacent grade*; or at least four (4) feet above the *highest adjacent grade* if no depth number is specified.
- B. Non-residential *structures* may, in lieu of elevation, be floodproofed to the same level as required by §200A-203.7 (Standards for Areas of Shallow Flooding (Zone AO)) (1) so that the *structure*, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with §200A-318 (Floodplain Development Permit) C (2) (Certification Requirements) and §200A-203.2 (Specific Standards) B (Nonresidential Construction).

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- C. Adequate drainage paths shall be provided around *structures* on slopes, to guide flood waters around and away from the *structures*.

#### **§200A-204. Legal Status**

##### **§200A-204.1. Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Regulations.**

This Subpart A in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted July 5, 2005 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of Henderson County enacted on July 5, 2005, as amended, which are not reenacted herein are repealed.

##### **§200A-204.2. Effect on Outstanding Floodplain Development Permits.**

Nothing herein contained shall require any change in the plans, construction, size or designated *use* of any development or any part thereof for which a Floodplain Development Permit has been granted by the *Floodplain Administrator* or his or her authorized agents before the time of passage of this Subpart A; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to passage of this subpart or any revision thereto, construction or *use* shall be in conformity with the provisions of this Subpart A.

##### **§200A-204.3. Effect on Outstanding Building Permits.**

Nothing herein contained shall require any change in the plans, construction, size or designated *use* of any development or any part thereof for which a Building Permit has been granted by the Building Codes Administrator or his authorized agents before the time of passage of this Subpart A (July 5, 2005); provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to passage of this subpart or any revision thereto, construction or *use* shall be in conformity with the provisions of this Subpart A.

##### **§200A-204.4. Effective Date.**

Subpart A originally became effective 30 July 2005 as amended through \_\_\_\_\_.

#### **§200A-205. Reserved**

### **Subpart B. Water Supply Watershed Protection**

#### **§200A-206. Statutory Authorization**

This subpart is adopted pursuant to the authority vested by the North Carolina General Statutes, particularly Chapter 153A, Article 6, Section 121 and Chapter 143, Article 21 (Watershed and Air Resources).

#### **§200A-207. Effect on Other Laws and Agreements**

This subpart shall not be construed to repeal or modify applicable local, state and federal laws, except that to the extent that the provisions of this subpart conflict with any applicable local, state or federal laws, the most stringent of all applicable laws shall govern. It is not intended that

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- (13) Zoning Compliance Inspections. To administer the provisions of this Chapter relating to *zoning compliance inspections*.
- (14) Variances. To review *variance* requests and make recommendations to the Zoning Board of Adjustment for final action thereon.
- (15) Statutory Vested Rights. To administer the provisions of this Chapter relating to Vested Rights for which he/she is the approving official.
- (16) Additional Powers and Duties. Such additional powers and duties as may be set forth for the *Zoning Administrator* elsewhere in this Chapter and in other laws and regulations.

**§200A-278. Henderson County Communication Facilities Administrator**

- A. Powers and Duties Pursuant to This Chapter. The *Communication Facilities Administrator* shall have the following duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:
  - (1) Communication Facility Site Plan Review. To approve or deny all communication facility *site plans*.
  - (2) Communication Facility Permits. To grant *communication facility permits* as authorized by this Chapter.
  - (3) Additional Powers and Duties. Such additional powers and duties as may be set forth for the *Communication Facilities Administrator* elsewhere in this Chapter and in other laws and regulations.
- B. Appointment. The *Zoning Administrator* shall serve as the *Communication Facilities Administrator*.

**§200A-279. Henderson County Floodplain Administrator**

- A. Powers and Duties Pursuant to This Chapter. The *Floodplain Administrator* shall have the following duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:
  - (1) **Administer.** To administer and implement the provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).
  - (2) **Interpretation.** To interpret the terms and provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).
  - (3) **Enforcement.** To enforce the provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) including properly investigating complaints from *persons* who allege that *violations* of this Chapter have occurred and initiating appropriate action as necessary to prevent, enjoin, abate or remove any *violations* found. The *Floodplain Administrator*, or his/her duly authorized representative, may enter any *building, structure* or premises, as provided by law, to perform any duty imposed upon him/her by this Chapter.
  - (4) **Staff Support.** To provide staff support to the Flood Damage Prevention Board.
  - (5) **Maintenance of Maps, LOMAs and Records.**

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- a. Maintain a current map repository to include, but not limited to, the FIS Report, *FIRM* and/or other official flood maps/studies adopted in accordance with Article VIII (Natural Resources) Subpart A (Flood Damage Prevention), including any revisions thereto including Letters of Map Amendment (LOMA), issued by State and/or *FEMA*. Notify State and *FEMA* of mapping needs.
  - b. Maintain, in the Floodplain Development Permit file, a copy of all Letters of Map Amendment (LOMAs) issued from *FEMA*.
  - c. Maintain, permanently, all records that pertain to the administration of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (6) Coordinate Revisions to FIS Reports and FIRMs. Coordinate revisions to FIS reports and *FIRMs*, including Letters of Map Revision on Fill (LOMR-F) and Letters of Map Revision (LOMR).
- (7) Alteration/Relocation of Watercourses.
- a. Notify adjacent communities and the North Carolina 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 such notification to *FEMA*.
  - b. Assure that maintenance is provided within the altered or relocated portion of said *watercourse* so that the flood-carrying capacity is maintained.
- (8) Interpret Boundaries. Interpret, as needed, the exact location of boundaries of the *Special Flood Hazard Areas*, *floodways*, or *non-encroachment areas* (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The *person* contesting the location of the boundary shall be given a reasonable opportunity to *appeal* the interpretation as provided by §200A-347 (Appeals).
- (9) Inspections of the Special Flood Hazard Area. Make periodic inspections throughout the *Special Flood Hazard Areas* within the jurisdiction of Henderson County. In exercising this power, the *Floodplain Administrator* (or his/her designee) has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of Henderson County at any reasonable hour for the purposes of inspection or other enforcement action.
- (10) Prevent Encroachments. Prevent *encroachments* within *floodways* and *non-encroachment areas* unless the certification and flood hazard reduction provisions of §200A-203.6 (Floodways or Non-Encroachment Areas) are met.
- (11) Consider Effects of Proposed Artificial Obstructions. Consider the effects of a proposed artificial *obstruction* in a *floodplain* in creating danger to life and property, prior to the issuance of any permit, by: (1) water which may be backed up or diverted by such obstruction; (2) the danger that the obstruction will be

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swept downstream to the injury of others; and (3) the injury or damage to the site of the obstruction itself. For this purpose, the *Floodplain Administrator* may take into account anticipated development in the foreseeable future which may be adversely affected by the *obstruction*, as well as *existing development*.

- (12) **Review Applications and Issue Permits.** Review all floodplain development applications and issue permits (floodplain development and special fill permits) for all proposed development within *Special Flood Hazard Areas* to assure that the requirements of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) have been satisfied.
- (13) **Advise of Other Permits.** Advise permittee that additional Federal or State permits (i.e., *Wetlands*, *Endangered Species*, *Riparian Buffers*, Mining, etc.) may be required, and if specific Federal or State permits are known, require that copies of such permits be provided and maintained on file with the Floodplain Development Permit (see §200A-318 (Floodplain Development Permit)).
- (14) **Advise of LOMA Option.** Advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA, when the *lowest floor* and the *lowest adjacent grade* of a *structure* or the lowest ground elevation of a *parcel* in the *Special Flood Hazard Area* is above the *Base Flood Elevation (BFE)*.
- (15) **Obtain Actual Elevations.** In accordance with the provisions of §200A-318 (Floodplain Development Permit) C (2) (Certification Requirements), obtain actual elevation (in relation to *mean sea level*):
  - a. Of the *reference level* (including *basement*) and all attendant utilities of all new or substantially improved *structures*;
  - b. To which the new **and** substantially improved *structures* and all utilities have been floodproofed; and
  - c. Of all new public utilities (also in accordance with the provisions §200A-203.2 (Specific Standards) B (Nonresidential Construction)).
- (16) **Obtain Certifications.** Obtain certifications from a registered professional engineer or architect in accordance with the provisions of §200A-318 (Floodplain Development Permit) C (2) (Certification Requirements) and §200A-203.2 (Specific Standards) B (Nonresidential Construction), when *floodproofing* is utilized for a particular *structure*.
- (17) **Obtain, Review and Utilize BFE Data.** Obtain, review, and reasonably utilize any *Base Flood Elevation (BFE)* data, along with *floodway* data and/or *non-encroachment area* data available from a Federal, State, or other source, including data developed pursuant to Article VIII (Natural Resources) Subpart A (Flood Damage Prevention), when *BFE* data has not been provided in accordance with §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas), in order to administer the provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).
- (18) **Obtain, Review and Utilize Floodway/Non-Encroachment Area Data.** Obtain, review and reasonably utilize any *floodway* data, or *non-encroachment area* data

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available from a Federal, State, or other source, when *Base Flood Elevation (BFE)* data is provided but no *floodway* nor *non-encroachment area* data has been provided, in accordance with §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas) in order to administer the provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).

- (19) **Inspection of Work In-Progress.** Make on-site inspections of work in progress, or of any location for which a permit under this Subpart A has been either been applied or granted. As the work pursuant to a Floodplain Development Permit progresses, the *Floodplain Administrator* shall make as many inspections of the work as necessary to ensure that the work is being done according to provisions of Subpart A and the terms of the permit. In exercising this power, the *Floodplain Administrator* (or his/her designee) has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of Henderson County at any reasonable hour for the purposes of inspection or other enforcement action.
- (20) **Stop-Work Orders.** Whenever a *structure* or part thereof is being constructed, reconstructed, altered, or repaired in *violation* of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention), the *Floodplain Administrator* may order the work to be immediately stopped. The *stop-work order* shall be in writing and directed to the *person* doing or in charge of the work. The *stop-work order* shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. **Violation of a stop-work order constitutes a misdemeanor.**
- (21) **Revoke Floodplain Development Permits.** The *Floodplain Administrator* may revoke and require the return of the Floodplain Development Permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and 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 Floodplain Development Permit mistakenly issued in *violation* of an applicable State or local law may also be revoked.
- (22) **Certificates of Compliance.** Issue certificates of compliance for permitted projects once as-built certifications have been received and approved and once final inspections have been completed.
- (23) **Variances.** To review flood damage prevention variance requests and make recommendations to the Flood Damage Prevention Board for final action thereon and to report any flood damage prevention variances to *FEMA* and the State of North Carolina upon request.
- (24) **Corrective Procedures.** Follow through with corrective procedures of §200A-346 (Violations of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention)).
- (25) **Require Statements, Certificates, and Certifications.** Require written statements, certificates and certifications or the filing of reports under oath, with respect to



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pertinent questions relating to complaints or alleged *violations* of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).

- (26) **Records of Appeals.** To maintain records of all *appeal* actions.
- (27) **Additional Powers and Duties.** Such additional powers and duties as may be set forth for the *Floodplain Administrator* elsewhere in this Chapter and in other laws and regulations.

#### **§200A-280. Henderson County Manufactured Home Park Administrator**

A. Powers and Duties Pursuant to This Chapter. The *Manufactured Home Park Administrator* shall have the following duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:

- (1) Interpretation. To interpret the terms and provisions of this Chapter related to *manufactured home parks*.
- (2) Enforcement. To enforce the provisions of this Chapter including properly investigating complaints from *persons* who allege that *violations* of this Chapter have occurred and initiating appropriate action as necessary to prevent, enjoin, abate or remove any *violations* found. The *Manufactured Home Park Administrator*, or his/her duly authorized representative, may enter any *building, structure* or premises, as provided by law, to perform any duty imposed upon him/her by this Chapter.
- (3) Manufactured Home Park Site Plan Review. To review *manufactured home park site plans* and make recommendations to the Technical Review Committee for final action thereon;
- (4) Manufactured Home Park Construction Permits. To grant *manufactured home park construction permits* as authorized by this Chapter.
- (5) Manufactured Home Park Completion of Improvements Permits. To grant *manufactured home park completion of improvements permit* as authorized by this Chapter.
- (6) Additional Powers and Duties. Such additional powers and duties as may be set forth for the *Manufactured Home Park Administrator* elsewhere in this Chapter and in other laws and regulations.

B. Appointment. The *Zoning Administrator* shall serve as the *Manufactured Home Park Administrator*.

#### **§200A-281. Henderson County Soil Erosion and Sedimentation Control Administrator**

A. Powers and Duties Pursuant to This Chapter. The *Soil Erosion and Sedimentation Control Administrator* shall have the following duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:

- (1) Interpretation. To interpret the terms and provisions of this Chapter related to *soil erosion and sedimentation control*.
- (2) Enforcement. To enforce the provisions of this Chapter including properly investigating complaints from *persons* who allege that *violations* of this Chapter

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- c. The facility owner/operator and/or site owner shall be jointly and severally responsible for the required removal of the communication facility within 180-days of receipt of written notification of *Communication Facility Permit Three* (3) revocation.

#### **§200A-318. Floodplain Development Permit.**

- A. Purpose. A Floodplain Development Permit shall be required for any new development in a *Special Flood Hazard Area (SFHA)*, except for *watercourse* alteration and streambank restoration where the same is permitted by the United States Corps of Engineers and, if applicable, the State of North Carolina (for *watercourse* alteration and streambank restoration where a proper and appropriate permit from the United States Corps of Engineers and, if applicable, the State of North Carolina, has been granted, no further permit from Henderson County is required).
- B. Permit Issuance. The *Floodplain Administrator* shall issue Floodplain Development Permits.
- C. Application.
  - (1) Application. Application for a Floodplain Development Permit shall be made to the *Floodplain Administrator* prior to any development activities proposed to be located within an *SFHA*. The following items/information shall be presented to the *Floodplain Administrator* to apply for a Floodplain Development Permit:
    - a. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed *floodplain* development:
      1. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed *structures*, utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
      2. The boundary of the *Special Flood Hazard Area* as delineated on the *FIRM* or other flood map as determined in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas), or a statement that the entire *lot* is within the *Special Flood Hazard Area*;
      3. *Flood zone(s)* designation of the proposed development area as determined on the *FIRM* or other flood map as determined in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas); or a statement that the entire *lot* is within the *Special Flood Hazard Area*;
      4. The boundary of the *floodway fringe* area, if any, as set out in the *FBFM*;
      5. The boundary of the *floodway(s)* or *non-encroachment area(s)* as determined in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas);
      6. The *Base Flood Elevation (BFE)*, where provided, as set forth in §200A-201.2 (Basis for Establishing the Special Flood Hazard

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- Areas); §200A-279 (Henderson County Floodplain Administrator) A (Powers and Duties Pursuant to this Chapter) (14), (17), and (18); §200A-203.4 (Standards for Floodplains without Established Base Flood Elevations); and/or §200A-203.5 (Standards for Riverine Floodplains with BFE Data but Without Established Floodways);
7. The old and new location of any *watercourse* that will be altered or relocated as a result of the proposed development; and
  8. Certification of the plot plan by, or under the direct supervision of, a **registered** land surveyor or professional engineer.
- b. Proposed elevation, and method thereof, of all development within a *Special Flood Hazard Area* including but not limited to:
1. Elevation in relation to *mean sea level* of the proposed reference level (including *basement*) of all *structures*;
  2. Elevation in relation to *mean sea level* to which any nonresidential *structure* **in Zone AE, A or AO** will be floodproofed; and
  3. Elevation in relation to *mean sea level* to which any proposed utility systems will be elevated or floodproofed;
- c. If *floodproofing*, a *Floodproofing Certificate (FEMA Form 81-65)* **with supporting data and operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.** Back-up plans from a registered professional engineer or architect certifying that the nonresidential floodproofed development will meet the floodproofing criteria in this Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) **are also required.**
- d. A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) are met. These details include but are not limited to:
1. **The** proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/**posts/piers/piles/shear walls**); and
  2. Details of sufficient openings to facilitate **automatic equalization of hydrostatic flood forces on walls in accordance with §200A-203.2 (Specific Standards) D (Elevated Structures) (3) when solid foundation perimeter walls are used in Zones A, AO, and AE.**
- e. Usage details of any enclosed space below the **lowest floor.**
- f. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

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- g. Copies of all other Local, State and Federal permits required prior to Floodplain Development Permit issuance (*Wetlands*, *Endangered Species*, *Riparian Buffers*, Mining, etc.).
- h. Documentation for placement of *recreational vehicles* and/or *temporary structures* to ensure the provisions of §200A-203.2 (Specific Standards) F (Recreational Vehicles) are met.
- i. A description of proposed *watercourse* alteration or relocation when applicable, including an engineering report on the effects of the proposed project on flood-carrying capacity of the *watercourse* and the effects to properties located both upstream and d downstream; and a map (if not shown on plot plan) showing the location of the proposed *watercourse* alteration or relocation.

(2) Certification Requirements.

- a. Elevation Certificates.
  - 1. An Elevation Certificate (*FEMA* Form 81-31) is required prior to the actual start of any *new construction*. It shall be the duty of the permit holder to submit to the *Floodplain Administrator* a certification of the elevation of the *reference level*, in relation to *mean sea level*. Elevation certification shall be prepared by, or under the direct supervision of, a professional land surveyor or professional engineer and certified by same. The *Floodplain Administrator* shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit.
  - 2. An Elevation Certificate (*FEMA* Form 81-31) is required after the *reference level* is established. Within seven (7) calendar days of establishment of the *reference level* elevation, it shall be the duty of the permit holder to submit to the *Floodplain Administrator* a certification of the elevation of the *reference level*, in relation to *mean sea level*. Elevation certification shall be prepared by or under the direct supervision of, a professional land surveyor or professional engineer and certified by same. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The *Floodplain Administrator* shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a *stop-work order* for the project.

