

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
PLANNING BOARD**

MEETING DATE: July 20, 2004

SUBJECT: Cummings Cove Golf and Country Club, Mountain Crest, Phases 4 & 5, and Valley View, File #02-M08, Development Plan Extension Request

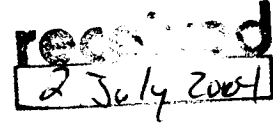
- ATTACHMENT:**
1. Letter Requesting Extension
 2. Subdivision Application
 3. Planning Board Extension Policy
 4. Vicinity Map
 5. Parcel Map
 6. Preliminary Development Plans

SUMMARY OF REQUEST:

On July 11, 2002 the Planning Staff administratively approved the Preliminary Development Plan for Phases 4 and 5 in the Mountain Crest portion of the Cummings Cove Golf and Country Club development and a Preliminary Development Plan for the Valley View section of the development. Per Section 170-16C (4) of the Henderson County Subdivision Ordinance, Development Plan approval shall be valid for two years, however, for just cause, the Planning Board may grant extensions of the development plan approval for a maximum of one additional year. On June 29, 2004, Mr. Roger A. Hill, developer, mailed a letter to the Henderson County Planning Department requesting an extension of the development plan approval for each of the above listed portions of the Cummings Cove Golf and Country Club project for a period of one year.

BOARD ACTION REQUESTED:

Action by the Planning Board is needed to either grant or deny this extension. Such action should be made with consideration of the attached extension policy.



June 29, 2004

Mr. Derrick Cook
Hendersonville County Planning Department
101 East Allen Street
Hendersonville, NC 28792

RE: Cummings Cove Golf & County Club
Mountain Crest Phase 4 & 5 and Valley View
Request for Extension

Dear Mr. Cook:

We are in receipt of your letter of June 21, 2002 noting that the Planning Board's approval of the two above referenced projects will expire on July 11, 2004. We respectfully request that the Planning Board extend the approvals of these projects for one year. At this time, the detailed plans for infrastructure have been completed and submitted for permitting approvals. We have received erosion control and sanitary sewer extension permits. We are waiting on Public Water Supply approval for the water line, tank and booster station construction. We are also attempting to secure final funding for the project.

As you are aware, we have recently completed Mountain Crest Phases 1, 2 and 3 as well as the Wynfield and Wexford subdivisions. We submit our completion of these projects as "good faith efforts".

If you have any questions or need further information, do not hesitate to contact my office. Will Buie from William G. Lapsley & Associates, P.A. will be at the Planning Board meeting to answer questions.

Sincerely,

A handwritten signature in black ink that reads "Roger A. Hill".

Roger A. Hill
Developer

cc: Will Buie, William G. Lapsley & Associates, P.A.

received
6/18/02

APPENDIX 1

HENDERSON COUNTY
SUBDIVISION APPLICATION FORM

6/10/02 Date of Application
Cummings Cove Golf & Country Club
Mountain Crest P4:5: Valley View Subdivision Name
02-M08 Application Number

Major Subdivision Minor Subdivision Other

Property Owners Name: Cummings Cove Properties, LLC - Hill Realty Group, Inc (Managing Member)

Address: 20 Cummings Parkway

City, State, Zip: Hendersonville, NC 28739

Owner's Agent: William E. Bure

Telephone No: 828-697-7331

PIN 00953899588055 Deed Book/Page 954/369

Zoning District Open Use Fire District Etoah/Horseshoe Watershed

Location of property to be divided: Cummings Cove Golf & Country Club

Type of Subdivision: Residential () Commercial () Industrial Present Use

Vo. Lots Created 78 Original Tract Size New Tract Size No. New Lots

Road System: () Public Private () Combination Public and Private

Water System: () Individual () Community Municipal

Sewer System: () Individual Community () Municipal

Fee: \$ 400.00 Paid Method

I certify that the information shown above is true and accurate and is in conformance with the Henderson County Subdivision Ordinance.

Roger A. Hill, President
APPLICANT (OWNER OR AGENT)

6-11-02
DATE

Development Plan Approval / Conditions

Final Plat Approval: Plat Recorded

HENDERSON COUNTY PLANNING BOARD POLICY FOR GRANTING SUBDIVISION EXTENSIONS

Statutory Reference: Section 170-16C(4) of the Henderson County Subdivision Ordinance states: "Development Plan approval shall be valid for two years, and such approval shall be annotated on the plan itself and certified by the Subdivision Administrator. The Planning Board may, for just cause, grant extensions of the development approval for a maximum of one additional year."

Policy.

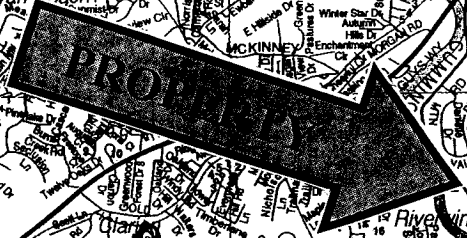
1. The developer should submit in writing a request for an extension, stating the status of the subdivision improvements and the reasons for any delays. The request shall be placed on the agenda for the next scheduled Planning Board meeting.
2. The developer or his/her agent should appear before the Planning Board to answer questions regarding the progress of the development.
3. No extension will be granted unless the developer can demonstrate that a "good faith effort" has been made to develop the property.
4. Property recently developed in an adjacent section of the subdivision, in conformance with the approved Master Plan, may serve as such "good faith effort."
5. A second request for an extension will not be granted unless over fifty percent of the overall development improvements have been completed.

280

ETOWAH-HORSESHOE FIRE DIST

Horseshoe Mtn
28742

1. VIEW DE LAKE
2. UNITY CT
3. VISTA VIEW CT
4. LE BLANC SQUIRREL TRL
5. ROLLING RIDGE WAY
6. SUNBEAM DR
7. SUNCHASE CT
8. SUNNY ACRES DR
9. PINEHURST CT
10. BRANDY MILL LOOP
11. BAY HILL CT
12. WENTWORTH CT
13. PEBBLE BEACH CT
14. FAIRWAY LN
15. TWILIGHT LN
16. RIVERWIND DR
17. FORSYTHA CT



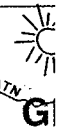
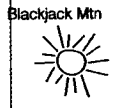
ETOWAH BEACH FIRE DIST

Etowah Beach
28729

1. PEBBLE RIDGE RD
2. TRAIL RIDGE RD
3. SUMMER GREEN RD
4. CREEKWOOD RD
5. OAK ARBOR RD
6. RIDGEMONT RD
7. WILLIAMS LN
8. GENTLE BREEZE RD

VALLEY HILL FIRE DIST

WILLOW FIRE DIST



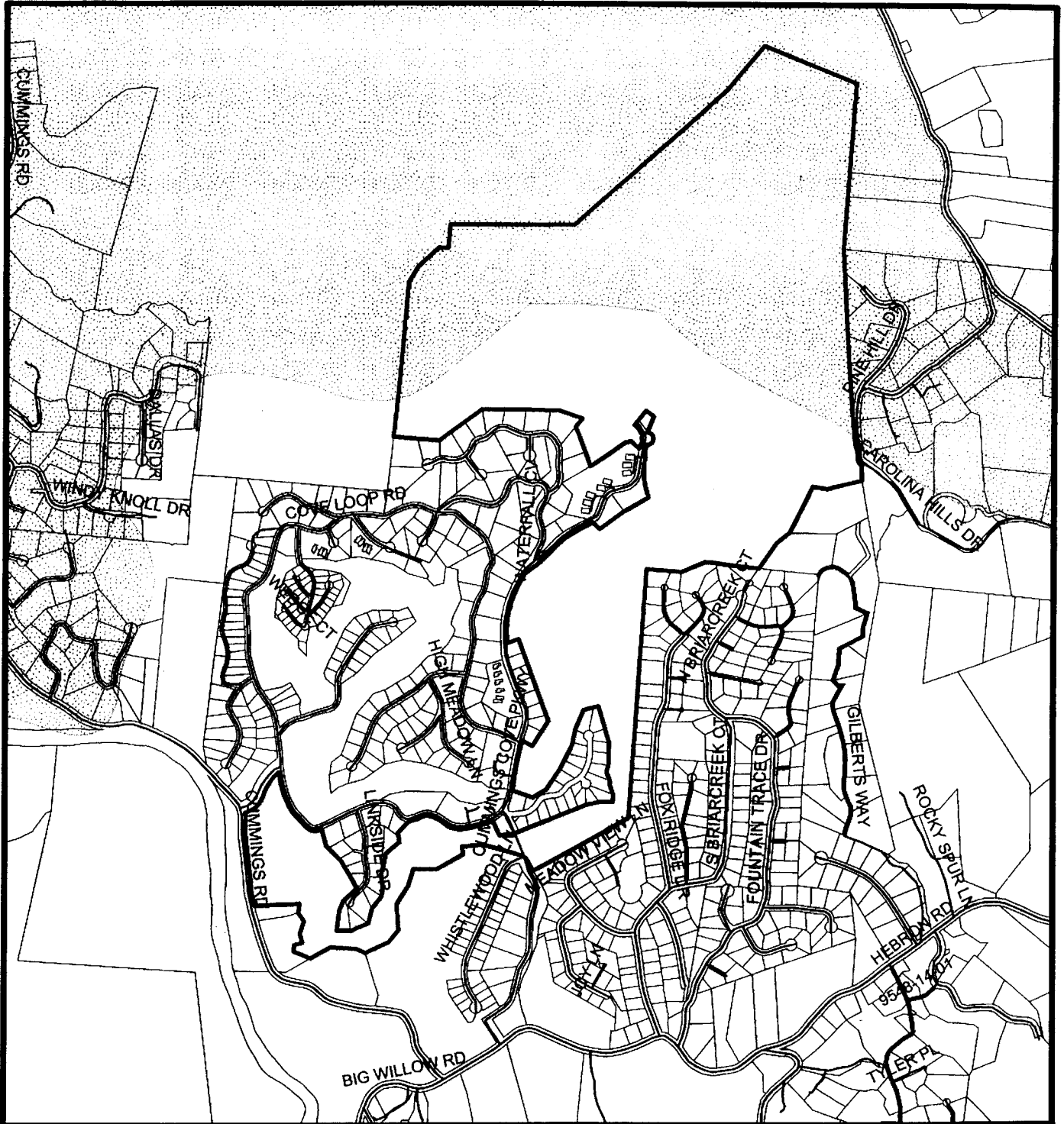
FOR GREATER DETAIL
SEE REVERSE SIDE

MATCHLINE 'A-B' SEE GRID 'M'
MATCHLINE 'A-B' SEE GRID 'M'

IES AND TOWNS

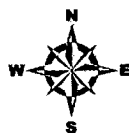
Vicinity Map
Cummings Cove
(Various Sections)

Henderson County Planning Department



02-M08 Cummings Cove (Various Sections)

Property Owners - Cummings Cove Properties
Agent - Will Buie
Tax Pin # 00-9538-99-5880-55
Zoned - OU
Watershed IV (Portion)



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. The County and mapping company assume no legal responsibility for the information contained on this map.

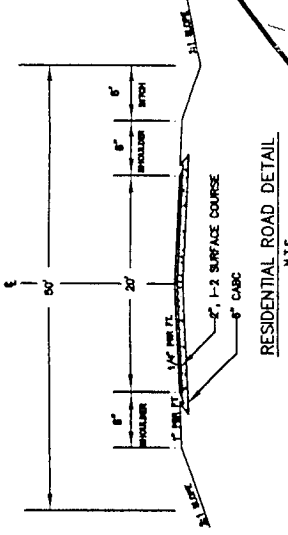


LOCATION MAP
NOT TO SCALE

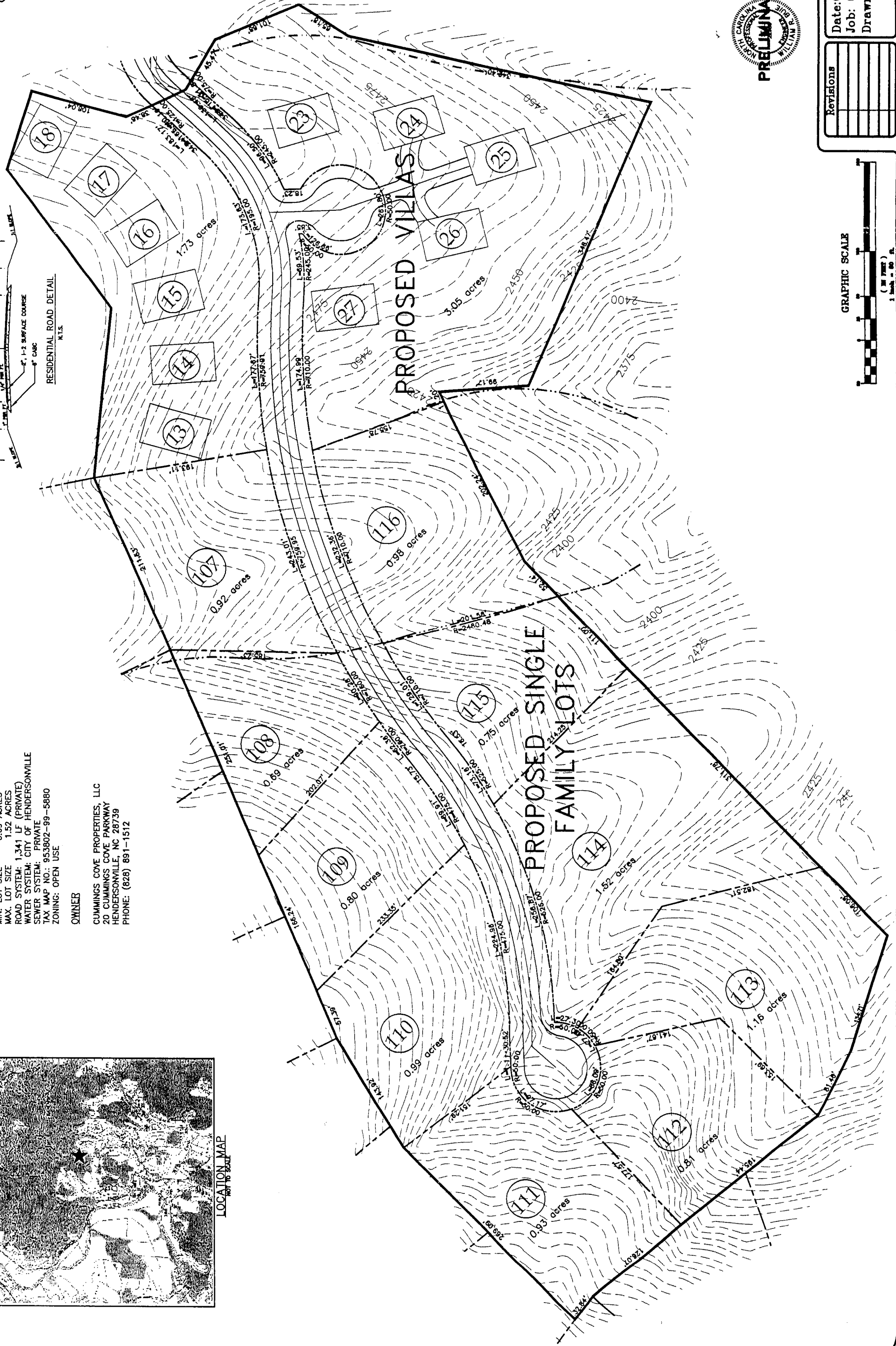
PROJECT SUMMARY
 TOTAL ACREAGE: 16.02 ACRES
 SINGLE FAMILY LOTS: 10
 VILLAGES: 11
 MIN. LOT SIZE: 0.69 ACRES
 MAX. LOT SIZE: 1.52 ACRES
 ROAD SYSTEM: 1,341 LF (PRIVATE)
 WATER SYSTEM: CITY OF HENDERSONVILLE
 SEWER SYSTEM: PRIVATE
 TAX MAP NO.: 953802-99-5880
 ZONING: OPEN USE

OWNER

CUMMINGS COVE PROPERTIES, LLC
 20 CUMMINGS COVE PARKWAY
 HENDERSONVILLE, NC 28739
 PHONE: (828) 891-1512



RESIDENTIAL ROAD DETAIL
N.T.S.

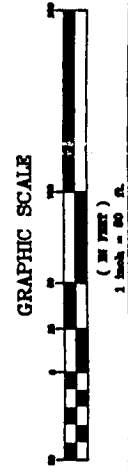


Received
6/18/02



PRELIMINARY

Revisions



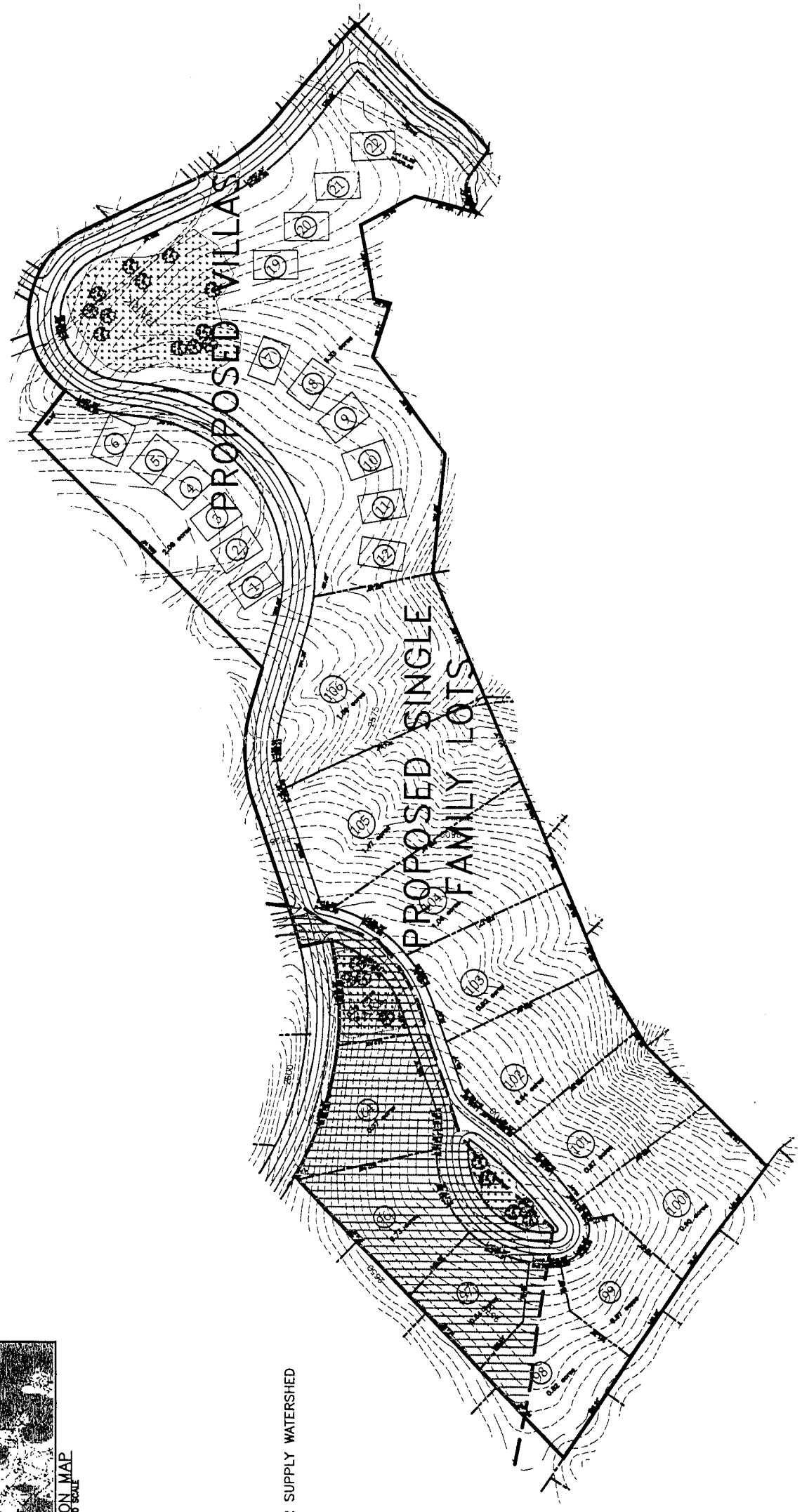
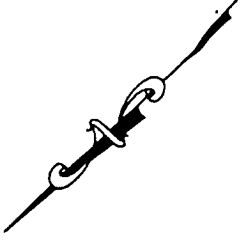
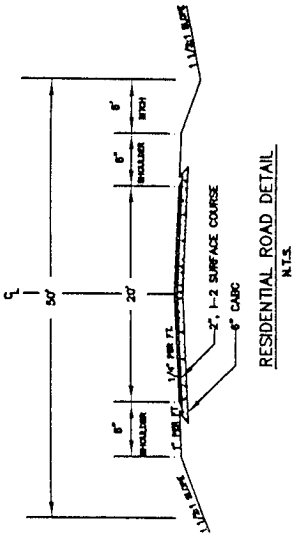
Date: 06-23-02
 Job: 02193
 Drawn: TLM



LOCATION MAP
NOT TO SCALE

PROJECT SUMMARY
 TOTAL ACREAGE: 23.26 ACRES
 SINGLE FAMILY LOTS: 12
 VILLAS: 16
 MIN. LOT SIZE: 0.54 ACRES
 MAX. LOT SIZE: 1.59 ACRES
 ROAD SYSTEM: 3,510 LF (PRIVATE)
 WATER SYSTEM: CITY OF HENDERSONVILLE
 SEWER SYSTEM: PRIVATE
 TAX MAP NO.: 953802-99-5880
 ZONING: OPEN USE

OWNER
 CUMMINGS COVE PROPERTIES, LLC
 20 CUMMINGS COVE PARKWAY
 HENDERSONVILLE, NC 28739
 PHONE: (828) 891-1512

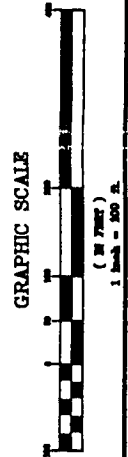


WS IV WATER SUPPLY WATERSHED

RECEIVED
6/18/02



Revisions



Date: 05-23-02
 Job: 02133
 Drawn: TLM

Sheet
1 of 1

Preliminary Development Plan

Mountain Crest, Phase V
 Cummings Cove Golf & Country Club
 Henderson County - North Carolina

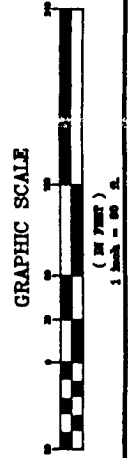
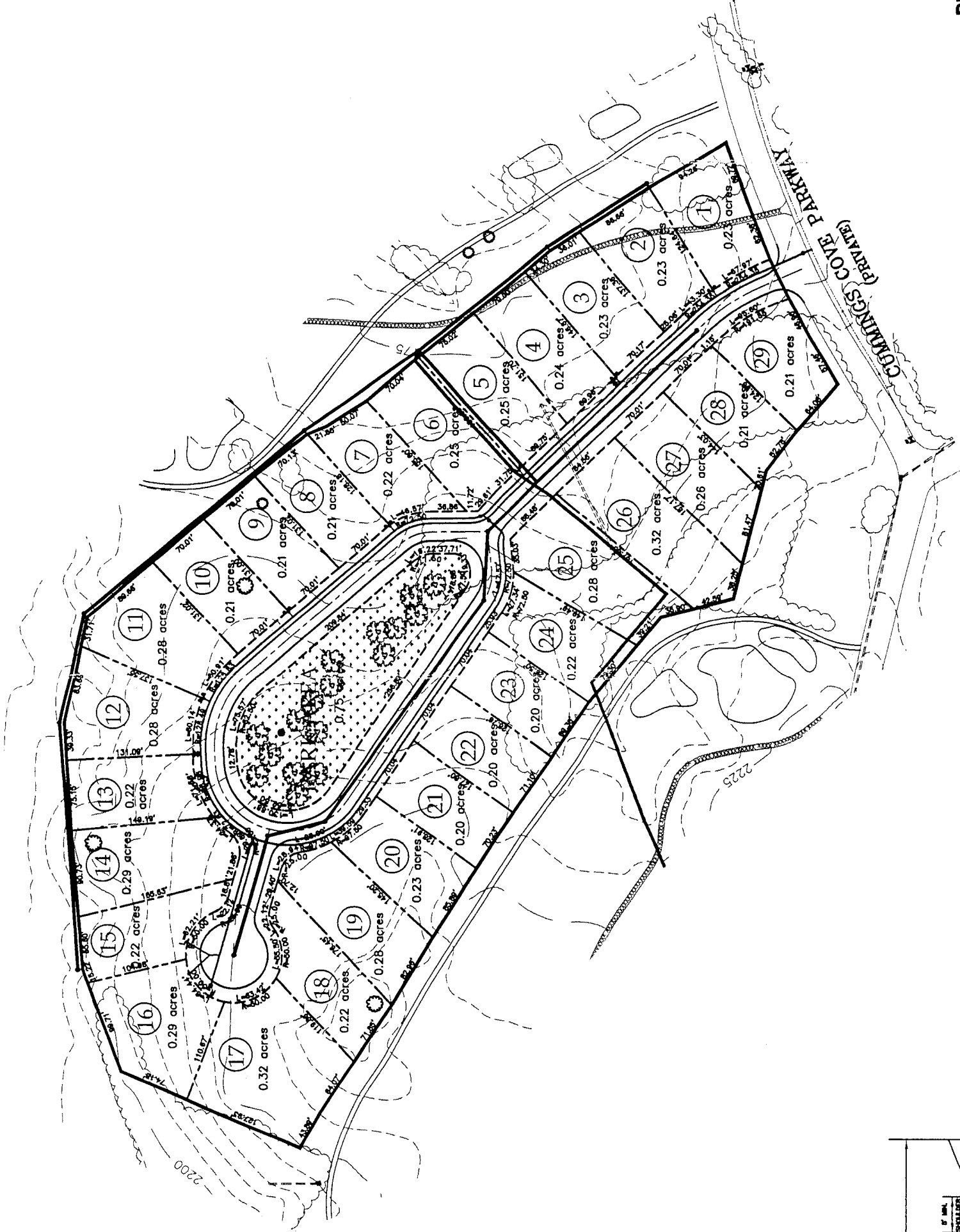
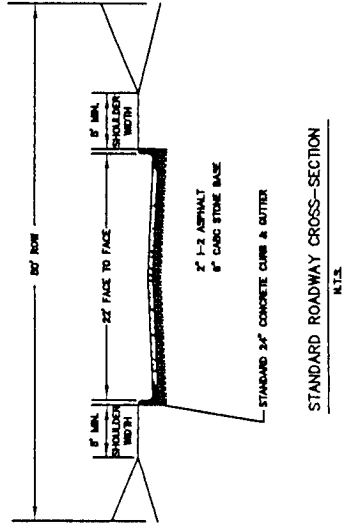
WILLIAM G. LAPSTEY & ASSOCIATES P.A.
 CONSULTING ENGINEERS & LAND PLANNERS
 HENDERSONVILLE, NORTH CAROLINA



LOCATION MAP
NOT TO SCALE

PROJECT SUMMARY
 TOTAL ACREAGE: 23.26 ACRES
 NO. OF LOTS: 29
 MIN. LOT SIZE: 0.54 ACRES
 MAX. LOT SIZE: 1.59 ACRES
 ROAD SYSTEM: 1,497 LF (PRIVATE)
 WATER SYSTEM: CITY OF HENDERSONVILLE
 SEWER SYSTEM: PRIVATE
 TAX MAP NO.: 953802-99-5880
 ZONING: OPEN USE

OWNER
 CUMMINGS COVE PROPERTIES, LLC
 20 CUMMINGS COVE PARKWAY
 HENDERSONVILLE, NC 28739
 PHONE: (828) 891-1512



Revisions

Date: 05-23-02
 Job: 02133
 Drawn: TLM



6/18/02
RECEIVED

Preliminary Development Plan

Valley View
 Cummings Cove Golf & Country Club
 Henderson County - North Carolina

WILLIAM G. LAPSLEY & ASSOCIATES P.A.
 CONSULTING ENGINEERS & LAND PLANNERS
 HENDERSONVILLE, NORTH CAROLINA

Sheet
 1 of 1



HENDERSON COUNTY
PLANNING DEPARTMENT
MEMORANDUM

Date: July 14, 2004
To: Planning Board Members
From: Derrick L. Cook, Planner
Re: Subdivision Plan Reviews for July 20, 2004 Planning Board Meeting
Sugar Loaf Gardens, Section III, Combined Master Plan and Development
Plan (File# 04-M09)

Sugar Loaf Gardens, Section III (File# 04-M09)
Dreams Dominion, Inc., Owner, Jon Laughter, P.E., Agent

The property is a 3.3-acre tract located off Sugar Loaf Lane and Kim Lane. The proposed development is a part of the existing Sugar Loaf Gardens subdivision. Section III of the development is for six (6) proposed single-family lots. Lot sizes range from 0.32 acres to 0.73 acres. The development is located in an Open Use Zoning District and will be served by City of Hendersonville water, individual septic tanks and existing private roads. The property is not located in a Water Supply Watershed district.