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3. A Final As-Built Elevation Certificate (*FEMA* Form 81-31) is required after construction is completed and prior to *Floodplain Development Certificate of Compliance/Occupancy* issuance. It shall be the duty of the permit holder to submit to the *Floodplain Administrator* a certification of final as-built construction of the elevation and all attendant utilities. Said elevation certification shall be prepared by, or under the direct supervision of, a registered land surveyor or professional engineer and certified by same. The *Floodplain Administrator* shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to *Floodplain Development Certificate of Compliance/Occupancy* issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make said corrections required shall be cause to withhold the issuance of a *Floodplain Development Certificate of Compliance/Occupancy*.
- b. **Floodproofing Certificates.** If nonresidential *floodproofing* is used to meet the *regulatory flood protection elevation* requirements, a Floodproofing Certificate (*FEMA* Form 81-65) **with supporting data, an operational plan, and an inspection and maintenance plan are** required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the *Floodplain Administrator* a certification of the floodproofed design elevation of the *reference level* and all attendant utilities, in relation to *mean sea level*. Said *floodproofing* certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The *Floodplain Administrator* shall review the certificate data, **the operational plan, and the inspection and maintenance plan** submitted. Deficiencies detected by such review shall be corrected by the **applicant prior to Floodplain Development Permit approval**. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a *Floodplain Development Certificate of Compliance/Occupancy*.
- c. **Engineered Foundation Certificates.** If a *manufactured/mobile home* is placed within **Zone A, AO, or AE** and the elevation of the chassis is above 36 inches in height, an engineered foundation certification is required per **§200A-203.2 (Specific Standards) B (Manufactured/Mobile Homes)**.
- d. **Certification Exemptions.** The following *structures*, if located within **Zone A, AO, or AE** are exempt from the elevation/*floodproofing* certification requirements specified in item **C(1) and C(2)** above:
  1. **Recreational Vehicles** meeting the requirements of **§200A-203.2 (Specific Standards) F (Recreational Vehicles)**

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2. *Temporary structures* meeting requirements of §200A-203.2 (Specific Standards) G (Temporary Nonresidential Structures); and
  3. *Accessory structures* less than 150 square feet meeting requirements of §200A-203.2 (Specific Standards) H (Accessory Structures).
- (3) Fees. Any review fee established by the Commissioners shall be submitted with the application. The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for permits, plan review, inspections, and other matters pertaining to Article VIII (Natural Resources) Subpart A (Flood Damage Prevention). No application for a permit or certificate shall be processed unless or until such fees, as established, and all estimated expenses have been paid in full, nor shall any action be taken on *appeals* before the Henderson County Flood Damage Prevention Board unless and until any fees and estimated expenses have been paid in full.
- D. Permit Issuance. The Floodplain Development Permit shall include, but not be limited to:
- (1) A description of the development to be permitted under the Floodplain Development Permit issuance.
  - (2) The *Special Flood Hazard Area* determination for the proposed development in accordance with available data specified in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas).
  - (3) The *regulatory flood protection elevation* required for the *reference level* and all attendant utilities.
  - (4) The *regulatory flood protection elevation* required for the protection of all public utilities.
  - (5) All certification submittal requirements with timelines.
  - (6) A statement that no fill materials or other development shall encroach into the *floodway, non-encroachment area, or the floodway fringe area* of any *watercourse*, if applicable, except as permitted in §200A-203.1 (General Standards), or pursuant to a *Special Fill Permit* issued pursuant to §200A-323 (Special Fill Permit).
  - (7) The flood opening requirements, if in Zones A, AO, or AE.
  - (8) A statement of limitations of below *BFE* enclosure *uses* (if applicable), including but not limited to parking, *structure* access and limited storage only.
- E. Permit Validity. A Floodplain Development Permit shall be construed as permission to proceed with work and not as authority to violate, cancel, alter, or set aside any of the provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) or any regulations included by reference. Issuance of a permit shall not prevent the *Floodplain Administrator* from thereafter requiring correction of errors in plans or construction, or *violations* of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).

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- (1) **Permit Revocation.** The *Floodplain Administrator* may revoke and require the return of the Floodplain Development Permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, **and** 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 Floodplain Development Permit mistakenly issued in *violation* of an applicable State or local law may also be revoked.

#### **§200A-319. Manufactured Home Park (MHP) Construction Permits**

- A. Purpose. *Manufactured Home Park (MHP) Construction Permits* are required for any construction, alteration or expansion of an *MHP*.
- B. Permit Issuance. The *MHP Administrator* shall issue the permit. No permit shall be issued until the *MHP Site Plan* has been reviewed and approved by the Technical Review Committee (*TRC*).
- C. Application.
  - (1) Pre-application Conference. Each *applicant* for a permit shall meet with the *MHP Administrator* in a pre-application conference prior to, or at the time of, the submittal of a request for approval of the *MHP*. The purposes of this conference are to provide information to the *applicant* regarding the review process and assist in the preparation of the application.
  - (2) Application. Each application for a permit shall be submitted along with the appropriate fee(s) and *site plan*, to the *MHP Administrator*. Applications may be modified by the *MHP Administrator* as necessary, who may require the *applicant* to supply additional information pertaining to the *MHP*.
  - (3) Review Schedule. Applications shall be submitted on or before the date required by the Planning Department for review of the *MHP Site Plan* at the meeting of the *TRC*.
  - (4) Fees. Any review fee established by the Commissioners shall be submitted with the application.
- D. Staff Review. Provided the *MHP Site Plan* is approved by the *TRC*, the *MHP Administrator* shall approve the application, noting any site improvements that must be made prior to the issuance of an *MHP Completion of Improvements (COI) Permit* (see §200A-320 (*MHP COI Permits*)). Site improvements required prior to the issuance of a *COI* may include: *buffers, internal roads, vertical clearance on roads, driveways, parking, erosion and sedimentation controls, stormwater drainage, culverts, sewage disposal systems, water supply systems, fire protection, solid waste disposal areas, electrical hookup and/or MHP identification signs*.
- E. Formal Review. None required.
- F. Permit Validity. Upon the issuance of a permit, the *applicant* shall have two (2) years to complete construction of site improvements as stated in such permit for the *MHP* or *phase* thereof, except as otherwise noted below. The *MHP Administrator* may grant a

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- D. Staff Review. The *Zoning Administrator* shall process and review all applications for a permit. If the application is found to be incomplete, the *Zoning Administrator* shall notify the *applicant* of any deficiencies. The *Zoning Administrator* shall approve, approve conditionally or deny the approval of the application.
- E. Permit Validity. Upon the issuance of a permit, the *applicant* shall have six (6) months from the date of issuance thereon to begin erecting the *sign*. Failure to make construction progress within six (6) months shall render the permit void. The *Zoning Administrator* may grant a single extension of this time period of up to six (6) months upon submittal by the *applicant* of sufficient justification for the extension.

**§200A-322. Soil Erosion and Sedimentation Control Permits** (See §200A-224 (Erosion and Sedimentation Control Plans))

**§200A-323. Special Fill Permit**

- A. Purpose. *Special Fill Permits* in the *floodway fringe* may be granted by the **Flood Damage Prevention Board** in particular cases meeting specific community need and subject to appropriate conditions and safeguards.
- B. Permit Issuance. **The Flood Damage Prevention Board** shall have the power to grant permits for special fill in the *floodway fringe*. In order to grant a *Special Fill Permit*, the Flood Damage Prevention Board must conclude that the:
  - (1) Proposed *encroachment* would not result in any increase in the flood levels during the occurrence of the *base flood*; and,
  - (2) *Special Fill Permit*, if granted will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed; and,
  - (3) Proposed *encroachment* will not violate any other Federal, State or Henderson County laws, rules, ordinances, or regulations; and,
  - (4) *Special Fill Permit*, if granted, will comply with the *Comprehensive Plan*, and that, if granted, it will advance a public or community purpose, and that such purpose is sufficiently substantial to justify issuance of the *Special Fill Permit*.

Any grant of a *Special Fill Permit* by the Flood Damage Prevention Board may include conditions, which must be satisfied by the *applicant*. These conditions must be based on evidence presented at the hearing, and must be related to increasing the flood-control capabilities of the parcel for which the fill permit is sought.

C. Application

- (1) Application. The application for the permit shall be on a form provided by the **Floodplain Administrator**, and shall be submitted prior to any fill activity requiring a *Special Fill Permit*. The application shall include the following:
  - a. Certification, on a form as published by *FEMA*, or acceptable alternative form approved by *FEMA*, of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, that the proposed *encroachment* would not result in any increase in the flood levels during the occurrence of the *base flood*; or



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- b. Technical documentation in the form of hydraulic analysis of the existing and proposed conditions. This documentation shall be either: complete runs of existing and proposed conditions using the HEC II/HEC-RAS step backwater analysis computer program as prepared by the US Army Corp. of Engineers for the analysis of flow plan hydraulics; or
  - c. An alternative method currently approved by *FEMA* for use in the revision process for *FEMA* flood maps. In this case, the engineer shall provide a letter from *FEMA* indicating that the method used is acceptable; and,
  - d. Any other technical documentation in the form of detailed site and construction plans, showing that all requirements of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) are met.
  - e. The application shall also include certification of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, demonstrating that the *Special Fill Permit*, if granted, will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed.
  - f. The application shall include information demonstrating compliance with the *Comprehensive Plan*, and demonstrating the substantial public or community purpose(s) which the *Special Fill Permit*, if granted, will advance. Examples of substantial public or community purpose(s) advanced by the *Special Fill Permit*, if granted, which must be demonstrated include:
    - 1. Advancing a governmental purpose, which includes promoting and preserving *use* of land for *agriculture*.
    - 2. Meeting public *infrastructure* needs.
    - 3. Projects which fall under the Board of Commissioners' Economic Incentives Guidelines.
    - 4. Redevelopment projects which have the effect of substantially increasing the flood-control capabilities of the parcel.
  - g. A complete listing of the names and mailing addresses of all owners of real property adjacent to the parcel upon which the *Special Fill Permit* is proposed.
- (2) Fees. Any review fee established by the Commissioners along with all estimated costs to the County as determined by the *Floodplain Administrator* and the estimated cost of all notices to be given for hearings shall be submitted with the application. The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for permits, plan review, inspections, and other matters pertaining to Article VIII (Natural Resources) Subpart A (Flood Damage Prevention). No application for a permit or certificate shall be processed unless or until such fees, as established, and all estimated expenses have been paid in full, nor shall any action be taken on *appeals* before

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the Henderson County Flood Damage Prevention Board unless and until any fees and estimated expenses have been paid in full.

- D. Staff Review. *The Floodplain Administrator* shall review the application for compliance with Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) and transmit the application to Federal, State and local agencies for review and comment. *The Floodplain Administrator* shall place the application on the agenda of the first regular Planning Board meeting after at least 30 days from the receipt of a complete application.
- E. Formal Review. Neither the review by the Planning Board nor the hearing before the Flood Damage Prevention Board shall be quasi-judicial in nature.

(1) Henderson County Planning Board Review and Recommendation.

- a. Public notification of the Planning Board meeting shall comply with the provisions of §200A-339 (Quasi-Judicial Process Standards). The *Floodplain Administrator* shall be responsible for all necessary public notifications.
- b. The Planning Board shall hear a summary and review of the application by *the Floodplain Administrator*, evidence as presented by the *applicant*, and such other evidence as the Planning Board may find useful.
- c. The Planning Board shall, within 60 days of the date the application is first considered by the Planning Board, issue its recommendation to the **Flood Damage Prevention Board** as to the grant or denial of the application.

(2) Flood Damage Prevention Board Public Hearing.

- a. Public notification of the Planning Board meeting shall comply with the provisions of §200A-339 (Quasi-Judicial Process Standards). The *Floodplain Administrator* shall be responsible for all necessary public notifications.
- b. The Flood Damage Prevention Board shall consider a summary of the proposed project from the *Floodplain Administrator*, evidence in support of the project and concerning the issues upon which proof must be submitted under Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) from the *applicant*, evidence from adjacent property owners, and such other evidence as the Flood Damage Prevention Board finds useful.
- c. At the conclusion of the public hearing, the Flood Damage Prevention Board shall issue its decision within the time limits established in Rule 47 of the Board of Commissioners' Rules of Procedure.

- F. Permit Validity. A *Special Fill Permit* shall be construed as permission to proceed with work and not as authority to violate, cancel, alter, or set aside any of the provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) or any regulations included by reference. Issuance of a permit shall not prevent the *Floodplain Administrator* from thereafter requiring correction of errors in plans or construction, or *violations* of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).

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which construction, operation or installation shall commence on the project for which the *Variance* was obtained.

H. Variance Validity. Upon issuance of a *Variance*, the *applicant* shall have 12 months within which (unless otherwise specified by the *ZBA*) to commence construction, operation or installation. If construction, operation or installation is commenced within the specified time period the *Variance* shall continue in force as long as the *structure*, operations or installation remains.

(1) Variance Revocation. If construction or operation is not commenced within 12 months (or other specified time period), the *Variance* shall no longer be valid.

#### **§200A-336. Variances (Flood Damage Prevention)**

A. Purposes. Flood Damage Prevention Variances are intended to provide limited relief from the requirements of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).

B. Application.

(1) Application. Each application for a Flood Damage Prevention Variance shall be submitted along with a written report addressing each of the factors identified by §200A-336 (Variances (Flood Damage Prevention)) E(1) (Granting Variances).

(2) Fees. The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for Flood Damage Prevention Variances and other matters pertaining to Article VIII (Natural Resources) Subpart A (Flood Damage Prevention). No application for a Flood Damage Prevention Variance, shall be processed unless or until such fees, as established, and all estimated expenses have been paid in full.

C. Eligibility for Flood Damage Prevention Variance. Flood Damage Prevention Variances may be issued for:

(1) The repair or rehabilitation of historic *structures* upon the determination that the proposed repair or rehabilitation will not preclude the *structure's* continued designation as an historic *structure* and the Flood Damage Prevention Variance is the minimum necessary to preserve the historic character and design of the *structure*;

(2) Functionally dependent facilities if determined to meet the definition as stated in Article XIV, provided provisions of §200A-336 (Variances (Flood Damage Prevention)) have been satisfied, and such facilities are protected by methods that minimize flood damages during the *base flood* and create no additional threats to *public safety*; or

(3) Any other type of development, provided it meets the requirements of §200A-336 (Variances (Flood Damage Prevention)) and Article VIII (Natural Resources) Subpart A (Flood Damage Prevention); or

(4) *Solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities* that are located in *Special Flood Hazard Areas* provided that all of the following conditions are met:

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- a. The *use* serves a critical need in the community;
- b. No feasible location exists for the *use* outside the *Special Flood Hazard Area*;
- c. The *reference level* of any *structure* is elevated or floodproofed to at least the *regulatory flood protection elevation*;
- d. The *use* complies with all other applicable Federal, State and local laws;
- e. Henderson County has notified the Secretary of the North Carolina department of Crime Control and Public Safety of its intention to grant a *variance* at least 30 calendar days prior to granting the *variance*.

(5) But not for *special fill permits*, pursuant to §200A-323 (Special Fill Permit Procedures) herein.

D. Public Hearing. Prior to considering the Flood Damage Prevention Variance application, the Flood Damage Prevention Board shall hold a public hearing on the application in accordance with §200A-339 (Quasi-Judicial Process Standards).

E. Granting Flood Damage Prevention Variances.

(1) In determining whether to grant or deny Flood Damage Prevention Variances, the Flood Damage Prevention Board shall consider all technical evaluations, all relevant factors, all standards specified in Article VIII (Natural Resources) Subpart A (Flood Damage Prevention), and:

- a. The danger that materials may be swept onto other lands to the injury of others;
- b. The danger to life and property due to flooding or *erosion* damage;
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d. The importance of the services provided by the proposed facility to the community, including the retention of land for *agriculture*;
- e. The necessity to the facility of a waterfront location as defined under Article XIV (Definitions) as a *functionally dependent facility*, where applicable;
- f. The availability of alternative locations, not subject to flooding or *erosion* damage, for the proposed *use*;
- g. The compatibility of the proposed *use* with existing and anticipated development;
- h. The relationship of the proposed *use* to the *Comprehensive Plan* and *floodplain management* program for that area;
- i. The safety of access to the property in times of flood for ordinary and emergency *vehicles*;

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- j. The expected heights, velocity, duration, rate of rise, and *sediment* transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - k. The costs of providing 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 *roads* and bridges.
- (2) Upon consideration of the factors listed above and the purposes of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention), the **Flood Damage Prevention Board** may attach such conditions to the granting of Flood Damage Prevention Variances as it deems necessary to further the purposes **and objectives** of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).
- (3) There are additional considerations of the **Flood Damage Prevention Board** in determining whether to grant or deny a Flood Damage Prevention Variance. Flood Damage Prevention Variances shall:
- a. Not be issued when the Flood Damage Prevention Variance will make the *structure* in *violation* of other Federal, State, or local laws, regulations, or ordinances.
  - b. **Not be issued within any designated *floodway* or *non-encroachment area* if any increase in flood levels during the *base flood* discharge would result.**
  - c. Only be issued upon a determination that the Flood Damage Prevention Variance is the minimum necessary, considering the flood hazard, to afford relief.
  - d. Only be issued prior to Floodplain Development Permit (see §200A-318 (Floodplain Development Permit)) approval.
  - e. Only be issued upon:
    - 1. A showing of good and sufficient cause;
    - 2. A determination that failure to grant the Flood Damage Prevention Variance would result in exceptional hardship; and
    - 3. A determination that the granting of a Flood Damage Prevention Variance will not result in increased flood heights, additional threats to *public safety*, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- F. **Written Notice.** Any *applicant* to whom a *variance* is granted shall be given written notice specifying the difference between the *Base Flood Elevation (BFE)* 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 *reference level* elevation. Such notification shall be maintained with a record of all *variance* actions.

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- (2) Equitable Remedies. This Chapter may be enforced by equitable remedies, and any unlawful condition existing in *violation* of this Chapter may be enforced by injunction and order of abatement in accordance with *NCGS §153A-123*.
- (3) Injunction. Where necessary to effect compliance with this Chapter, the County may institute an action in a court of competent jurisdiction seeking an injunction against the further *violation* of this Chapter. Such action may be joined with a civil action instituted to collect accrued civil penalties in accordance with the provisions above.
- (4) Order of Abatement. Where necessary to abate a condition existing upon land in *violation* of this Chapter or a *use* made of land in *violation* of this Chapter, the County may institute an action in a court of competent jurisdiction seeking an order of abatement of the *use* or condition of land in *violation* of this Chapter. Such action may be joined to an action for an injunction and/or an action to recover civil penalties accrued against an individual for the *use* or condition of land in *violation* of this Chapter.
- (5) Stop-Work Order. If any *building* or *structure* is erected, constructed, repaired, converted, or maintained or any *building*, *structure* or land is used in violation of the Henderson County Code, the *Zoning Administrator* or any other appropriate authority may institute a stop-work order if further action by the violator would cause irreparable harm or damage. Once a stop-work order has been issued, no work may be done on the *structure* or property until authorized by Henderson County Code Enforcement Services or a court of appropriate jurisdiction.
- (6) Other Equitable Remedies. This Chapter may be enforced by any other equitable remedy which a court of competent jurisdiction deems just and proper.

**§200A-346. Violations of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention)**

- A. **Violations to be Corrected.** When the *Floodplain Administrator* finds *violations* of applicable State and local laws, it shall be his or her duty to notify the owner of occupant of the *structure* of the *violation*. The owner or occupant shall immediately remedy each of the *violations* of law **cited in such notification**.
- B. **Actions in the Event of Failure to Take Corrective Action.** If the owner of a *structure* or property shall fail to take prompt corrective action, the *Floodplain Administrator* shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating **that**:
  - (1) The *structure* or property is in *violation* of the **floodplain management regulations** of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention);
  - (2) An informal hearing will be held before the *Floodplain Administrator* at a designated place and time, not later than ten (10) 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 *Floodplain Administrator* may issue such order to alter, vacate, or demolish the *structure*; or to remove fill as **applicable**.

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- C. **Order to Take Corrective Action.** If, upon a hearing held pursuant to the notice prescribed above, the *Floodplain Administrator* shall find that the **structure** or development is in *violation* of Subpart A, he or she shall **issue** an order in writing to the owner, requiring the owner to remedy the *violation* within a specified time period, not less than 60 **calendar days, nor more than 180 calendar days**. Where the *Floodplain Administrator* finds that there is imminent danger to life or other property, he **or she** may order that corrective action be taken in such lesser period as may be feasible.
- D. **Appeal.** Any owner who has received an order to take corrective action may *appeal* the order to the Henderson County Flood Damage Prevention Board by giving notice of *appeal* in writing to the *Floodplain Administrator* **and the clerk** within ten (10) days following issuance of the final order. In the absence of an *appeal*, the order of the *Floodplain Administrator* shall be final. The Henderson County Flood Damage Prevention Board shall hear an *appeal* within a reasonable time and may affirm, modify and affirm, or revoke the order.
- E. **Failure to Comply with Order.** If the owner of a **structure** or property fails to comply with an order to take corrective action from which no *appeal* has been made, or fails to comply with an order of the **Flood Damage Prevention Board** following an *appeal*, **the owner** shall be guilty of a misdemeanor and shall be punished at the discretion a court of competent jurisdiction.

#### **§200A-347. Appeals**

Questions arising in connection with the enforcement of this Chapter shall be presented first to the approving official or agency and shall be presented to the appellate agency only on *appeal* from the approving official or agency (See Table 12.1). *Appeals* must be filed 30 days from the date of the decision.

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## ARTICLE XIV DEFINITIONS

### §200A-359. Definitions

The following definitions shall apply to this Chapter.

**ABC.** Aggregate Base Course.

**Accelerated Erosion.** Any increase over the rate of *natural erosion* as a result of *land-disturbing activity*.

**Access Control Device.** Equipment and/or machinery that opens and closes an *entry gate* (See Chapter 89 of the Henderson County Code, *Entry Gates*).

**Accommodation.** A portion of a *building* providing complete and permanent living facilities for one (1) family.

**Adequate Erosion Control Measure, Structure, or Device.** One which controls the soil material within the land area under responsible control of the *person* conducting the *land-disturbing activity*.

**Adequate Lighting.** (See *Lighting, Adequate*).

**Addition.** An extension or increase in the *floor area* or height of an existing *structure*.

**Administrative Amendment.** (See *Amendment, Administrative*).

**Administrator, Communication Facilities.** The individual (*Zoning Administrator* or his/her designee) appointed and authorized to administer and enforce the communication facilities regulations under the terms and conditions of this Chapter.

**Administrator, Floodplain.** The individual (*Soil Erosion and Sedimentation Control Administrator* or his/her designee) appointed and authorized to administer and enforce the *floodplain management* regulations under the terms and conditions of this Chapter.

**Administrator, Manufactured Home Park.** The individual (*Zoning Administrator* or his/her designee) appointed and authorized to administer and enforce the *manufactured home park* regulations under the terms and conditions of this Chapter.

**Administrator, Soil Erosion and Sedimentation Control.** The Henderson County authorized *person* or his/her designee responsible for the County's Erosion and Sediment Control Program.

**Administrator, Subdivision.** The individual (*Planning Director* or his/her designee) appointed and authorized to administer and enforce the *subdivision* regulations under the terms and conditions of this Chapter.

**Administrator, Zoning.** The individual appointed and authorized to administer and enforce various regulations under the terms and conditions of this Chapter.

**Administrator, Watershed.** The individual (*Zoning Administrator* or his/her designee) appointed and authorized to administer and enforce those regulations related to *water supply watershed* protection under the terms and conditions of this Chapter.

**Adult Book and Retail Merchandise Store.** An establishment or business that sells merchandise that is conducted exclusively for the patronage of adults and that excludes minors



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from patronage, either by operation of law or by the owners of the business, except any business licensed under this Chapter which is devoted to adult material, including but not limited to one or more of the following: (1) books, magazines, periodicals or other printed matter; (2) photographs, films, motion pictures, video cassettes, video reproductions, slides or other visual representations that depict or describe specified sexual activities or specified anatomical areas; or (3) instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities.

**Adult Care Home.** An *assisted living residence* in which the housing management provides 24 hour scheduled and unscheduled personal care services to residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated, trained staff. Adult care homes that provide care to two (2) to six (6) unrelated residents are commonly called family care homes (*NCGS* §131D-2 (a)(1b)).

**Adult Day Care Facility.** The provision of group care and supervision in a place other than their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally disabled as inspected and certified by the Department of Health and Human Services (*NCGS* §131D-6(b)). Adult day care facilities do not include *senior centers*.

**Adult Theatre and Live Entertainment.** Any establishment or business that is conducted exclusively for the entertainment and patronage of adults and that excludes minors from patronage, either by operation of law or by the owners of the business. Such establishments that would be considered adult entertainment include, but may not be limited to, an adult escort agency, adult nightclub/bar, adult motion-picture theater, adult mini-motion-picture theater or adult live entertainment business as each is defined in *NCGS* §14-202.10. This definition does not include bona-fide massage parlors or adult book and/or retail merchandise stores.

**Affiliate.** A *person* that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another *person*.

**Agriculture.** The *use* of land for the tilling of soil; the growing of crops or plants, including truck farming, field crops, vegetables, fruit, nut, sod, seed or *tree* production; other farming practices, including but not limited to plastic culture; pasturage, including pasture for cattle, horse, sheep, goats and other farm animals; *forestry* (silviculture); other forms of food and fiber grown for human and/or animal consumption; greenhouses, nurseries and ornamental horticulture; the raising, breeding, working and use of farm animals; aquaculture; beekeeping; associated processing and packing of agricultural commodities; the use of waters for stock watering, irrigation and other farm purposes; and, the permitted construction or maintenance of *agriculture*-related water diversion *structures*, including dikes, levies and ditches.

**Airport (Private).** Any area of land or water which is used or intended for use for the landing and taking off of privately owned fixed-wing and rotary-wing aircraft on a noncommercial basis. This does not include the regular repair, fueling and/or maintenance of aircraft and the sale of goods or materials to users of such aircraft.

**Airport (Public).** Any area of land or water which is used or intended for use for the landing and taking off of fixed-wing and rotary-wing aircraft, and any appurtenant areas used for

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*structures/facilities/rights-of-way*, including all necessary taxiways, aircraft storage areas, tie-down areas, hangars, and other associated *buildings* and open spaces. This *use* may include the regular repair, fueling and/or maintenance of aircraft and the sale of goods or materials to users of such aircraft.

**Alley.** A public way which affords only a secondary means of access to an abutting property and is not intended for general traffic circulation.

**Amateur Radio.** For the purpose of this Chapter, a wireless communications operation will only be considered amateur radio if permitted by the Federal Communications Commission as such.

**Ambulance Services.** An establishment primarily engaged in providing transportation of patients by ground or air, along with medical care. These services are often provided during a medical emergency but are not restricted to emergencies. *Vehicles* are equipped with lifesaving equipment operated by medically trained personnel.

**Amendment, Administrative.** An amendment which does not change the meaning or intent of the *Comprehensive Plan*, but instead corrects errors of a technical or clerical nature, perhaps involving the addition of explanatory materials and graphics, or calling for the correction of typographical errors.

**Amendment, Map.** An amendment that changes the “Official Zoning Map of Henderson County” in accordance with the processes outlined by *NCGS*.

**Amendment, Substantive.** An amendment that changes the meaning or intent of the *Comprehensive Plan*, and likely involves a lengthy review process in order to fully assess the impact(s) of proposed amendments on the *Comprehensive Plan*'s assumptions, principles, goals, objectives, recommendations and action steps.

**Amendment, Text.** An amendment that changes the text of this Chapter, the “Land Development Code of Henderson County” in accordance with the processes outlined in the *NCGS*.

**Amendment, Water Supply Watershed Text and/or Map.** A *text or map amendment*, as defined, but which, because it includes a change to the *water supply watershed* text and/or map, must also adhere to additional processes as outlined by the North Carolina Environmental Management Commission.

**Amusement Park.** A commercially operated park composed primarily of amusement rides (mechanical, aquatic or other device/attraction that carries passengers over a fixed or restricted area, primarily for the passengers' amusement), coin operated amusements, miniature golf, batting cages, go-cart tracks, skateboard facilities, food/beverage services and the like. This definition excludes motor sports facilities, botanical gardens and zoological gardens.

**Animal Shelter.** A designated facility, operated and maintained by the County or another organization for the purpose of impounding animals under the authority of Chapter 66A of the Henderson County Code, *Animal* or *NCGS* for care, confinement, return to owner, adoption or euthanasia.

**Antenna.** An exterior transmitting or receiving device which radiates or captures electromagnetic waves.

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**Appeal.** A request for a review of: (1) the *Zoning Administrator's* interpretation of any provision of this Chapter; (2) any official written determination by the *Zoning Administrator*; (3) the *Subdivision Administrator's* interpretation of any *subdivision* regulations/provisions of this Chapter; (4) any official written determination by the *Subdivision Administrator*; (5) the *Soil Erosion and Sedimentation Control Administrator's* interpretation of any soil erosion and sedimentation regulations/provisions of this Chapter; (6) any official written determination by the *Soil Erosion and Sedimentation Control Administrator*; (7) the *Floodplain Administrator's* interpretation of any flood damage prevention regulations/provisions of this Chapter ; or (8) any decision made by a planning agency or governing body. An appeal must be made within 30 days of an official written determination by the *Zoning/Subdivision/Soil Erosion and Sedimentation Control Administrator* or an official decision made by a planning agency or governing body.

**Applicant.** The party submitting an application, petition or seeking other approval required by this Chapter. An applicant includes a firm, association, organization, partnership, corporation, company, trust, individual or governmental unit or any other entity usually defined in legal usage as a *person*.

**Area of Shallow Flooding.** A designated Zone AO on a community's *Flood Insurance Rate Map (FIRM)* with *base flood* depths determined to be from one (1) to three (3) feet. These areas are located 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.** (See *Special Flood Hazard Area (SFHA)*).

**Asphalt Plant.** An establishment (portable or nonportable) engaged in petroleum refining; manufacturing involving various compositions of asphalt and tar with other materials (asphalt-type roofing materials, asphalt/tar paving mixtures, asphalt paving block and various other compositions of asphalt or tar with other materials); and the recycling of old asphalt into asphalt-type material.

**Assisted Living Residence.** A group housing and services program for seven (7) or more unrelated persons, by whatever name it is called, that makes available, at a minimum, one (1) meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department of Health and Human Services may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from *nursing homes* subject to provisions of *NCGS §131E-102 (NCGS §131D-2(1d))*. *Extended care facilities* with seven (7) or more residents (excluding *hospice residential care facilities* and *nursing homes*) shall, for the purposes of this Chapter, be included with and permitted in the same fashion as an assisted living residence.

**Athletic Field, Non-Commercial.** An athletic field not intended for commercial *use* or profit.

**Automobile and Equipment Service.** An establishment primarily engaged in providing service to automobiles and equipment. An automobile and equipment service may include auto inspection stations and/or tire recapping as *accessory uses* provided each is conducted within an enclosed *structure* and that neither is the principal business.

**Base Flood.** The flood having a one (1) percent chance of being equaled or exceeded in any given year.

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**Base Flood Elevation (BFE).** A determination of the *water surface elevations* of the *base flood* as published in the *Flood Insurance Study*. When the BFE has not been provided in a *Special Flood Hazard Area*, it may be obtained from engineering studies available from a Federal, State or other source using *FEMA* approved engineering methodologies. This elevation, when combined with *freeboard*, established the *Regulatory Flood Protection Elevation*.

**Basement.** That portion of a *structure* which is partly or completely below grade.

**Basement (Flood Damage Prevention).** Any area of the *structure* having its *floor* sub-grade (below ground level) on all sides.

**Bathroom (Bed and Breakfast Inn).** A room with at least one (1) shower or tub, water closet and lavatory (lavatories may be located within *bedrooms*) (*NCAC* 15A, 18A .3001).

**Bed and Breakfast Inn.** A business of not more than 12 guest rooms that offers bed and breakfast accommodations to at least nine (9) but not more than 23 persons per night for a period of less than one (1) week, and that: does not serve food or drink to the general public for pay; serves only the breakfast meal to overnight guests of the business; includes the price of breakfast in the room rate; and is the permanent residence of the owner/manager of the business (*NCGS* §131A-247(6)).

**Bedroom.** A room or space used or intended to be used for sleeping purposes.

**Being Conducted.** A *land-disturbing activity* has been initiated and permanent stabilization of the site has not been completed.

**Berm.** An earthen mound designed to provide visual interest on a site, screen undesirable views, reduce noise or fulfill other such purposes.

**Best Management Practices (BMP).** A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

**BFE.** *Base flood elevation* (See *Base Flood Elevation*).

**Billboard.** An *outdoor advertising sign* that exceeds 380 square feet in area.

**Boathouse, Private.** A residential accessory *water dependent structure* whose principal purpose is waterfront mooring/storage of boats.

**Bond.** (See *Improvement Guarantee*).

**Borrow.** Fill material which is required for on-site construction and is obtained from other locations.

**Boulevard.** A roadway that consists of moderate mobility and low to moderate accessibility. The relationship between mobility and accessibility is more balanced than that of *freeways* and *expressways*. Access control points may not be permitted and if allowed, are limited. Typically, roadways in this category have a median, but may have as few as two (2) lanes. They have posted speed limits of 30 to 55 miles per hour. Traffic signals are allowed and recommended at one-half (½) mile intervals.

**Broadcasting and Communications Facilities.** An establishment providing point-to-point communications and the services related to that activity. This may include radio and television broadcasting, cable networks and program distribution, and their directly related

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telecommunications. Examples include: radio/television broadcasting, radio/cable networks, radio stations and cable/other program distribution among others. Communications facilities not related to broadcasting are excluded from this definition.

**BST.** Bituminous Surface Treatment (asphalt, tar and gravel).

**Buffer.** An area of natural or planted vegetation that serves as a separation and screen between two (2) properties and/or dissimilar land *uses*.

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

**Buffer Zone (Soil Erosion and Sedimentation Control).** The strip of land adjacent to a *lake or natural watercourse*.

**Building.** A *structure* used or intended for supporting or sheltering any *use* or occupancy (North Carolina State Building Code, Chapter 2, Section 202).

**Building, Enclosed.** A building which has a roof supported by “imperforated” walls extending from ground to roof on all sides. The presence of doors (not doorways having no door) or windows shall not cause a wall to be considered “perforated.”

**Building, Occupied.** A building that is inhabited by one or more persons. Such buildings include, but are not limited to: residences, *schools, religious institutions*, buildings for public assembly, hospitals, clinics and other commercial and industrial entities.

**Building Façade.** The façade of a building, which for the purposes of this Chapter, is that side which faces a *traveled way*.

**Building Line.** A line which crosses the front of the principal *building* on the *lot*.

**Built-Upon Area.** The portion of a development project that is covered by impervious/partially impervious cover (including, but not limited to, *structures, roofs, driveways, roads, concrete slabs, walkways, paved (asphalt, concrete, etc.)/compacted stone parking lots, recreational facilities, etc.*) (Wooden slatted decks and the water area of a swimming pool or pond are considered pervious).

**Bulkhead.** A *water dependent structure*; a wall or an embankment along a waterfront, that acts as a protective barrier.

**BW.** *Balance of Watershed* (See *Balance of Watershed*).

**CA.** *Critical Area* (See *Critical Area*).

**Caliper.** A horticultural method of measuring the diameter of nursery stock. For *trees* less than four (4) inches in diameter, the measurement should be taken at six (6) inches above ground level. For *trees* greater than four (4) inches in diameter up to and including 12 inches, the caliper measurement must be taken at 12 inches above the ground level. For *trees* greater than 12 inches in diameter, the trunk is measured at breast height (Diameter at Breast Height or DBH), which is four and one-half (4 ½) feet above the ground. For the purposes of this Chapter where related to landscaping regulations, diameter and caliper are used interchangeably.

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**Camp.** An establishment primarily engaged in operating/accommodating educational and/or recreational activities for patrons. These establishments typically: (1) are operated on a seasonal basis; (2) provide access to *indoor/outdoor/governmental recreational facilities*; (3) provide access to dining facilities; (4) provide sleeping quarters (for temporary use by patrons and/or employees); and (5) are often operated on a temporary/seasonal basis (i.e. summer camp, day camp, etc.).

**Campground.** An establishment primarily engaged in operating/accommodating campsites. These establishments may provide access to facilities, such as laundry rooms, recreational halls and playgrounds, stores and snack bars.

**Carport.** A *structure* that covers a *driveway* or other parking area. A carport may have permanent walls but shall not have a door in the manner of a *garage*.

**Certificate of Need (CON).** A written order which affords the *person* so designated as the legal proponent of the proposed project the opportunity to proceed with the development of such project (*NCGS* §131E-176(3)).

**Chemical Storage Facility.** A *structure*, portion of a *structure* or exterior area adjacent to a *structure* used for the storage of any chemical or chemically reactive products.

**Childcare.** A program or arrangement where three (3) or more children less than 13 years old, who do not reside where the care is provided, receive care on a regular basis of at least once (1) per week for more than four (4) hours but less than 24 hours per day from *persons* other than their guardians or full-time custodians, or from *persons* not related to them by birth, marriage or adoption. Childcare does not include the following:

- (1) Arrangements operated in the home of any child receiving care if all the children in care are related to each other and no more than two (2) additional children are in care;
- (2) Recreational programs operated for less than four (4) consecutive months in a year;
- (3) Specialized activities or instruction such as athletics, dance, art, music lessons, horseback riding, gymnastics or organized clubs for children, such as Boy Scouts, Girl Scouts, 4-H groups or Boys and Girls clubs;
- (4) Drop-in or short-term care provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible, such as drop-in or short-term care provided in health spas, bowling *alleys*, *shopping malls*, resort hotels or *religious institutions*;
- (5) Public *schools*;
- (6) Nonpublic *schools* (*NCGS*, Chapter 115C, Article 39, Part 2) that are accredited by the Southern Association of Colleges and Schools and that operate a childcare facility as defined in subdivision (3) of this section for less than six and one-half (6 ½) hours per day either on or off the *school* site;
- (7) Bible schools conducted during vacation periods;
- (8) Care provided by facilities licensed under *NCGS* Chapter 122C, Article 2;
- (9) Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment; and
- (10) Any childcare program or arrangement consisting of two (2) or more separate components, each of which operates for four (4) hours or less per day with different children attending each component. (*NCGS* §110-86(2)).