Technical and Procedural Comments

Staff has reviewed the combined Master Plan and Development Plan for conformance with the Henderson County Subdivision Ordinance and offers the following comments:

Master Plan

No Comments- requirements satisfied.

Development Plan

1. **Soil Erosion and Sedimentation Control** – The Applicant should submit notice from NCDENR that a soil erosion and sedimentation control plan has been received or provide documentation that no plan is required prior to beginning construction (HCSO 170-19).

2. **Private Roads** – Because private roads are shown, the final plat should include a note stating: *The private roads indicated on this Final Plat may not meet requirements of the North Carolina Department of Transportation for acceptance into the state road system (HCSO Appendix 7).*

3. **Farmland Preservation** – The Applicant provided the Affidavit of Understanding of Farmland Preservation District. On the final plat, a statement should be noted saying the subdivision lies within ½ mile of the Blue Ridge Farmland Preservation District (HCSO 170-35 and Appendix 7).
4. **Water Supply** – The Applicant supplied a letter of water capacity from the City of Hendersonville Water and Sewer Department. The Applicant must meet the City of Hendersonville’s minimum requirements for fire hydrant installation (HCSO 170-20). Final approval of the water supply system must be provided and such system must be installed (or an improvement guarantee for such system must be posted) prior to Final Plat approval.

Other Comments

Sewer System. The Applicant shows on the combined Master and Development Plan that sewer line connection is 0.3 miles from the proposed development. The Henderson County Subdivision Ordinance requires that a subdivision connect to a public sewer system when the subdivision is located within a distance equal to the product of 50 feet multiplied by the number of proposed lots, however, the maximum distance require for connection shall be 2500 feet. The Applicant should address why sewer will not be connected to the proposed project if the subdivision is only 0.3 miles (1584 feet) from a sewer connection line.

~~0.3 miles~~
1.36 miles

Staff Recommendation

The submittal is for approval of the combined Master and Development Plan for the Sugar Loaf Gardens Section III subdivision. Staff believes that the submittal satisfactorily addresses the requirements of the Henderson County Subdivision Ordinance. Staff would recommend approval of the combined Master and Development Plan subject to the above listed comments being addressed.

Possible Motion

I move that the Planning Board find and conclude that the combined Master and Development Plan submitted for Sugar Loaf Gardens, Section III, complies with the provisions of the Subdivision Ordinance except for those matters addressed in the Technical and Procedural Comments section of the Staff’s memo that have not been satisfied by the applicant;

AND

I further move that the combined Master and Development Plan be approved subject to the following Conditions: The Applicant satisfies Staff comment 1 prior to beginning construction and comments 2 through 4 on the Final Plat or by Final Plat approval (and any other conditions imposed by the Planning Board).

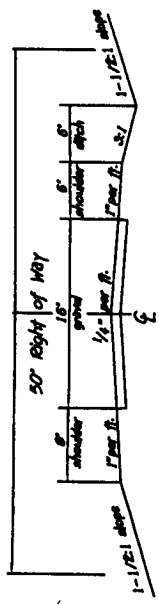
- REFERENCES - DEED BOOK 539
751 . PAGE 163
PLAT CABINET . SLIDE
- AREA DETERMINED BY COORDINATE COMPUTATION
- MAP IS NOT FOR RECORDATION
- NORTH ARROW SHOWN IS OBTAINED FROM MAGNETIC OBSERVATION UNLESS OTHERWISE SHOWN
- MINIMUM SETBACKS
FRONT _____ ZONED OPEN USE
REAR _____
SIDE _____
- THIS MAP IS NOT TRANSFERABLE AND MAY NOT BE USED BY ANY OTHER PERSON OR ENTITY WITHOUT WRITTEN AUTHORIZATION BY LAUGHTER, AUSTIN AND ASSOC. P.A. THE MAP IS PROVIDED FOR THE USE OF THE PARTIES NAMED HEREON.
- This project is located within 1/2 mile of land in a Farmland Preservation District.
- THIS PROPERTY IS NOT LOCATED IN A WATERSHED.
- Distance to public water system - 0 LF
- Distance to public sewer system - 0.3 Miles
- Mail delivery to individual lots.

FLOOD HAZARD NOTE

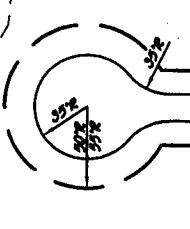
BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS NOT IN A FLOOD HAZARD ZONE OF THE FLOOD INSURANCE RATE MAP, PANEL NO. 370125 0005 WHICH BEGINS AN EFFECTIVE DATE OF MARCH 1, 1982. NO FIELD SURVEYING WAS PERFORMED TO DETERMINE THIS ZONE AND AN ELEVATION CERTIFICATE MAY BE NEEDED TO VERIFY THIS DETERMINATION OR APPLY FOR A VARIANCE FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

PROJECT SUMMARY

TOTAL PROJECT AREA 3.3 AC.
 NUMBER OF PROPOSED LOTS 6
 MINIMUM LOT SIZE (SF) 14000 SF
 MAXIMUM LOT SIZE (SF) 32000 SF
 LENGTH OF PROPOSED PUBLIC ROADS 0 LF
 LENGTH OF PROPOSED PRIVATE ROADS 117 LF
 WATER SYSTEM -INDIVIDUAL PUBLIC
 SEWER SYSTEM INDIVIDUAL
 CURRENT ZONING OPEN USE
 Distance to public water system 0 MILES
 Distance to public sewer system 100 FEET

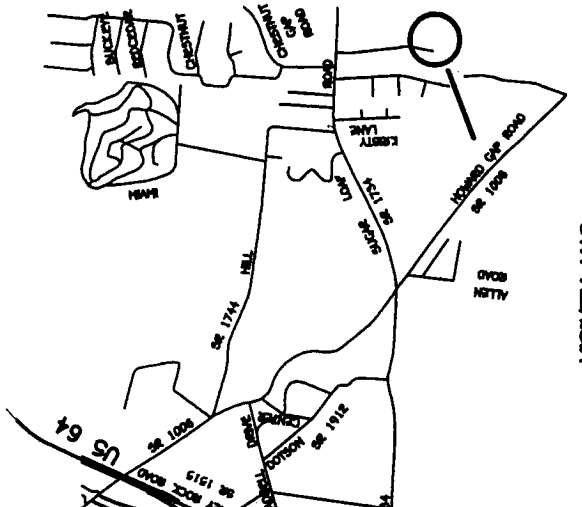
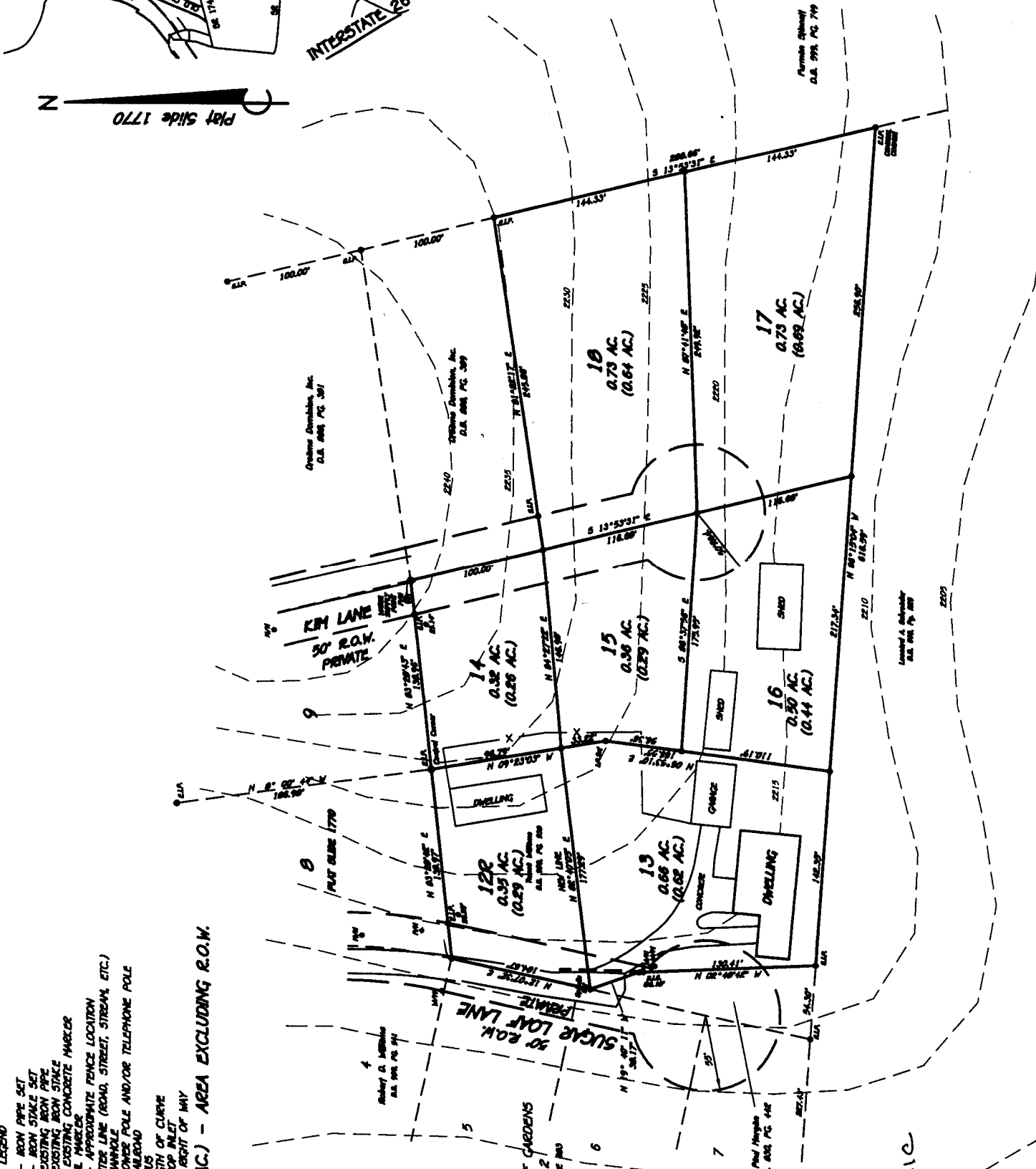


TYPICAL ROAD SECTION
 LOCAL ROAD (CUL-DE-SACS)
 SUGAR LOAF LANE AND
 KIM LANE



TYPICAL CUL-DE-SAC

- LEGEND**
- I.P. SET - IRON PIPE SET
 - I.S. SET - IRON STAKE SET
 - E.I.P. - EXISTING IRON PIPE
 - E.C.M. - EXISTING CONCRETE MARKER
 - P.C. - MAIL MARKER
 - X-X- - APPROXIMATE FENCE LOCATION
 - H/H - HAWKHOLE
 - P/P - POWER POLE AND/OR TELEPHONE POLE
 - R/R - RAILROAD
 - R - RADIIUS
 - L - LENGTH OF CURVE
 - D.I. - DROP INLET
 - R.O.M. - RIGHT OF WAY
- (0.26 AC.) - AREA EXCLUDING R.O.M.



VICINITY MAP

MAP OF SURVEY
 made for Owner:
DREAMS DOMINION INC.
 P.O. Box 2752
 Hendersonville, N.C. 28793

SUGAR LOAF GARDENS
 SECTION II
 A RECOMBINATION OF
 LOT 12-R
 NEW LOTS
 13 - 18
 A MAJOR SUBDIVISION

NO.	DATE	BY	APPROV.	DESCRIPTION
REVISIONS				

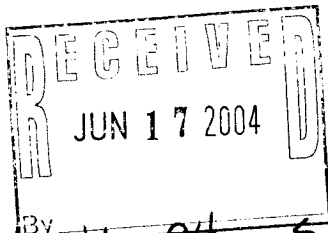


JUN 17 2004

JOB NO. 04-174

BLUE RIDGE TWP.	HENDERSON COUNTY, N.C.
LAUGHTER, AUSTIN AND ASSOCIATES, P.A.	131 FOURTH AVENUE EAST HENDERSONVILLE, NORTH CAROLINA 28792 (828) 692-9089
CREW CHIEF	DJA
CHECKED BY	TPV
DATE	5/27/04
SCALE	1" = 50 FT.
DRAWN BY	3394253
COORD. FILE	04174master
FLOOD MAP PANEL NUMBER	370125_0009
TAX PARCEL NUMBER	9569-25-7823

RECEIVED
 JUN 17 2004



HENDERSON COUNTY
SUBDIVISION APPLICATION FORM

By 6-16-04 SUGARLOAF GARDENS
Date of Application Subdivision Name

2004-1009
Application Number

Major Subdivision Minor Subdivision Other

Property Owners Name: DREAMS DOMINION, INC

Address: PO Box 2752

City, State, Zip: HENDERSONVILLE, NC 28793

Owner's Agent: JON LAUGHTER

Telephone No: 828-692-9089

PIN 9589-25-7625 Deed Book/Page 1168/581

Zoning District OU Fire District DANA Watershed _____

Location of property to be divided: Off Sugarloaf Lane. - Sugarloaf Rd.

Type of Subdivision: Residential () Commercial () Industrial Present Use _____

No. Lots Created _____ Original Tract Size 3.25 New Tract Size _____ No. New Lots _____

Road System: () Public Private () Combination Public and Private

Water System: () Individual () Community Municipal

Sewer System: Individual () Community () Municipal

Fee: \$ 400.00 Paid 400⁰⁰ - 6/17/04 Method Check #2476
Rec'd. [Signature]

I certify that the information shown above is true and accurate and is in conformance with the Henderson County Subdivision Ordinance.

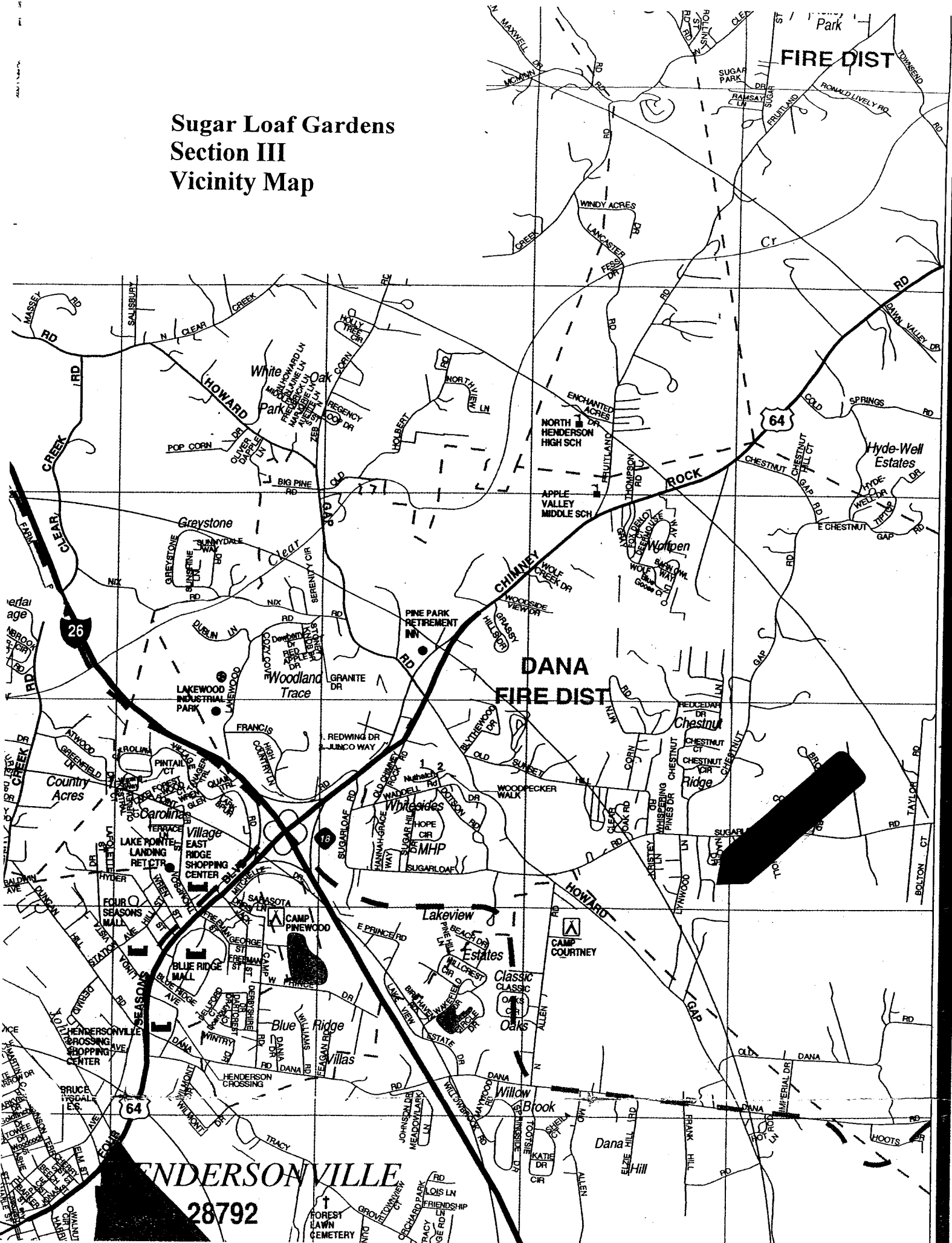
[Signature]
APPLICANT (OWNER OR AGENT)

JUNE 1, 2004
DATE

Development Plan Approval / Conditions

Final Plat Approval: _____ Plat Recorded _____

Sugar Loaf Gardens Section III Vicinity Map



Henderson County Planning Department



Sugar Loaf Gardens, Section III

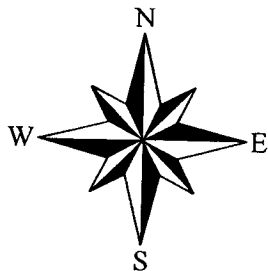
PROPERTY OWNER: Dreams Dominion, Inc.

AGENT: Jon Laughter

TAX MAP ID: 9589-25-9089

ZONING: Open Use

WATERSHED: NA



This map is prepared from 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. The County and mapping company assume no legal responsibility for the information contained on this map.

HENDERSON COUNTY
PLANNING DEPARTMENT
MEMORANDUM

Date: July 14, 2004
To: Planning Board Members
From: Derrick L. Cook, Planner
Re: Subdivision Plan Reviews for July 20, 2004 Planning Board Meeting
Valley View Farms Combined Master Plan and Development Plan (File# 04-M10)

Valley View Farms (File# 04-M10)

Fraday Family Limited Partnership, Owners (Edward and Norine Gillilan and Patrick and Gay Ann O'Neal have contract to purchase property), Jon Laughter, Agent

The subject property is a 45.97-acre tract located off Walnut Cove Road. The development is for 33 proposed single-family lots. Lot sizes range from 0.92 acres to 2.33 acres. The development is located in an Open Use Zoning District and will be served by private roads, individual wells and individual septic tanks. The property is not located in a Water Supply Watershed district.

Technical and Procedural Comments

Staff has reviewed the combined Master Plan and Development Plan for conformance with the Henderson County Subdivision Ordinance and offers the following comments:

Master Plan

No Comments- requirements satisfied.

Development Plan

1. **Soil Erosion and Sedimentation Control.** The Applicant should submit notice from NCDENR that a soil erosion and sedimentation control plan has been received or provide documentation that no plan is required prior to beginning construction (HCSO 170-19).
2. **Private Roads.** Because private roads are shown, the final plat should include a note stating: *The private roads indicated on this Final Plat may not meet requirements of the North Carolina Department of Transportation for acceptance into the state road system (HCSO Appendix 7).*
3. **Perennial Stream Setback.** The Applicant has acknowledged on the combined Master Plan and Development Plan 30-foot building and other

structures setback from perennial streams required by §170-37A of the Subdivision Ordinance. Such setback must be noted on the Final Plat (HCSO Appendix 7).

4. **Farmland Preservation.** The Applicant provided an Affidavit of Understanding of Farmland Preservation District. On the Final Plat, a statement should be noted saying the subdivision lies with ½ mile of the Flat Rock Farmland Preservation District (HCSO 170-35 and Appendix 7).
5. **Road Grade.** The Applicant proposes what seem to be private gravel residential collector roads to serve the proposed subdivision with a 60-foot wide right-of-way for Old Gait Drive and a 50-foot wide right-of-way for Saddle Club Lane. The road grades are not to exceed 12% for private gravel residential collector roads. The Applicant has provided approximate finished grades of the roads on the combined Master and Development Plan. A section of Saddle Club Lane exceeds the 12% maximum road grade standard for private gravel residential collector roads as required by the Henderson County Subdivision Ordinance with a 12.8% approximate finished grade. The Applicant may designate Saddle Club Lane as a private gravel local residential road, which allows a maximum road grade of 15%. The Applicant should note that from Walnut Cove Road to the Saddle Club Lane intersection that the proposed road must be built to the private residential collector road standards. To alleviate any confusion of which type of road the Applicant intends to build, the Applicant should provide on a revised Master and Development Plan cross-sections for the residential collector road and local residential road specifying which sections of the proposed roads will be built to indicated road type. On the Final Plat, a professional engineer or professional land surveyor must certify that no portion of the roads has a grade that exceeds 12% for residential collector roads and 15% for local residential roads (HCSO 170-21 Table 1 and 170-21E).

Other Comments

Staff suggests that the prospective owners of the subject property should provided a deed showing transfer of property to them as the purchasers and a document signed by the seller that assigns the Master and/or Development Plan approval to the buyer as part of the closing.

Staff Recommendation

The submittal is for approval of the combined Master and Development Plan for the Valley View Farms subdivision. Staff believes that the submittal satisfactorily addresses the requirements of the Henderson County Subdivision Ordinance. Staff would recommend approval of the combined Master and Development Plan subject to the above listed comments being addressed.

Possible Motion

I move that the Planning Board find and conclude that the combined Master and Development Plan submitted for Valley View Farms subdivision complies with the provisions of the Subdivision Ordinance except for those matters addressed in the Technical and Procedural Comments section of the Staff's memo that have not been satisfied by the applicant;

AND

I further move that the combined Master and Development Plan be approved subject to the following Conditions: The Applicant satisfies comments 1 and 5 prior to beginning any construction and comments 2 through 4 on the Final Plat or by Final Plat approval (and any other conditions imposed by the Planning Board).

HENDERSON COUNTY
SUBDIVISION APPLICATION FORM

04-104

*Graphic
Scale
Culdesac*

6-16-04 Date of Application VALLEY VIEW FARMS Subdivision Name 2004-M10 Application Number

Major Subdivision Minor Subdivision Other

Property Owners Name: EDWARD N. AND NOREEN E. GILLILAN

Address: 665 MARK FREEMAN ROAD

City, State, Zip: HENDERSONVILLE, NC 28792

Owner's Agent: JON LAUGHTER

Telephone No: 828-692-9089

PIN 9546-91-1047 Deed Book/Page 950/672 - 949/234

Zoning District Ou Fire District Valley Hill Watershed N/A

Location of property to be

divided: Off Walnut Cove Road - SR 1125

Type of Subdivision: Residential () Commercial () Industrial Present Use 110 -

No. Lots Created _____ Original Tract Size 45.97 New Tract Size _____ No. New Lots _____

Road System: () Public Private () Combination Public and Private

Water System: Individual () Community () Municipal

Sewer System: Individual () Community () Municipal

Fee: \$ 400.00 Paid 400⁰⁰ 6/17/04 Method Check # 1815
Rec'd. [Signature]

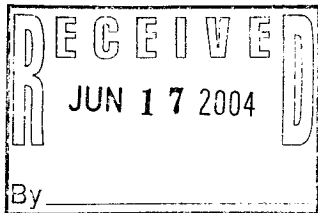
I certify that the information shown above is true and accurate and is in conformance with the Henderson County Subdivision Ordinance.