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**Childcare Facility.** Includes childcare centers, *family childcare homes* and any other childcare arrangement (not excluded by *NCGS §110-86(2)*), that provides childcare, regardless of the time of day, wherever operated, and whether or not operated for profit (*NCGS §110-86(3)*).

**Chip Mill.** A nonportable wood-chipping facility that stands alone and apart from a *sawmill* or a pulpmill whose purpose is to provide wood chips to an off-site fabricating facility including but not limited to a papermill or oriented strand board (OSB) mill.

**Church.** (See *Religious Institution*).

**Club/Lodge.** An establishment primarily engaged in promoting the common civic and social interest of their members. This industry includes local branches or chapters of fraternal organizations, guilds or unions. Establishments in this industry may operate bars and restaurants for their members.

**Cluster Development (Watershed).** The grouping of single-family residential *buildings* on one (1) single *tract* (*manufactured home park*, etc.); or the grouping of single-family *building lots* in a *subdivision* where higher-density design is combined with land conservation (preservation of natural areas/*open space*) and innovative design in order to minimize negative impacts (reduce *stormwater runoff*, etc.). Cluster developments shall include conservation *subdivisions* as defined by this Chapter.

**Collector Road.** Collector roads feature characteristics of moderate to low mobility and high accessibility, and serve as a link between through-roads and *local roads*. There is no control of access (i.e. no physical restrictions on access). Traffic signals are allowed, at a recommended minimum spacing of one-quarter ( $\frac{1}{4}$ ) mile. *Driveways* are allowed with full movement, but are still recommended to be consolidated or shared if possible. Roadways in this category will have neither a center left turn lane nor a median. Speed limits are regulated at 25 to 55 miles per hour.

**Collocation.** The placement of an additional *antenna* on an existing communication facility, including required support equipment and *structures* at the base of the tower and any necessary modification to the *structure* of the existing facility.

**Commissioners.** The Board of Commissioners of Henderson County, North Carolina.

**Common Area.** Area set aside, dedicated or reserved for the *use* and enjoyment of residents of a complex, development, *manufactured home park* or *subdivision*. Common area may include space for community buildings, ponds, gardens, walking paths, outdoor play areas, swimming pools, ball fields, basketball courts, racquet courts, gazebos, picnic shelters, etc. Where damage to subsurface *sewage disposal systems* or wells would not result as a *use* of property for common area, such areas over *sewage disposal systems*/wells may be used as common area. Those areas which shall not be considered common areas include: land within *setbacks/separation areas*, *internal/external roads/rights-of-way*, *driveways*, parking spaces, *common area recreation and service facilities*, *sale/model homes*, solid waste disposal areas and areas needed for aboveground utility facilities including water supply or *sewage disposal systems*.

**Common Area Recreation and Service Facilities.** Recreational (swimming pools, hot tubs, etc.) and service (laundry, mail delivery area, etc.) facilities built to serve complexes, developments, *manufactured home parks* and *subdivisions*.

**Communication Facility, Category 1.** A Category One (1) Communication Facility shall be a:  
(1) Tower and/or *antenna* constructed or permitted prior to March 2, 1998;

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- (2) Tower used for residential, *amateur radio* or governmental purposes which is less than 90 feet in height;
- (3) Tower less than 50 feet in height; or
- (4) *Collocation* of an *antenna* on an existing communication facility.

**Communication Facility, Category 2.** A Category Two (2) Communication Facility shall be a/an:

- (1) Tower intended to replace an existing tower where such new tower is sited as close to the existing tower as is reasonably feasible, but in no event more than 100 feet from the base of the existing tower, and no higher than the height of the existing tower;
- (2) *Antenna* located on an *alternative structure*;
- (3) Tower used for residential, *amateur radio* or governmental purposes which is 90 feet or greater in height;
- (4) Tower (all others) 50 to less than 200 feet in height;

**Communication Facility, Category 3.** A Category Three (3) Communication Facility shall include all towers 200 feet or greater in height.

**Communication Facility, Stealth.** A *stealth communication facility* is a communication facility which is designed and constructed so as to blend into its surroundings. A communication facility may be stealth where such facility is a monopole or appears to be a tree, light pole, water tower, clock tower or any of a number of other similar *structures/natural vegetation*. The choice of design shall be compatible with the setting in which the communication facility is placed, in order to camouflage/conceal the presence of the facility and in order for the facility be considered a "stealth" design.

**Communication Facility Height.** The vertical distance measured from the facility base to the highest point of the facility, including any *antenna*, lighting or other equipment affixed thereto.

**Communication Facility Permit.** The permit issued by the *Communication Facilities Administrator*, as designated by this Chapter, to an *applicant* to construct a *communication tower*, co-locate an *antenna* on an existing tower, locate an *antenna* on an *alternative structure* or replace an existing tower.

**Communication Facility Registration Number.** A number issued by the *Communication Facilities Administrator* (upon the issuance of a *communication facility permit*) which is used to reference individual communication facility projects. A communication facility registration number corresponds to the facility permit application number issued by the *Communication Facilities Administrator*.

**Communication Tower.** A tower, pole or similar *structure*, used to support one or more *antennas*, including self-supporting lattice towers, guyed towers or monopole towers. The term includes radio and television transmission towers, personal communications service (PCS) towers, microwave towers, common-carrier towers, cellular telephone towers and *alternative structures*.

**Communication Tower Base.** The foundation, usually concrete, on which the *communication tower* and other support equipment are situated. For measurement calculations, the tower base is that point on the foundation reached by dropping a vertical line through the geometric center of the tower



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**Communication Tower Site.** The land area which currently or will in the future contain a tower, support *structures* and other related *structures* and improvements. A communication tower site may consist of a parcel of record or a deeded *easement*.

**Community Club.** A *structure* and its related facilities, owned or operated by an educational, nonprofit organization whose members typically reside inside boundaries that are established by the community club, and whose purposes are: to provide a framework whereby community members can work together to supplement or expand the goals that the community wants to accomplish; and to provide for the social, recreational, educational, cultural and/or economic improvement of the community.

**Completion of Construction or Development (Soil Erosion and Sedimentation Control).** No further *land-disturbing activity* is required on a phase of a project except that which is necessary for establishing a permanent *ground cover*.

**Comprehensive Plan.** The official public planning document adopted by the Board of Commissioners as the official guide for the development and redevelopment of the County.

**Conical Evergreen Plant.** An *evergreen shrub* or *tree* whose foliage is full to the ground, widest at the base and tapers toward the top. A conical evergreen plant provides a visual screen at ground level at 75 percent maturity.

**Continuing Care Retirement Community.** A continuing care retirement community involves the furnishing to an individual (other than an individual related by blood, marriage or adoption to the person furnishing the care) of lodging together with nursing services, medical services or other health related services, under an agreement effective for the life of the individual or for a period longer than one (1) year (*NCGS* §58-64-1(1)). Health related services include, at a minimum, *nursing home* admission or assistance in the activities of daily living, exclusive of the provision of meals or cleaning services (*NCGS* §58-64-1(4)).

**County.** Henderson County, North Carolina.

**County Permit.** Any zoning, subdivision, building construction, septic system, soil erosion, or similar permit granted by Henderson County or any employee thereof.

**Critical Area.** The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the *watershed*. The critical area is defined as extending either one-half ( $\frac{1}{2}$ ) mile from the normal pool elevation of the reservoir in which the intake is located or to the ridgeline of the *watershed* (whichever comes first) or one-half ( $\frac{1}{2}$ ) mile upstream from the intake located directly in the stream or river (run-of-the-river) or the ridgeline of the *watershed* (whichever comes first). The Board of Commissioners may extend the critical area as needed. Major landmarks, such as highways or property lines, may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half ( $\frac{1}{2}$ ) mile.

**Critical Root Zone.** The minimum area beneath a *tree* which must be left undisturbed and protected from construction disturbance in order to preserve a sufficient root mass to give a *tree* a reasonable chance of survival. The critical root zone is delineated by a concentric circle with the *tree* trunk as the center. The radius of the critical root zone equals one (1) foot for every one (1) inch of *tree* diameter. For example: a 20 inch diameter *tree* will have a critical root zone radius of 20 feet.

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**Deciduous.** A plant with foliage that is shed annually.

**Design Manual.** The County adopted manual that provides comprehensive guidelines and practices for controlling *erosion* and *sedimentation*. Unless a manual is adopted by the County, the State manual shall serve as the *Design Manual*.

**Design Professional.** A civil engineer or landscape architect who prepares the Erosion and Sediment Control Plan for the *person* or agent engaged in *land-disturbing activity*.

**Development (Flood Damage Prevention).** Any man-made change to improved or unimproved real estate, including but not limited to, *structures*, mining, dredging, filling, grading, paving, excavating operations, drilling operations, or storage of equipment or materials.

**Development (Watershed).** A *land-disturbing activity* which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

**Development, Agriculture.** A development where the *use* is agriculture, including *agritourism farms* and *bona fide farms*.

**Development, Commercial/Office/Institutional.** A *nonresidential development* that is not industrial.

**Development, Existing.** Those developments that, at a minimum, have established a vested right under North Carolina zoning law.

**Development, Industrial.** A *nonresidential development* that requires a National Pollutant Discharge Elimination System (*NPDES*) permit for an industrial discharge and/or requires the *use* or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

**Development, Nonresidential.** All development other than *residential development* and *agriculture*. Nonresidential development consists of office, institutional, commercial and industrial development.

**Development, Residential.** *Buildings* for residential *use* (including *single* and *multifamily dwellings*) and their associated *accessory structures* and *uses*.

**Development, Single-Tenant.** A single establishment, activity or *use* which does not share any facilities (parking, storage areas, entrances, etc.) with another *tenant* or *use* and is developed on an individual parcel.

**Discharge Point.** That point at which *stormwater runoff* leaves a *tract* of land.

**Disposal (Flood Damage Prevention).** The discharge, deposit, injection, dumping, spilling, leaking or placing of any *solid waste* into or on any land or water so that the *solid waste* or any constituent part of the *solid waste* may enter the environment or be emitted into the air or discharged into any waters, including groundwaters (*NCGS §130A-290(a)(6)*).

**Disqualified Party.** Any *person* or entity who has had any *county permit* suspended, during the period of such suspension.

**Dock/Pier.** A *water dependent structure*; a platform extending from a shore over water and supported by piles or pillars, whose purpose is to secure, protect and provide access to boats.

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**Dormitory.** A facility providing group sleeping accommodations in one (1) or several rooms under joint occupancy and single management, where the use of the facility is associated with an institution or business which provides services, employment or education to people who require temporary housing during the time of their association with the institution or business.

**Driveway/Entryway.** An area used for ingress or egress of *vehicles* and allowing access from a *traveled way* onto a property.

**DU.** *Dwelling unit* (See *Dwelling Unit*).

**Dwelling, Accessory.** A unit added to, contained within or detached from a principal *dwelling unit* that provides self-contained, complete and permanent (non-transient) living facilities for one (1) family.

**Dwelling, Apartment.** (See *Accommodation*).

**Dwelling, Conventional.** A *dwelling unit* constructed in accordance with the standards of the North Carolina State Building Code that is constructed on site.

**Dwelling, Duplex.** Two (2) *dwelling units*, including *modular* homes, placed one (1) on top of another or attached side by side and sharing one or more common walls, *floors* and/or ceilings and placed on one (1) or two (2) separate lot(s).

**Dwelling, Manufactured Home.** A *dwelling unit* constructed in accordance with the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (which became effective June 15, 1976), as amended, and composed of components substantially assembled in a manufacturing plant and transported to the *building* site for final assembly on a permanent foundation. The term “*manufactured home*” does not include “*mobile home*,” “*recreational vehicle*” or “*park model home*.”

**Dwelling, Mobile Home.** A transportable, factory-built home designed for *use* as a *single-family detached* residential dwelling and manufactured prior to the Federal Manufacture Housing Construction and Safety Standards Act of 1974 (which became effective June 15, 1976).

**Dwelling, Modular.** A *dwelling unit* constructed in accordance with the standards set forth in the North Carolina State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the *building* site for final assembly on a permanent foundation.

**Dwelling, Multifamily.** A residence where one (1) *building* contains more than one (1) *dwelling unit*. This includes *duplexes*, *triplexes*, *quadraplexes* and *multifamily* (*five (5) or more units*) but shall not include *single-family homes* with an attached *garage* containing only one (1) *garage apartment*.

**Dwelling, Multifamily (Five (5) or More Units).** Five (5) or more *dwelling units*, including *modular* homes, placed one (1) on top of another and/or side-by-side and sharing common walls, floors and/or ceilings.

**Dwelling, Quadraplex.** Four (4) *dwelling units*, including *modular homes*, placed one (1) on top of another and/or side-by-side and sharing common walls, floors and/or ceilings.

**Dwelling, Single-Family Detached.** A single-family dwelling which is located in a separate *building* detached from any other *building* (excluding a customary *accessory structure*). Single-

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family detached dwellings may include dwellings constructed on site, *manufactured dwellings* or *modular dwellings*.

**Dwelling, Triplex.** Three (3) *dwelling units*, including *modular* homes, placed one (1) on top of another or side-by-side and sharing common walls, floors and/or ceilings.

**Dwelling Unit.** A *building* or portion thereof, providing complete and permanent living facilities for one (1) family.

**Easement.** That portion of land or property reserved for present or future *use* by a *person* or agency other than the legal fee owner(s) of the property. The easement shall be permitted to be for *use* under, on, or above said *lot(s)*.

**Elevated Structure.** A non-basement *structure* which has its *reference level* raised above ground level by foundation walls, *shear walls*, posts, piers, pilings or columns.

**Encroachment.** The advance or infringement of *uses*, fill, excavation, *structures* or development into a *floodplain*, which may impede or alter the flow capacity of a *floodplain*.

**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.

**Entertainment Complex.** An establishment that is conducted exclusively for entertainment. Entertainment complexes include some form of live entertainment and may include food services, beverage services, etc. *Accessory structures* and *uses* necessary to the operation of the complex may be included in this definition, as determined by the *Zoning Administrator*. This definition does not include *adult theatres/live entertainment* or cinema complexes.

**Erosion.** The wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.

**Evergreen.** A plant with foliage that persists and remains green year-round.

**Expressway.** Roadways in this category feature characteristics of high mobility and moderate to low accessibility. Moving through-traffic is an important element; however, access points are allowed, but limited. Traffic signals are not permitted, but *driveway* connections are permitted. Typically, roadways in this category have a minimum of four (4) travel lanes, are median-divided facilities, and have posted speed limits of 55 to 60 miles per hour.

**Extended Care Facility.** A licensed care facility that provides continuing services to residents and which shall include: *family care homes*, *hospice residential care facilities*, *assisted living residences*, *adult care homes*, *mental health facilities*, *multiunit assisted housing with services*, *nursing homes* and *continuing care retirement communities*.

- (1) *Family Care Home.* A care home (for persons of any age) having two (2) to six (6) residents (based on NCGS §131D-2(A)(5)). *Extended care facilities* with two (2) to six (6) residents shall, for the purposes of this Chapter, be included with and permitted in the same fashion as a family care home (see *Family Care Home* for full definition).
- (2) *Hospice Residential Care Facility.* A freestanding licensed hospice facility which provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual and special needs of terminally ill patients and their families in a group residential setting.

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- (3) *Assisted Living Residence*. A group housing and services program for seven (7) or more unrelated persons, by whatever name it is called, that makes available, at a minimum, one (1) meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. *Extended care facilities* with seven (7) or more residents (excluding *hospice residential care facilities* and *nursing homes*) shall, for the purposes of this Chapter, be included with and permitted in the same fashion as an assisted living residence (see *Assisted Living Residence* for full definition).
- (4) *Adult Care Home*. An *assisted living residence* in which the housing management provides 24 hour scheduled and unscheduled personal care services to residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies (see *Adult Care Home* for full definition).
- (5) *Mental Health Facilities*. A facility that provides services to individuals who are mentally ill, developmentally disabled, or substance abusers for one or more minors or for two (2) or more adults. These services shall be residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities.
- (6) *Multiunit Assisted Housing with Services*. An *assisted living residence* in which hands on personal care services and nursing services (which are arranged by housing management) are provided by a licensed home care or hospice agency, through an individualized written care plan (see *Multiunit Assisted Housing with Services* for full definition).
- (7) *Nursing Home*. A facility, however named, which is advertised, announced or maintained for the express or implied purpose of providing nursing or convalescent care of seven (7) or more *persons* unrelated to the licensee (see *Nursing Home* for full definition).
- (8) *Continuing Care Retirement Community*. A *continuing care retirement community* involves the furnishing to an individual (other than an individual related by blood, marriage or adoption to the *person* furnishing the care) of lodging together with nursing services, medical services or other health related services, under an agreement effective for the life of the individual or for a period longer than one (1) year (see *Continuing Care Retirement Community* for full definition).

**Family Care Home.** A care home (for persons of any age and which includes, but is not limited to *adult care homes*, *hospice residential care facilities*, or *nursing homes*) having two (2) to six (6) residents (based on NCGS §131D-2(a)(5)). *Extended care facilities* with two (2) to six (6) residents shall, for the purposes of this Chapter, be included with and permitted in the same fashion as family care homes.

**Family Childcare Home (FCCH).** *Childcare* arrangement in the provider's home that may have no more than five (5) preschool children present at any one (1) time. The program may enroll up to eight (8) children if at least three (3) of the children are *school* aged.

**Farm, Agritourism.** A working farm or ranch that welcomes visitors who come to purchase agricultural products or value-added agricultural products, learn about or participate in agricultural-themed recreation and/or entertainment, and who pay the farmer a fee for that experience.

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**Farm, Bona Fide.** All land on which agricultural operations are conducted as a *principal* or *accessory use*.

**FBFM.** *Flood Boundary and Floodway Map*.

**FEMA.** The Federal Emergency Management Agency of the United States Department of Homeland Security.

**Final Plat.** A *plat* representing a *lot*, parcel, *subdivision* or a *tract* of land showing the boundaries and location of individual properties, *roads* and other information required by this Chapter and *NCGS*. A *final plat* shall be prepared by a professional land surveyor, currently licensed and registered in the State of North Carolina, in such a fashion as to be suitable for recording by the Henderson County Register of Deeds and in accord with *NCGS* §47-30.

**Fire Lane.** A *road* or other passageway developed to allow the passage of fire apparatus. A fire lane is not necessarily intended for vehicular traffic other than fire apparatus.

**Fire and Rescue Station.** A government or quasi-public establishment primarily engaged in fire fighting and other related *fire protection* activities. Government or quasi-public establishments providing combined fire protection and ambulance or rescue services are classified in this industry.