[Signature]
APPLICANT (OWNER OR AGENT)

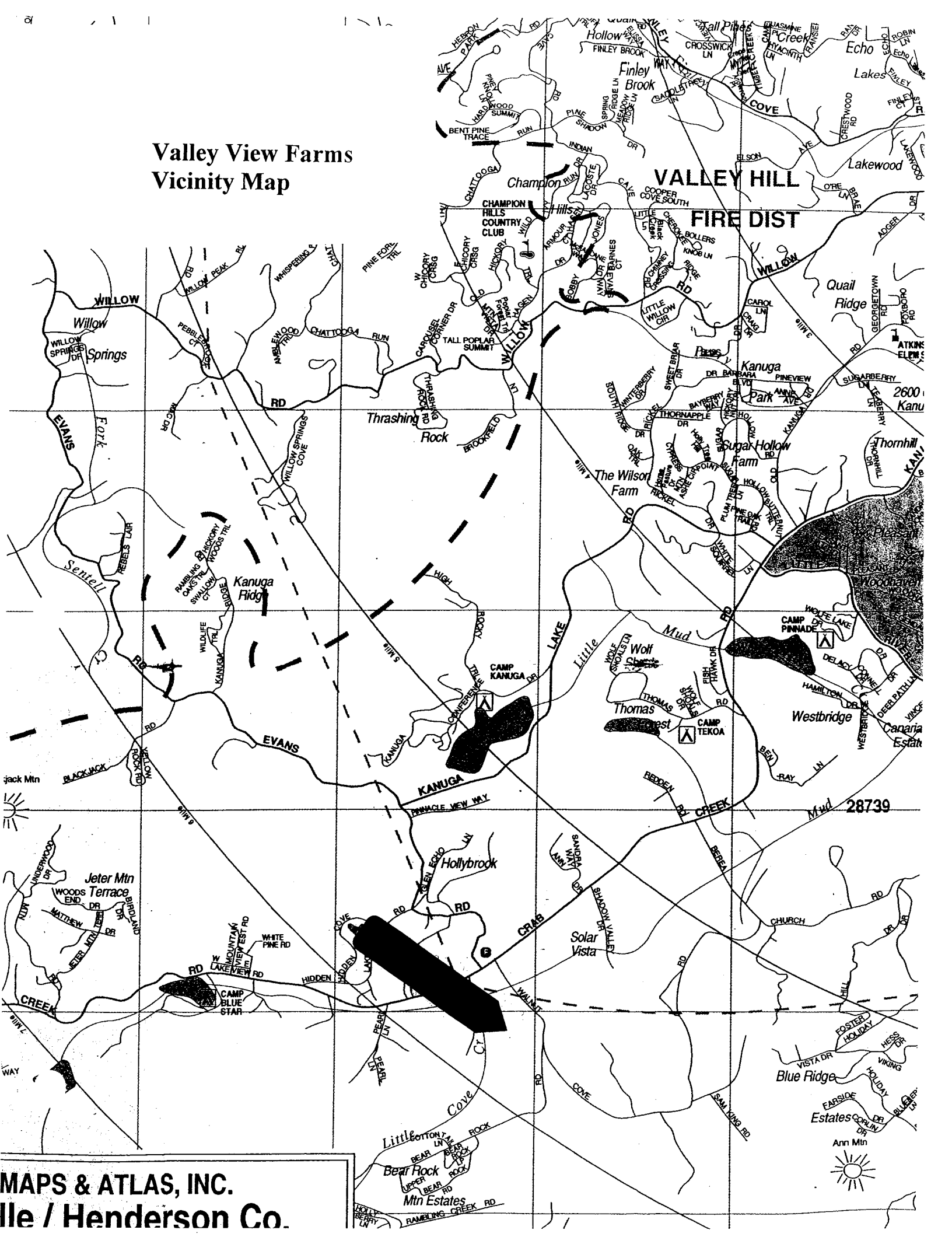
6/16/04
DATE

Development Plan Approval / Conditions

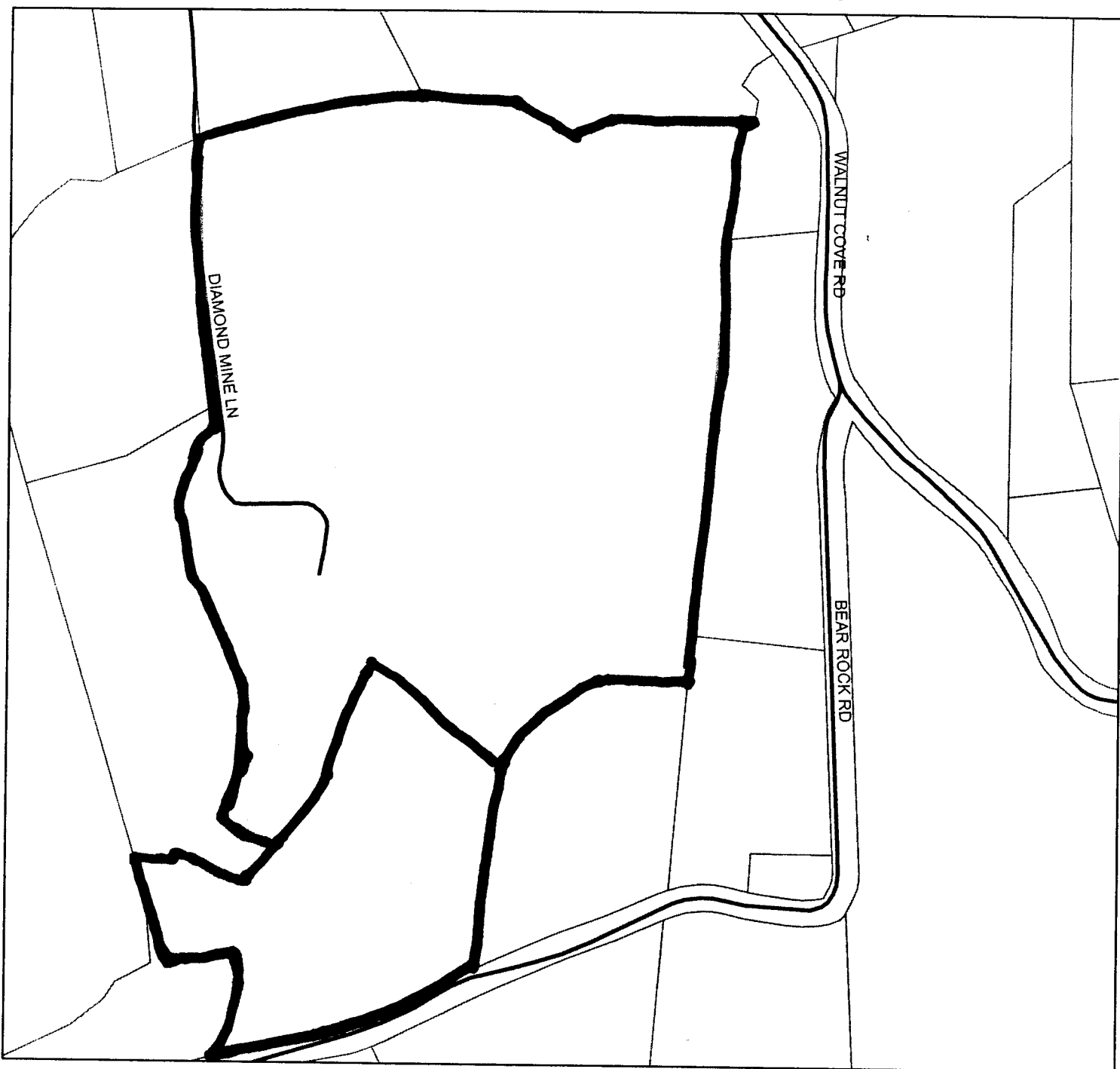
Final Plat Approval: _____ Plat Recorded _____



Valley View Farms Vicinity Map

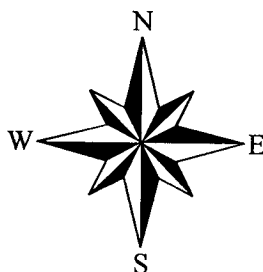


Henderson County Planning Department

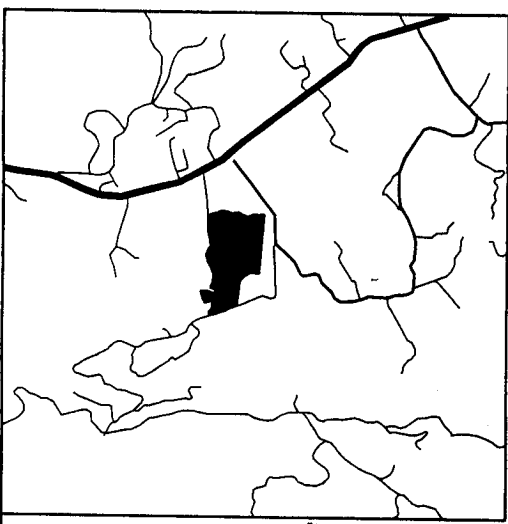


Valley View Farms

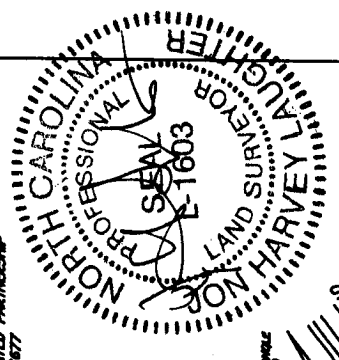
PROPERTY OWNER: Edward N. and Norine Gillilan
AGENT: Jon Laughter
TAX MAP ID: 9546-92-6147 & 91-7047
ZONING: Open Use
WATERSHED: NA



This map is prepared from 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. The County and mapping company assume no legal responsibility for the information contained on this map



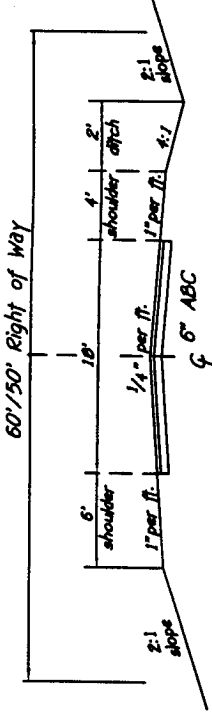
RECEIVED
JUN 21 2004



JUN 17 2004

CONTRACT NO.	370125 01-20 B
DATE	6/16/04
SCALE	1" = 100'
SHEET NO.	1 OF 1
PROJECT NAME	VALLEY VIEW FARMS
OWNER/DEVELOPER	EDWARD N. and NOREEN E. GILLAN PATRICK and GAY ANN ONEAL HENDERSONVILLE, NC 28792
OWNER'S ATTORNEY	LAUGHTER, AUSTIN AND ASSOCIATES, P.A. 131 FOURTH AVENUE EAST HENDERSONVILLE, NORTH CAROLINA 28792 (828) 692-9089
DESIGNER	SEAN HARVEY LAUGHTER PROFESSIONAL LAND SURVEYOR NO. 1603 NORTH CAROLINA

No portion of the roads shall have grades that exceed 18% as required for local residential paved surfaced roads.



TYPICAL ROAD SECTION

N/T FRANK FAMILY LIMITED PARTNERSHIP
DB 990/307

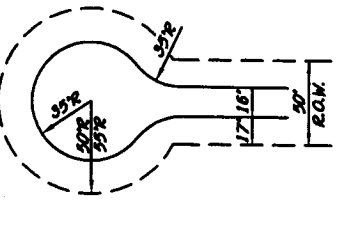
N/T ANDY & PATRICK E. PETREE
DB 1182/817

N/T ANDY & PATRICK E. PETREE
DB 1182/817

N/T ANDY & PATRICK E. PETREE
DB 1182/817

N/T GEOFFREY F. & ELIZABETH KERR
DB 646/477

NOTE: THIS PROPERTY LIES WITHIN F.E.M.A. FLOOD HAZARD ZONE C AS SHOWN ON THE FIRM COMMUNITY PANEL NUMBER 370125 150 B DATED MARCH 1, 1982.



TYPICAL CUL-DE-SAC

NOTE: ALL PROPOSED CULVERTS SHALL BE A MINIMUM OF 18".

A minimum thirty foot setback for buildings or other structures, excluding bridges or culverts, is required along all perennial streams (LITTLE COVE CREEK and MUD CREEK) indicated on the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps.

NOTICE:
NOTIFICATION REQUIREMENT:
OWNER OR CONTRACTOR MUST NOTIFY NCDENR-LAND QUALITY SECTION, ASHEVILLE REGIONAL OFFICE (828-251-6208) PRIOR TO BEGINNING ANY LAND-DISTURBING ACTIVITY.

Approx. Area To Be Disturbed
3.4 Acres

PROJECT SUMMARY

- TOTAL PROJECT AREA 45.97 AC.
- NUMBER OF PROPOSED LOTS 33
- MINIMUM LOT SIZE (SF) 40000 SF
- MAXIMUM LOT SIZE (SF) 2.33 AC.
- LENGTH OF PROPOSED PRIVATE ROADS 3281 LF
- WATER SYSTEM INDIVIDUAL WELLS
- SEWER SYSTEM INDIVIDUAL
- CURRENT ZONING OPEN USE

**VALLEY VIEW FARMS
MASTER / DEVELOPMENT PLAN**

OWNER/DEVELOPER
EDWARD N. and NOREEN E. GILLAN
PATRICK and GAY ANN ONEAL
665 MARK FREEMAN RD.
HENDERSONVILLE, NC 28792

JOB NO. 04-104

10

**HENDERSON COUNTY
PLANNING DEPARTMENT
MEMORANDUM**

Date: July 14, 2004
To: Planning Board Members
From: Derrick L. Cook, Planner
Re: Subdivision Plan Reviews for July 20, 2004 Planning Board Meeting
Hutch Mountain Estates Combined Master Plan and Development Plan
(File# 04-M12)

Hutch Mountain Estates (File# 04-M12)

Chad Z. Cabe, Owner, Terry A. Baker, Agent

The subject property contains 36.63 acres in four tracts located off Hutch Mountain Road. The proposed development is for 30 proposed single-family lots. Lot sizes range from 0.85 acres to 1.62 acres. The development is located in an Open Use Zoning District and will be served by private roads, individual wells and individual septic tanks. The property is not located in a Water Supply Watershed district.

Technical and Procedural Comments

Staff has reviewed the combined Master Plan and Development Plan for conformance with the Henderson County Subdivision Ordinance and offers the following comments:

Master Plan

No Comments- requirements satisfied.

Development Plan

1. **Soil Erosion and Sedimentation Control.** The Applicant should submit notice from NCDENR that a soil erosion and sedimentation control plan has been received or provide documentation that no plan is required prior to beginning construction (HCSO 170-19).
2. **Road Grade.** The Applicant has proposed paved private residential collector roads and paved private local residential roads to serve the property. The road grades are not to exceed 16% and 18% respectively. The Applicant has provided approximate finished grades of the roads on the combined Master and Development Plan. A professional engineer or professional land surveyor must certify on the Final Plat that no portion of the roads has a grade that exceeds 16%

for residential collector roads and 18% for local residential roads (HCSO 170-21 Table 1 and 170-21E).

3. **Private Roads.** Because private roads are shown, the Final Plat should include a note stating: *The private roads indicated on this Final Plat may not meet requirements of the North Carolina Department of Transportation for acceptance into the state road system* (HCSO Appendix 7).
4. **Perennial Stream Setback.** The Applicant has acknowledged on the combined Master Plan and Development Plan the 30-foot building and other structures setback from perennial streams required by §170-37A of the Subdivision Ordinance. Such setback must be noted on the Final Plat (HCSO Appendix 7).
5. **Existing Rights-of-way.** The Applicant has clearly depicted 20-foot wide off-site private rights-of-way adjoining and/or crossing the subject property. The combined Master and Development Plan show several dirt road beds on and adjacent to the subject property. The Applicant should be prepared to discuss status of the rights-of-way as they relate access and usage availability. The rights-of-way should be depicted on the Final Plat (HCSO Appendix 7).

Staff Recommendation

The submittal is for approval of the combined Master and Development Plan for the Hutch Mountain Estates subdivision. Staff believes that the submittal satisfactorily addresses the requirements of the Henderson County Subdivision Ordinance. Staff would recommend approval of the combined Master and Development Plan subject to the above listed comments being addressed.

Possible Motion

I move that the Planning Board find and conclude that the combined Master and Development Plan submitted for Hutch Mountain Estates subdivision complies with the provisions of the Subdivision Ordinance except for those matters addressed in the Technical and Procedural Comments section of the Staff's memo that have not been satisfied by the applicant;

AND

I further move that the combined Master and Development Plan be approved subject to the following Conditions: The Applicant satisfies comment 1 prior to beginning any construction and comments 2 through 5 on the Final Plat or by Final Plat approval (and any other conditions imposed by the Planning Board).

HENDERSON COUNTY
SUBDIVISION APPLICATION FORM

6-21-04 HUTCH MOUNTAIN ESTATES 2004-1112
Date of Application Subdivision Name Application Number

Major Subdivision Minor Subdivision Other

Property Owners Name: CHAD ZEBULON CABE

Address: P.O. BOX 141

City, State, Zip: HORSE SIDE, NC 28742

Owner's Agent: TERRY A. BAKER

Telephone No: 828-890-3507

PIN 9662-76-2063, 3538 - 9662-75-3429 Deed Book/Page 1186/727

Zoning District DU Fire District FLETCHER Watershed NONE

Location of property to be divided: HWY 25 N. TO FLETCHER, RIGHT ON HOWARD GAP RD.
TURN LEFT ON JACKSON RD. - TO RIGHT ON HUTCH MTN. RD. GO APPROX.
ONE MILE TO PROPERTY ON THE RIGHT

Type of Subdivision: Residential () Commercial () Industrial Present Use _____

No. Lots Created 30 Original Tract Size 36.63 New Tract Size 36.63 No. New Lots 30

Road System: () Public Private () Combination Public and Private

Water System: Individual () Community () Municipal

Sewer System: Individual () Community () Municipal

Fee: \$ 400.00 Paid 400.00 Method Check # 9756
6/21/04

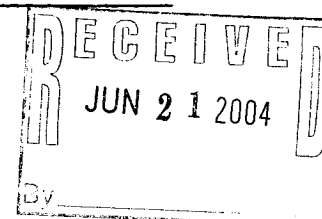
I certify that the information shown above is true and accurate and is in conformance with the Henderson County Subdivision Ordinance.

Chad Z
APPLICANT (OWNER OR AGENT)

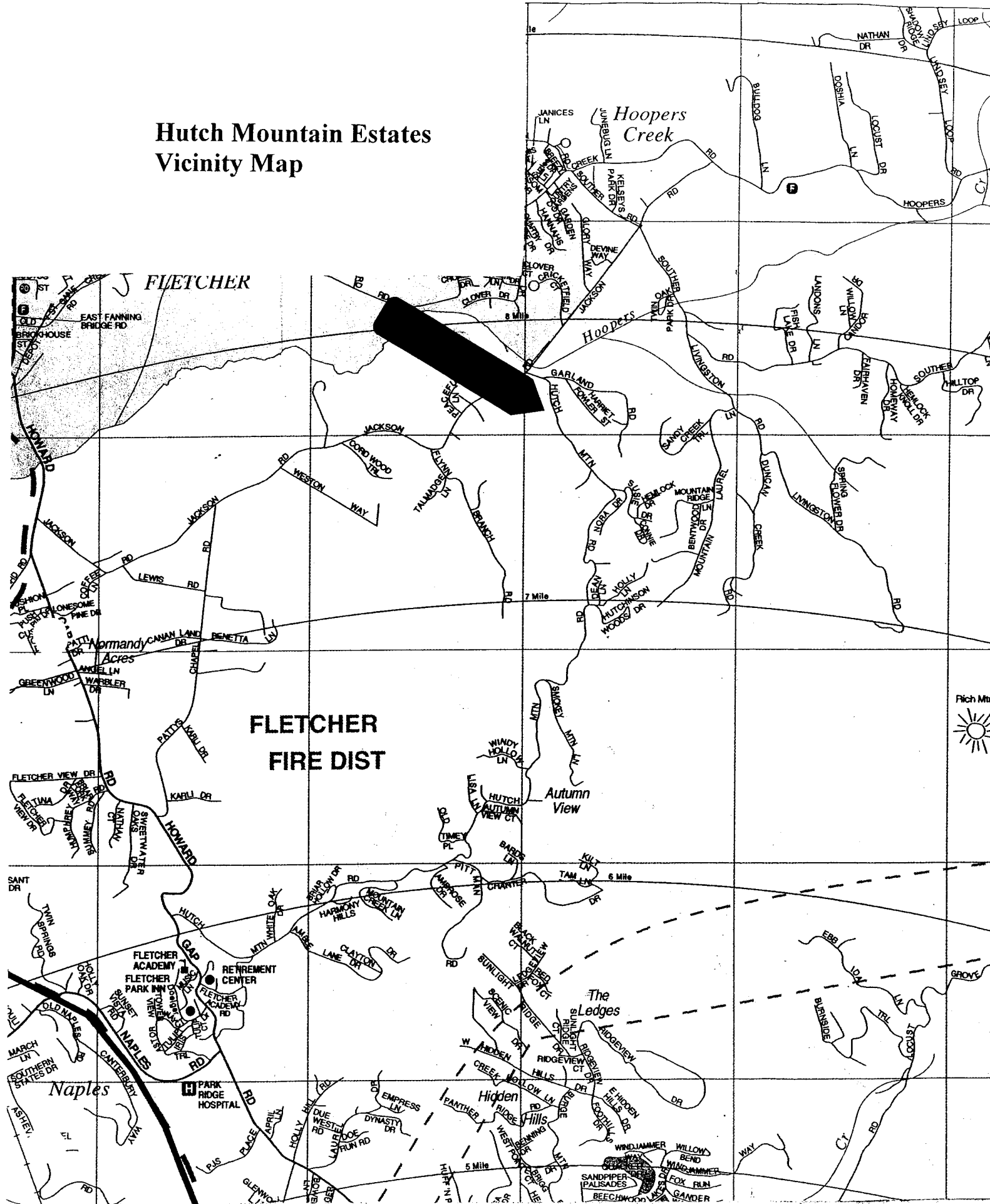
6-18-04
DATE

Development Plan Approval / Conditions _____

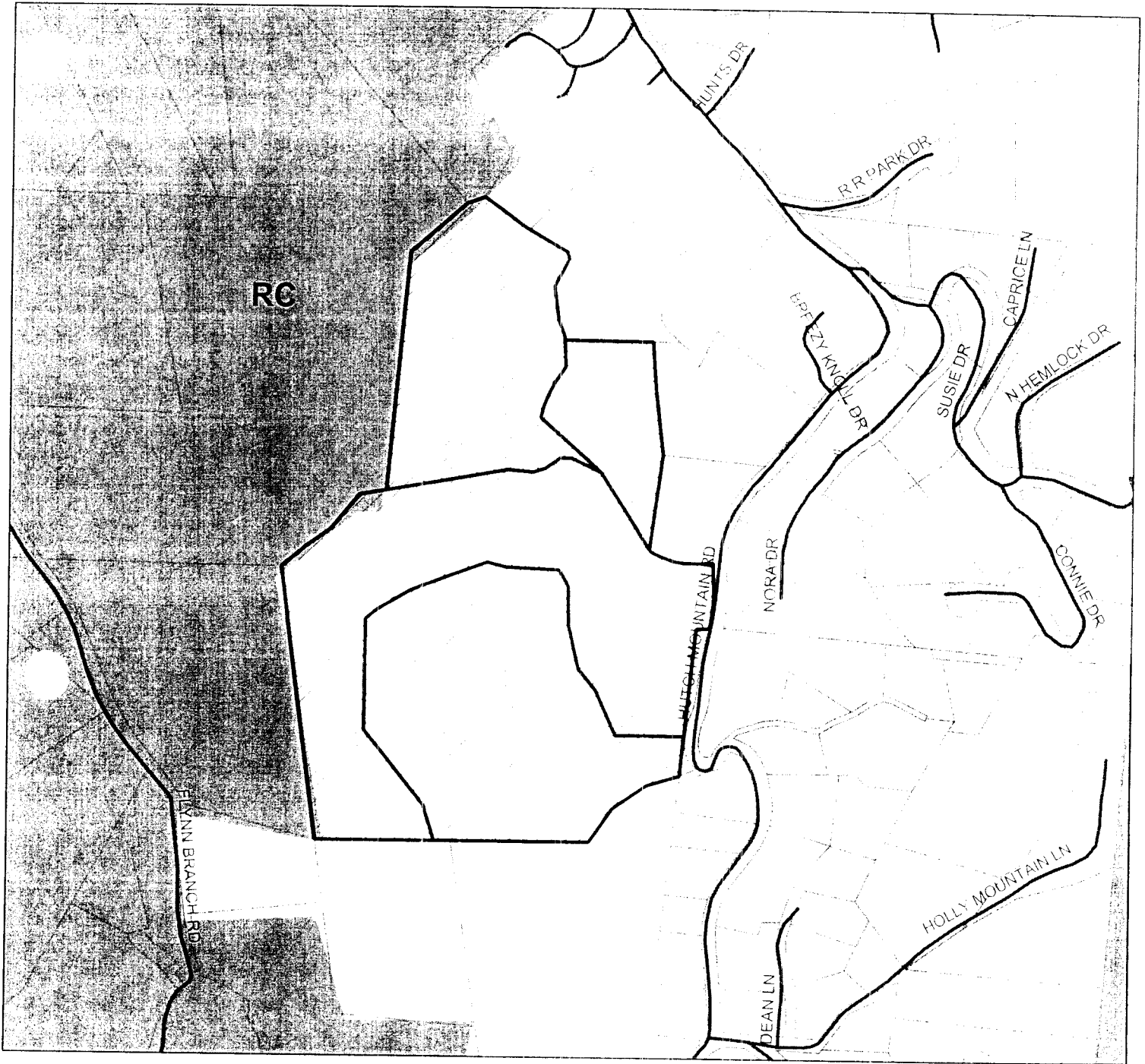
Final Plat Approval: _____ Plat Recorded _____



Hutch Mountain Estates Vicinity Map



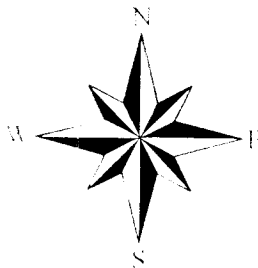
Henderson County Planning Department



Hutch Mountain Estates

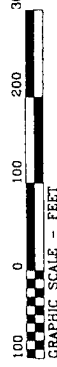
PROPERTY OWNER: Chad Zebulon Cabe
AGENT: Terry A. Baker
TAX MAP ID: 9662-76-2063, 3538, 7307, & 9662-75-3429
ZONING: Open Use
WATERSHED: NA

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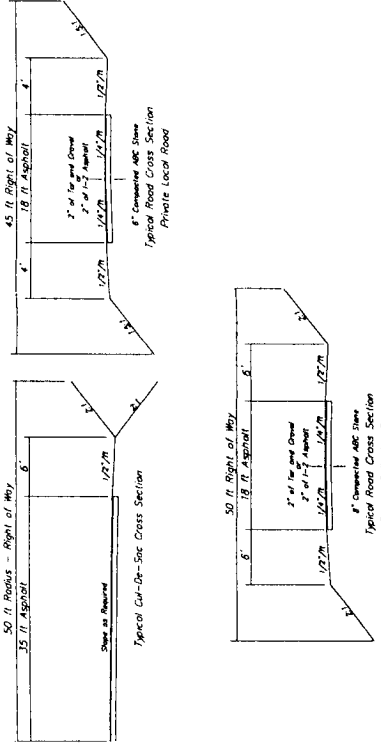
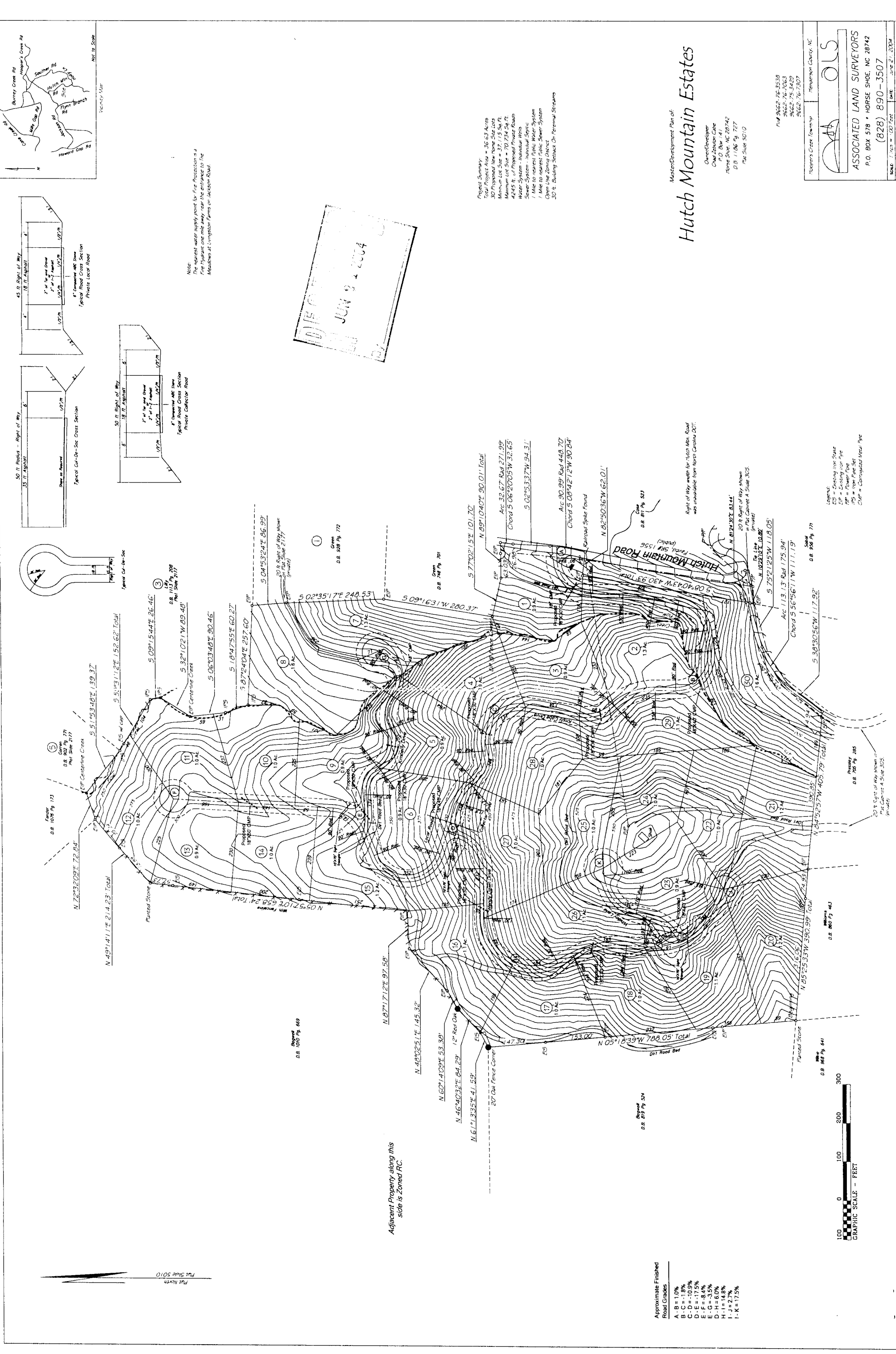


Approximate Finished Road Grades

A	= 1.0%
B	= 1.0%
C	= -1.0%
D	= -1.5%
E	= -1.5%
F	= -1.5%
G	= -1.5%
H	= -1.5%
I	= -1.5%
J	= -1.5%
K	= -1.5%



Adjacent Property along this side is Zoned RC.



Note:
The nearest water supply point for fire protection is a fire hydrant one mile away near the entrance to the Meadows at Livingston Farms on Jackson Road.

DEVELOPED
JUN 9 2004

Project Summary:
Total Project Area = 36.63 Acres
30 Proposed New Home Site Lots
Minimum Lot Size = 37,115 Sq Ft
Maximum Lot Size = 70,734 Sq Ft
4245 Sq Ft of Proposed Private Road
Water System - Individual Wells
Sewer System - Individual Septic
Fire Protection - Fire Department
1 Mile to nearest Fire Department
Open Use Zoned District
30 ft Building Setback On Perennial Streams

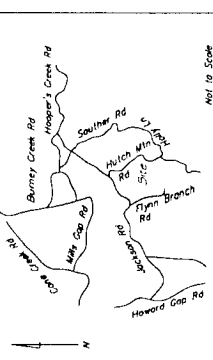
Hutch Mountain Estates

Master/Development Plan of:

Owner/Developer:
Chad Johnson Coker
P.O. Box 578
Horse Shoe, NC 28742
O.B. 1186 Pg. 727
Plan Scale 50:1

Map Scale: 50:1
Date: June 21, 2004
Sheet No. 5 of 304
Sheet No. 800

ASSOCIATED LAND SURVEYORS
P.O. BOX 578 • HORSE SHOE, NC 28742
(828) 890-3507



Legend:
EIS = Existing Iron State
EIS = Existing Iron Pipe
EIS = Existing Iron Pipe
EIS = Existing Iron Pipe
EIS = Existing Iron Pipe
EIS = Existing Iron Pipe

HENDERSON COUNTY

Planning Department

101 East Allen Street • Hendersonville, NC 28792
Phone 828-697-4819 • Fax 828-697-4533

MEMORANDUM

TO: Henderson County Planning Board

FROM: Karen C. Smith, Planning Director *KCS*

DATE: July 15, 2004

SUBJECT(S): Special Use Permit Application #SP-02-01 (Revised) for Proposed Expansion to Existing Mining and Extraction Operation for Hoopers Creek Quarry - Junius D. Grimes, Applicant

ATTACHMENTS:

1. Vicinity Map
2. Table with Specific Site Standards for the Open Use District
3. Special Use Permit Application #SP-02-01 (including supplemental material and site plan)
4. Excerpt from Minutes of the December 17, 2002 Henderson County Planning Board Meeting
5. Excerpt from Minutes of Various Meetings of the Henderson County Board of Commissioners
6. Staff Memo to Henderson County Board of Commissioners
7. State Mining Permit for Hoopers Creek Quarry Issued March 29, 2004 (including cover letter)
8. Revised Site Plan for Hoopers Creek Quarry
9. May 18, 2004 Letter from NC DENR

Background Information

In November of 2002, Mr. William G. Lapsley, P.E., on behalf of Mr. Junius D. Grimes (the "applicant"), submitted special use permit application #SP-02-01 for an expansion to an existing mining and extraction operation (as defined by §200-7 of the Henderson County Zoning Ordinance) known as Hoopers Creek Quarry. The application also included a request for a variance from the fencing requirement for mining and extraction operations.

The quarry expansion was proposed on property owned by Hoopers Creek Quarry, LLC, located off of Hoopers Creek Road and known by County parcel identification number 00-9663-95-5226-55 (the "subject property"). The entrance to the subject property is located approximately 635 feet west of the intersection of Hoopers Creek Road and Jackson Road (see Attachment 1). Most of the subject property is within the County's Open Use (OU) zoning district, however the entrance and part of the access road for the subject property fall within the extraterritorial jurisdiction of the Town of Fletcher. The site plan submitted with the special use permit application indicated that the subject property contained approximately 32.53 acres.

At the time of submission of the original special use permit application in 2002, Hoopers Creek Quarry had a mining permit that had been issued by the North Carolina Department of Environment and Natural Resources, Division of Land Resources, Land Quality Section (the "State") in 1994, as well as a Federal mining permit. It appears that the 1994 State mining permit considered 5 acres of the subject property as "permitted" acreage and 4 acres as "affected" acreage. "Affected land" is defined by the Mine Safety and Health Act of North Carolina (NCGS 74-49) as "*The surface area of land that is mined, the surface area of land associated with a mining activity so that soil is exposed to accelerated erosion, the surface area of land on which overburden and waste is deposited, and the surface area of land used for processing or treatment plant, stockpiles, nonpublic roads, and settling ponds.*" Please note that the State recently discovered a calculation error in the "permitted" acreage apparently dating back to the 1994 State mining permit (referenced in Attachment 9) which meant that 1994 mining permit should have shown the "permitted" acreage as 6 acres and the "affected" acreage as 5 acres.

In 2002, the applicant applied for a modification to the State mining permit in order to relocate a sediment basin and enlarge a waste fill site. The modification also involved adding an area along the entrance road to the area to be disturbed (for realignment of the road).

The application for the modification to the State mining permit triggered the special use permit application because it resulted in a physical expansion of the area devoted to the principal use of the property. As noted above, the quarry was a preexisting use in the OU district. On May 16, 2001, a mining and extraction operation became a regulated use due to the application of OU zoning and such use, if being newly established, would require a special use permit (per §200-32.1(F)(1)(c) of the Zoning Ordinance. The OU district also contains provisions for the treatment of expansions and alterations to preexisting uses, including those that did not require zoning approval when constructed but would now require such approval. Staff determined in 2002 that §200-32.1(H)(3)(b) of the Zoning Ordinance regarding physical expansions of preexisting uses applied and that a special use permit would be needed for the quarry expansion. However, the standards that apply to the expansion of a use required to obtain a special use permit in the OU district are not as stringent as those that would apply if the use was being newly established. In the case of the quarry, according to §200-32.1(H)(3)(c) of the Zoning Ordinance, the expansion was required to meet the specific site standards for mining and extraction operations in §200-38.2 of the Zoning Ordinance (see Attachment 2) to the extent possible for the expanded or altered portion of the facility or operation only. The same section of the Zoning Ordinance also required that the quarry meet the general standards in §200-56 (which apply to all special use permits) with or without conditions imposed by the Board of Commissioners. Conditions could include the imposition of specific site standards of the types found in §200-38.2. Another part of §200-32.1(H)(3)(c) states: "Notwithstanding anything to the contrary, development occurring around a preexisting use will not affect the ability of such use to alter or expand its facilities or operations." Finally, §200-32.1(I) provides more language limiting the impact of events occurring after the date of an application for a special use permit for uses in the OU district.

The Planning Board discussed special use permit application #SP-02-01 on December 17, 2002, following its referral by the Board of Commissioners. Copies of the original special use permit

application form with supplemental materials and a site plan, as well as an excerpt from the minutes of the December 17, 2002 Planning Board meeting are attached for reference (see Attachments 3 and 4). As the Board will note from the December 17, 2002 meeting minutes, the Planning Board decided to send the Board of Commissioners a favorable recommendation on the special use permit application subject to the applicant satisfying two comments that were in a staff memo. Such comments stated that the applicant should either obtain a variance from the fencing requirement or meet the fencing requirement for the expansion area only and also stated that the applicant should obtain approval of the amendments to the State mining permit application before beginning construction of the sediment basin. The Planning Board also acknowledged that there would be an adjustment to the site plan as to the location of the sediment basin per comments made by Mr. Lapsley during the Planning Board meeting. The Planning Board did not specifically address the variance request as the Zoning Ordinance does not require a recommendation from the Planning Board on variance applications.

The Board of Commissioners held a quasi-judicial public hearing on special use permit application #SP-02-01 on January 15, 2003. Following the hearing, the Board voted to approve the special use permit and decided to act on the fencing variance request separately. Staff was to bring back a draft order for the special use permit decision. Regarding the variance, the Board discussed whether it could require fencing on the most at-risk portion of the quarry operation or if it could only consider fencing for the expansion area. The Board asked staff to work on additional options for fencing for the Board to discuss at its next meeting. The County Attorney prepared a draft order granting the special use permit for the Board of Commissioners' February 19, 2003 meeting. At that time, the Board learned that the State was changing the amount of land it was including in its permit. This was due to a change in the design of the waste fill area/sediment basin that caused the expansion area to change from 0.72 acres to 1.07 acres. The Board then decided to postpone approval of the order and other action until it could re-open the hearing to obtain evidence regarding the actual size of the expansion area.

On March 3, 2003, the Board of Commissioners re-opened the hearing and limited testimony to that related to the increase in the expansion area. It also decided to allow testimony from only those parties who had participated in the original hearing. During that portion of the hearing, the Board of Commissioners learned that the State had not yet approved the modifications to the applicant's mining permit and that it was possible that there could be other revisions to the site plan before the State issued the permit. The Board of Commissioners decided to hold the hearing open until the applicant received official notice from the State regarding approval of the modifications to the State mining permit.

Staff has attached excerpts from minutes of various Board of Commissioners' meetings at which the special use permit and variance for Hoopers Creek Quarry were discussed (see Attachment 5). The minutes from the hearing (including the continuation) include testimony from Mr. Lapsley, County staff as well as neighboring property owners. A copy of a staff memo outlining the Planning Board's recommendation and staff comments on the special use permit application is also attached for the Board's information (see Attachment 6). Staff entered the memo as evidence during the hearing.

Current Status

The State issued approval of modifications to the applicant's mining permit on March 29, 2004 (see Attachment 7). The permit expires July 6, 2005. In addition to reflecting an increase in the affected acreage due to the realignment of the entrance road and the redesign of the waste fill area and sediment basin, the new permit also indicated that the affected acreage had increased due to a "slight expansion of the pit area." The final revised site plan that was considered by the State (see Attachment 8) shows a design of the waste fill site and sediment basin that is somewhat different than what was considered during the Board of Commissioners' hearing on the special use permit. For example, while the size of the waste fill area and sediment basin remains at 1.07 acres, the new design shows that a portion of the sediment basin will encroach on the 180-foot buffer that the applicant had initially proposed. Please note that the revised site plan shows different acreages on sheets 1 and 2 for the proposed waste fill site expansion area (0.72 acres on sheet 1 and 1.07 acres on sheet 2). Mr. Lapsley has informed staff that the number on sheet 2 (1.07 acres) is the correct size for the expansion. The State also approved a modification to the applicant's mining permit that allows the subject property in its entirety plus the access road to be included in the "permitted" acreage. This change, according to State staff, enables the applicant to apply to the State for future modifications of the mining permit without having to go through all of the public notice procedures. The State would still have to approve the modifications.

Regarding the "slight expansion of the pit area" referenced in the March 29, 2004 letter accompanying the modified State mining permit, the State issued a letter on May 18, 2004 (see Attachment 9) to be attached to the modified mining permit to correct the acreages shown in the modified mining permit. Apparently two 0.5-acre areas shown on the various site plans as the West Face Quarry Expansion and the East Face Quarry Expansion were part of the mine excavation area in the 1994 permit but were added a second time when the modified permit was issued. With the correction, the modified mining permit from the State should now indicate that the permitted acreage for the site is 34.52 acres and the amount of area the applicant can disturb (the affected area) is 7.47 acres.

Due to the changes to the site plan and the State mining permit, on June 7, 2004, the Board of Commissioners decided to refer the State's response (the modified State mining permit) to the Planning Board so it could have the opportunity to reconsider its recommendations given the new information. At the same meeting, the Board of Commissioners scheduled a continuation of the quasi-judicial public hearing on the special use permit and variance requests for Wednesday, August 18, 2004, at 11:00 A.M.

Staff Comments

Based on its review of the modified State mining permit (as corrected), as well as the revised site plan, prior staff comments and the Planning Board's previous recommendation, staff offers the following comments:

1. One of the more significant changes to the site plan relates to the buffer. The Zoning Ordinance, for purposes of the OU district only, defines a "buffer" as:

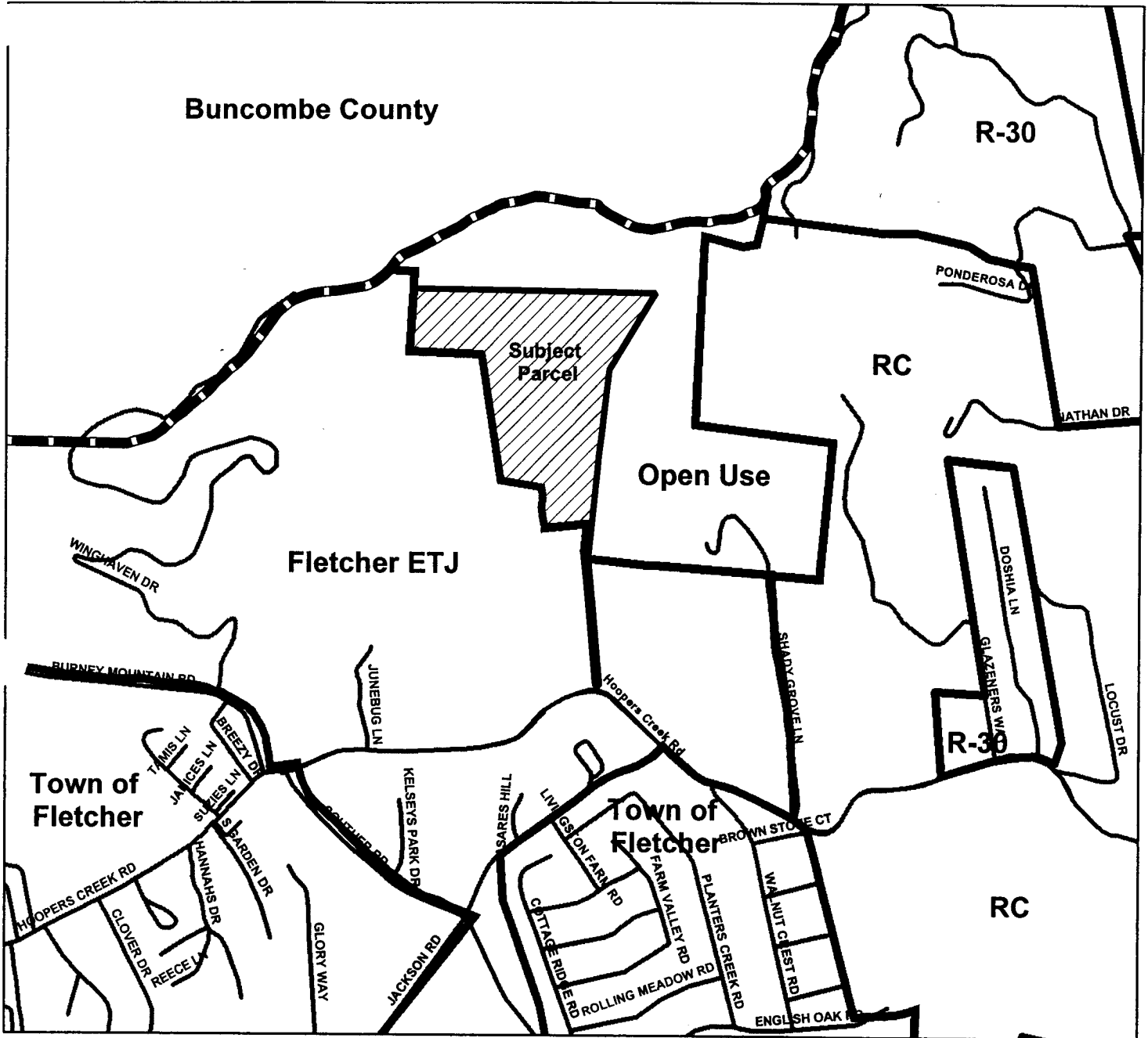
A continuous strip of land, measured from the property lines or from any street bordering or traversing the property (whichever is closer to the principal use or building), in which no development or principal use may occur, but which may contain screening, fencing, interior service roads not intended for patron use, principal use signs, business signs and gate or security houses. Access road corridors may cross the buffer at entrance and exit points only.

The buffer standard for mining and extraction operations in the OU district is 500 feet per §200-38.2 of the Zoning Ordinance. However, the applicant's agent had previously indicated (and prior site plans showed) that the extent to which it was possible to meet the buffer standard for the expansion in that area was 180 feet. The most recent site plan shows a portion of the sediment basin within approximately 140 feet of the eastern boundary of the subject property. The applicant or his agent should provide information to the Planning Board as to whether a 140-foot (+/-) buffer is all that can be provided along that portion of the expansion area.




2. Since the modified State mining permit expires on July 6, 2005, the applicant or his agent should discuss with the Planning Board if the applicant will apply to the State for another mining permit in the future.
3. If the Board of Commissioners grants the special use permit, the applicant must comply with the Henderson County Zoning Ordinance for any future alterations or expansions of the mining and extraction operation, regardless of whether a modification to his State mining permit (or a new State mining permit) is required.

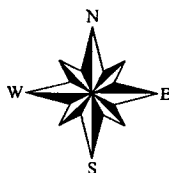
The applicant, his agent, Planning Board members, staff as well as the public may have additional comments to offer during the July 20, 2004 meeting.

Vicinity / Zoning Map



Legend

-  Subject Parcel
-  County Border
-  Streets



Special Use Permit
Application SP-02-01
Hoopers Creek Quarry, LLC, Applicant



PIN - 00966395522655
 Property Owners - Hoopers Creek Quarry, LLC
 Address - PO BOX 7147
 City - Asheville
 State - NC
 Zip - 28802
 PROP_DESC - On Hoopers Creek Road
 Zoning - OU Acreage - 32.53
 Watershed - N/A

Henderson County
Open Use Districts:
Minimum Specific Site Standards
[Added 5-16-2001]

	Heavy Industry	Solid Waste Management Facility	Mining and Extraction Operation	Concrete Plant	Asphalt Plant	Incinerator	Junkyard	Motor Sports Facility	Slaughtering Plant	Amusement Park	Chip Mill
Hours of Operation	No stated minimum	7 a.m. - 11 p.m.	7 a.m. - 11 p.m.	7 a.m. - 11 p.m.	7 a.m. - 11 p.m.	No stated minimum	7 a.m. - 11 p.m.	7 a.m. - 11 p.m.; no more than 3 consecutive days	7 a.m. - 11 p.m. on weekdays	7 a.m. - 11 p.m. weekdays; 7 a.m. - 2 a.m. Fri. & Sat.	7 a.m. - 11 p.m.
Screening	No stated minimum	No stated minimum	No stated minimum	No stated minimum	No stated minimum	No stated minimum	Full	No stated minimum	No stated minimum	No stated minimum	No stated minimum
Fencing	Secured	Secured	Secured	Secured	Secured	Secured	Secured	Secured	Secured	Secured	Secured
Buffer (feet)	100	500	500	100	100	100	50	100	100	100	100
Setback (feet)	300	1,500 (landfill) 500 (other)	No stated minimum	200	500	300	300 (from public road)	500 (minor) 1,500 (major)	1,000	500	200
Parking	See § 200-40	See § 200-40	See § 200-40	See § 200-40	See § 200-40	See § 200-40	See § 200-40	See § 200-40	See § 200-40	See § 200-40	See § 200-40
Loading	See § 200-41	See § 200-41	See § 200-41	See § 200-41	See § 200-41	See § 200-41	See § 200-41	See § 200-41	See § 200-41	See § 200-41	See § 200-41
Access Road Corridor	Number: 1 Width: 60 feet	Number: 2 Width: 60 feet	Number: 1 Width: 60 feet	Number: 1 Width: 60 feet	Number: 1 Width: 60 feet	Number: 1 Width: 60 feet	Number: 1 Width: 45 feet	Number: 1 (minor); 2 (major) Width: 45 feet	Number: 1 Width: 60 feet	Number: 2 Width: 45 feet	Number: 1 Width: 60 feet
Width of Travelway (feet)	30	30	30	30	30	30	20	20	30	20	30
Fire Protection	Required	Required	Required	Required	Required	Required	Required	Required	Required	Required	Required
Noise Mitigation	Plan required	Plan required	Plan required	Plan required	Plan required	Plan required	Plan required	Plan required	Plan required	Plan required	Plan required
Lighting	Required	Required	Required	Required	Required	Required	Required	Required	Required	Required	Required
Separation	1/2 mile - schools 1/2 mile - health-care 1 unit per 2 acres radius: 1 mile	1/2 mile - schools 1/2 mile - health-care 1 unit per 2 acres radius: 1 mile	1/2 mile - schools 1/2 mile - health-care 1 unit per 2 acres radius: 1 mi	1/2 mile - schools 1/2 mile - health-care 1 unit per 8 acres radius: 1 mile	1/2 mile - schools 1/2 mile - health-care 1 unit per 8 acres radius: 1 mile	1/2 mile - schools 1/2 mile - health-care 1 unit per 8 acres radius: 1 mile	1/2 mile - schools 1/2 mile - health-care 1 unit per 2 acres radius: 1 mile	1/2 mile - schools 2 miles - health-care 1 unit per 2 acres radius: 1 mile	1/2 mile - schools 1/2 mile - health-care 1 unit per 2 acres radius: 1 mile	1/2 mile - schools 1/2 mile - health-care 1 unit per 2 acres radius: 1 mile	1/2 mile - schools 1/2 mile - health-care 1 unit per 2 acres radius: 1 mile
Maximum Residential Density	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
Protected Mountain Ridge	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited

7-5-2001

NOTES:
1. The term "health-care" refers to health-care facilities as that term is defined in this chapter. (See § 200-7B.)

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NOV 13 2002

Application No. SP-02-01

COUNTY OF HENDERSON
STATE OF NORTH CAROLINA
APPLICATION FOR A SPECIAL USE PERMIT

Attachment 1

November 12 2002
Month Day Year

Applicant: HOOTERS CREEK QUARRY, LLC Phone: 828-252-6477
Address: P.O. Box 7147, ASHEVILLE, NC 28802
Property Owner's Name (if different from above): _____
Property Address (if different from above): HOOTERS CREEK ROAD
Parcel ID Number: 9663-95-5226 Zoning District: OPEN USE

TO THE BOARD OF COMMISSIONERS:

I, JUNIUS D. GRIMES (owner/agent), hereby petition the Board of Commissioners to issue a SPECIAL USE PERMIT for use of the property described in the attached form, or if not adequately explained there, as more fully described herein:
To continue use of the subject stone quarry.