**Fire Protection.** The design, construction and installation of *buildings* and facilities, equipment, appliances and infrastructure or the protection of the facilities and *buildings*, and the occupants thereof, from the effects or potential effects of fire. All *uses* requiring fire protection in this Chapter shall be required to comply with the standards of the National Fire Protection Association.

**FIRM.** *Flood Insurance Rate Map*.

**Flea Market.** A place that has regular consistent hours of operation on a regular reoccurring basis of at least four (4) days a month specifically dedicated to where people buy, auction, rent, sell, appraise, lease or exchange goods, products or services including but not limited to real property, personal property, services, food and/or entertainment whether it indoors, outdoors or a combination venue.

**Flood/Flooding.** A general and temporary condition of partial or complete inundation of normally dry land **areas** from: the overflow of inland or tidal waters; **and/or** the unusual and rapid accumulation of runoff of surface waters from any source.

**Flood Boundary and Floodway Map (FBFM).** An official map of a community, issued by *FEMA*, on which the **Special Flood Hazard Areas and floodways are delineated.** This official map is a supplement to, and shall be used in conjunction with, the *Flood Insurance Rate Map (FIRM)*.

**Flood Hazard Boundary Map (FHBM).** An official map of a community, issued by *FEMA*, where the boundaries of the *Special Flood Hazard Areas* have been defined as Zone A.

**Flood Insurance.** The insurance coverage provided under the National Flood Insurance Program.

**Flood Insurance Rate Map (FIRM).** An official map of a community, issued by *FEMA*, on which both the *Special Flood Hazard Areas* and the risk premium zones applicable to the community are delineated.

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**Flood Insurance Study (FIS).** An examination, evaluation and determination of flood hazard areas, corresponding *water surface elevations* (if appropriate), *flood insurance* risk zones and other flood data in a community issued by *FEMA*. The Flood Insurance Study report includes *Flood Insurance Rate Maps (FIRMs)* and *Flood Boundary and Floodway Maps (FBFMs)* if published.

**Flood Prone Area.** (See *Floodplain*).

**Flood Zone.** A geographic area shown on a *Flood Hazard Boundary Map (FHBM)* or *Flood Insurance Rate Map (FIRM)* that reflects the severity or type of flooding in the area.

**Floodplain.** Any land area susceptible to being inundated by water from any source.

**Floodplain Development Certificate of Compliance/Occupancy.** A certification that the development within the *floodplain* is in compliance with this Chapter and may be occupied.

**Floodplain Management.** The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the *floodplain*, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations and open space plans.

**Floodplain Management Regulations.** This Chapter, building codes, health regulations, special purpose ordinances, and other applications of police power.. This term describes Federal, State, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

**Floodproofing.** Any combination of structural and nonstructural *additions*, changes or adjustments to *structures*, which reduce or eliminate flood damage to real estate, improved real property, water facilities, sanitation facilities, or *structures* and their contents.

**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 (1) foot.

**Floodway Fringe.** The floodway fringe as shown on the *Flood Boundary and Floodway Map (FBFM)*.

**Floor.** (See *Lowest Floor*).

**Floor Area, Gross.** The total floor area of all *buildings* in a project (including *basements*, mezzanines and upper floors) and which excludes stairways, elevator shafts and separate service facilities outside the principal *building* (boiler rooms, maintenance shops, etc.).

**Food Manufacturing.** An establishment that includes the following: dairy product manufacturing (including milking, cheese manufacturing and butter manufacturing); grain and oilseed milling (including flour milling, malt manufacturing, rice milling, starch and vegetable fats and oils manufacturing, wet corn milling, soybean processing, fats and oils refining and blending and breakfast cereal manufacturing); wine and brandies manufacturing; snack food manufacturing; coffee and tea manufacturing; concentrate, syrup, condiment and spice manufacturing; establishments that freeze food and use preservation processes (pickling, canning and dehydrating); and an entire range of other miscellaneous food product manufacturing.

**Footprint.** The outside dimensions of a *building* describing the amount of space it occupies on the ground, usually expressed in square feet.

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**Forestry.** Includes timber *tract* operations and forest nurseries and gathering of forest products. This subsector specializes in long production cycles that separate it from crop production.

**Forestry Support Services.** An establishment primarily engaged in performing particular support activities related to timber production, wood technology, *forestry*, economics, marketing and forest production. These establishments may provide support activities for *forestry*, such as estimating timber, forest firefighting, forest pest control and consulting on wood attributes and reforestation.

**Fraternity and/or Sorority House.** A specific type of *rooming and boardinghouse*, which is for the purposes of housing members and meetings of a fraternal organization. These establishments provide temporary or longer-term accommodations which, for the period of occupancy, may serve as a principal residence. These establishments also may provide complementary services, such as housekeeping, meals and laundry services.

**Freeboard.** The height added to the *Base Flood Elevation (BFE)* to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The *Base Flood Elevation (BFE)* plus the freeboard establishes the *Regulatory Flood Protection Elevation*.

**Freeway.** Freeways feature characteristics of high mobility and low accessibility, or full control of access. Carrying through traffic and controlling access points are of supreme importance of roadways classified in this category. Typically, freeways have a minimum of four (4) travel lanes, are median-divided facilities, and have posted speed limits of 55 miles per hour or greater. Traffic signals and *driveways* are not permitted, as access is only permitted at grade-separated interchanges.

**Frontage.** The side of a *lot* adjacent to the *traveled way*. All sides of a *lot* adjacent to the *traveled way* shall be considered frontage and have *yard* provided as indicated under the *yard* requirements set forth in this Chapter.

**Fuel Oil Distribution and Sales.** An establishment with bulk liquid storage facilities primarily engaged in wholesaling, retailing and/or distributing fuel oil and fuel oil products.

**Full Pond Elevation.** The elevation, measured in feet above *mean sea level*, of the top of a lake's spillway or the top of the floodgates (if applicable).

**Functionally Dependent Facility.** A facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

**Garage, Residential.** A *building* primarily designed to house *vehicles*, which can be either attached to or detached from the *dwelling unit*.

**Gate and/or Guardhouse.** *Structures* for the purpose of restricting access to all or portions of a property.

**Gate, Entry.** Movable partition for controlling access and egress (See Chapter 89 of the Henderson County Code, *Entry Gates*).



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**Golf Course and/or Country Club.** An establishment primarily engaged in operating golf courses (except miniature) and/or dining and other recreational facilities known as country clubs. These establishments often provide food, beverage, equipment rental and golf and recreational instructional services.

**Governmental Recreational Facilities.** A public recreation facility that is indoors and/or outdoors which may include: courts (basketball, tennis, etc.), swimming pools, batting cages, shuffleboard areas and/or other such *uses* that fit the intent of this Chapter as determined by the *Zoning Administrator*. A government recreational facility shall, for purposes of this Chapter, not include go-cart tracks (a *recreational motor sports facility*), golf courses, miniature golf courses, golf driving tees/ranges.

**Greenhouse.** An enclosed *structure* with transparent or translucent roof and/or wall panels, and devoted to the cultivation and protection of plants out of season or climate.

**Greenway.** A public space that may be a linear *park*, alternative transportation route and/or *open space* conservation area that provides passive recreational opportunities, pedestrian and/or bicycle paths and/or the conservation of *open spaces* or natural areas, which may be so indicated in a greenway plan.

**Ground Cover.** Any natural vegetative growth or other material which renders the soil surface stable against *accelerated erosion*.

**Hazardous Waste Management Facility.** A facility for the collection, storage, processing, treatment, recycling, recovery or disposal of hazardous waste as defined in *NCGS* Chapter 130A, Article 9.

**Height.** The height of a *building* or *structure* measured as the vertical distance from the finished main floor level to the highest point of the *building* or *structure*. Chimneys, cupolas and steeples are not included in measuring a *building* or *structure* height.

**Heliport (Private Accessory).** A facility or *structure* that is used for the landing and take-off of rotary-wing aircraft, but not including the regular repair, fueling and/or maintenance of such aircraft or the sale of goods/materials to users of such aircraft.

**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 pursuant to *NCGS* §150B-14(c).

**High Quality Water (HQW) Zones.** For the Coastal Counties, areas within 575 feet of *High Quality Waters*; and for the remainder of the state, areas within one (1) mile and draining to HQW's.

**Highest Adjacent Grade (HAG).** The highest natural elevation of the ground surface, prior to construction, **immediately** next to the proposed walls of the *structure*.

**Historic Structure.** A *structure* that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of the 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 of the Interior to qualify as a registered historic district;

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- (3) Individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (4) Certified as contributing to the historical significance of a historic district designed by a community with a “Certified Local Government (CLG) Program”.
  - a.

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National historic Preservation Act of 1966 as amended since 1980.

**Home Occupation, Adult Day Care.** A daycare program for two (2) to six (6) people operated in a *single-family detached dwelling* (10A NCAC 06R .0201). (See also *Home Occupation, General*).

**Home Occupation, Childcare Facility.** A *family childcare home* with no more than 12 children (where any of the children are preschool-aged or younger) or no more than 15 children (where they are *school* aged) that provides *childcare*, regardless of the time of day and whether or not operated for profit (NCGS §110-86(3)).

**Home Occupation, General** An *accessory use* of a *structure* for a limited nonresidential purpose that is clearly incidental and subordinate to the *use* of the property for residential purposes.

**Hospice Residential Care Facility.** A freestanding licensed hospice facility which provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual and special needs of terminally ill patients and their families in a group residential setting (NCGS §131E-176(13c)).

**Impervious Surface.** A ground covering which prevents or restricts the absorption of water directly into the ground below (including, but not limited to, *structures*, roofs, *driveways*, *roads*, concrete slabs, walkways, and paved (asphalt, concrete, etc.)/compacted stone parking lots, etc).

**Impervious Surface, Maximum.** Maximum impervious surface indicates that not more than the percentage of the total land area indicated be covered by *impervious surface*.

**Improvement Guarantee.** Cash, letters of credit, trust agreements, *bonds* or similar financial instruments deposited with the County to assure that required improvements will be constructed or installed.

**Indoor Recreational Facilities.** A recreational facility that is completely indoors and which may include: public or private operations, courts (basketball, tennis, etc.), swimming pools, batting cages, shuffleboard areas and/or other such *uses* that fit the intent of this Chapter as determined by the *Zoning Administrator*. An indoor recreational facility shall, for purposes of this Chapter, not include go-cart tracks (a *recreational motor sports facility*), miniature golf courses, driving tees or driving ranges.

**Issuing Party.** The Henderson County Department or employee who originally granted the permit to the *disqualified party*.

**Junk.** Litter; debris; animal carcasses; used or unserviceable *motor vehicle* and machinery parts; used and non-functional furniture, appliances, tools, equipment and implements; and waste

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materials of any kind (excluding compost piles for normal, personal or noncommercial *uses*, in their proper location).

**Junkyard.** A parcel having a *principal use* consisting of the storing, keeping, buying or selling of *junk*, as defined herein. This definition excludes any *vehicle graveyard* or *manufactured/mobile home graveyard*.

**Junked Motor Vehicle.** A *motor vehicle* which does not display a current license plate or *vehicle* registration.

**Kennel.** A collection of *structures*, property, *outside/outdoor uses* of land in which domestic animals are housed, maintained and/or bred. (See Chapter 66A of the Henderson County Code, *Animal*).

**Lake or Natural Watercourse.** Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, 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 accumulation of *sediment*.

**Land Clearing Debris and Inert Debris Storage or Disposal.** A disposal facility which stores solid waste resulting solely from land-clearing activities (stumps, *trees*, bricks, concrete, etc.).

**Land-Disturbing Activity.** Any use of the land by any *person* in residential, industrial, education, 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*.

**Landfill.** A facility for the disposal of solid waste on land in a sanitary manner in accordance with *NCGS* Chapter 130A, Article 9. For the purpose of this Chapter, this term does not include composting facilities.

**Landfill, Nondischarging.** A *landfill* which does not discharge treated leachate into surface waters and for which no National Pollutant Discharge Elimination System (*NPDES*) permit is required.

**Landscaping Materials Sales and Storage.** An establishment primarily engaged in selling and storing a variety of landscaping materials including but not limited to plants, *shrubs*, *trees*, mulch, timbers, rocks, etc. directly associated with or used for landscaping.

**Library/Archive.** These establishments are engaged in maintaining collections of documents (books, journals, newspapers and music) and facilitating the *use* of such documents as are required to meet informational, research, educational or recreational needs of their user(s). These establishments may also acquire, research, store, preserve and generally make accessible to the public historical documents, photographs, maps, audio material, audiovisual material and other archival material of historical interest. All or portions of these collections may be accessible electronically.

**Lighting, Adequate.** Lighting of areas used for vehicular and pedestrian access which serves to heighten visibility and, as a result, protect the public health, safety and welfare.

**Lighting Mitigation.** Mitigating the impact of outdoor lighting fixtures in order to protect neighboring properties and *roads* from direct glare or hazardous interference of any kind.

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Lighting mitigation typically involves directing lighting fixtures away from adjacent properties but may also include the installation of planted *buffers*, screens, walls, etc.

**Local Government (Soil Erosion and Sedimentation Control).** Any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant thereto.

**Local Road.** Local roads are designed to provide final access to properties, rather than through movements. There is no control of access (i.e. no physical restrictions on access). Traffic signals are allowed, at a recommended minimum spacing of one-quarter ( $\frac{1}{4}$ ) mile. *Driveways* are allowed with full movement, but are still recommended to be consolidated or shared if possible. Roadways in this category will have neither a center left turn lane nor a median. Speed limits are regulated at 35 miles per hour or less.

**Lot.** A parcel of land occupied or capable of being occupied by a *structure* or group of *structures* devoted to a common *use*, together with the customary *accessory structures/uses* and *open spaces* belonging to the same.

**Lot, Double-Fronted.** A *lot* abutting two (2) *traveled ways*.

**Lot, Existing.** (See *Lot of Record*)

**Lot, Flag.** An irregularly shaped *lot* where the buildable portion of the *lot* is connected to a *road* by a narrow extension of the *lot*.

**Lot, Zoning.** A parcel of land that is designated by its owner/developer at the time of applying for a building permit as one (1) *lot*, all of which is to be used, developed or built upon as a unit under single ownership. Such *lot* may consist of a: single *lot of record*; portion of a *lot of record*; combination of complete *lots of record*; combination of complete *lots* and portions of *lots of record*; or combination of portions of *lots of record*.

**Lot Line, Front.** The line of a *lot* separating a *lot* from the edge of the *traveled way*.

**Lot Line, Rear.** The line of a *lot* which is opposite and farthest from the *front lot line*.

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

**Lot Size.** The total horizontal area within the lines of a *lot*, exclusive of *road* or highway *rights-of-way*, measured in acres.

**Lowest Adjacent Grade.** The elevation of the ground, sidewalk or patio slab immediately next to the *structure*, or deck support, after completion of the *structure*.

**Lowest Floor.** The lowest floor (subfloor, top of slab or grade) of the lowest enclosed area (including *basement*). An unfinished or flood resistant enclosure, usable solely for parking of *vehicles*, building access or limited storage in an area other than a *basement* area is not considered a *building's* lowest floor provided that such an enclosure is not built so as to render the *structure* in violation of the applicable non-elevation design requirements of this Chapter.

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**Machining and Assembly Operations.** An establishment engaged in the assembly, fabrication and/or modification of products utilizing specialized equipment to produce non-perishable goods generally created from alloys, plastics or other compounds. Machining and assembly operations differ from *manufacturing and production operations* as they do not create objects from raw materials; rather, they modify previously assembled parts, fabricate objects from finished materials (e.g. metal and plastic blanks) and/or assemble objects from pre-manufactured components.

**Mailed Notice of Intent.** A mailed notice which is required for *communication facilities category three (3)*. Mailed notices of intent for *communication facilities category three (3)* shall include: (1) a vicinity map showing proposed communication facility location; (2) a sketch of the communication facility with dimensions which indicate any proposed tower type and height; and (3) a statement from the *Communication Facilities Administrator* indicating the processes and procedures by which the communication facility may be permitted.

**Manufactured Home.** (See *Dwelling, Manufactured Home*).

**Manufactured Home Park.** A *tract* of land designed to accommodate three (3) or more *manufactured/mobile home* spaces, three (3) or more *manufactured/mobile homes* or any combination of such for rent or lease.

**Manufactured Home Park Administrator.** (See *Administrator, Manufactured Home Park*).

**Manufactured Home Park Completion of Improvements Permit.** A permit issued by the *Manufactured Home Park Administrator* to an *applicant* upon completion of improvements indicated in the *manufactured home park construction permit*, which certifies the *manufactured home park* conforms to the requirements of this Chapter. A completion of improvements permit is required in order to obtain *manufactured/mobile home* set-up permits or other building permits from the Henderson County Code Enforcement Services Department.

**Manufactured Home Park Construction Permit.** A permit issued by the *Manufactured Home Park Administrator* to an *applicant* upon approval of a *manufactured home park* application and *site plan* which certifies the *applicant* may begin improvements to the *manufactured home park* or *phase* thereof.

**Manufactured Home Park/Manufactured Home Subdivision, Existing.** A *manufactured home park* or *manufactured home 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 *roads* and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community (July 30, 2005).

**Manufactured Home Park Operator.** The *person* responsible for the operation of a *manufactured home park*.

**Manufactured Home Park Space.** An area of land within a *manufactured home park* designed for the exclusive *use* of one (1) *manufactured/mobile home* and associated *accessory structures*. A space shall be defined on the ground by the presence of two (2) or more of the following: (1) a *water supply system* service connection; (2) a *wastewater* disposal system service connection; and/or (3) electrical service equipment.

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**Manufactured Home Park Space, Preexisting.** A manufactured home space within a *manufactured home park* which contains an occupied *manufactured/mobile home* or is defined on the ground by the presence of two (2) of the following: (1) a *water supply system* service connection; (2) a *sewage disposal system* connection; or (3) electric service equipment.

**Manufactured/Mobile Home Graveyard.** A parcel of land having an *accessory use* consisting of the storage or keeping of three (3) or more wrecked, dismantled, scrapped, ruined or dilapidated *manufactured/mobile homes, recreational vehicles* or *park model homes*, which are not occupied by humans.

**Manufacturing and Production Operations.** An establishment engaged in the mechanical, physical or chemical transformation of raw materials, substances or components into new products. Manufacturing and production operations are often described as plants, factories or mills and characteristically use power-driven machines and materials-handling equipment. Establishments that transform materials or substances into new products by hand may also be included in this sector. Manufacturing establishments may process materials or may contract with other establishments to process their materials for them. Both types of establishments are included in manufacturing. Almost all manufacturing and production operations have some captive research and development or administrative operations, such as accounting, payroll or management.

**Map Amendment.** (See *Amendment, Map*).

**Market Value.** The *structure* value, excluding the land value and that of any *accessory structures or other improvements to the lot* (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of *structure* (actual cash value) or adjusted assessed values.

**Materials Recovery Facilities (Recycling).** An establishment primarily engaged in (1) operating facilities for separating and sorting recyclable materials from non-hazardous waste streams (i.e., garbage (all putrescible wastes, including animal offal and carcasses, and recognizable industrial byproducts, but excluding sewage and human waste)) and/or (2) operating facilities where co-mingled recyclable materials, such as paper, plastics, used beverage cans and metals are sorted into distinct categories.

**Mean Sea Level.** The National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the *floodplain*, to which *Base Flood Elevations (BFEs)* shown on a *FIRM* are referenced. Refer to each *FIRM* panel to determine datum used.

**Mental Health Facilities.** A facility that provides services to individuals who are mentally ill, developmentally disabled, or substance abusers for one or more minors or for two (2) or more adults. These services shall be residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities (based on *NCGS §122C-3.(14)b.*)).

**MHP.** *Manufactured Home Park.* (See *Manufactured Home Park*).

**Mining and Extraction Operations.** An establishment primarily engaged in mining, mine site development and beneficiating (i.e. preparing) metallic and nonmetallic minerals, including coal.

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This includes ore extraction, quarrying and beneficiating (e.g. crushing, screening, washing, sizing, concentrating and floating customarily done at the mine site).

**Model Home/Sales Office, Temporary.** A *structure* used on a temporary basis for the purposes of generating sales within a *residential development*.

**Motor Sports Facility.** A facility, track or course upon which motor sports racing or racing practice is conducted.

**Motor Sports Facility, Major.** A motor sports facility having a seating or standing capacity of 500 or more patrons/spectators. Standing capacity (for the purposes of this definition) shall be computed based on three (3) persons for each 200 square feet of space intended for spectator use.

**Motor Sports Facility, Minor.** A motor sports facility having a seating or standing capacity of less than 500 patrons/spectators and not considered to be a recreational motor sports facility. Standing capacity shall be computed based on three (3) persons for each 200 square feet of space intended for spectator use.

**Motor Sports Facility, Recreational.** A motor sports facility designed and operated primarily for racing practice purposes. Recreational motor sports facilities do not provide: seating, cover, concessions or restrooms for spectators/patrons and shall have a capacity of less than 100 spectators and/or riders.

**Motor Vehicle.** A *vehicle* which is or is designed to be self-propelled and/or is designed or used for transporting *persons* or property. This definition includes watercraft but excludes aircraft.

**Multi-Tenant Development.** A development in which there exists a number of individual and/or separate activities and in which there are shared facilities (such as parking areas or pedestrian mall areas) (example: *Shopping Malls*, etc.).

**Multiunit Assisted Housing with Services.** An *assisted living residence* in which hands-on personal care services and nursing services (which are arranged by housing management) are provided by a licensed home care or hospice agency, through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one (1) licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24 hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multiunit assisted housing with services programs are required to register with the Division of Facility Services and to provide a disclosure statement. The disclosure statement is required to be a part of the annual rental contract that includes a description of the following requirements: emergency response system; charges for services offered; limitations of tenancy; limitations of services; resident responsibilities; financial/legal relationship between housing management and home care or hospice agencies; listing of all home care or hospice agencies and other community services in the area; an *appeals* process; and procedures for required initial and annual resident screening and referrals for services. *Continuing care retirement communities* are exempt from the regulatory requirements for multiunit assisted housing with services programs (NCGS §131D-2(7a)).

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**Natural Drainage and Filtering System.** A drainage and filtering system which uses, in lieu of a curb and gutter system, vegetated ditches, grassed swales and/or other natural areas to carry and absorb *stormwater runoff* from *roads*, parking lots, *buildings* and other *impervious surfaces* where such runoff is not bypassed by gutters, drains, pipes, paved swales or other similar conduits. The purpose of a natural drainage and filtering system is to remove pollutants from *stormwater runoff* and to allow some ground absorption of the water prior to discharge into streams, rivers, lakes or other surface waters.

**Natural Erosion.** The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

**NCAC.** North Carolina Administrative Code.

**NCDENR.** North Carolina Department of Environmental and Natural Resources.

**NCDOT.** North Carolina Department of Transportation.

**NCEMC.** North Carolina Environmental Management Commission.

**NCGS.** North Carolina General Statutes.

**Neighborhood.** An area impacted by a *principal use*.

**New Construction.** *Structures* for which the “*start of construction*” commenced on or after the effective date of the **initial floodplain management regulations (July 5, 2005)** and includes any subsequent improvements to such *structures*.

**NFIP.** National Flood Insurance Program.

**Non-Encroachment Area.** 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 (1) foot as designated in the *Flood Insurance Study* report.

**Nonconforming.** That which was lawfully created prior to the effective date of this Chapter or any portion thereof incorporated into this Chapter, or any amendment thereto, but which does not conform to one or more of the requirements of the Chapter. That which may be nonconforming includes the following:

- (1) Nonconforming *lot*;
- (2) Nonconforming *lot of record*;
- (3) Nonconforming *manufactured home park* (also referred to as pre-existing *manufactured home park*);
- (4) Nonconforming *outside/outdoor use*;
- (5) Nonconforming *structure*;
- (6) Nonconforming *structure* containing nonconforming *use*; and
- (7) Nonconforming *use*.

**Nonconforming Structure or Development (Flood Damage Prevention).** Any legally existing *structure* or development which fails to comply with the current flood damage prevention provisions of this Chapter.

**NPDES.** National Pollutant Discharge Elimination System.



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**Nursing Home.** A facility, however named, which is advertised, announced or maintained for the express or implied purpose of providing nursing or convalescent care for seven (7) or more persons unrelated to the licensee. A nursing home is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray, laboratory and obstetrical facilities. A nursing home provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision (*NCGS* §131E-101(6)). Nursing homes offering one or more levels of care, including any combination of skilled nursing, intermediate care and *adult care home* (commonly referred to as “combination homes”) shall be included with and regulated in the same fashion as a nursing home (*NCGS* §131E-101(1a)).

**Obstruction (Flood Damage Prevention).** Includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, *building*, wire, fence, rock, gravel, refuse, fill, *structure*, vegetation or other material in, along, across or projecting into any *watercourse* which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, increase its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

**Occupied Building.** (See *Building, Occupied*).

**Opaque.** That which does not allow light to pass through.

**Open Air Market.** A market which is open to the outdoors throughout the year. Such a market may be conducted with or without a *structure*, however where a *structure* is erected such *structure* shall be built so as to be “open,” that is, no walls may be constructed which would be more than 25 percent closed.

**Open Space.** An area that is intended to provide light and air, and is designed for either environmental, scenic or recreational purposes. The term “open space” shall include *greenways* dedicated for environmental, scenic or recreational purposes. The term “open space” shall not include *roads* or any areas dedicated or reserved for a *road*. Those areas which shall not be considered open space include: land within *setbacks/separation areas, internal/external roads/rights-of-way, driveways, parking spaces, common area recreation and service facilities, sale/model homes*, solid waste disposal areas, and areas needed for aboveground utility facilities including water supply or *sewage disposal systems*.

**Outside/Outdoor Use.** A land use activity where the only *buildings* associated with such activities are incidental and accessory to the *principal use*. Land uses such as storage yards, used car lots, auto wrecking, *salvage yards*, golf driving ranges, miniature golf courses, and *agriculture* are examples of outside/outdoor uses.

**Outdoor Recreational Facilities.** A recreational facility that is outdoors and which may include: public or private operations, playing fields (soccer, baseball, etc.), courts (basketball, tennis, etc.), swimming pools, batting cages, shuffleboard areas and/or other such *uses* that fit the intent of this Chapter as determined by the *Zoning Administrator*. An outdoor recreational facility shall, for purposes of this Chapter, not include go-cart tracks (a *recreational motor sports facility*), golf courses, miniature golf courses, driving tees or driving ranges.

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**Outdoor Sale Display Area.** An area reserved for the display of merchandise outdoors and associated with a *principal use* and/or *structure*.

**Outdoor Storage.** The keeping and/or storing of goods, products, supplies or equipment associated with a nonresidential *use* which is not in an *enclosed building*, nor in a *portable storage container*.

**Overlay District.** A zone established through this Chapter which regulates the *use* of land beyond and in addition to those regulations of the underlying *use district*.

**PA.** *Protected Area* (See *Protected Area*).

**Packaging and Labeling Services.** An establishment primarily engaged in packaging client owned materials. The services may include labeling and/or imprinting the package.

**Parent.** An *affiliate* that directly, or indirectly through one or more intermediaries, controls another *person*.

**Park.** Those areas developed for both passive and active recreational activities. The development may include, but shall not be limited to, walkways, benches, open fields, multiuse courts, swimming pools, wading pools, amphitheaters, etc. The term “*park*” shall not include zoos, *recreational vehicle parks*, *manufactured home parks*, *amusement parks*, equestrian racing facilities or dog racing facilities.

**Park Model Home.** A *recreational vehicle* which is: (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projection; (3) self-propelled or permanently towable by a light duty truck; and (4) designed for temporary living quarters for recreation, camping, travel and seasonal *use* (but in no case for *use* as a permanent dwelling).

**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), unless other provisions have been made.

**Perimeter Setback.** (See *Setback*, *Perimeter*).

**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 Activity.** Any *person* who may be held responsible for *violation* unless expressly provided otherwise by this Chapter, the North Carolina Sedimentation Control Act of 1973, or any order adopted pursuant to this Chapter or the North Carolina Sedimentation Control Act of 1973.

**Person Responsible for the Violation.** The (1) developer or other *person* who has or holds himself out as having financial or operation control over the *land-disturbing activity*; or (2) landowner or *person* in possession or control of the land that has directly or indirectly allowed the *land-disturbing activity*, or benefited from it or failed to comply with a duty imposed by any provision of this Chapter, the North Carolina Sedimentation Control Act of 1973, or any order adopted pursuant to this Chapter or the North Carolina Sedimentation Control Act of 1973.

**Phase.** A portion of a development delineated on a development plan/*site plan*.

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**Phase of Grading.** One (1) of two (2) types of grading: rough or fine.

**PIN.** (Property Identification Number).

**Place of Assembly.** A *structure* or area designed and designated to accommodate *persons* for the purposes of assembly.

**Planned Seasonal Agricultural Worker Development.** A residential *use* of property for the purpose of seasonally housing workers hired to provide assistance in agricultural operations.

**Planning Board.** The Planning Board of Henderson County, North Carolina.

**Planning Director.** The Planning Director for Henderson County, or his/her designee, appointed and authorized to administer this Chapter. Any act authorized by this Chapter to be carried out by the Planning Director is, by implication, authorized to be carried out by a designee of the Planning Director.

**Plat.** A map showing planned or actual features of an area. A plat may depict a *subdivision* of land, designation of *right-of-way*, or other feature to be recorded into public record.

**Police Station.** A government establishment primarily engaged in criminal and civil law enforcement, police, traffic safety and other activities related to the enforcement of the law and preservation of order. Combined police and fire departments are included in this industry.

**Portable Storage Container.** A movable storage container, such as but not limited to “PODS,” which is placed temporarily.

**Post-FIRM.** Construction or other development for which the “start of construction” occurred on or after January 1, 1975 or on or after the effective date (March 1, 1982) of the initial *FIRM* for the area, whichever is later.

**Pre-FIRM.** Construction or other development for which the “start of construction” occurred before January 1, 1975 or before the effective date (March 1, 1982) of the initial *FIRM* for the area, whichever is later.

**Principally Above Ground.** At least 51 percent of the actual cash value of the *structure* is above ground.

**Produce Stand.** An establishment primarily engaged in retailing fresh fruits and vegetables where other ancillary items may be sold provided that the ancillary items constitute no more than: (1) 25 percent of gross sales, and (2) 25 percent of total display areas.

**Product Processing and Storage Facilities.** An establishment engaged in the intermediate steps of processing (e.g. packaging, removal of packaging, refrigeration, freezing, modification, etc.) and storage of goods subsequent to production and prior to shipment, sale or use. Product processing and storage facilities do not include operations dealing with hazardous substances or waste.

**Protected Area.** The area adjoining and upstream of the *critical area* of WS-IV *watersheds*. The boundaries of the protected area are defined as: (1) within five (5) miles of and draining to the normal pool elevation of a reservoir or to the ridgeline of the *watershed*; or (2) within ten (10) miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the *watershed*.

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**Protected Mountain Ridge.** A ridge with an elevation of 500 feet or more above the elevation of an adjacent *valley floor*.

**Public Nuisance.** (See *Public Safety*).

**Public Safety.** Anything which is injurious to the safety or health of an entire community or *neighborhood*, or any considerable number of *persons*; this includes that which unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal or basin.

**Rail Transportation Facilities and Support Activities.** An establishment primarily engaged in operating rail systems over regular routes on a regular schedule.

**Recombination (Subdivision).** The combining of previously subdivided and recorded *lots* or portions thereof where the total number of *lots* is not increased and the resulting *lots* meet the requirements of this Chapter.

**Recreational Vehicle (RV).** A vehicular-type unit primarily designed as a temporary and mobile living quarters for recreational, camping or travel use, which either has its own mode of power or is mounted on and drawn by another *vehicle*. Such units do not satisfy the dimensional requirements of a *manufactured home*.

**Recreational Vehicle (RV) (Flood Damage Prevention).** A vehicular-type unit primarily designed as a temporary and mobile living quarters for recreational, camping or travel use, which either has its own mode of power or is mounted on and drawn by another *vehicle*. Such units do not satisfy the dimensional requirements of a *manufactured home*. 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 (RV) Park.** An establishment primarily engaged in operating sites to accommodate *park model homes* or *recreational vehicles*. These establishments may provide access to facilities, such as laundry rooms, recreational halls, playgrounds, stores and snack bars.

**Recycling Centers, Drop-off.** An establishment primarily engaged in receiving recyclable materials via drop-off.

**Reference Level.** The top of the *lowest floor* for structures within *Special Flood Hazard Areas* designed as Zone A1, A30, AE, A, A99 or AO. The portion of a *structure* or other development that must be compared to the *regulatory flood protection elevation* to determine regulatory compliance of such *structure*.

**Regulatory Flood Protection Elevation.** The *Base Flood Elevation plus the Freeboard*. The elevation to which all *structures* and other development located within the *Special Flood Hazard Areas* must be elevated or *floodproofed*. Within areas where *Base Flood Elevations (BFE's)* have been determined, this elevation shall be the *BFE* plus two (2) feet of *freeboard*, not to exceed a total elevated height of six (6) feet..

**Related Parties.** Any *person*, with respect to any *disqualified party*, who:

- (1) Is the spouse, sibling, parent or child of the *disqualified party*, or of any other *related party*.
- (2) Is the employee of the *disqualified party*.

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- (3) Is the managing party, manager, director or owner of at least ten (10) percent of the ownership interest of the *disqualified party* (whether such *disqualified party* is a partnership, unincorporated association, corporation, limited liability company, or other entity).
- (4) Exercises the controlling interest in the *disqualified party*.
- (5) Is the administrator, executor, trustee or other fiduciary of the *disqualified party*.
- (6) Is controlled by the same entity or entities as the *disqualified party*.

**Religious Institution.** A *structure* and parcel on which it is located, in and on which *persons* regularly assemble for religious worship. This term includes all facilities which are on all or part of the premises and their associated *uses* which are: (1) traditionally operated or conducted by a congregation in furtherance of its mission, and/or (2) actually being operated or conducted by the congregation in furtherance of its mission (as permitted in the district in which it is located).

**Remedy a Violation.** To bring the *structure* or other development into compliance with State or Henderson County *floodplain 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.

**Repetitive Loss.** Flood-related damages sustained by a *structure* on two (2) separate occasions during any ten (10) year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the *market value* of the *structure* before the damage occurred.

**Research and Development Operations (Hazardous or Biological Materials).** An establishment primarily involved in research and development operations dealing directly with hazardous materials.

**Research and Development Operations (Nonhazardous).** An establishment primarily involved in research and development operations excluding hazardous materials.

**Residential Density.** The number of *dwelling units* permitted per acre of land.

**Residential Zoning District.** Zoning districts which include Residential District One (R1), Residential District Two (R2), Residential District Two Manufactured Housing (R2MH), Residential District Three (R3), Residential District Four (R4), Estate Residential Zoning District (R-40), Waterfront Residential District (WR), Surface Water District (SW), and Mixed Use Districts (MU).

**Residuals.** A solid or semisolid waste generated from a *wastewater treatment plant*, water treatment plant or air-pollution control facility permitted under the authority of the North Carolina Environmental Management Commission.

**Retrofitting.** Measures, such as *floodproofing*, elevation, construction of small levees and other modifications, taken on an existing *building* or its *yard* to protect it from flood damage or to manage *stormwater runoff*.

**Right-of-Way.** An *easement*, either public or private, on which an irrevocable right-of-passage has been recorded for *use* as a *road*, crosswalk, railroad, electric transmission line, oil/gas pipeline, water main, sanitary/storm sewer main, shade *trees* or other specified *use*.

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**Riparian.** Of, on, or relating to the banks of a natural course/body of water; including the area of land adjacent to the course/body of water and the vegetation it contains.

**Riverine.** Relating to, formed by or resembling a river (including tributaries), stream, brook, etc.

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

**Road, External.** A *road* located outside of a development that abuts the development.

**Road, Internal.** A *road* located within a development.

**Road, Private Subdivision Collector.** A road or a section of a road which:

- (1) Provides direct or indirect access from the entrance of the subdivision inward to 50 or more existing or proposed dwelling units and is designed to be the main travel path for such residential access. The terminus or "last block" of a residential collector road ending in a dead end may be designed to the standards of a *private subdivision local road* as long as such "last block" serves fewer than 50 *dwelling units*;
- (2) Is designed/has the potential to serve in a future phase, property in the same ownership of the applicant that, if developed, will meet the 50 *dwelling unit* standard;
- (3) Connects proposed developments with existing developments where the aggregate sum of *dwelling units* in both developments is 50 or more;
- (4) Serves as a through-road connecting *lots* within a residential *subdivision* to more than one (1) public thoroughfare; and/or
- (5) Serves a nonresidential facility located within a residential development, such as a frequently used recreation area, clubhouse, golf course, public utility site, etc.

**Road, Private Subdivision Limited Local.** A *road* or group of *roads* which serves less than 50 existing or proposed *dwelling units* and does not connect *public roads*.

**Road, Private Subdivision Local.** A *road* which serves no more than four (4) residential *lots* each containing or to contain no more than one (1) existing or proposed principal *dwelling unit* and its associated driveway which does not connect multiple *public roads*. *Limited local road* standards shall also apply to roadways proposed solely for maintenance and/or emergency access purposes regardless of the number of *lots* it adjoins. Emergency access roads shall not be used to access *lots* within the subdivision and appropriate signage shall be required. Roads proposed for such purposes should be clearly identified on all plans and *final plats*.