Authority to grant the requested permit is contained in the Zoning Ordinance, Sections _____

The Zoning Ordinance imposes the following GENERAL REQUIREMENTS on the use requested by the applicant. Under each requirement, the applicant should explain, where applicable, how the proposed use satisfied these requirements:

General Requirement #1: The use will not adversely affect the health and safety of persons residing or working in the neighborhood: The existing stone quarry operation has adequate buffers from existing homes. There have been no complaints or injuries to persons in the area resulting from this operation.

General Requirement #2: The use will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood: The quarry has been in continuous operation for many years and has not been detrimental to the neighborhood.

(continue remarks on reverse side or separate page)

The Zoning Ordinance also imposes the following SPECIFIC REQUIREMENTS on the use requested by the applicant. The applicant should be prepared to demonstrate that satisfactory provisions have been made for the following, where applicable:

- Satisfactory ingress and egress to property and proposed structures thereon, with particular reference to pedestrian safety and convenience, automotive, traffic flow and control;
- Provision of off-street parking and loading areas where required, with particular attention to the items above and the economic, noise, glare, and odor effects of the conditional use on adjoining

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NOV 13 2002

Application for a Special Use Permit
Page 2

- properties in the area;
- Utilities with reference to locations, availability, and compatibility;
- Buffering with reference to type, location, and dimensions;
- Playgrounds, open spaces, yards, landscaping, access ways, pedestrian ways with reference to location, size, and suitability;
- Building and structures with reference to location, size, and use.

In addition, the applicant shall provide the names and addresses of all adjoining property owners.

I certify that all of the information presented by the undersigned in this application is accurate to the best of my knowledge, information, and belief.

Quinn D. Grimes
Signature of Applicant

Nov. 12, 2002
Date

IN THE EVENT THAT ANY DISCREPANCIES EXIST BETWEEN THE CRITERIA OUTLINED ON THIS FORM AND THE ZONING ORDINANCE OF HENDERSON COUNTY, THE ORDINANCE SHALL PREVAIL.

Karen C. Smith
Received By

11/13/02
Date

Check # 022157 \$300.00
Fee Paid

11/13/02
Date Received

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NOV 13 2012

**HOOPERS CREEK QUARRY
SPECIAL USE PERMIT**

Attachment 2

Supplemental Information

1. Parcel Information –

Hoopers Creek Quarry, LLC
P.O. Box 5615
Asheville, NC 28813

Attn: Junius Grimes
(828) 252-6477

PIN: 9663-95-5226

2. Adjacent Property Owners

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3. Stone Quarry mining operation -
Normal working hours 8:00 a.m. – 5:00 p.m.

4. Noise Emission -
The quarry operation requires periodic blasting. This is done by a properly licensed contractor that monitors the noise and vibration in accordance with the quarry’s Federal Mine Permit #31-02108.

5. Lighting Plan
There are no outdoor lights at this facility. The operation ceases work at dark.

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The applicant owns a 30 foot wide access (see attached survey) which limits the width of the travelway to 16 feet (with drainage ditches & shoulder).

A waiver from the 30 foot wide travel width is requested.

10. Fire Protection –
There is no water supply available at the site for fire suppression.
11. Separation –
The quarry is located more than ½ mile from schools or health care facilities.
12. Protected Mountain Ridge –
The quarry operation does not encroach within the protected mountain ridge area.
13. Water supply/Wastewater Disposal –
There are no buildings on the site. The employees bring a water container each day and use a porta-john for wastewater.
14. Residential Density with 1 mile –
This information will be provided by County staff.

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6. Screening / Buffer -

The cleared area of the mine operation is more than 1200 lf from the nearest house. There is a natural wooded buffer which shields the operation from view. The operation does not and cannot meet the 500 foot minimum buffer from the property line. A waiver from this requirement is requested.
7. Fencing -

There are no existing fences around the property or the mining operation. There are warning signs around the edge of the property. The proposed expansion area presents no additional risk to the public. A waiver from the fencing requirement is requested.
8. Narrative -

The Hoopers Creek Quarry is a stone mining operation that has been in continuous operation for over 8 years by the applicant. The quarry operated for many years under a previous owner.

The quarry operation normally has 3 full-time employees supplemented by 1 or 2 during the summer months.

The mining operation includes a trackhoe excavator and a rubber tired loader to move the stone material. The stone is selectively sized and loaded into wire baskets for shipment to the sales yard in Asheville, North Carolina. The stone is used by the consumer for decorative rock veneer on homes and businesses.

The quarry operation has a Federal Mining Permit #31-02108 and a State of North Carolina Mining Permit.

The amount of stone product removed from the quarry varies based upon consumer demand. It is expected that approximately 5,000 tons of rock will be selected and hauled offsite during the calendar year 2002.

The only hazardous material stored on site is a small quantity of diesel fuel for the operation of equipment. It is contained in a standard storage tank (500 gallons).
9. Travelway Width -

The quarry is accessed from Hoopers Creek Road (SR1533) via an existing 16 foot wide gravel roadway. This roadway has served the quarry traffic satisfactorily for many years. There is no public traffic to the quarry. The only vehicles coming to the site are employees (4 max per day), the owner (1-2 per week) and the truck loaded with stone (average 1 per day).



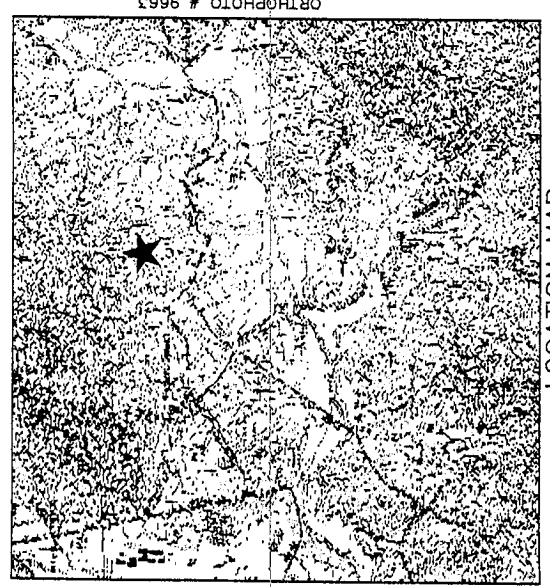
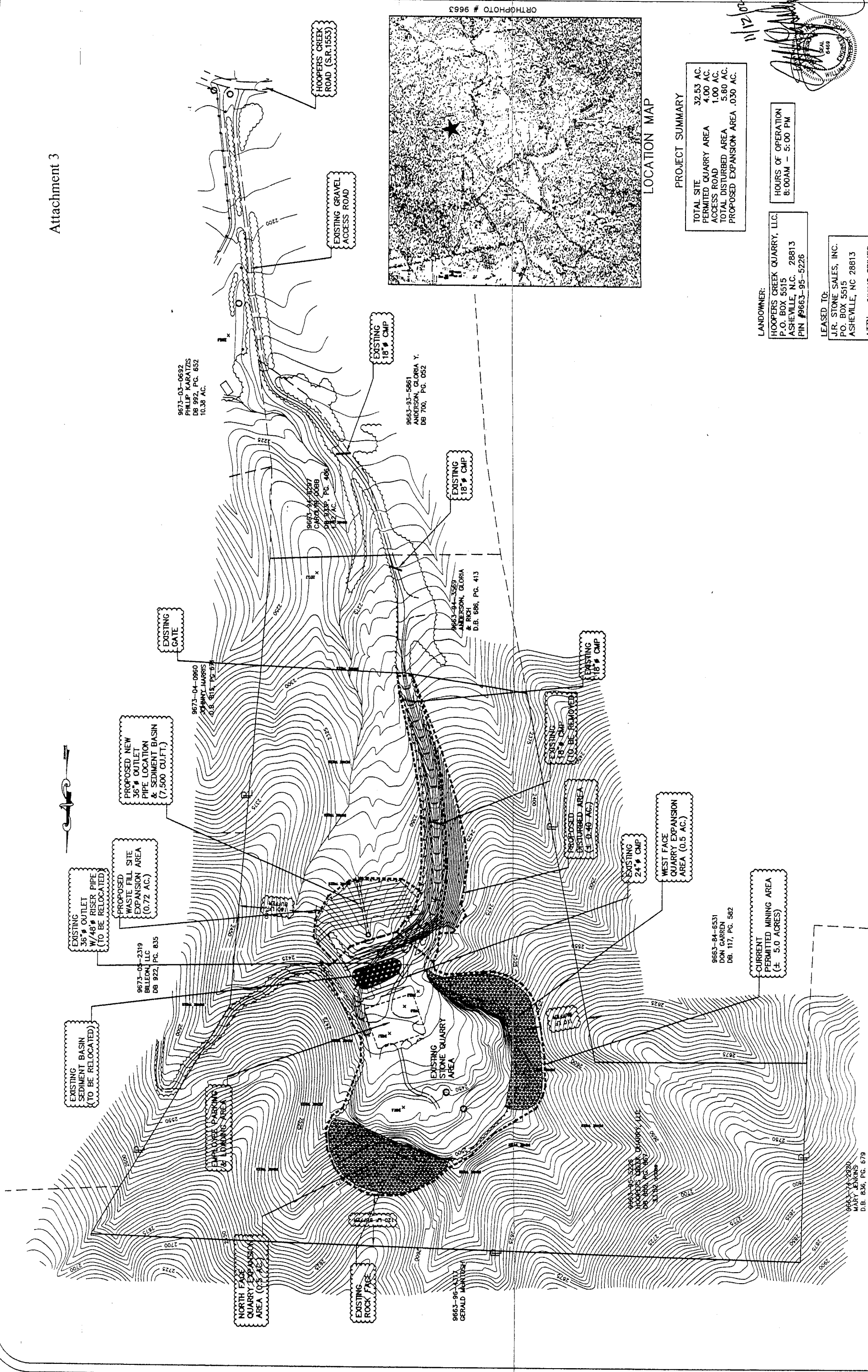
WILLIAM G. LAPSLEY & ASSOCIATES P.A.
CONSULTING ENGINEERS & LAND PLANNERS
HENDERSONVILLE, NORTH CAROLINA

HOOPERS CREEK QUARRY
HOOPERS CREEK TOWNSHIP
NORTH CAROLINA

SPECIAL USE PERMIT
SITE PLAN

sheet
1_of_1

Attachment 3



LOCATION MAP

PROJECT SUMMARY

TOTAL SITE	32.53 AC.
PERMITTED QUARRY AREA	4.00 AC.
ACCESS ROAD	1.00 AC.
TOTAL DISTURBED AREA	5.60 AC.
PROPOSED EXPANSION AREA	.030 AC.

LANDOWNER:
HOOPERS CREEK QUARRY, LLC.
P.O. BOX 5515
ASHEVILLE, N.C. 28813
PIN #9663-95-5226

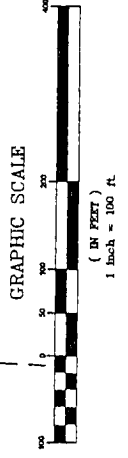
LEASED TO:
J.R. STONE SALES, INC.
P.O. BOX 5515
ASHEVILLE, NC 28813
ATTN: JUNIUS GRIMES
PHONE: 828-252-6477

WILLIAM G. LAPSLEY & ASSOCIATES P.A.
CONSULTING ENGINEERS & LAND PLANNERS
1200 HENDERSONVILLE ROAD
HENDERSONVILLE, N.C. 28804
828-497-7524, FAX 828-497-7535

Revisions

date: 4/02
job: 02128
drawn: KHC

11/2/02
[Signature]



EXISTING
CURRENT PERMITTED MINING AREA
(± 5.0 ACRES)

9663-84-5531
DON GARDEN
DB. 117, PG. 562

EXISTING
24# CMP

PROPOSED
DISTURBED AREA
(± 0.40 AC.)

EXISTING
18# CMP
(TO BE REMOVED)

EXISTING
18# CMP

9663-93-5661
ANDERSON, GLORIA Y.
DB 700, PG. 052

EXISTING
18# CMP

9663-94-3589
ANDERSON, GLORIA
& RICH
D.B. 686, PG. 413

EXISTING
18# CMP

9663-94-3589
ANDERSON, GLORIA
& RICH
D.B. 686, PG. 413

9673-03-0692
PHILIP KARATZIS
DB 992, PG. 652
10.38 AC.

9673-04-0960
CANNON HARRIS
D.B. 815, PG. 57

PROPOSED NEW
WASTE FILL SITE
EXPANSION AREA
(0.72 AC.)

9673-05-2319
BILLEDA, LLC
DB 922, PG. 835

EXISTING
36" OUTLET
W/48" RISER PIPE
(TO BE RELOCATED)

EXISTING
SEDIMENT BASIN
(TO BE RELOCATED)

9663-74-2920
MARY ENKINS
D.B. 836, PG. 679

9663-96-2374
GERALD MANTON

9663-95-2248
HOOPERS CREEK QUARRY, LLC
DB 960, PG. 967
21.02 AC.

EXISTING
ROCK FACE

NORTH FACE
QUARRY EXPANSION
AREA (0.5 AC.)

EMPLOYEE PARKING
& LOADING AREA

EXISTING
GATE

PROPOSED NEW
36" OUTLET
PIPE LOCATION
& SEDIMENT BASIN
(7,500 CU.FT.)

EXISTING
GATE



**Excerpt from
HENDERSON COUNTY
PLANNING BOARD MINUTES
December 17, 2002**

Review of Special Use Permit Application # SP-02-01 for Proposed Expansion to Existing Mining and Extraction Operation for Hoopers Creek Quarry (Off Hoopers Creek Road in an Open Use Zoning District) – William G. Lapsley, Agent for Junius D. Grimes, Applicant. Leon Allison recused himself from this issue, as he owns property adjoining this proposed development. All members were in favor of his recusal. Mr. Gurley stated that Mr. Junius D. Grimes, who owns Hoopers Creek Quarry, submitted an application for a Special Use Permit for an expansion to an existing mining and extraction operation. The Quarry expansion is proposed on property owned by Hoopers Creek Quarry, LLC, which is located off of Hoopers Creek Road. The entrance to the subject property is located approximately 635 feet west of the intersection of Hoopers Creek Road and Jackson Road. Most of the subject property, except for the entrance and part of the access road, is within the County's Open Use Zoning District. The subject property contains approximately 32.53 acres, 5 of which are currently governed by a State mining permit and the Quarry also has a Federal mining permit. Staff has attached a copy of the State permit application. Mr. Gurley stated that the only item the Board can consider, with regard to what the Ordinance says on what this use would need to meet, is the expansion. The expansion is to construct a sedimentation basin and to move the sedimentation basin. He stated that there would be no additional mining area. They are already permitted for five acres with the Federal and State mining permit. He stated they intend to expand the operation by approximately 0.72 acres in order to relocate a sediment basin and enlarge its waste fill site. He stated that a Special Use Permit is required when there is an expansion to one of the uses listed. Staff has also interpreted this to mean that only the expansions to the pre-existing non-conforming use can be regulated under the Henderson County Zoning Ordinance. Therefore, the area containing the new sediment basin and enlargement to the waste fill area is the only portion of the operation that can be considered under the Ordinance. He said that this being the case, only certain specific and general site standards could be considered during the review of this application. Mr. Gurley stated that there are a few items that the Board needs to look at regarding approval of this request as follows:

1. Buffer. Mr. Gurley stated that proposed location, use and dimensions of the stated minimum buffer for a mining and extraction operation are 500 feet. The current property and where it is going to be located, there is not 500 feet of property to provide a buffer. Mr. Gurley referred to Section 200-38.2 which states that needs to meet the specific site standards set forth to the extent possible for the expanded or altered portion of the operation only. There is no minimum setback for mining and extraction operations.
2. Fencing. Mr. Gurley stated that basically the Ordinance states that the applicant needs to fence the surrounding expansion area. The applicant is not indicating fencing and they are planning on asking and have submitted a variance to the Board

- of Commissioners to not require fencing. He stated that the Planning Board couldn't look at the variance they are requesting, but only reviewing the Special Use Permit.
3. Compliance with all Federal, State, and Local Laws. Mr. Gurley stated that Staff would offer the condition of requiring the applicant to obtain approval of the amendments to his State application before the initiation of construction of the sediment basin.
 4. Residential Density. Mr. Gurley stated that this is required by the Ordinance. He stated that the applicant is compiling this information and if the applicant has not completed this, to make it a condition of the motion made for this request so that the Board of Commissioners can look at this when they are reviewing the Special Use Permit.
 5. 1993 Henderson County Comprehensive Land Use Plan. Mr. Gurley stated that this area was designated on the 1993 Henderson County Comprehensive Land Use Plan as Rural-Conservation, which is intended for housing at a density of approximately 1 unit per 5 acres, summer camps, active and passive parks, and major public and private recreation areas. Although the overall facility is inconsistent with the Land Use Plan Map, its existence preceded the 1993 comprehensive Land Use Plan. One of many goals of the Comprehensive Land Use Plan is to preserve and protect the environment for future generations. There is an unnamed tributary running through the middle of the subject property that drains into Hoopers Creek. Mr. Gurley stated that it is Staff's opinion that to the extent that the proposed action should enhance water quality protection in the County by keeping the sediment onsite and not contaminating nearby streams, the application is consistent with the Land Use Plan.

Mr. Gurley stated that subject to the applicant satisfactorily responding to and/or completing the aforementioned items, the Planning Board could consider sending a favorable recommendation on the application to the Henderson County Board of Commissioners. Mr. Gurley showed on a map the area in relation to the proposed expansion to the existing mining and extraction operation for Hoopers Creek Quarry. Chairman Pearce asked that Mr. Allison show his property in relation to this proposed operation. Board members discussed the fencing regarding the proposed operation and Staff mentioned that there is barbed wire fencing on the high wall at present. Chairman Pearce stated that the fencing is a standard condition and would need to meet it and or get a variance. Ms. Smith stated that regarding the residential density information, Staff requires that the applicant submit a separation information from the Tax Assessor's Office, but that this requirement is not critical for the decision of the Planning Board.

Mr. Lapsley, agent for the applicant for this project stated that this project started in late July with a submittal for an erosion and control permit to move the sediment basin approximately 40 feet. He stated that this triggered a mandatory request by the State for modification of the mining permit and the modification of the mining permit required that the applicant do a number of things. He said among some of the items required was that they were required to send out a registered copy of the plan to all the property owners adjacent to the project. He added that since the project was in the Open Use District and the Special Use Permit required to come before the Planning Board, we are trying to abide by the procedures. He said the actual quarry area is approximately 20 – 30 years old with periods of non-operation. Mr. Grimes has had the operation for approximately 10 years and Lapsley and Associates obtained the original mining

permit for Mr. Grimes in 1993 when Mr. Grimes opened the mining operation up again. He said the quarry is for decorative stone that are sold for houses for walls. He pointed out that he had recently been contacted by the State mining engineer, which they have decided they do not want the sediment basin on the top of this hill as it is at present, but want it moved to the toe of the slope as they are concerned the developers are creating a dam that might be under the State's jurisdiction. He stated that the basin rather than being proposed at the top of the slope would be modified to show at the bottom of the slope, which will not change the concept. He stated that the reason they are doing all of this is the developers want to condition a better sediment basin to control any run-off but the more important issue is while the applicant is excavating the rock there is a waste material and he needs a place to put the material and this is the waste material pile that creates at the foot of the quarry. He said because of this, he has run out of room, so by moving the waste pile he is able to continue his operation. He stated that the plan has been submitted and made the Town of Fletcher aware of the project as well as meeting some of the adjacent property owners to discuss their concerns and so far the State has mentioned they have not received any letters of objection or additions to this requested change. Mr. Patterson asked about the dam issue and asked whether that is the down stream? Mr. Lapsley stated that this issue is that the slope is greater than 15 feet high but if it is moved down this issue will go away and we agreed. Chairman Pearce stated that the Board should make a recommendation and indicate that there will be some minor changes to the drawings as reflected with his conversations to the State. Jack Lynch made a motion that the Planning Board, in the matter of the Special Use Permit application submitted by Junius D. Grimes for an expansion to a mining and extraction operation (SP-02-01), send forth a favorable recommendation to the Henderson County Board of Commissioners subject to the following conditions. The applicant satisfy comments 2 and 3 in the Staff memo and that the adjustment would be made concerning the sediment basin rather than being proposed at the top of the slope, will be modified to show at the bottom of the slope as discussed by Mr. Lapsley and requested by the State. Paul Patterson seconded the motion and all members voted in favor.

**Excerpt from Minutes of Various Meetings of the Henderson County Attachment 5
Board of Commissioners**

January 15, 2003

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that is set aside for Community Housing Development Organizations (CHDO's), and administration of the program. The remaining 70% goes to the Consortium, with is divided out to the member governments of the Consortium. Therefore, Henderson County's HOME Program allocation is an established allocation that Henderson County is responsible for using within the county. The money received is for use in the unincorporated parts of the county, and is based on population. Occasionally, funds go back to the Consortium and are used by other agencies. To compete for those funds, agencies must have a very good time line of how they are going to spend that money.

Habitat for Humanity requested \$96,945.75 for Phase I of the Highlander Woods Development. Highlander Woods is a 16 family development on South Highlander Drive. These funds being requested for this year, are gap funding requests to cover the remaining land cost of \$33,360, and the remaining infrastructure costs for road paving of \$63,585.

Housing Assistance Corporation requested \$150,000 for Downpayment Assistance for the Village at King Creek project, as well as any other downpayment need. HOME funds in the amount of \$165,000 were awarded for this project during the 2002 program year.

Chairman Hawkins made the motion that both projects be approved, and that Ms. Coffey be directed to come back with as much money at the Consortium level as possible. All voted in favor and the motion carried.

Chairman Hawkins called a five minute technical recess.

QUASI-JUDICIAL PUBLIC HEARING - Application for a Special Use Permit for Expansion to a Preexisting Mining and Extraction Operation. Application #SP-02-01 by Junius Grimes

Chairman Hawkins made the motion for the Board to go into a Quasi-judicial proceeding. All voted in favor and the motion carried.

Chairman Hawkins - "Just a couple of comments, uh, a quasi-judicial proceeding is being held today on the following petition: Application for a Special Use Permit for Expansion to a Preexisting Mining and Extraction Operation, Application #SP-02-01 by Mr. Grimes. A quasi-judicial proceeding, much like a court proceeding, is a proceeding in which one's individual's rights are being determined. The proceedings will be conducted under the Henderson County Board of Commissioners Rules of Procedure for Quasi-judicial Proceedings. Only persons who can demonstrate that they will be affected by the outcome of the decision are allowed to participate in the proceedings. Just as a general overview, all persons who speak and participa, participate including any witnesses that will be called, will be placed under oath. The Board will ask the petitioner or the petitioner's attorney what evidence the petitioner wishes to present in support of the request. Then after the petitioner is finished, anyone else who has expressed a desire to be a party and, and, uh, who the Board has recognized as a party would then be allowed to present their evidence. All parties will be given an opportunity to ask questions of all witnesses testifying in this proceeding. The Board will be given an opportunity to ask questions also. After the evidence is presented the Board will discuss the issues raised and will make a decision. The Board's decision must be made in writing within 45 days of the hearing. Uh, Ms. Beeker do you have any special instructions to the Board, uh, prior to, uh, identifying the parties to the proceedings?"

Angela Beeker - "Yes I do thank you Mr. Chairman. Um, I just want to remind the Board members and inform the new Board members, um, that in a quasi-judicial proceeding an applicant is entitled to know everything that is being

Attachment 5

**Excerpt form Minutes of Various Meetings of the Henderson County
Board of Commissioners**

January 15, 2003

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considered when the Board makes the decision. So, therefore, um, it is appropriate that if you have been to the site or have spoken with the applicant or gained any information outside of the hearing, that you would reveal that so that the applicant could know and have a chance maybe to address anything that, um, you might be relying on that is not formally part of the proceeding."

Chairman Hawkins - "Everyone understand that? Okay. At this time we'll identify the, uh, parties to the proceeding. The Board acknowledges the petitioner Mr. Grimes, and the Planning Staff as parties to the proceedings. Uh, are there any other persons present who can demonstrate that they will be affected by the outcome of this proceeding and who wish to be a party to the proceeding?"

William Lapsley - "Mr. Chairman, uh, I'm representing the applicant."

David Nicholson - "To the, to the mic please."

Chairman Hawkins - "If you would come on up Mr. Lapsley and we'll get you sworn, uh, if it's the pleasure of the Board if they're, uh. Is there anyone else? Would you please come forward sir and state your name."

Richard Anderson - "Uh, Richard Anderson. We own the property directly in front of the quarry."

Chairman Hawkins - "Okay. Anybody have any objections to him being a part of the proceedings, obviously not."

David Nicholson - "You need to go over there too."

Chairman Hawkins - "Any, uh, I see Karen and, uh, does any of you have witnesses you plan to call that will need to be sworn also."

Karen Smith - "This is Daniel Gurley our Zoning Administrator, he'll be doing the primary presentation."

Chairman Hawkins - "Okay. Anyone else? Witnesses? Ms. Corn if you would, uh."

Angela Beeker - "Um. Before you do, if each of you could make sure the Clerk has your address, for purposes of the order."

Elizabeth Corn - "Each of you must touch the Bible with your left hand, raise your right hand. Do you swear or affirm that the testimony that you shall give to the Board of County Commissioners shall be the truth, the whole truth and nothing but the truth so help you God?"

In unison - "I do."

Chairman Hawkins - "If you'd take just a minute and let Ms. Corn get your mailing address, or sometime get that to her. We'll begin our proceeding with evidence. Uh, we'll start out with a staff overview. Uh, Karen are you gonna give that or."

Karen Smith - "Mr. Gurley's gonna..."

Chairman Hawkins - "Mr. Gurley."