**Road, Public.** A road which is state-maintained.

**Road, Single-Loaded.** A *road* serving property (*front yard* or *side yard*) on one (1) side only, with no need for access (to a *rear yard* or to *open space*) or parking on this other side.

**Road Classification.** *Roads* within the County shall be classified according to the following:

- (1) *Local Road.* *Local roads* are designed to provide final access to properties, rather than through movements (see *Local Road* for full definition).
- (2) *Collector Road.* *Collector roads* feature characteristics of moderate to low mobility and high accessibility, and serve as a link between through-roads and *local roads* (see *Collector Road* for full definition).
- (3) *Thoroughfare.* *Thoroughfares* feature characteristics of moderate to low mobility and high accessibility (see *Thoroughfare* for full definition).

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- (4) *Boulevard*. A roadway that consists of moderate mobility and low to moderate accessibility (see *Boulevard* for full definition).
- (5) *Expressway*. Roadways in this category features characteristics of high mobility and moderate to low accessibility (see *Expressway* for full definition).
- (6) *Freeway*. *Freeways* feature characteristics of high mobility and low accessibility, or full control of access (see *Freeway* for full definition).

**Road Frontage.** Having *frontage* along a *road*, as defined herein.

**Rooming and Boardinghouse.** An establishment primarily engaged in operating rooming and boardinghouses and similar facilities including, but not limited to: cottages, off-campus dormitories, residential clubs and workers' camps. These establishments provide temporary or longer-term accommodations which, for the period of occupancy, may serve as a principal residence. These establishments also may provide complementary services, such as housekeeping, meals and laundry services.

**ROW.** *Right-of-way* (See *Right-of-Way*).

**Rural Family Occupation.** An *accessory use* of a *structure* for a limited nonresidential purpose that is clearly incidental and subordinate to the *use* of the property for residential purposes and which is more expansive (in size, number of employees, outside storage area and/or *structures*) than a *home occupation*.

**S-9.5B Asphalt.** Type of asphalt concrete surface which is currently used by *NCDOT*.

**Salvage Yard.** A nonresidential property used for the storage, collection and/or recycling of any type of equipment including but not limited to *vehicles*, appliances and related machinery.

**Sawmill.** An establishment primarily engaged in sawing dimension lumber, boards, beams, timbers, poles, ties, shingles, shakes, siding and wood chips from logs or bolts. Sawmills may plane the rough lumber that they make with a planning machine to achieve smoothness and uniformity of size.

**School (Home).** A nonpublic school in which one or more children of not more than two (2) families or households receive academic instruction from parents or legal guardians or a member of either household. Such schools must be qualified in accordance with *NCGS* §115C, Article 39, Part 3 (or its successor).

**School (Public/Private/Charter).** An elementary or secondary school, whether private or public, established under *NCGS* Chapter 115C (or its successor). Schools include:

- (1) Public School. A school operated under the jurisdiction of the Henderson County Board of Education and supported by tax revenue, or any charter school.
- (2) Private School. A school having a curriculum similar to those of a public school.
- (3) Charter School. A school authorized and operating under *NCGS* Chapter 115 C, Article 16, Part 6A (or its successor).

**School (Sports Instructional).** An establishment primarily engaged in offering instruction in athletic activities to groups of individuals. Overnight and day sports instruction camps are included in this industry.

**School (Technical, Trade and Business).** An establishment primarily engaged in offering vocational, technical and business training in a variety of technical and/or business subjects and

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trades. Business schools are primarily engaged in offering courses in: office procedures, secretarial skills, stenographic skills, and basic office skills (i.e. word processing, office machine operation, reception, communications, and other skills designed for individuals pursuing a clerical or secretarial career). Technical and trade schools offer a variety of courses often leading to job-specific certification.

**Screening.** A *structure* or planting that conceals view from public ways or adjacent property.

**Section (Phase).** A grouping of three (3) or more *lots*, *rights-of-way*, common space and associated improvements therein, in a Preliminary Plan, numbered consecutively and relating to stages of a Master Plan.

**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.

**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*.

**Senior Center.** A community facility where older adults come together for services and activities that reflect their skills and interests and respond to their diverse needs. Centers are a resource for the entire community, providing services and information on aging, and assisting family and friends who care for older *persons*. For older *persons* at risk of losing their self-sufficiency, *senior centers* are the entry point to an array of services that will help them maintain their independence. Any variety of services to individuals or groups may be accessed depending on local community circumstances. *Persons* of differing backgrounds share and learn from each other. *Persons* of all ages with all types of skills and interests are needed to perform vital roles and enhance the services and programs at the centers. (North Carolina Division of Aging and Adult Services).

**Setback.** The required distance between the location of a *structure* and/or operation and some other point of location, most typically a *lot* line, *right-of-way* or edge of *traveled way*.

**Setback, Front Yard.** A *setback* measured from the property line determined to be the *front yard*. Where the *front yard* falls along a *road*, the *setback* is to be measured from the edge of the public *right-of-way* or, where no *right-of-way* exists, edge of *traveled way*.

**Setback, Perimeter.** A *setback* measured from all *lot* lines of a parcel. Where the property boundary falls along a *road*, the *setback* is to be measured from the edge of the public *right-of-way*. The perimeter setback shall apply to the *use* and any *structures* associated with the *use* (this shall not include parking, however).

**Sewage Disposal System.** Any facilities for *wastewater* (sewage) collection, treatment and disposal. A sewage system may be of the following types:

- (1) Septic Tank. A subsurface *wastewater* system consisting of a settling tank and subsurface disposal field.
- (2) Approved Public or Community Sewage System. A single system of sewage collection, treatment and disposal owned and operated by a sanitary district, metropolitan sewage district, water and sewer authority, county, municipality or public utility constructed and operated in compliance with applicable requirements of the North Carolina Division of Environmental Management.



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- (3) Municipal Sewage Disposal System. An approved public or community sewage system that is owned and operated by a county or municipality.

**SFHA.** *Special Flood Hazard Area* (See *Special Flood Hazard Area*).

**Shear Wall.** Walls used for structural support but not structurally joined or enclosed at the end (except by breakaway walls). Shear walls are parallel or nearly parallel to the flow of water.

**Shooting Range.** A facility designed or used for archery and/or the discharging of firearms for the purposes of target practice or temporary competitions. A shooting range may be indoors (completely enclosed within a *building/structure*) or outdoors.

**Shopping Mall.** A *building* that contains commercial establishments which have interconnecting and enclosed walkways making it easy for people to walk from establishment to establishment.

**Shrub.** A woody *deciduous* or *evergreen* plant which consists of a number of small branches from or near the ground.

**Sight Visibility Triangle.** A triangular area formed when connecting new *roads* to existing state maintained *roads*, that is measured a distance of 70 feet along the existing *road right-of-way* and ten (10) feet along the new *road right-of-way* as defined by *State Road Standards* (see *State Road Standards*). The area within the sight visibility triangle shall remain unobstructed between three (3) and ten (10) feet above grade.

**Sign.** A sign may consist of any of a combination of the following: words, designs, emblems, figures, phrases, trade names, trademarks, devices, lettering, numerals, sentences, parts of letters or parts of numerals. A sign may be made of any material (other than live vegetation) including any surface, fabric or other material background and the *structure* designed to carry such materials. A sign shall not include: (1) architectural features of a *building*, even when identifiable with certain establishments; and (2) works of art provided they do not include logos, business names or features that would be advertising the business where the work of art is located. Any art located on a traditional sign shall be considered as part of the sign.

**Sign, Agricultural.** A *sign* advertising agricultural products for sale.

**Sign, Animated.** A *sign* using flashing or intermittent lights, sound, color changes or other mechanical or electrical means to give motion, the impression of motion/movement or the optical illusion of motion to the *sign*; or any *sign* with visible moving, revolving or relocating parts; provided, however, this shall not include time/date/temperature or *electronic message signs*.

**Sign, Area of a.** Multiply the vertical distance measured from the highest point to the lowest point on the *sign* face and the maximum horizontal distance across the *sign* face.

**Sign, Attached.** A *sign* attached to, applied on or supported by any part of a *building*; including, but not limited to any of the following: *wall signs*, *window signs*, *signs* on canopies, *signs* on awnings or *signs* on *marquees*.

**Sign, Awning.** A temporary hood or cover which projects from the wall of a *building*, and which may include a type which can be retracted, folded or collapsed against the face of a supporting *building*.

**Sign, Changeable Copy.** A permanently unframed *sign*, illuminated or not, which is principally devoted to and designed for changeable copy text and graphics, but which specifically excludes time/date/temperature *signs* and *electronic message signs*. Changeable *copy signs* may involve

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either manual or automatic changeable copy. An automatic changeable *copy sign* which changes more than two (2) times in a 24 hour period shall be defined to be an *electronic message sign*. *Portable signs* are not considered changeable *copy signs*.

**Sign, Commemorative.** A *sign* which denotes, honors, celebrates, acknowledges or is in remembrance of an historical *person*, place or event.

**Sign, Community Identification.** A *sign* erected to identify a specific community, residential *subdivision*, multifamily housing development or *manufactured home park* for which boundaries and characteristics have been established and recognized by the Planning Department.

**Sign, Construction.** A *sign* whose message is limited to identification of architects, engineers, contractors and other persons involved with the construction project or which may include the name, purpose and expected completion date of the *building*.

**Sign, Copy.** Words, letters, numbers, figures, designs or other symbolic representations incorporated into a *sign*.

**Sign, Development Identification.** A *sign* bearing only the name of a *multi-tenant development*.

**Sign, Directional.** A *sign* whose sole purpose is to direct pedestrian or vehicular traffic on the premises on which it is displayed. Examples include: “in,” “out,” “entrance,” “exit” and “*driveway*.”

**Sign, Double-Faced.** A *sign* constructed to display its message on the outer surface of two (2) identical and opposite parallel planes.

**Sign, Electronic Message.** A *sign* which displays changeable information and is composed of a series of lights that may be changed automatically through electronic means. All messages shall be visible for a minimum of three (3) seconds. These will not be deemed to constitute changeable copy or *animated signs*.

**Sign, Externally Illuminated.** A *sign* which reflects light from a source intentionally directed upon it from a distance.

**Sign, Flashing.** A *sign* illuminated by direct or indirect artificial light that flashes on and off in regular or irregular sequences, including, but not limited to, strobe light.

**Sign, Governmental.** A *sign* erected by or on the order of an authorized public official which includes, but is not limited to, traffic control, road name/identification, warning, directional, public notice or similar *signs*.

**Sign, Ground.** A freestanding *sign*, flush to the ground, and not elevated upon poles/stanchions or attached to a *building/structure*.

**Sign, Home Occupation.** A *sign* identifying a *home occupation (general, adult daycare or childcare facility)*.

**Sign, Incidental.** A *sign* attached wholly to a *building*, window or door containing information relative to emergencies, store hours, credit cards honored and other similar accessory information.

**Sign, Inflatable.** A *sign* that is blown up (increased in volume) with air or gas.

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**Sign, Internally Illuminated.** A *sign* whose light source is located in the interior of the *sign* so that the rays go through the face of the *sign*, or where the light source is attached to the face of the *sign* and is perceived as a design element of the *sign*.

**Sign Height.** The vertical distance from the uppermost point used in measuring the area of a *sign* to the average grade immediately below and adjoining the *sign*. For *outdoor advertising signs*, *sign height* shall be measured from the existing *road* grade to the uppermost point on the *sign structure*.

**Sign, Marquee.** A *sign* of a theater, auditorium, fairground or museum which advertises current and scheduled events. Marquees may include, incorporate or consist of *electronic message signage*.

**Sign, Menu Board.** A freestanding or wall mounted *sign* primarily designed for the display of menu items and prices for the purpose of placing orders for such items in conjunction with a restaurant utilizing drive-through service. Said *signs* are considered *incidental signs*.

**Sign, Multi-Faceted.** A *sign* that contains more than one (1) plane in the *sign* face.

**Sign, Multi-Tenant Development.** A *sign* bearing the name of individual *tenants* located within a *multi-tenant development* and which may include the name of the *multi-tenant development*.

**Sign, On-Premise.** A *sign* used for the purpose of displaying, advertising, identifying or directing attention to a business, products, operations or services sold or offered on the *lot of record* where the *sign* is located.

**Sign, Outdoor Advertising.** A *sign* or *structure*, pictorial or otherwise, that draws attention to or communicates information about a business, profession, service, commodity, product, accommodation, event, attraction or other enterprise or activity that exists or is conducted, manufactured, sold, offered, maintained or provided at a location other than on the premises where the *sign* or *structure* is located. Outdoor advertising does not, for the purposes of this Chapter, include *billboards*.

**Sign, Pole.** A freestanding *sign* which is permanently affixed to the ground by a pole or other *structure* and which is not part of the *building*. This shall not be considered to include *signs* on canopies.

**Sign, Political.** A *sign* promoting or publicizing a candidate/candidates for election or *signs* related to issues on a ballot. Such *political signs* may be erected at any time subsequent to filing for candidacy or the placement of an issue on the ballot.

**Sign, Portable.** A *sign* that is not permanently affixed to a *structure*.

**Sign, Property Identification.** A *sign* that contains the property address (*road* name and house number), homeowner's name or name of business or other identifying symbol of a *building*, profession, institution or service conducted on the *lot*.

**Sign, Regulatory.** A *sign* erected for the purposes of traffic control, as regulated by the Manual on Uniform Traffic Control Devices (MUTCD), including warning, safety and railroad *signs*.

**Sign, Roof.** An *attached sign* erected, constructed or maintained on, upon or over the roof of any *structure* and which is wholly or partially dependent upon the roof for support.

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**Sign, Sandwich Board.** A *portable sign* which is *single-* or *double-faced*, which may readily be moved from place to place, and which is intended to be used on a sidewalk or pedestrian way. These *signs* are considered temporary in nature.

**Sign, Single-Tenant Development.** A *sign* bearing the name of the single *tenant* of an individual parcel.

**Sign, Temporary.** 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. Any *sign* announcing a one (1) time event such as “Grand Opening,” “Sale Saturday” and the like and may include the following: *sandwich board signs, wind signs, changeable copy signs, inflatable signs, banners, pennants, streamers and/or posters (excludes portable signs)*.

**Sign, Temporary Event.** A *sign* placed temporarily to direct traffic to special events, festivals, etc.

**Sign, Time/Date/Temperature.** A *sign* containing numerals or letters, which may be alternately displayed and which show the time, date and/or temperature. This *sign* shall not be considered a *flashing* or an *animated sign*.

**Sign, Vehicle Sale.** A *sign* affixed to the window of a *vehicle* displaying terms of sale of said *vehicle* and placed on property where the owner of the *vehicle(s)* resides.

**Sign, Wall.** A *sign* painted/attached flat against, parallel to or projecting from the exterior wall or surface of a *structure*.

**Sign, Wind.** A suspended *sign* made of a flexible material such as canvas, sailcloth, plastic or waterproof paper, including, but not limited to, banners, pennants, spinners or streamers. These *signs* are considered temporary.

**Sign, Window.** A *sign* which is permanently painted on, attached to or designed to be visible through a window (excluding displays of merchandise).

**Sign Setback.** The *setback* of a *sign* is measured from the closest portion of the *sign* or *sign structure* to the closest property line on which the *sign* fronts.

**Sign Stanchion.** A vertical supporting beam, post, pole or rod.

**Sign Structure.** A *structure* which supports, has supported or is capable of supporting a *sign*, including any decorative cover for said *sign structure*.

**Single-Family Residential Development.** A *residential development* where no *building* contains more than one (1) *dwelling unit*.

**Siltation.** *Sediment* resulting from *accelerated erosion* which is settleable or removable by properly designed, constructed, and maintained control measures; 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.

**Site Plan.** The *site plan* shall contain all items required by the County for applicable review. Such plan may include, but not be limited to, the following: (1) the approximate boundaries of the site; (2) significant topographical and other natural features effecting development of the site; (3) proposed vegetation removal and *open space* preservation; (4) the approximate location on the site of existing and proposed *structures*, coverage of *lot* by those *structures* and other

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improvements; (5) the approximate dimensions, including height and scale, of the proposed *structures* (and their relation to surrounding existing and proposed future *uses*); (6) the approximate locations and dimensions of proposed *buffers* and landscaping; (7) the proposed location and dimensions of *signs*; (8) the approximate location of all existing and proposed infrastructure on the site, including stormwater, water, sewer, *roads*, parking and pedestrian walkways; and (9) any proposed phasing.

**Site-Specific Development Plan.** A plan which has been submitted to the County by a landowner describing with reasonable certainty the type and intensity of *use* for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals: a preliminary or master development plan, special use permit, or any other land-use approval designation as may be utilized by the County. Such plan shall include: (1) the approximate boundaries of the site; (2) significant topographical and other natural features effecting development of the site; (3) the approximate location on the site of the proposed *buildings*, *structures* and other improvements; (4) the approximate dimensions, including height, of the proposed *buildings* and other *structures*; and (5) the approximate location of all existing and proposed infrastructure on the site, including water, sewer, *roads* and pedestrian walkways. A *variance* shall not constitute a *site-specific development plan*, and approval of a site-specific development plan with the condition that a *variance* be obtained shall not confer a vested right unless and until the necessary *variance* is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of *use* for a specified parcel/parcels or property may constitute a site-specific development plan. (See *NCGS* §153A-344.1(b)(5)).

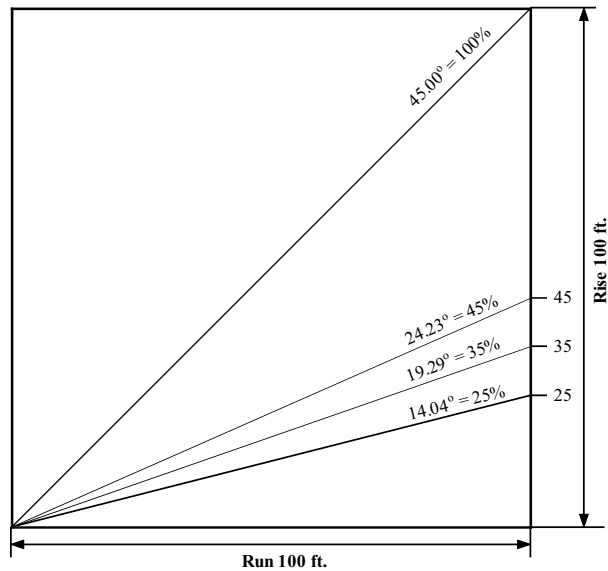
**Sketch Plan (Soil Erosion and Sedimentation Control).** A graphic illustration used to depict proposed *land-disturbing activities*.