Dan Gurley - "Okay good morning Board. Um, the applicant Mr. Junius Grimes is applying for a special use permit, um, through his agent today Mr. William Lapsley, a local land surveyor, um, for an expansion to a pre-existing mining and extraction operation. Um, this is being done under Section 200-32.1.F(1)(C) of the Henderson County Zoning Ordinance for the property known as Hooper's Creek Quarry. Um, the expanded area of operation is approximately .72 acres, as indicated on the, uh, site plan given to us by, by Mr. Lapsley. Um, and basically this expansion will allow the owners to relocate a sediment basin and enlarge it's waste fill site. Um, the, this is the first special use permit that the County has received regarding regulated uses in the Open Use District. Um, as a rel, as a

Excerpt from Minutes of Various Meetings of the Henderson County Attachment 5 Board of Commissioners

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related issue the applicant is also requesting a variance, um, from the specific site standard, um, the fencing requirement for, um, mining and extraction operations. The quarry expansion is proposed on a property that is owned by Hooper Creek Quarry, LLC, um, it's located off of Hoopers Creek Road. Um, the subject is located approximately 635 feet west of the intersection of Hoopers Creek Road and Jackson Road. The majority of the subject property is within the County's jurisdiction. Um, a small portion including the entrance and the section of the access road, um, falls within Fletcher's extraterritorial jurisdiction. Uh, the subject property contains approximately 32.5 acres. Five acres are currently governed by state and federal mining permits. The proposed expansion requires a modification to the applicant's state mining permit, and County staff has felt since then, that modify, since that amendment is being necessary, a, um, special use permit would be necessary as well. Um, we've attached a copy of the application of the state mining permit to the packets that you received. Um, the details of the operation are discussed in the attachment, um, entitled Hoopers Creek Quarry Special Use Permit, Supplemental, um, information, and that's attachment #3. Um, a special use permit is required when there's an expansion to one of the uses that's listed in the Zoning Ordinance under, uh, 200-32.1(1)(F). Um, it's County staff's interpretation that with the relocation of the sediment basin and the expansion of the waste fill area, the operation is required to obtain a special use permit. Um, staff has also interpreted this to mean that only the expansion area of the pre-existing non-conforming use can be regulated under the Henderson County Zoning Ordinance. So anything that was existing prior to May 16, 2001 would not be able to be regulated. Just the expansion area being done today. Um, therefore the area containing the new sediment basin and the enlargement to the waste fill area is the only portion of the operation that can be considered under the ordinance. Um, that being the case you can see why some of the general and specific site standards didn't really, um, or weren't included in the review, just simply because of it being a sediment basin and a waste fill area. Not the actually mining uses itself. Um, definitions in the Open Use District, uh, 200-32.1 and Section 200-7 apply to this application. Attachment #8 that was in your packet includes some excerpts from the Zoning Ordinance that are pertinent to this issue. Um, as stated before the applicant is requesting a variance, um, from the minimum site specific standard requiring a secured fencing around the expansion area. As stated before, um, the expansion is just the expansion area that we're looking at and can be governed under the ordinance now. Um, so the fencing would be required around the, um, new sediment basin and the waste fill site. Um, let's see, Sections 200-56 and 200-70 of the Zoning Ordinance require the Board of Commissioners to refer applications for Special Use Permits to the Planning Board for review and recommendation. Uh, the Board of Commissioners referred this application to the Planning Board, um, at its November 20th meeting, um, and the Planning Board reviewed and made its recommendations during its December 17th meeting. Um, with previous special use permits this, um, as with previous special use permits the recommendation will be entered into evidence later during this hearing. Um, in accordance with 200-56(D) and 200-70(A)(2) of the Zoning Ordinance the Board of Commissioners must make findings of fact regarding compliance with the ordinance in order to grant a special use permit and may impose conditions. Um, to ensure that a proposed use will meet the requirements of the Zoning Ordinance, um, Section 200-56(D) lists the general site standards that apply to all special uses and 200-70(A)(6), um, require that, uh, the Board of Commissioners demonstrate that the proposed use complies with the specific requirements for the use, um, if applicable. The Board of Commissioners also will be hearing the variance today, um, the, there's a list of things that are set up by general statute that, um, must be made affirmative through a finding of fact before a variance can be issued. Um, those things are listed not only in your, um, excerpts, but also, um, in the last paragraph of your, of staff's memo. Um, the public hearing has been, um, advertised in accordance with the Henderson County Zoning Ordinance and under the, uh, Board of Commissioners rules of procedure for quasi-judicial proceedings. Uh, notices of the hearing were published in the December 30th, January 8th and January 13th editions of the Times-News. On December 31st the Planning Department posted notice at the project site to advertise the hearing, and on January 2nd the Planning Department sent notices to the public of the public hearing via certified mail to the applicant and abutters of the subject property. And if there are any questions regarding, introduction."

Chairman Hawkins - "Uh, let me ask you just a couple to, to be sure I'm, uh, straight. You, you ask, or you, uh, mention the supplemental information and, in the supplemental information there was uh, quite a few other areas that indicated a waiver would be required however, uh, you, I think just indicated one specific site standard, the fencing requirement. Uh, are the other, uh, other ones that you listed there, uh, not applicable in as much as they're, uh, not on the site that's being, uh, for the special use permit?"

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Daniel Gurley - "I think the other, that was in the supplemental, was the, um, the new travelway that's being constructed."

Chairman Hawkins - "Yeah."

Daniel Gurley - "Um, we determined that, um, technically they're not constructing a travelway. It's going to be an earthen dam. Um, with a, just basically access for maintenance that'd be used once, you know, every year or two for maintenance to the dam. It's not technically what we would consider to be a travelway, and thusly wouldn't have to, to meet that, um, I think it's a 45 foot requirement. Or 45 foot travelway, or 30 foot travelway."

Chairman Hawkins - "So you really just, uh, the Board's really looking for two things. One's a special use permit and one is, uh, specific site standard, uh, fencing variance."

Dan Gurley - "Correct."

Chairman Hawkins - "Okay."

Dan Gurley - "Correct."

Chairman Hawkins - "I, that was what I wanted to do. Anybody have any questions for Mr. Gurley?"

Commissioner Baldwin - "I've got a question. You, uh, uh, it was your interpretation that this is a non-conforming use? Existing non-conforming use?"

Dan Gurley - "It's existing non-conforming under the current ordinance, yes."

Commissioner Baldwin - "That was your interpretation?"

Dan Gurley - "Yes."

Commissioner Baldwin - "Can you read the definition of non-conforming use?"

Dan Gurley - "Yes."

Commissioner Baldwin - "Publicly."

Dan Gurley - "Sorry, I wasn't prepared for this one. A non-conforming use is any parcel of land, use of land, building, or structure lawfully existing at the time of adoption of this chapter, or any amendment there to that does not conform to the use requirements, dimensional or other requirements of the district in which it is located."

Commissioner Baldwin - "Okay. Why is this a non-conforming use?"

Dan Gurley - "Um, currently it doesn't meet, um, the requirements as far as access for the width of the access road, um, it doesn't meet the buffer requirement, um, I think that might be all that it doesn't meet."

Commissioner Baldwin - "Okay. So, so access and the buffer requirement."

Dan Gurley - "Correct."

Commissioner Baldwin - "Correct. Okay. And, um, that's all I've got for now."

Dan Gurley - "Okay."

Chairman Hawkins - "Anyone else have any questions for Mr. Gurley?"

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Angela Beeker - "Mr. Chairman if I could offer one clarifying point for the Board. Um, when the Board adopted the Open Use Zoning text, the Board also adopted provisions governing the extent to which an expansion to a pre-existing non-conforming use must comply. And the language that the Board adopted says that with regard to those specific standards, an expansion to a pre-existing use, I'm paraphrasing but it says must meet it to the extent possible, um, and that is why some of the things are being requested as a waiver under that language. And then on the fencing, um, I'm assuming that everyone's taking the position that that would be possible to meet that, but that's why they're asking for a variance. So if you'd bear that in mind as you're hearing the evidence."

Commissioner Baldwin - "And, and, and what Angie said was, was, triggered another thought. As far as, this has been defined as a non-conforming use, and you've said that is a non-conforming use because the access, as well as the buffering does not comply with the current standards. But, um, I guess what I'm getting at is, is an expansion of a non-conforming use, and Angie you're saying the language that was put in allows those uses to continue as long as they"

Angela Beeker - "The expansion has to comply to the extent possible."

Commissioner Baldwin - "To the extent possible."

Angela Beeker - "And that's the judgement call for the Board to make based on the evidence that you would hear. So you know, you would need to ask questions to be satisfied in your mind as to whether all of those standards could be met or not. And that's entirely your judgement call."

Chairman Hawkins - "And, and I think that's in your, uh, in the text there. I, I don't have the page number but it's H, uh, which deals with the expansion and alteration of certain uses. And then there's a little more on the, the next page on pre-existing uses. Uh, I don't know what the lead in, uh, paragraph is for that, might have been 200-32.1(F) but"

Commissioner Baldwin - "I'll find it."

Chairman Hawkins - "That might help you out a little bit on that."

Commissioner Baldwin - "Thank you."

Daniel Gurley - "Yes, in your excerpts I did include that, the sections that Angie wa, uh, was referring to regarding the expansion of pre-existing non-conforming uses in Open Use."

Chairman Hawkins - "Any other questions for Mr. Gurley? Thank you."

Commissioner Baldwin - "Thanks Dan."

Chairman Hawkins - "Uh, petitioner's evidence. Mr. Lapsley are you gonna give that?"

William Lapsley - "Mr. Chairman, members of the Board, uh, for the record my name is Bill Lapsley. I'm a consulting engineer. I certainly don't want the record to show that I'm a land surveyor. Uh, I'm not a licenced land surveyor. Uh, I'm here on behalf of the applicant as his agent. Uh, Junius Grimes who represents Hoopers Creek Quarry, LLC. Uh, that operates, owns and operates the quarry on this site. Uh, a little bit of background, uh, I have personally been involved with Mr. Grimes since he took over the operation of the quarry approximately 1993. Uh, it's my understanding that the quarry operated on and off for a number of years prior to that. Mr. Messer may be able to recall, uh, the dates better than I, but I'm told that it op, it has operated as a quarry for, for many years. Mr. Grimes operates the uh, quarry to, uh, to mine stone, I'll call it decorative stone out of the quarry, uh, mainly for residential and commercial use, uh, facades of buildings and this sort of thing. Uh, it, there's no crusher there or, or any kind of a processing operation. It's a, a blast uh, the site of the mountain, uh, break up the rock, put it in baskets you've seem them the, in the, uh, display areas, uh, purchase areas, uh, around, uh, for, uh, new homes or

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reconstruction purposes. Uh, they put um' in baskets and then they truck them off the site to a sales yard in Asheville or direct to a project site that, that, they've sold, sold the, uh, stone to. So that's the, uh, the process, uh what he goes through on the property. Uh, it's all of this information is described in the application. Uh, but I'd point out to you that uh, that there are very fe, minimum number of employees here. Uh, there, the days that I've been on the site there's five to, to seven or so, uh, employees, uh, that are working and gathering the stones and putting them in the basket. And, uh, one to two trucks a day is what Mr. Grimes tells me, uh, is come in, and take the stone that's been gathered, load it on the truck and, and take it out. Uh, there is a very narrow access road, uh, as Mr. Gurley mentioned, uh, it's a, doesn't conform to the, uh, new ordinance travelway that's the one that he's used, uh, from day one. It's a, uh, about a 12-14 foot wide access road inside a 30 foot, uh, right-of-way that gets into the quarry. Uh, two other bits of information I understand from the ordinance the applicant is required to present to you. One is the, um, uh, residential density, uh, within a mile of the, uh, uh, the property with the assistance of Henderson County GIS we, we have a map, uh, that shows all the homes in Henderson County, uh, and then I have added to that the tract in Buncombe County because this one mile radius does extend beyond the Henderson County limit. Uh, the breakdown of that for the record is in Henderson County there's 1,332 acres within this area. And, uh, uh, residential home count of 680. I'm sorry, correct that, the acreage in Henderson County is 1,332, the acreage in Buncombe County is 680. The residential home count in Henderson County is 485 and on the Buncombe County side is 23. So the total density is 508 homes within 2,009 acres which gives a density of one unit per 3.95 acres. And the ordinance requires uh, that it be less than one unit in two acres. And so we understand the, the math here the density that we found is half of what the ordinance requires. So we have one unit for approximately four acres and the ordinance requires one unit, two acres. So that was one point that we needed to put in the record. The second is the separation from existing schools or health facilities. And again with the assistance of, uh, your GIS Department, uh, we have a map that shows that there are no schools, uh, or health facilities within the radius in, and Karen you'll have to correct me is that a..."

Chairman Hawkins - "Half mile."

William Lapsley - "Half a mile, uh, within the half mile radius of the site. Uh, on the Buncombe County side there are no schools or health care facilities, uh, within that radius. So we believe we meet, meet those two conditions. Uh, a foot note, uh, this process Mr. Grimes, uh, as I mentioned has been operating this facility for a number of years. Uh, he came to me last summer, indicated he needed to fill in his sediment control basin, that the mining permit that he has requires, uh, that he keep active, he needed to use that space and relocate his sediment basin. Uh, what we thought would be a, a relatively simple process to relocate his sediment basin, uh, turned out that we had to modify his mining permit which required him to, uh, fill out a substantial package of information, send it to Raleigh, which is still in the review process. Uh, that required that he notify all of the adjoining property owners by certified mail which he has done. Uh, it required him to notify a local governments that are affected. Uh, which included the County as well as the Town of Fletcher, which he has done. Uh, which prompted, uh, your Planning Department to call to his attention that would require, uh, this special use permit, uh, so I think it, it's fair to say Mr. Grimes never dreamed that moving his sediment basin would require so much effort but, so be it that's the regulation that he has to deal with. Uh, and he has complied with all of the step, uh, that we know of that he has to go through, uh, to do this. Uh, one other point with regard to his state mining permit modification, uh, the plan that you have presented before you is the one that was submitted to the State. The State reviewed it and has requested some changes to the plan. Uh, the changes did not enlarge the area affected, uh, but it does, uh, move the proposed sediment basin from the top of the hill that's shown on the plan to the bottom of the hill. And the State was very adamant about that and that has been sent in to the State for final approval. Uh, but the plan has been modified somewhat, uh, at the request of the State, um, uh, Division of Land Resources, Mining Section. So, we're, uh, expecting to get approval of that here shortly and hopefully that in conjunction with an approval from the Commissioners. Mr. Grimes will be able to proceed with his, uh, changing his sediment basin. If you have any questions I'd be more than happy to attempt to answer them. Uh, Mr. Grimes apologizes he could not be here this morning and, uh, asked me as his agent to fill in for him."

Chairman Hawkins - "Any questions for Mr. Lapsley?"

Commissioner Messer - "Yes Bill on the, uh, fencing"

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William Lapsley - "Yes."

Commissioner Messer - "that he asked for the variance. Would you mind stating how much fencing do you think that would require?"

William Lapsley - "Well as I understand the ordinance, and, and, Mr. Gurley maybe can correct me, uh, under the, the ordinance if this was a new facility the entire area has to be fenced. Uh, because this is an expansion of a pre-existing condition the fencing would apply to the new expanded area. Uh, the existing quarry area does not have a chain link fence, barbed wire, or anything like that around it. Uh, and the area that's proposed for expansion would be actively involved in the day to day operation of the quarry, and so it seems to Mr. Grimes that, uh, having a fence around this small area, with respect to the entire operation, didn't seem to make a whole lot of sense. Uh, he has not had any problem with, with public, uh, disturbing the property or coming in. There's been no, uh, as far as I know there's been nobody hurt or nobody accessing the property that would, from security standpoint that he would need to have a fence there to protect the public. Uh, and so, uh, for those reasons, uh, he felt that it was unnecessary to fence this area. So that's why he asked for a variance."

Commissioner Baldwin - "Is the property posted?"

William Lapsley - "Yes. Yes the mining permit, uh, requires around the edge, uh, especially the upper area above the quarry, to be posted and he has, has done that. Has apparently has done that for many years, from day one."

Chairman Hawkins - "Any other questions for Mr. Lapsley at this time?"

Angela Beeker - "I have one clarification question. Um, in the application, the State application it did indicate that there is some permanent fencing in place in"

William Lapsley - "There's some barbed wire fencing, he tells me that's very old around the prop, uh, at the property line on the upper end on the top of the mountain, that continues to be in place but, uh, what little I saw I wouldn't exactly call it a security fence of any kind. It's old cattle fence that, that somebody put up years and years ago."

Angela Beeker - "That's in the completed excavations area?"

William Lapsley - "It's above, it's above the excavation area."

Angela Beeker - "Um, and then the other clarification question, um, it's the applicants position that except for the standards which the applicant has specifically requested a waiver, that the application meets all those specific site standards."

William Lapsley - "We believe it does, yes."

Chairman Hawkins - "Any other questions for Mr. Lapsley? Thank you. Staff, do you have additional evidence?"

Daniel Gurley - "Okay thank you Mr. Chair. Um, as stated earlier this, um, application did have to go to the Planning Board for review and recommendation. Um, at it's December 17th, 2002 meeting the Henderson County Planning Board did review, um, this application as submitted by Mr. Grimes and, um, made the following recommendation. Um, the Planning Board members voted unanimous, unanimously 5-0 to send the Board of Commissioners a favorable recommendation on this application, um, with the following conditions. One being fencing, um, either the applicant wants to receive a variance for the fencing or the area would have to be fenced per the ordinance."

Commissioner Baldwin - "Which area?"

Daniel Gurley - "The expansion area."

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Commissioner Baldwin - "Only the expansion area."

Daniel Gurley - "We are only, we are only discussing the expansion area in this application, nothing about the existing quarry. Just the sediment basin and the, um, waste fill area that's being expanded. Um, saying that, um, the condition was either the applicant would have to fence that area, or receive a variance, um, from the Board of Commissioners. Um, the second condition being, um, compl, compliance with federal, state and local laws. Um, the applicant would have to receive, um, approval from the state for his amendment to this mining permit. Um, and thirdly, um, the amendment to the application site plan, um, as Mr. Lapsley stated, um, during the Planning Board meeting it was brought to our attention that, um, the site plan submitted did not indicate the exact location of where the sediment basin, sediment basin was going to be located. Um, they asked that, um, a plan be presented showing that new location. Um, the draft, the draft minutes, and I will say these are draft minutes, um, the Board, the Planning Board doesn't meet again until the 22nd, I believe. 21st excuse me, um, to accept these minutes, so these are draft minutes, um, that are presented. And this, uh, is basically what was said at the Planning Board meeting. Um, also, uh, for your information we have the copy of the site plan that we received, um, including the sediment, uh, the location of the sediment basin and the expansion of the waste fill site. Um, this is, um, being shown on the pedestal here as well. Um...photos, yes, I'm sorry. Uh, we to have photos, um, they show what we thought was going to be the sediment basin, um, and that area. Um, as Mr. Lapsley stated the sediment basin is now being planned on being moved so I'm not sure if you even care to see those photographs of where we thought it was going to be when we did our site..."

Chairman Hawkins - "I think as far, uh, as where the State determines you have to put the sediment basin is, is gonna be one thing but I, I don't think it'll affect, uh, as I understand it whether or not you, the Board grants a special use permit and/or variance to the fencing. I don't think that will be germane."

Angela Beeker - "You don't regulate that."

Chairman Hawkins - "Well. So."

Daniel Gurley - "Okay."

Chairman Hawkins - "Uh, do you want to enter those photos in as evidence or"

Daniel Gurley - "We can enter them if the, if the Board wishes, um, as I stated the, the photographed area is that of where we thought the sediment basin was going to be at that time."

Commissioner Moyer - "Not really relevant now though, we don't need um as evidence."

Daniel Gurley - "Okay. Um, then I believe that's all that we have right now."

Chairman Hawkins - "Any other questions?"

Angela Beeker - "Yes sir, um, Dan, you have read the Planning Board minutes correct?"

Daniel Gurley - "Yes."

Angela Beeker - "They reflect, um, a number of statements that you made in those minutes. Have you read those?"

Daniel Gurley - "Yes."

Angela Beeker - "Do you re-adopt those say under oath as your statement as well?"

Daniel Gurley - "Uh, yes I will."

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Angela Beeker - "Okay. In the, um, Request for Board Action for the Planning Board, um, there were staff comments in that as well. Did you make those?"

Daniel Gurley - "Yes, it was..."

Angela Beeker - "And the reason I'm asking is because it contains basically a staff analysis of like the buffer, and the, whether it's possible for him to comply."

Daniel Gurley - "Yes."

Angela Beeker - "Do you readopt those statements also?"

Daniel Gurley - "I do."

Angela Beeker - "today under oath?"

Daniel Gurley - "I do."

Angela Beeker - "So what, what do those statements reflect regarding whether or not it's possible for them to comply with the buffer or not?"

Daniel Gurley - "Um, basically as, as you see on the site plan, um, if, and the buffer requirement is that of, um, 500 feet. If you notice the, the width of the property, um, and the location of the expansion area, um, the 500 feet the property's not even 500 feet wide at that point. Um, so as stated in the, uh, Planning Board, um, Request for Board Action, um, it would be almost impossible for him to meet the 500 foot buffer at that point considering his property's not even 500 feet wide. Um, so, and as the ordinance states, um, any expansion to a pre-existing, non-conforming use in an Open Use District, um, the applicant is to try and meet the standards to the greatest extent possible. Um, it's, it's staffs opinion that, um, the buffer that he is showing that he can do is, is the greatest extent that can be done since obviously the 500 foot buffer can't be, um, achieved."

Angela Beeker - "The, um, area that has a dotted line around it, that's the quarry area but the property boundary is the larger boundary. Is that correct?"

Daniel Gurley - "Yes. Um, as Karen is pointing out now on the television, um, that dotted line is the expansion area that they're looking at. Um, the, the dark black line that surrounds, that goes on the outside where pencils, um, line. Um, that's the property line."

Angela Beeker - "Okay."

Commissioner Baldwin - "The dark, um, excuse me, the dark areas, um, the dark areas that, uh, where the expansion is going to occur. Now what type of activity is gonna take place in those areas, is this additional area to be mined?"

Daniel Gurley - "It's, it's"

Commissioner Baldwin - "Mr. Lapsley. The, the dark areas..."

William Lapsley - "No sir."

Commissioner Baldwin - "...for expansion."

William Lapsley - "No. There is no expansion of the mining extraction."

Commissioner Baldwin - "Okay."

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William Lapsley - "The, the area, the expansion area that we're, that's before you is for waste material. It's for dirt and smaller rocks that don't end up in the baskets, that they're not hauling off site. And, uh, there's, there's, that's all that's, and, and the sediment basin."

Commissioner Baldwin - "Okay. So, there's no additional mining."

William Lapsley - "No. No sir."

Angela Beeker - "Mr. Lapsley what would you estimate the length of that boundary to be on it's narrowest, the property boundary not the mining boundary. I don't see any dimensions on the drawing."

William Lapsley - "This property down here?"

Angela Beeker - "The, the"

William Lapsley - "Or the width here?"

Angela Beeker - "The width, yes sir, on that narrowest end."

William Lapsley - "Well this is 1 to 100, uh, and this area, is probably about 500 feet. Uh,"

Daniel Gurley - "Okay."

William Lapsley - "Very close to that."

Angela Beeker - "Okay."

William Lapsley - "But the mining...to answer your question...the mining permit for extraction is this area right here. And there, he's limited to that without applying for another expansion of the mining operation which he's not, uh, this is the area, that's crosshatched that, that he's currently working in. Okay so..."

Commissioner Baldwin - "So the dashed area he's permitted."

William Lapsley - "Yes."

Commissioner Baldwin - "Currently permitted."

William Lapsley - "Yes, that's"

Commissioner Baldwin - "To mine within that area."

William Lapsley - "Yes. Yes. Within that boundary the current waste material area and sediment, existing sediment basin's right here. So what we're proposing to do, is to move this from here to here. So that he can use this area to fill it in with waste material, uh, and continue to operate."

Commissioner Baldwin - "So, so the, let me see if I can get, understand this right now. The mining's not gonna increase and the dark areas, uh, if you, if you'd point to those, uh."

William Lapsley - "This is existing sediment basin."

Commissioner Baldwin - "Okay."

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William Lapsley - "...moved. It is, this area is the travelway or the access road to the site, and we're proposing to regrade that to help with slopes and reseed it and gravel this road, and that's why that's darker. So part of the erosion control permit was to improve this roadway."

Chairman Hawkins - "But most of that's in the Fletcher ETJ is it not? The roadway?"

William Lapsley - "The Fletcher ETJ is right here."

Chairman Hawkins - "Okay."

Several people speaking at once.

William Lapsley - "...change in the activity or the expansion, it's just that it's a roadway regrade, and that, the expansion area is right here."

Commissioner Baldwin - "So that's the only part that's being expanded."

William Lapsley - "Yes. That's correct."

Commissioner Baldwin - "Okay."

Chairman Hawkins - "Any other, uh, evidence that staff needs to present?"

Daniel Gurley - "No."

Chairman Hawkins - "Any questions? Any questions?"

Commissioner Baldwin - "Well, I wanted to get, get another thing squared away. It, non-conforming uses we, we read the definition, we said, you explained why this is a non-conforming use, the right-of-way or entrance into as well as the buffering. And currently your standard says it's 500 feet is the buffer?"

Daniel Gurley - "Yes."

Commissioner Baldwin - "Okay and we're gonna be moving into it, that 500 foot area, matter of fact the 500 foot area couldn't meet that right now right?"

Daniel Gurley - "Correct."

Commissioner Baldwin - "So we're expanding a non-conforming use, or the applicant is, is attempting, uh, it's an, it's an attempt to expand a non-conforming use. So we're gonna increase the degree of non-conformity. Is that correct?"

Daniel Gurley - "If, if you read that, that back section of the ordinance, and Angie can jump in, um, as well when it talks about the expansion of free existing non-conforming uses."

Commissioner Baldwin - "As much as possible, but when does that stop. I mean, he comes back next year and he wants to expand, does he move right up to the property line because he's doing as well as he can do? That's my question."

Daniel Gurley - "Um, I believe dur, through the special use permit process that's kind of left up to the Board to make that decision. As to what you believe the greatest extent shall be."

Commissioner Baldwin - "So in essence we're granting the variance, it's set up so that we grant a variance when we approve this if we choose to do so."

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Daniel Gurley - "Yes, I believe that's how the language was written in the Zoning Ordinance."

Commissioner Baldwin - "Okay."

Chairman Hawkins - "Any other questions? Thank you. Is there any additional parties evidence? Sir will you come forward."