**Slope.** The level inclination of land from the horizontal plane determined by dividing the horizontal run of the land into the vertical rise of the same land and converting the result into a percentage value. For purposes of measurement, property must be at least 25 feet vertically and 50 feet horizontally. See Figure 19A, for measuring slope.

**Figure 19A. Measurement of Slope**

Not to Scale

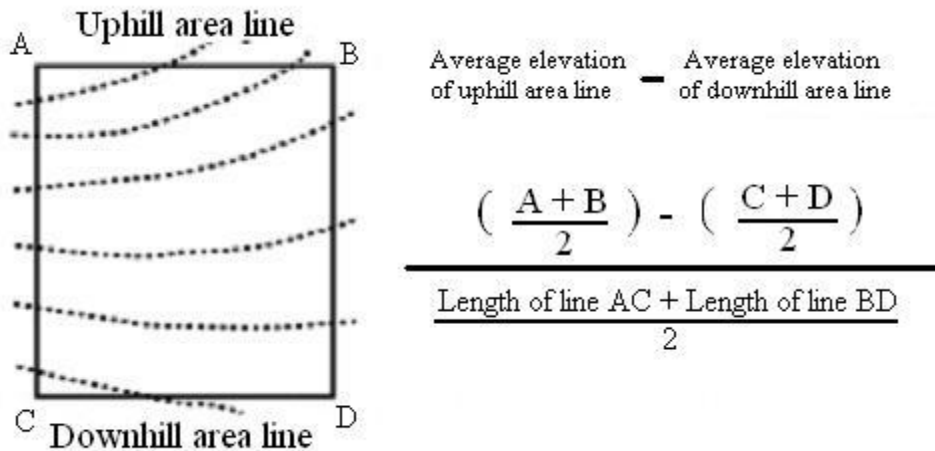
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**Slope, Average.** Calculating the average slope of the disturbed area is based on the elevations at the corners. An imaginary rectangle or square would have to be applied to calculate the area. The average slope is calculated by subtracting the average elevation of the uphill area line and the average elevation of the downhill area line and dividing the sum by the average distance between the two (2) area lines. The average elevation of the uphill or downhill area line is calculated by adding the elevations at the ends of the area line and dividing by two (see Figure 19B, for calculating average slope).

**Figure 19B. Calculating Average Slope**

Not to Scale



**Slope, Steep.** A slope greater than 25 percent, identified as part of: (1) a County Soil Survey prepared by the USDA Natural Resources Conservation Service; and/or (2) a site analysis conducted by a registered professional engineer, professional land surveyor, landscape architect, architect or land planner and calculated using topographic maps from an actual survey or from the US Geological Society.

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**Community Plan.** A plan that covers specific subareas of the County. These plans provide basic information in the natural features, resources and physical constraints that affect development of the planning area. They also specify detailed land *use* designation used to review specific development proposal and to plan services and facilities.

**Small Area Zoning Study.** An application which is both too large and too disconnected from other zoning districts to be considered as a standard rezoning application and which, should be considered as a small area zoning study based on Planning Board determination.

**Soil Erosion and Sedimentation Control Administrator.** (See *Administrator Soil Erosion and Sedimentation Control*).

**Solid Waste.** Hazardous or non-hazardous garbage or other refuse, rubbish, litter, trash, tires, and other discarded solid materials and solid or semisolid waste materials resulting from industrial, commercial and agricultural operations and from community activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial *wastewater* effluent, dissolved materials in irrigation return flows or other common waster pollutants. As used herein, “solid waste” shall refer collectively to any or all of the aforementioned waste materials, unless otherwise specified.

**Solid Waste Disposal Facility.** Any land, personnel and equipment used in the management of *solid waste*. *Solid waste* management facilities include the following: transfer stations, *landfills* or *materials recovery facilities*. Specifically excluded from this definition and any regulation under this Chapter are: incinerators; *drop-off recycling centers*; and those *solid waste* management facilities that are constructed and/or operated by or on behalf of any local, state or federal governmental entity (provided, however, that this exclusion from regulation only applies to those *solid waste* management facilities not operating as a hazardous waste disposal facility or radioactive waste disposal facility (which are prohibited in all zones)).

**Solid Waste Disposal Facility (Flood Damage Prevention).** Facility involved in the disposal of *solid waste*, as defined in NCGS 130A-290(a)(35). Land, personnel and equipment used in the management of *solid waste*. *Solid waste* management facilities include the following: (1) transfer station; (2) *landfill*; or (3) materials recovery facility.

**Solid Waste Disposal Site.** Any place at which *solid wastes* are disposed of by incineration, sanitary *landfill*, or any other method as defined as in (NCGS §130A-290(a)(36)).

**Special Fill Permit.** A permit granted pursuant to the procedures set out in of this Chapter to fill an area of the *floodway fringe* greater than the area of *floodway fringe* permitted by this Chapter in accordance with the requirements of this Chapter.

**Special Flood Hazard Area (SFHA).** The land in the *floodplain* subject to a one (1) percent or greater chance of being flooded in any given year, determined in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas).

**Special Use.** *Uses* that are generally compatible with land *uses* permitted in a general *use district*, however, because of their unique characteristics or potential impacts on the surrounding *neighborhood* and/or the County as a whole, require individual consideration of their location, design, configuration and/or operation at the particular location proposed. A special use must meet both the specific standards for the *use* as well as the general standards for the issuance of special use permits. Special uses are permitted *uses* which require a special use permit.

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**Sporting and Recreational Facilities.** A recreation facility that is devoted to sporting and which may include: public or private operations, courts (basketball, tennis, etc.), swimming pools, batting cages, shuffleboard areas and/or other such *uses* that fit the intent of this Chapter as interpreted by the *Zoning Administrator*.

**Start of Construction.** Includes *substantial improvement*, and means the date the building permit was issued, provided the actual *start of construction*, repair, reconstruction, rehabilitation, *addition* placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a *structure* (including a *manufactured/mobile home*) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a *manufactured/mobile home* on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of *roads* 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 structures*, such as *garages* or sheds not occupied as *dwelling units* or not part of the main *structure*. For *substantial improvement*, the actual *start of construction* means the first alteration of any wall, ceiling, *floor* or other structural part of the **structure**, whether or not that alteration affects the external dimensions of the **structure**.

**State Road Standards.** Those standards contained in the *NCDOT* publication *Subdivision Roads—Minimum Construction Standards*, dated January 1, 2000, as amended.

**Steep Slope.** (See Slope, Steep).

**Stop-Work Order.** The **Floodplain Administrator** may issue a stop-work order where *floodplain* development is occurring, in accordance with specific procedures and reasons outlined therefore.

**Storm Drainage Facilities.** The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

**Stormwater Runoff.** The surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.

**Structure.** That which is built or constructed (North Carolina State Building Code, Chapter 2, Section 202).

**Structure (Flood Damage Prevention).** Anything constructed or erected, the *use* of which requires permanent location on the ground or which is attached to something having permanent location on the ground; however, anything constructed or erected solely to provide ingress and egress to the site, ornamental enhancement of the property (exclusive of *buildings*), site stabilization, on-site utilities/lighting or property fencing shall not be considered a *structure* for the purposes of the **flood damage prevention regulations of this Chapter**.

**Structure, Accessory.** A *structure* which is located on the same parcel of property as the *principal structure*, the *use* of which is incidental to the *use* of the *principal structure*. *Garages*, *carports* and storage sheds are common accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop *building*. This term expressly includes aircraft hangars.

**Structure, Alternative.** 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*



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include, but are not limited to: *buildings*, water tanks, *pole signs*, *billboards* and electric power transmission towers.

**Structure, Appurtenant.** (See *Structure, Accessory*).

**Structure, Principal.** A *structure* in which is conducted, or in which is intended to be conducted, the main or *principal use* of the *lot* on which it is located.

**Structure, Temporary.** A *structure* placed and permitted on a temporary basis.

**Subdivision.** All divisions of a *tract* or parcel of land into two (2) or more *lots*, building sites or other divisions for the purpose of sale or development (whether immediate or future) and shall include all divisions of land involving the dedication of a new *road* or a change in existing *roads*, but the following shall not be included within this definition:

- (1) Combination or *recombination* of portions of previously subdivided and recorded *lots* where the total number of *lots* is not increased, and the resultant *lots* are equal to or exceed the standards of this Chapter;
- (2) Division of land into parcels greater than ten (10) acres where no *road right-of-way* dedication is involved;
- (3) Public acquisition by purchase of strips of land for the widening or opening of *roads*; or
- (4) Division of a *tract* in single ownership whose entire area is no greater than two (2) acres into not more than three (3) *lots*, where no *road right-of-way* dedication is involved and where the resultant *lots* are equal to or exceed the standards of this Chapter and the *subdivision* regulations for the County (NCGS §153A-335).

**Subdivision, Major.** A proposed *subdivision* of land where 11 or more *lots* or parcels will result after the *subdivision* is complete.

**Subdivision, Minor.** A proposed *subdivision* of land where not more than ten (10) *lots* or parcels will result after the *subdivision* is complete. One (1) *phase* of a development cannot be considered a *minor subdivision* unless the entire development does not exceed ten (10) *lots*.

**Subdivision, Nonstandard.** The proposed *subdivision* of land for purposes other than individual residential *lot* development including:

- (1) Facilities such as *utility substation* sites, meter vaults, pump station sites, *sign lots*, etc.;
- (2) Cemetery plots;
- (3) Designated *open space* or *common area* sites; and/or
- (4) Any other *subdivision* of land which does not fall within a category herein designated.

**Subdivision, Special.** An option to the *minor subdivision* provision, where not more than five (5) *lots* or parcels will result after the *subdivision* is complete.

**Subdivision Administrator.** (See *Administrator, Subdivision*).

**Subsidiary.** An *affiliate* that is directly or indirectly, through one or more intermediaries, controlled by another *person*.

**Substantial Damage.** Damage of any origin sustained by a *structure* during any one (1) year period 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. Improvements, modifications and *additions* to existing *buildings* are counted cumulatively for a minimum of five (5) years. See definition of *Substantial Improvement*. Substantial damage also means flood-related damage sustained by a *structure* on two (2) separate occasions during a 10

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year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the *market value* of the *structure* before the damage occurred.

**Substantial Improvement.** Repair, reconstruction, rehabilitation, *addition* or other improvement of a *structure*, **taking place during any one (1) year period**, the cost of which equals or exceeds 50 percent of the fair *market value* of the *structure* before the *start of construction* of the improvement, or when an existing *building* is structurally altered such that the first floor area is increased by more than 20 percent. Improvements, modifications and *additions* to existing *buildings* are counted cumulatively for a minimum of five (5) years. This term includes *structures* which have incurred *substantial damage*, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any correction of existing *violations* of State or Henderson County health, sanitary or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of an *historic structure* provided that the alteration will not preclude the *structure's* continued designation as an *historic structure*.

**Substantive Amendment.** (See *Amendment, Substantive*).

**Swim and Tennis Club.** An establishment primarily engaged in operating fitness and recreational sports facilities featuring exercise and other active physical fitness conditional or recreational sports activities, such as swimming, skating or racquet sports.

**Swimming Pool, Spa, Hot Tub, Residential.** Swimming pools, spas and hot tubs built on the same site as, and for the *use* of those residing in a *dwelling unit*.

**Synagogue.** (See *Religious Institution*).

**Temple.** (See *Religious Institution*).

**Ten-Year Storm.** The *stormwater runoff* resulting from precipitation of an intensity expected to be equaled or exceeded, on the average, once in ten (10) years, and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

**Tenant.** A *person*, corporation, partnership or group, whether or not the legal owner of record, occupying a *building* or portion thereof as a unit.

**Text Amendment.** (See *Amendment, Text*).

**Thoroughfare.** Thoroughfares feature characteristics of moderate to low mobility and high accessibility. Access control points are allowed, but limited. No control of access is allowed in the category. Traffic signals are allowed and recommended at one-half (½) mile intervals. *Driveways* are allowed with full movement, but are still recommended to be consolidated or shared if possible. This category includes all *roads* with a two-way center left-turn lane, but no *roads* with medians. Speed limits are posted between 25 to 55 miles per hour.

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

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physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

**Tract.** An area, site, piece of land or property which is the subject of a development application. A tract may contain one or more smaller parcels or *lots* all under/in the same ownership or control.

**Tract (Soil Erosion and Sedimentation Control).** All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

**Trail.** A public or private path of travel for recreation and/or transportation within a *park*, natural environment or designated corridor (not to be a highway or *road*).

**Transit and Ground Passenger Transportation.** An establishment comprised of a variety of passenger transportation activities such as: chartered bus, school bus, interurban bus transportation and taxis. These activities are defined by *vehicle* type, route and schedule.

**Travel Trailer.** (See *Recreational Vehicle*).

**Travel Trailer Park.** (See *Recreational Vehicle Park*).

**Traveled Way.** A means of access to a property. Typically this shall mean a public or private *road*. Where no public or private *road* adjoins a property, the vehicular access to a personal drive shall be considered as the *traveled way* for purposes of determining *front yard* requirements.

**Traveled Way, Edge.** The edge of the *road* pavement on a paved *road* or the edge of the riding surface on an unpaved *road* or drive.

**Travelway.** The portion of a *road*, highway, *driveway*, access *road* corridor, *right-of-way*, etc., that is designed and maintained for the purpose of accommodating vehicular passage. Specifically excluded are *road* shoulders, ditches, curb and gutter systems, other drainage facilities and unimproved *road rights-of-way* not intended to be driven on by *vehicles*.

**TRC.** Technical Review Committee.

**Tree.** A living, self-supporting woody perennial plant which normally obtains a trunk diameter of at least two (2) inches and a height of at least ten (10) feet, and typically has one (1) main stem and many branches.

**Tree, Large.** A *tree* whose height under average regional growing conditions will exceed 35 feet in height at maturity.

**Tree, Small.** A *tree* whose height under average regional growing conditions will be 35 feet in height or less at maturity.

**Truck Terminals.** An establishment primarily engaged in providing services to trucks which may include offices of transport companies, easy loading and unloading facilities and large parking areas for idle trucks.

**Twenty-Five Year Storm.** The *stormwater runoff* resulting from precipitation 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 for the watershed of interest under average antecedent wetness conditions.

**Uncovered.** The removal of *ground cover* from, on, or above the soil surface.

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**Undertaken (Soil Erosion and Sedimentation Control).** The initiating 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.

**Unique Natural Area.** An area that meets the criteria for qualifications as a natural heritage area as prescribed in *NCAC* Chapter 15A-12H, Section 0202.

**Urgent Care Clinic.** A full service walk-in medical clinic (which may include a physical therapy facility) which provides immediate/urgent health care services (including services for individuals with sudden, serious and unexpected illnesses, injuries or conditions which require immediate medical attention) but which does not provide emergency medical/emergency room services.

**Use.** The purpose or activity for which a piece of land (or portion thereof) and/or its *structures* (or portion thereof) is/are designed, arranged or intended or for which it/they is/are occupied or maintained.

**Use, Accessory.** A *use* customarily incidental and subordinate to a *principal use*, located within a *principal* and/or *accessory structure*.

**Use, Existing.** Those *uses* that, at a minimum, have established a vested right under North Carolina zoning law.

**Use, Principal.** The specific primary purpose for which land is used.

**Use, Temporary.** A *use* permitted on a temporary basis.

**Use District.** A zone established through this Chapter which regulates the *use* of land. use districts are applied to particular *tracts* of land by the Board of Commissioners through a *zoning map amendment* in accordance with this Chapter. When a use district is applied to a particular *tract* of land, the land is said to have been “zoned.” Use districts each contain a variety of *uses* which are generally compatible with one another and which accomplish the stated purpose of the district.

**USGS.** United States Geological Survey.

**Utility Substation.** Substation engaged in the operating of utilities such as, but not limited to, electricity, water, sewer, telephone and cable. Substations arrange, facilitate or coordinate the transmission of a utility from the generating source to the distribution centers, other utilities or final consumers.

**Variance.** A grant of relief from the requirements of this Chapter (excluding *variances* from *watershed* and *floodplain* development requirements).

**Variance (Flood Damage Prevention).** A grant of relief from the requirements of this Chapter related to flood damage prevention regulations.

**Variance, Watershed Local.** A *variance* from the minimum statewide *water supply watershed* protection criteria that results in the relaxation, by a factor of up to ten (10) percent, of any management requirement under the low-density option.

**Variance, Watershed Major.** A *variance* from the minimum statewide *water supply watershed* protection criteria that results in any of the following:

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- (1) The relaxation, by a factor greater than ten (10) percent, of any management requirement under the low-density option.
- (2) Any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater control system.

**Vehicle (Gate Regulations).** Any *motor vehicle* which is allowed to *use* the public roadways in North Carolina, but not including *vehicles* which include trailers or semi-trailers (See Chapter 89 of the Henderson County Code, *Entry Gate*).

**Vehicle Graveyard.** A parcel of land having an *accessory use* consisting of the storage or keeping of five (5) or more wrecked, scrapped, ruined, dismantled, *junked or inoperable motor vehicles* (including but not limited to cars, trucks, tractor trailers, boats, motorcycles or jet skis or other motorized equipment) located on a land parcel or adjacent land parcels under the same ownership or control, if such storage or keeping is not enclosed within a *structure(s)*.

**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 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.

**Vertical Clearance.** A minimum established height clearance required for the passage of emergency *vehicles*. For the purposes of this Chapter, *vertical clearance* shall be a minimum of 13 feet, six (6) inches.

**Violation.** The failure of a *structure* or other development to be fully compliant with the County's regulations.

**Violation (Flood Damage Prevention).** The failure of a *structure* or other development to be fully compliant with the County's *floodplain management regulations*. A *structure* or other development without an elevation certificate, other certifications or other evidence of compliance required in §200A-202 (Administration) and §200A-203 (Flood Hazard Reduction) is presumed to be in *violation* until such time as that documentation is provided.

**Warehousing and Storage.** An establishment primarily engaged in operating warehousing and storage facilities (excluding warehousing of hazardous substances).

**Waste (Soil Erosion and Sedimentation Control).** Surplus materials resulting from on-site *land-disturbing activities* and being disposed of at other locations.

**Waste Collection and Transfer Facility (Hazardous).** An establishment primarily engaged in: (1) collecting and/or hauling hazardous waste; and/or (2) operating hazardous waste transfer stations. Hazardous waste collection establishments may be responsible for the identification, treatment, packaging and labeling of wastes for the purposes of transport.

**Waste Collection and Transfer Facility (Non-hazardous).** An establishment primarily engaged in: (1) collecting and/or hauling non-hazardous waste and/or recyclable materials; and/or (2) operating non-hazardous waste transfer stations. Non-hazardous waste collection establishments may be responsible for the identification, treatment, packaging and labeling of wastes for the purposes of transport.

**Wastewater.** Sewage or industrial process wastewater discharged, transmitted or collected from any place into sewage disposal (wastewater) system.