Richard Anderson - "Hi, my name is, uh, Richard Anderson and, uh, we own, my wife and I own the property directly in front, the 15 acres. Um, the quarry and the State I'm fairly familiar with and the, with that it was part of my wife's family and they had had it for many, many years. Uh, it was really not used very often. It was originally started as a WPA Project during, uh, the depression. And used, and dug out at that point and then pretty much after that it went, it just wasn't used very much. There was a lot of rock up there and occasionally somebody would go up, but the road was almost impassable. Um, when they took over it they had to, uh, you know get, get their mining permit and things like this and we were told at that time a lot of, uh, things that it was not gonna be expanded. Uh, the, uh, nu, State Department of North Carolina Environmental and Health and Natural Resources gave them a permit. Um, part of that permit, it did say that the provisions for safety to persons and to adjoining property must be provided at all, in, in all excavations in rock. We were told at that time, verbally, that it was the entire project was gonna be fenced. That's never been done. Um, as you're aware that area of the county has grown a lot. There's a development I think that starts about a quarter of a mile from there and I believe the density is either one, or either, uh, three or four houses per acre. Um, their provision that they're talking about that it, it, uh, fits within the density uses a lot of property from Buncombe County. Which is really over the top of the ridgeline. And, uh, it's really unbuildable property. But right down where the quarry is, and if this, and dam would ever let loose it's all down hill and goes towards that location. In fact the drainage, I think you're planning a fire station out there is, kinda where the drainage would go. Um, as you can tell I'm probably against this. Uh, there is some safety issue I feel. Uh, they have moved the, uh, their gate all the way down to the road and put a lock and blocked the, uh, the access to our property as well as theirs, and I was told the reason they wanted to do that was because of a lot of people going up that way."

Commissioner Baldwin - "So, so the gate's been moved closer to Jackson Road?"

Richard Anderson - "...it's right on Jackson Road."

Commissioner Baldwin - "Okay."

Richard Anderson - "It's right on Hoopers Creek Road, excuse me."

Commissioner Baldwin - "Okay, yeah, Hoopers Creek."

Richard Anderson - "Um, and, we don't have a key but I guess I could get one but the, the, um, um, that road is now entirely blocked off and I was told the reason they put it down there was because people were coming up on that property. And, with the addition of, what is that 400 houses just at the bottom of the quarry. You know there's gonna be a lot of kids, there's gonna be a lot of access. You know, I, I'm of the opinion that not only should the part that they're discussing with the you should be fenced it for protection, but the entire quarry should be because it must be 100 foot tall at the top. And, uh, you know any kids walking through the woods, there's a lot of nice paths up there, uh, that is a safety issue from that point. Um, any questions do you have?"

Chairman Hawkins - "Mr. Anderson let me, let me clarify, cause I wasn't quite sure your, um, your concern. Uh, it would appear that if they are locking the gate on Hoopers Creek Road that, that would be a plus in the safety area, not a minus but I..."

Richard Anderson - "Well it, it, it blocks my access to my property okay. And it's not supposed to be blocked. They arbitrarily without permission put a, put a, uh, a fence down there."

Chairman Hawkins - "On the easement or..."

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Several people speaking at once.

Richard Anderson - "On the eas, on the easement. We came down there one day to go up on the property and found this locked gate. And inquiring further about it we were told that they had of problems with people coming up there, now that's driving in. There's, there's no, there's no provision at all for somebody walking around the gate. So, and, and walking on the property. An, anybody could walk on the property."

Commissioner Baldwin - "So were you issued a key to the gate?"

Richard Anderson - "No. We have never been but, truly a private matter."

Chairman Hawkins - "Any, any, uh, other, uh, evidence, uh."

Richard Anderson - "No, other than, other that I think that the density, if you would look at it for the, the Henderson County portion, is, is probably at or very close to the, the maximum that you'd allow. Uh, I wish you would, you know try to protect all those people in there as much as you can. Uh, with fencing or whatever we need to do."

Chairman Hawkins - "Okay."

Richard Anderson - "Okay? Thank you."

Chairman Hawkins - "Thank you."

Angela Beeker - "Before you leave, Mr. Chairman he has an opportunity to ask questions of any of the other persons who have spoken."

Richard Anderson - "Does anybody have any questions for..."

Chairman Hawkins - "That's the next item, rebuttal."

Angela Beeker - "Do you have any questions for them?"

Commissioner Baldwin - "I was gonna ask one, one more of him. What about and intensity of the operation as far as, uh, uh, just the mining activity what."

Richard Anderson - "Generally I have not, I, I don't, I don't live out there. You know, I've been told that you can hear the blasting, there's not a lot of blasting though I've heard a little bit more from the people that have moved into the development out there that they didn't, they were not aware of it at the time. And they were kinda surprised to see that there was actually mining up the hill from them."

Commissioner Baldwin - "What's the name of the development?"

Richard Anderson - "Um."

Several people answered "Livingston Farms."

Unidentified male - "I'm sorry what was the name of the development?"

Unidentified male - "Liv, Livingston Farms."

Richard Anderson - "Also there was some concern about ETJ. My wife had, she was told that it was going to be in the ETJ of Fletcher. We're in the ETJ of Fletcher. We, we abound, we, we butt right up to theirs, so I was just trying to, I didn't know if that had ever been looked into. Is it really or not, has it been surveyed out?"

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Chairman Hawkins - "Well that was a question I asked earlier. Mr. Lapsley I think addressed that as to where the ETJ boundary came to apparently was very close to the entrance of the end of the road down there on Hoopers Creek. Karen can you"

Richard Anderson - "Yeah all our 15 acres is in the ETJ."

Chairman Hawkins - "Karen can you show that, uh."

Daniel Gurley - "Uh, basically where Karen's showing now is the access road into the subject property. Um, the dark black line, um, you can see the majority of the property of the quarry is located in the Open Use District. Um, the ETJ is the, the rem, the remainder of that black line, and I believe Livingston Farm is where ... is written on that map."

Richard Anderson - "Did you want to see what our prop, which our property is? I can show that to you."

Chairman Hawkins - "Is it on"

Richard Anderson - "...on there if they can put the map back up.

Chairman Hawkins - "Is it on that map there also?"

Muffled discussion.

Chairman Hawkins - "Okay."

Richard Anderson - "...see it right there."

Chairman Hawkins - "Okay. Is, is, do you access off of Hoopers Creek directly?"

Richard Anderson - "Yes, off that same access road."

Chairman Hawkins - "Okay, you, you don't have another access off of Hoopers Creek other than the access road in to the back?"

Richard Anderson - "Right. There never was built one."

Chairman Hawkins - "But if I, if I read that map correctly then the larger part of this road leading in there is in the Fletcher ETJ."

Richard Anderson - "Oh yeah, I pay the taxes on it every year."

Chairman Hawkins - "Yeah. Okay."

Commissioner Baldwin - "I'd, I'd just like a, just a few questions and I'd like to ask Bill these same questions. Uh, do, in your opinion do you believe that the area is being expanded as been shown to us as far as the operation goes?"

Richard Anderson - "I've got an old picture, which was taken in the spring, where you could barely see the quarry. Alright this was taken, uh, in 90, in the mid 90's when they were originally asking for the permit. You know and, if you look at it now and you go out there today and the picture you can see the, the, the quarry has gotten bigger. Even though the trees over that period grew you can still see more of the quarry."

Chairman Hawkins - "But that may be a function of what they've taken out versus where the trees are would it not?"

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Richard Anderson - "Well, now maybe it's my misunderstanding but at the original hearings we were told that the quarry would not expand beyond the boundaries that were already there. So in my way of thinking, the trees get bigger the quarry should get smaller. You shouldn't be able to see it as well. You know if they're working within the same confines."

Chairman Hawkins - "Do you wish to enter that, um, picture?"

Richard Anderson - "If you'd like it, yes."

Chairman Hawkins - "Board, board, need that? Like it?"

Angela Becker - "Since he has proffered it I would enter it for the record. Um, would you hand that to Mrs. Corn so that the Board members can see it."

Chairman Hawkins - "Do we have to have some fancy number for it?"

Angela Becker - "I would think, we needed to keep it straight."

Commissioner Baldwin - "Exhibit 1."

Several people speaking at once.

Angela Becker - "Do you have any other pictures that you wanted to show the Board?"

Richard Anderson - "No that one, pretty much I stood back on our property line and shot it. The length of that field which was an old cow pasture looking up towards the quarry and the top part of it's where our trees are. And, uh, like I said, we were told when it was gonna be the entire thing would be fenced and then after a period of three years as the trees grew the, the quarry would pretty much be hidden, and you can see it as well today so that's what makes me feel that the quarry is bigger now than it was. That's why I was hoping they would put a fence around it and it would be real obvious at that point. Cause the fence would fall down. But I'm, I'm, if you would look at the density issues in there particularly since the new development and I understand you're going to get sewer out that way. That there's a chance of even more development in that part of the county that you're going to be way over the uh, the uh, home density requirements for the, for mining."

Angela Becker - "Mr. An, Mr. Anderson do you have any questions for Mr. Lapsley or for, um, about, or for Mr. Gurley about anything they've said today?"

Richard Anderson - "Uh, no other than I just differ some among the, on the usage of, of, the density on property I think."

Angela Becker - "Okay."

Richard Anderson - "Did they have any questions for me?"

Chairman Hawkins - "Well we could go ahead and get those if, uh, anyone has either any rebuttal evidence or additional questions we'll entertain those."

Commissioner Baldwin - "I would like to ask Dan another question about the density. Uh, did you guys calculate the density on, within our jurisdiction with respect to this?"

Daniel Gurley - "Um, Karen may be more apt to answer that than I was. She was involved in that process. Um, I know that Henderson County GIS was the one that produced the numbers, um, the numbers they've got, and here's the map that was used. As you can see the subject property is in blue, um."

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Commissioner Baldwin - "So if we exclude the Buncombe County side the density is gonna go up, clearly."

Daniel Gurley - "Mr. Lapsley I think ran those numbers as well. You can see the green dots are actual residences. Um, you can see how many residences are actually in, um, the County line is that blue line that, um, goes across the map. And I'll let Mr. Lapsley, he might be able to explain his, his formulas that he used or Karen a little better than I could."

Commissioner Baldwin - "I had a couple questions for Mr. Lapsley. Um, as, as far as, as far as the operation goes, would you, would you say that the operation itself is being intensified by what's being requested?"

William Lapsley - "No sir. No."

Commissioner Baldwin - "It's not."

William Lapsley - "No. They're not adding additional people or equipment."

Commissioner Baldwin - "Okay."

William Lapsley - "Uh, so I would, the intensity is the same as it is today."

Commissioner Baldwin - "The only expansion we're looking at is area, as to what's being used"

William Lapsley - "Yeah."

Commissioner Baldwin - "to support the mining operation."

William Lapsley - "It provides the operation additional space to put the waste materials that they're not mining."

Commissioner Baldwin - "Okay."

Chairman Hawkins - "Uh, Bill as far as the, uh, as, as far as you know, uh, when the state considers, u, a mining permit, uh, would, does the state consider this an expansion of the mining operation or just a, uh, a relocation of where the waste and in this case the sediment pond is gonna be located."

William Lapsley - "The, the, the language as I understand it and the state permitted is a modification to the existing permit. And the modifications include a number of things, one of which is expanding the outer edge. So, I, I, the, the technical term as I understand it is to modification. And any time an applicant modifies their existing permit it requires them to go through this process, public notice to, to you all plus all the neighbors and for the state to have a, another crack at the whole area inside the permit. In other words they, uh, the way I understand it they really have broader, uh, powers under this than, than maybe you do in that they can revisit, uh, the entire mining operation, uh, whenever you modify it. And, and that's what, what they have been doing, uh, since we sent this in. Uh, to, to answer Commissioner Baldwin's question if my math is correct just looking at the Henderson County side, and I, I gave you those numbers which were 485 residential units in 1,332 acres. My math is correct that's one unit for every 2.75 acres. So yes it does come down from the 3.95."

Commissioner Baldwin - "But our standard is what?"

William Lapsley - "But your standard is one unit for two acres. So we're, we're still substantially less than that. Uh"

Commissioner Baldwin - "Okay."

William Lapsley - "Mr. Anderson's comment is probably correct in that in the future there will be additional density there. I, I would not refute that. Uh, as to how fast it will approach one unit per two acres I don't know and I don't, uh, and when that will happen or if, uh, I don't know. Uh, with respect to a fence, uh, around the entire operation,

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uh, I don't recall that being in Mr. Grimes permit that he got in 1993. Uh, if it was in there I can assure you that the state would make sure that he has it. He, uh, as far as I know ever mine operation that I've been involved with if it's in the state permit then they would mandate that it be put in. Uh, and to the best of my knowledge that's not in his permit."

Commissioner Messer - "Bill in length, uh, how far would you say it is from Hoopers Creek Road to the area that he's wanting to, uh, reconstruct?"

William Lapsley - "Uh, this is Hoopers Creek Road"

Commissioner Messer - "Right."

William Lapsley - "on the map, uh, it's more than a thousand feet. It's, it's probably 1,200 feet, a quarter of a mile, something like that I would guess. 1,200 feet something like that. ... the other point Mr. Anderson mentioned the gate, yes he did, the gate was originally, uh, up in this area here. Uh, and I'll certainly bring it to Mr. Grimes attention, that, make sure that the adjoining property owner has a key. I don't know of any reason why he would not allow them to do that. Uh."

Commissioner Baldwin - "Of the, of the 32.5 acres Bill that was stated, I can't remember if it was you or the, or staff said that five acres is currently permitted for mining activity. Is that correct?"

William Lapsley - "Yes. That, and that area right here is the five acres."

Commissioner Baldwin - "Okay, So you did have to go back to the, uh, uh, amend your, your state permit to increase the area that you'll be using for the operation."

William Lapsley - "That, the, the area for the mine, for the stone extraction, the mining operation itself, the, these areas were approved nine years ago."

Commissioner Baldwin - "Okay."

William Lapsley - "He is working within those areas"

Commissioner Baldwin - "Right now."

William Lapsley - "to the best of my knowledge."

Commissioner Baldwin - "Right."

William Lapsley - "And, one of the questions was does he have any desire to go beyond this area. No, he's, uh, he, he will, must stay and has no plans to apply to expand the mining extraction area."

Chairman Hawkins - "Any other, uh, questions, uh."

Angela Beeker - "Mr. Chairman I have one for Mr. Lapsley, Um, did Karen provide you a copy of the minutes from the Planning Board?"

William Lapsley - "Uh, I was just given them I have not, uh, read them."

Angela Beeker - "Um, I was wondering if you could, um, take a minute while we're concluding everything to read your statements in there to see if you would readopt those under oath today."

William Lapsley - "I'll be glad to read that if you'll give me just a second."

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Chairman Hawkins - "While he's doing that do we have any other, uh, rebuttal of evidence? Mr. Anderson."

Richard Anderson - "One other question about Livingston Farms."

Chairman Hawkins - "You want to come on up to the mic sir?"

Richard Anderson - "One other question about Livingston Farms. I understand that they have purchased a large piece of property along Jackson Road and are planning an expansion. Have ya'll, you're aware of this? And I didn't know how many homes they were planning in that area. It'll also affect the density cause that's certainly within a mile. I would, I, it's a big piece of property I can tell you."

Chairman Hawkins - "I don't know if that's, uh."

Richard Anderson - "I was gonna say if you're looking at density it may not, today the homes may not be there but as quickly as they put 'um up they could be here in a very short amount of time."

Chairman Hawkins - "We'll probably have to deal with what's there today when we make the decision."

Richard Anderson - "Alright."

Chairman Hawkins - "Any other, uh, any other evidence?"

Karen Smith - "Mr. Chairman could I just make one comment"

Chairman Hawkins - "Yes please."

Karen Smith - "and it would kinda go back to that. Um, there is a section in the Open Use District, it's 200-32.1(i) that deals with subsequent events, and in that paragraph it says the development occurring around a pre-existing use, uh, for which, or use for which a special use permit was not required at the time it was established will not affect the ability of such use to alter or expand its facilities or operations. And so we're presenting the information about the density standard but I do not believe that, um, even if it did not meet the density if we would be able to deny it on that basis. Um, the other thing I was going to point out is there are provisions in that open use section. Once they've gone through this process the first time, on the expansion, um, under the provision that they're using, think after that there are other provisions in the Open Use that they would have to use if they wanted to expand or alter. So the, the standards may change a little bit and whether or not they'd have to comply with the specific site standards would be a different situation."

Chairman Hawkins - "Okay."

Karen Smith - "Okay."

Chairman Hawkins - "That may answer part of Commissioner Baldwin's question I think on further expansions. Bill do you want to respond to, uh Ms. Beeker."

William Lapsley - "Yes, I've reviewed the draft minutes and, and this represents, uh, what I stated at the hearing and I stand behind it."

Angela Beeker - "Okay, thank you."

Chairman Hawkins - "Are there any other rebuttals, questions, or evidence to be presented at, anyone? Okay, all the evidence had been given we'll ask the petitioner if he has any closing remarks."

William Lapsley - "No s, no sir."

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Chairman Hawkins - "Staff do you have any closing remarks?"

Daniel Gurley - "No."

Chairman Hawkins - "Additional parties, any closing remarks. Yes sir?"

Angela Beeker - "He's not a party."

Commissioner Moyer - "He's not a party."

Angela Beeker - "He's not a party."

Chairman Hawkins - "Are you"

Unidentified male - "I, I haven't been sworn in. No."

Chairman Hawkins - "Were, were you recognized as a party to the proceedings?"

Unidentified male - "No."

Chairman Hawkins - "Uh, are there any additional parties closing remarks. Mr. Anderson I think you were the only additional party. Uh, petitioner do you have any final closing remarks since you didn't have any to begin with?"

William Lapsley - "No sir."

Chairman Hawkins - "Alright, thank you. The Board now can have some discussion that the evidence been presented and the closing remarks concluded. Um, it's appropriate of course for the Commissioners to discuss the issues presented today. For a vote a decision we can either vote today and direct staff to bring back findings of fact and conclusion consistent with the decision and the Board's discussion or we can continue our discussion and decision to a later date. I would remind the Board that we have to have a, uh, written decision within 45 days of the conclusion of the hearing today. So, uh, I don't know what the pleasure of the Board is, you want to have some discussion on the matters that's been presented, see where we end up."

Commissioner Baldwin - "Well, a couple of things that come to mind. One is that as, that area of Henderson County begins to, or continues to grow, and it's going to, um, I don't know if we've fully investigated really the impact on the community of this operation. But there are two things, one is a buffer. We've got a 500 foot buffer which is a standard, but because of it being grandfathered in, it's allowed to increase the degree of non-conformity, uh, uh, as much as necessary. Uh, the density. Uh, you may find the density in the area exceeds that standards set out in this ordinance but again because it's a pre-existing use, uh, that really doesn't make a difference either. I think we've got, uh, to work with the ordinance that we've, we have on the books. I don't particularly like the standards, but that's how it reads. And it reads so that they can continue to increase the degree of non-conformity. If we're gonna have standards lets have um, but if, if not why is it set up so that we can continue to, uh, increase the degree of non-conformity of a pre-existing non-conforming use. I don't, I don't quite understand that. But we have to deal with what we've got on the books. But one of the things we can do to mitigate the impact of this is conditions that we can place on this permit. If we chose to do so."

Chairman Hawkins - "Any, any other comments, uh, on the, or thoughts as we, uh, look at this."

Commissioner Moyer - "I guess mine would be Grady this is not really an expansion of the operation. It's just an adjustment to the, uh, storage area, uh, and I think to, uh, require a fencing around the small portion doesn't make a, uh, lot of sense. Um, so I would support, uh, granting this for, I think my concern and I would express it to the, uh, to the applicant, petitioner is that, uh, there's a substantial issue there with respect to liability and, and danger and I would hope, uh, the petitioner would take that into consideration because the, the appropriateness of fencing part of this to avoid a heck of a future lawsuit, um, would be certainly worthwhile. And if you talk about an attractive

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nuisance, when you're sittin' on one, uh, be very candid, and, uh, so I don't think we should require it but I would hope the petitioner would take that into consideration."

Chairman Hawkins - "Okay. Uh, I would, uh, maybe just remind the Board that, uh, that you are able to grant the, um, uh, the permit if you, uh, feel that the, uh, particular case has met all the required general standards that are listed over on 200-56, um, the, I think the ones that, uh, uh, that we have listed here are the, uh, ones that deal with detrimental to the public welfare, uh, or property or public involvement in the neighborhood, uh, minimize the effects of noise. We've had some, some discussion on that, um, uh, I, I don't see it as a worsening the traffic congestion, I don't think there's very much congestion on the, the little road that leads into the rock quarry. Um, obviously one of the areas that we can't determine at this point is whether or not it meets applicable federal and state local laws cause it think that permit's still out. But, uh, that, that certainly is a condition on meeting the general, uh, site standards. Uh, it's involvement in the Comprehensive County Land Use Plan, um, uh, I, as old as that mine is it was probably already, already there before the current Comprehensive Land Use Plan was written. Um, and, uh, I think Bill would tell us that the, we probably don't a thoroughfare plan through there at the moment. No pun intended, but um, uh, the other areas that are list down there, uh, you can take a look at that, and. I just see if, uh, if there's any of those specific site standards that, uh, the Board feels is not being met or, has been addressed such as the, um, issuance of the permit. If there, if there's anything in there you see that needs additional discussion."

Commissioner Baldwin - "If we have a mine, this is a question for the County Attorney, if we have a mine that locates, is it possible to locate a quarry today in a Henderson County Open Use District?"

Angela Beeker - "Is it possible?"

Commissioner Baldwin - "Yes. To locate a new one?"

Angela Beeker - "Assuming the standards could be met. A new one would have to meet all the standards."

Commissioner Baldwin - "Okay."

Angela Beeker - "Um, so, you'd have to calculate the, d, you know a sparse area of the county, maybe a densely population area of the county probably not."

Commissioner Baldwin - "Right."

Angela Beeker - "Because of the residential."

Commissioner Baldwin - "But if it had a large enough tract it, it, it could, it would have to meet the 500 foot buffer."

Angela Beeker - "It would and it would have to meet all, all of those standards. Yes sir."

Commissioner Baldwin - "And if they wanted to come back 5 years from now if it went in today, and they wanted to move into this 500 foot buffer, they would not be allowed to do so."

Angela Beeker - "That's correct unless the Board granted a specific variance."

Commissioner Baldwin - "But if it's existing, it's pre-existing, um."

Angela Beeker - "They wouldn't be protected by that language that says they only have to meet that standard to the extent possible. The buffer right now, um, the, they get a little bit of a break because they were pre-existing. And the language says if you were pre-existing you only have to meet those standards to the extent possible. And so that's the pro, additional protection that they have that a new one would not have. If a new one wanted to be able to encroach in that 500 foot buffer, they would have to meet all the standards for a variance which I want to point the

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Board to anyway in your book to review those standards for variance, cause you're going to have to be able to make findings"

Commissioner Baldwin - "Findings on those."

Angela Becker - "that would support the granting of that variance as well as this variance."

Commissioner Baldwin - "But, a, a new use if it goes, if it goes in could not become a non-conforming use without violating the 500 foot buffer."

Angela Becker - "That's correct."

Commissioner Baldwin - "But if there's a, but if there's a pre-existing use, and let's say it's 400 feet from the property line then it can increase the degree of non-conformity, by moving into that."

Angela Becker - "If the Board determines that meeting that is not possible. Yes. I, I, enough, it's your discretion, nothing says you have to allow them to increase the nonconformity however the language does say they don't have to meet it if it's not possible to meet it. So, in my opinion this one, it's not possible for them to meet it so. But it's your, it's your discretion. I mean, has a little bit of a difference there I think, the, it, it's the Boards discretion."

Chairman Hawkins - "Well let me just, I guess kinda finish the thought cause we're looking at two things here. One you're looking at, uh, granting a special use permit and then as a, a separate question you're looking at variances. And I just went through, uh, the, uh, items that were listed for the special use permit. Those, uh, uh, through G, uh, I don't have a page number here but they're under 200-56, special use, dash 56, special uses. Those are the general site standards and, uh, I, I think that, uh, most of these aside from the one we pointed out as far as the, uh, establishment requiring a special permit shall be located or developed in such a manner as to comply with all applicable federal, state, and local laws, rules and regulations. That's the one area that we hadn't got the information back on as far as the, uh, mining permit, uh, that I, I assume the state's working on at this time. Are there any of those other items listed there that you don't feel is, uh, has been demonstrated as, uh, meeting the general site standards? If not it would seem it would be incumbent on the Board then to, uh, uh, having, having met the requirements of the ordinance to, uh, to as, I think Commissioner Moyer indicated favorably, uh, respond to the request for the special use permit."

Angela Becker - "Mr. Chairman there are also some standards that relevant to the special use under 200-70, under powers and duties of the Board of Commissioners, um, A-6, and then little a through f, um, if you flip over just a couple pages past, one page past where you were reading, 200-70, and look down at the bottom number 6, before a special use permit is issued you have to make the findings with regard to what's on the next page. So, I just didn't know if you want to look through those to see if there are any of those also."

Chairman Hawkins - "Do I think basic, uh, if I'm at the same place you are if, uh, if at any time after the permit has been issued the finds the conditions imposed, those, are those the ones you're looking at."

Angela Becker - "Um, I was referring to, it says before any use permit is issued the Board shall make written findings certifying compliance with these specific rules governing the individuals special use and that satisfactory, satisfactory provision and arrangement has been made concerning the following where applicable, a is satisfactory ingress and egress, b is off street parking where required, c is utilities if, you know, to the extent these are applicable, buffering, d, buffering with reference to type, location and dimensions. E, playgrounds, open spaces, yards, access ways and pedestrian ways and f, building and structures with reference to location, size and use."

Chairman Hawkins - "Does any Board member see any of those that are applicable, uh. That, uh, that satisfactory provisions have not been made concerning those? Certainly the ingress and egress problem that, that you raised a question on as far as locking of the gate I think is a different, uh, issue than what we deal with, you know in here, uh, uh, I think it's a valid point but I'm not sure it's a, part of this, uh, of this dialogue here. Uh, parking is, is non-

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applicable, nor utilities. Uh, playgrounds, uh, I don't think there's any other buildings and structures up through there. Any, any other thoughts or comments on that particular section?"

Commissioner Baldwin - "How do we, uh, how do we feel about the buffering with, uh, with, uh, respect to location and dimensions."

Chairman Hawkins - "Okay, you wanna have some discussion on that particular aspect, Item D."

Commissioner Baldwin - "I think so."

Chairman Hawkins - "Okay."

Commissioner Baldwin - "Um, again I feel like we're just increasing the degree of non-conformity. They don't meet the buffering standards now, and by granting this permit, we're, uh, we're reducing the buffer even further and eroding the standards that we're already set."

Chairman Hawkins - "Well I, I think that's a, a valid point I, I think as, as, uh, Mr. Lapsley pointed out if the, if the piece of land, uh, or that we're looking at is just the width of the buffer or smaller, uh, what you say is certainly germane. But under the, um, the variance here, uh, the next paragraph down there seven then you start talking about can you secure reasonable return or make a reasonable use of your property. If it's imperative that you have the, these additional places for waste material then, um, then you're gonna preclude the u, the further use of the property up there as, as a mining operation."

Commissioner Baldwin - "Well I guess that's a, a question I, we closed the hearing as far as the questions and answers go but I think that's one question I would like to, to see if the Board would be willing to ask Mr. Lapsley as far as expanding the site is it absolutely imperative to the operation itself that if, the permit, permit is not granted the operation cannot continue?"

Chairman Hawkins - "We haven't closed the hearing so I think Mr. Lapsley can still respond to that."

William Lapsley - "Well I, I, I guess, if I understand your question, what would be the condition if this special use permit, for this expanded area was not granted. Uh, if that was the case and he was not allowed to, to move his sediment basin it would have to stay where it is, and, uh, would seem to me that he would have to truck off, uh, the material that's waste material cause there's not, there's no room to mound it up within that existing permitted area. Uh....there's this, this area's, is currently within the permitted area by the state, that has a sediment basin and has the spoil area for his waste material. So if, if he cannot change and move as we applied, the sediment basin would still have to stay. I mean the state mining permit would require that. And so he would have to try and start mounding up the material here but that would eliminate his current parking area and where his truck turns around to load the materials so it would seem to me that, that he would be forced to take that spoil material and either try and find a way to, to pack it back into the hillside or truck it off, and I, to, to me if he wants to continue his mine operation he can't, he can't put it up against the rock face where he's getting the materials so it would seem to me he would have to truck it off. And I, you know, I don't know whether that would add probably two or three maybe more trucks a day, I don't think it would add any 500 but"

Commissioner Baldwin - "So."

William Lapsley - "certainly add, he'd have to truck it to another site somewhere off site to dispose of it unless he was able to negotiate with the neighbor, Mr. Anderson or somebody else to, to deposit the material there."

Commissioner Baldwin - "So it could be that, that if we don't go with the permit, then we may be increasing, uh, truck traffic."

William Lapsley - "I...I don't, I think so, I think"

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Commissioner Baldwin - "As a result because he's gonna truck it off site."

William Lapsley - "He would have to...mining operation the way I, I would see it. Now how far, it might, he may not as I say he may, he may be able to, as I would understand the state mining permit once you take it outside of this permitted mining area it's not a mining issue anymore. Now it's just a"

Commissioner Baldwin - "Fill."

William Lapsley - "a problem he has to deal with if he disturbs more an acre. Where he puts it he's gotta have an erosion permit and all those sorts of ... so he, it may be possible that he negotiates something with a neighbor, and he didn't get the trucks out on Hoopers Creek Road but if, if the neighbors didn't want him to put it there, then he would have to increase his traffic onto Hoopers Creek Road."

Angela Beeker - "Mr. Chairman under that general standard, um, I think the Board needs to look at the buffer that is proposed and determine if that under that general standard that is adequate, taking into consideration the, um, topography and the distance from, of the buffer. So, on one of the expansion areas there's 120 feet of buffer left, and on the other side the smallest looks like 110 feet of buffer left, so under that general standard now you would need to determine whether you feel like what is left is an adequate buffer regardless of that 500 foot standard. It's, it's a different consideration under that general standard."

Chairman Hawkins - "Any, any thoughts on, uh, on that particular issue as far as, uh, the adequacy of the remaining buffer? Any, any"

Commissioner Baldwin - "So we're gonna have to make a finding if we're gonna chew into the 500 that what is left is adequate."

Angela Beeker - "I will have to when I draw the order"

Commissioner Baldwin - "Based on specific reasons."

Angela Beeker - "correct. I will have to make a finding that the buffer that is left is adequate, is sat, satisfactory, buffering with reference to type, location and dimensions. Under that general standard that's"

Commissioner Baldwin - "So if we're gonna grant this permit we're gonna have to make a finding that the buffer that's left is adequate."

Angela Beeker - "That's correct."

Commissioner Baldwin - "In this case, in this case."

Angela Beeker - "In this case. That's correct. And, there really aren't a whole lot of standards to guide you as to whether it's adequate or not. It's up to your discretion."

Chairman Hawkins - "Because I, I think that the essence of this is that you know, you're really what you're looking at for the adequacy of the buffer is the adequacy around a sediment pond and a, and a fill area. You know rather that the, further up on the, uh, quarry because it's back in the area that's already non-conforming. Is that. Any other discussion, the Board ready to vote on this? You want more data, you want. Bill, do you have any thoughts?"

Commissioner Moyer - "I, with respect to the buffering issue the way I would phrase it is that under, under the circumstances in this case, not necessarily that it's adequate, but that satisfactory provision has been arranged based on what they've started with and based on the expansion that's occurring. That's what I'd be willing to say with respect to the buffering. And I'd be willing, uh, I'd be willing to move, you wanna move, motion now or do you want to go out of the public hearing?"

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Chairman Hawkins - "Well, let me see if everybody's got all the discussion done they want. Do we need to move out of public hearing before we vote on it?"

Angela Beeker - "Once you move out you can't ask any more questions. You can still...discuss it, but, but you just can't take in anymore information."

Karen Smith - "Um, I wondered if they should take action before they discuss the variance. Or if they should."

Angela Beeker - "Right. I was gonna say the same thing but they're just talking about whether to close the hearing or not."

Chairman Hawkins - "*Then I move we go out of public hearing then. All those in favor of that motion say aye.*"

Commissioner Baldwin - "I, I didn't hear the motion I was trying to secure this chair."

Chairman Hawkins - "Do you, equipment problems?"

Commissioner Baldwin - "Yes sir I did."

Chairman Hawkins - "Uh, it was just move to go out of public hearing so we won't hear any more questions and."

Commissioner Baldwin - "Okay."

Chairman Hawkins - "*All those in favor of that motion say aye.*"

"Aye" in unison.

Commissioner Moyer made a motion to approve the special use permit and deal with the variance separately. Commissioner Baldwin clarified that the fencing is a separate issue. All voted in favor and the motion carried. Chairman Hawkins directed staff to bring that back as a finding.

With respect to the variance and the fencing, Commissioner Moyer stated he would prefer to see the at risk part of the operation fenced. He did state that he realized such a request went beyond the Board's authority, and that it would have to be to the petitioner's agreement. There followed discussion on what the Board could do to facilitate fencing areas other than the area within the Board's jurisdiction. Karen Smith reminded the Board of the findings that have to be made to grant a variance. A compromise would have to be tied to those findings.

Following additional discussion, it was the consensus of the Board to have staff work on some additional options for the Board, and bring those options back at the next meeting.

IMPORTANT DATES

Chairman Hawkins reminded the Board of some dates that the Board came up with at their retreat. He stated that there would be a presentation on Outcome Based Budgeting on February 3rd. The Regional Water Agreement will be revisited at the Board's March 3rd meeting. The Human Services Building will appear on the agenda for February 3rd. On February 19th the Board will have a presentation on facility needs for the Animal Control Ordinance.

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Animal Shelter
Historic Courthouse (at least set aside a quarter million dollars this year)

Mr. Nicholson informed the Board that staff will present a Capital Improvement Plan as part of the budget this year. He mentioned EMS, the main station as well as the satellite station planned for Upward Road. Library branches have been on the table for several years now.

They also directed Mr. Nicholson not to appropriate fund balance. We are currently at the 10.5 cent range. LGC suggests a minimum of 8% fund balance. The Board discussed the Incorporation of Mills River.

David Nicholson suggested that we plan to take the monies from the sales tax and use them for one-time issues, maybe a one time capital project like the animal shelter. Or it may be needed to replace fund balance if Mills River doesn't incorporate until July 2004.

Sales Tax Distribution

Within the units of local governments, county government can choose annually the distribution method for sales tax. The two options are by population and by Ad Valorem Tax Levy. Should the Board wish to change the method, we must notify the NC Department of Revenue by April. Mr. Nicholson had prepared a spreadsheet with information concerning the alternatives. There was also some discussion of the tax effect due to the possible incorporation of Mills River.

Mr. Nicholson reviewed briefly a couple of examples that had been prepared concerning the options for sales tax distribution. Partly because this is a reappraisal year, it was the consensus of the Board to wait until next year to think about going to ad valorem tax distribution.

Motor Vehicle Valuations

At a previous meeting, the Board discussed information on the effect of a possible change to the motor vehicle valuation. Currently, Henderson County uses the high value (decision was made by former Tax Assessors). The vast majority of North Carolina Counties use the standard valuation. Mr. Nicholson had prepared some information for the Board concerning the different options.

Following discussion, Chairman Hawkins made the motion to go to the standard rate from the high rate on motor vehicle valuation, effective July 2003. A vote was taken and the motion passed four to one with Commissioner Baldwin voting nay.

APPROVAL OF ORDER GRANTING A SPECIAL USE PERMIT FOR EXPANSION TO A PREEXISTING MINING AND EXTRACTION OPERATION FOR HOOPERS CREEK QUARRY

Chairman Hawkins reminded those present that Ms. Beeker was absent and she had prepared this order but he also made everyone aware that when the State permitted the extension to the quarry it changed the amount of area included. It was Ms. Beeker's advice that the Board postpone this issue

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to an upcoming meeting to open up the hearing again and get the actual boundary size that the State has permitted and include that as part of the deliberations.

No action was taken. This item was rolled.

ORDINANCE TO REGULATE FIRING OF WEAPONS

Chairman Hawkins also suggested that this item be rolled, partly due to the fact that Ms. Becker was absent from the meeting. We will still have a public hearing. Commissioner Moyer felt that there were some major problems with the proposed ordinance and he felt that the Board needed to reconsider this issue.

Chairman Hawkins referenced some laws that are already on the books. The Board will reconsider this issue at a later date.

BLUE RIDGE COMMUNITY COLLEGE PROPERTY - add-on by Commissioner Moyer
Commissioner Moyer stated that he would like to get some more information for the Board on the piece of property in question. He and Commissioner Messer went out and looked at the property. Mr. Moyer felt that the Board should get an impartial person to do a site plan of what it would cost for site preparation and what the footprint of the building (80,000 sq. ft.) could be put on that site. The Board was in agreement to get more information on this piece of property.

STATE PRISON - add-on by Commissioner Messer

Commissioner Messer stated that it was brought to his attention in the last few days of some talk about locating a prison in either Henderson, Haywood, or Transylvania county. He would like to see this Board discuss the impact it would have on Henderson County, the pros and the cons.

Chairman Hawkins stated that to his knowledge the County had not been contacted yet by the Bureau of Prisons with an inquiry as to whether or not we want it in our county. The Commissioners had received a forwarded e-mail from Representative Justus that posed the question. Apparently they are looking for 100 - 150 acres of land to be donated for the site. Chairman Hawkins had asked Scott Hamilton of the Chamber of Commerce, our economic guru, to look around and there has been some search for that amount of land to fit the requirements they were asking for. They also requested that the land be close to a major road with sewer and gas. There are advantages to having that workforce for our citizens but there is no guarantee that the workforce would come out of our county.

Commissioner Young asked that Mr. Nicholson check with the County Manager in McDowell County because they have a prison that's been in operation there for 10-15 years which is a 2,000 bed prison. Property in McDowell County is probably worth \$15,000 an acre and its probably \$50,000 an acre in Henderson County. It would be interesting though to know what the prison has done for McDowell County as far as revenue increased, jobs, etc.

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QUASI-JUDICIAL PROCEEDING - Hoopers Creek Quarry

Chairman Hawkins referenced a memo to the Board from Angela Beeker concerning this issue. He asked Ms. Beeker to address this.

Angela Beeker reminded the Board that on January 15 they held a quasi-judicial proceeding to consider the request of Hoopers Creek Quarry, LLC, to expand the Hoopers Creek Quarry. The Board was also requested to grant a variance on the fencing requirements associated with the Special Use Permit. At that time, the Board voted to grant the special use permit, but to hold open the question of the variance. The draft order previously prepared to grant the special use permit was presented for the Board's information.

Subsequent to the January 15 proceeding, the applicant notified the Planning Department that the expansion area was going to be 1.07 acres, rather than 0.72 acres. For this reason the Board rolled

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consideration of the order on the special use permit to this meeting so that the hearing could be reopened to consider the increase in size of the expansion area.

Ms. Beeker stated that all parties had been notified of today's proceeding.

Ms. Beeker stated that we have been contacted by a number of property owners who received a mailed notice of the original proceeding who now wish to come forward and be parties to the proceeding. It was her recommendation that if the Board wishes to reopen the hearing just to consider the additional acreage that the Board not allow additional persons to become parties. If the Board wishes to allow other people to become full participating parties they would need to start the proceeding over and renotify everyone so everyone would have the same chance to come forward again and be a party to the proceeding. Her recommendation to the Board was to simply reopen the proceeding with the parties that came forward originally. Those parties could produce witnesses as part of their presentation to the Board but the witnesses would not be full participants and wouldn't get to cross examine each other or make closing statements. They would simply be allowed to present their evidence to the Board. She also recommended that the Board limit the proceeding to just the additional acreage. The Board had already heard testimony and made a decision on the 0.72 acre piece.

Following discussion it was the consensus of the Board to reopen the same hearing, not to go back all the way to the beginning.

Chairman Hawkins made the motion to reopen the quasi-judicial proceeding to include all the original parties to the proceeding and any witnesses they wish to call and with the limited scope of the 1/3 of an acre. All voted in favor and the motion carried.

Chairman Hawkins - "In that case I guess the uh first folks we'll hear from is Mr. Lapsley and I can ask the question."

Bill Lapsley - "Mr. Chairman, members of the Board, thank you very much for the opportunity to speak tonight. I think it would be very helpful to - to briefly explain how we got into this dilemma, I'll call it that. The - on behalf of the applicant, Hoopers Creek Quarry LLC, the State of North Carolina regulations required as I have stated in front of this Board and the County Planning Board required that the applicant when he changed anything at his mining operation had to submit an application for a modification of his mining permit. That's what the regulations require. In order to submit that application there are a number of things that were documents to be included with the application. Uh and the principal one was a proposed plan for modifying the boundary of the permit. Well that plan uh, at the request of the applicant I prepared for him based on my knowledge, one of what the applicant wanted to do which again I've explained to the Planning Board and to this Board and one that I believe met the requirements of the State of North Carolina in reviewing the application and in addition not only did we have to do a plan but we had to notify - the applicant had to notify by certified mail all of the adjacent property owners and send them a copy of the plan. All of those notices including the return receipts requested had to be submitted to the State before they

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would even look at the application so I think you can see the immediate flaw is that if the State in its wisdom decides to change the plan at all uh then the whole process can be disrupted. But we proceeded and submitted the plan which we believed met the conditions required by the State, we notified all the property owners, uh we uh got our return receipt requested, sent them all to the State, uh and it was at that point that under the Open Use regulations that the Board has passed we were notified by the Planning Department that this required, if I recall, special use permit uh in order to - to uh for the applicant to proceed under county regulations so now we - we're in a two step process. We have the state to deal with and we have the county - to meet the county's requirements. As we started the county review process uh back in - uh in early November uh this Board uh took the application, remanded it back to the Planning Board for review which the Planning Board did in December and at the December Planning Board Member on behalf of the applicant I presented the plan as it was submitted to the State 'cause that was my understanding of what would be approved. Shortly before that meeting, about a week before I received a phone call from the State Review Staff in Raleigh indicating they had some questions about the plan and that they may want to make requests for revisions to the plan and I told them that we were going through this process and that I was concerned that if they made any substantive changes that it might negate what we were going through in the county under the zoning ordinance. They indicated they wanted to make some changes and among the changes was which I reported to the Planning Board - when we went through the process with that Board - that the State had requested that we relocate a proposed sediment basin from the top of the fill area, where it exists today and which was approved in 1993 - from the top of the fill area to the bottom of the fill area and they indicated to me that that was imperative in their opinion, that that be done. Uh my question to them was well if we do that uh will be affect the area that the mining permit indicates is dedicated for the waste material from the mine - no that would be the same, so I said OK uh let me submit another plan and - and let's address your concerns. In the meantime the plan was going through the Planning Board and I pointed out to the Planning Board that it may be changed and the sediment basin protecting the site may in fact move to the bottom of the hill and that I was in the process of - of resubmitting and negotiating with the State to get it approved. Uh in early January, the 10th as a matter of fact I submitted that revised plan to the State uh and what I believed would be approved by the State. This Board met on the 15th of January uh and at that time I knew as I reported to the Board at the eventual public hearing that there was a revised plan in to the State. It did not increase the area that was to be designated for waste material uh but it in fact did increase the overall area that the State considers inside the permit boundary by this .35 acres plus or minus and uh I submitted the revised plan to the State not knowing whether that plan would receive approval from the State. We held the public hearing with this Board in February and uh to the best of my knowledge uh the plan was going to be approved but I had no indication verbal or written that the plan would be approved uh and as County Attorney mentioned uh I did state that - that the area had not substan- increased uh and I stand corrected uh in my mind it was the area for the waste material, it was not the area including the sediment basin which the State required at the foot of the - the fill area. Uh it was at that point after the public hearing uh and discussions with Staff that uh I realized that - that maybe this was an issue uh and I discussed it with - with Staff and uh they suggested that we reopen this hearing which is fine with the applicant and as a matter of fact uh in the last week uh we were notified - I was notified verbally by the State that the plan would be approved as - as the revised plan as I submitted. I was also

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informed today uh about five or six hours ago by the State Staff that because it was a change from the plan that was submitted uh with the original application the changes at the State's request, that they were going to require the applicant to send out the revised plan by certified mail to all the neighbors again to solicit any comments uh prior to their final decision issuing a permit. So that's the sequence of events that have transpired uh I understand from your procedure that the app - only the people that participated in the hearing uh at least at the moment can participate. Mr. Grimes, the applicant is here tonight if you have any questions of him. But that's the sequence of events uh I certainly don't want to leave the impression at all that - that I or the applicant deceived this Board or the public in any way. We did not do that. We submitted what we believed would be an approved plan, we finally have received verbal approval that the plan's gonna be approved uh and the applicant just - just wants to proceed as we have demonstrated to this Board and the Planning Board previously and I'll be glad to answer any questions about the application that you may have."

Chairman Hawkins - "Mr. Lapsley on - you said that you submitted a uh - on January the 10th a plan. Is that the plan that finally was approved?"

Bill Lapsley - "Yes sir."

Chairman Hawkins - "And so that's the one that we're seeing now that actually has the expanded area on it?"

Bill Lapsley - "Yes sir that's correct, yes."

Chairman Hawkins - "And it was your - it was your understanding that when we were talking about the expanded area we're talking about just the sediment area, not the whole mining"

Bill Lapsley - "When - when we sent - submitted the revised plan uh and we - the State directed us in writing to move the sediment basin to the toe of the fill area my question to the State at that time was if I move it to the toe of the fill area as depicted in the plan and you take a slope back up we would gain nothing - we uh - there would be no need to - to file the application because the applicant would not gain uh the space that he had requested and the State's comment was fine keep the area that you plan to fill the same and put the sediment basin at the toe of the fill and that's what generated the .35 acre additional area uh"

Chairman Hawkins - "And that was on the plan that you submitted back on the 10th of January?"

Bill Lapsley - "Yes but I did not know whether that would be approved and - and the fact is that even today I have nothing in writing from the State indicating that the plan will be approved. I just have a verbal indication from the Staff in Raleigh that - that they will approve it but now they have decided not to issue the letter until we proceed again with the notification by certified mail and - and I guess from my perspective that's the flaw in the process. They - they make us not- send out a notice with a plan that we don't know is going to be approved and if it's changed at all in effect you've changed the condition and so"

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Chairman Hawkins - "So currently uh the State's gonna require you to renotify everyone which"

Bill Lapsley - "That's right"

Chairman Hawkins - "Where does that leave us then, have we got to wait until that notification occurs or"

Commissioner Messer - "Did they give you any indication of the time frame Mr. Lapsley?"

Bill Lapsley - "Well my - well they told me to do it immediately and uh I believe uh the waiting period is 30 days from - from the date that we mail it out return receipt requested so if that happens you know this week then 30 days from now they will see if they obtain any additional comments uh and then they will make a decision to either adjust the plan or accept it as its submitted."

Chairman Hawkins - "So your response - the letters that - that you're sending out now goes back to the State for comments. The ones that the State directed you to send out?"

Bill Lapsley - "The State has directed uh the applicant to send the revised plan that verbally they've indicated to me would be approved - they have directed me as the applicant's agent to send that plan registered mail return receipt requested to everyone of the neighbors to make sure that they all are aware of the revised plan. Uh and so we"

Chairman Hawkins - "So that could affect any action this Board took tonight, we'd be back in the same, almost in the same predicament we were before."

Bill Lapsley - "I - I guess it's conceivable that we - we could go through this process and - and if the neighbors convinced the State to revise the plan uh then we could be back here with another revision that the State has requested us to do and it's a - it's a catch 22. We - we're just"

Chairman Hawkins - "That- that bothers me more than the other aspect of it. It may be that we need to just close this thing out and reopen and crank back up. Once the State's decided in their feeble minds down there what the heck they're gonna do. You know - I mean - because we - we're playing a - a catch 22 game. We're doing our hearings and uh"

Commissioner Moyer - "Grady, I move we just hold the hearing open until Bill gets official notice from the State approving the plan"

Chairman Hawkins - "Are we able to do that?"

Ms. Beeker indicated by a nod of her head in the affirmative.

Chairman Hawkins - "All those in favor of that motion say aye."

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“Aye” in unison.

Chairman Hawkins - “We’re gonna hold the hearing open.”

Recess

Chairman Hawkins called a technical recess to change videotapes.

Human Services Building

Mr. Nicholson stated that the Board had asked Staff to do an investigation of the site at Blue Ridge Community College as well as alternative methods of construction for the possible construction of the Human Services Building. The Board asked the County Manager to get a letter from Blue Ridge Community College which had been received and included for the Board’s review. The letter is from Joe Spearman, Chairman of the Board of Trustees of BRCC offering the property to the County. One thing was a little ambiguous - discussion of the classroom space associated with the project. Mr. Nicholson stated that in the original design of the Human Services Building and the renovation of the Carolina Apparel Building there were two classrooms designed as part of that as well as a number of conference rooms.

Mr. Nicholson had gotten Bill Lapsley to go out to the site and to come up with a lay-out suggestion. He and his staff came up with a different type layout than what county staff had. Mr. Nicholson showed on a map from Mr. Lapsley making the point that we could put multiple buildings on the BRCC property. His map showed the Animal Shelter up front on College Drive with parking for them and then the Human Services Building in an L-shape farther back with parking for it. There was some discussion of the possibility of also putting a Land Development Building on the same property but back on Allen. This was just a conceptual rendering and there are multiple possibilities but at least this showed the Board that several buildings could fit on the site.

Mr. Nicholson addressed cost and financial information with three construction alternatives for the Human Services Building (80,000 sq. ft. building):

- Prefab building (metal building with masonry or stucco on one side only)
approx. \$73.00 sq. ft.
- Prefab tilt-up construction building (steel framed building with pre-fab concrete panels like were used on the exterior of the new courthouse)
approx. \$76.00 sq. ft.
- Conventional masonry construction (steel framed building with masonry exterior)
approx. \$80.00 sq. ft.

Following much discussion, direction to staff was to prepare to put the Carolina Apparel Building out to sell and get some good numbers on the BRCC land. We need to clarify with BRCC about the classroom space they had mentioned.

MEMORANDUM

To: Henderson County Board of Commissioners

From: Daniel B. Gurley, III, Zoning Administrator
Karen C. Smith, Planning Director

Date: January 15, 2003

Subject: Planning Board Recommendation and Staff Comment on Application for a Special Use Permit for an Expansion to a Pre-Existing Mining and Extraction Operation – Application #SP-02-01 by Junius Grimes

Attachment(s): 1. Draft minutes from December 17, 2002 Planning Board Meeting
2. Request for Board Action (Planning Board Meeting 12/17/02)

At its December 17, 2002 meeting, the Henderson County Planning Board reviewed the Special Use Permit application submitted by Junius Grimes (the applicant), represented by William Lapsley (the agent) to expand an existing mining and extraction operation by relocating a sedimentation basin and expanding a waste fill area. The applicant is also applying for a variance from the fencing requirement of the Henderson County Zoning Ordinance.

The Planning Board members voted unanimously (5 to 0) to send the Board of Commissioners a favorable recommendation on application SP-02-01 for the expansion to an existing mining and extraction operation provided that certain conditions were satisfied. The conditions were as follows:

1. Fencing. The applicant has applied for a variance to receive relief from this requirement. If the variance request is not approved the applicant would need to install fencing as defined in the Henderson County Zoning Ordinance.(per §200-38.2.C)
2. Compliance with all Federal, State, and Local Laws. The applicant should obtain approval of the amendments to his State application before the initiation of construction of the sediment basin (per §200-56.D(1)(d))
3. Amendment to Application Site Plan. The applicant should provide a copy of the amended site plan to the Board of Commissioners. The applicant's agent indicated to the Planning Board that the State is requiring an amendment to

Planning Board Recommendation for SP-02-01

January 15, 2003

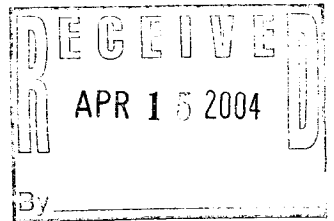
the applicant's site plan including changing the location of the sediment basin due to the dam requirements (per §200-38.3.B.(3))

The draft minutes from the December 17, 2002 are attached for reference.

Staff Comments

Included with this packet is a copy of the Request for Board Action submitted by Henderson County Planning Staff to the Planning Board at its December 17, 2002 meeting. Staff comment was deliberated by the Planning Board and incorporated into its recommendation.

With the satisfaction by the applicant of the condition regarding fencing the Board should be able to find that the Special Use Permit as proposed will not adversely affect the health or safety of persons residing or working in the neighborhood and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.



North Carolina Department of Environment and Natural Resources
Division of Land Resources
 Land Quality Section

James D. Simons, P.G., P.E.
 Director and State Geologist

Michael F. Easley, Governor
 William G. Ross Jr., Secretary

March 29, 2004

Mr. Junius D. Grimes
 J. R. Stone Sales, Inc.
 P.O. Box 7147
 Asheville, North Carolina 28802

RE: Permit No. 45-12
 Hoopers Creek Quarry
 Henderson County
 French Broad River Basin

Dear Mr. Grimes:

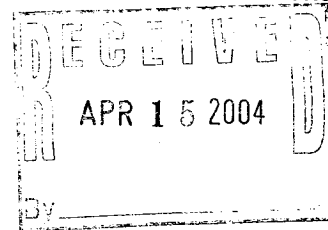
Your recent request to have the above referenced mining permit modified has been approved. The modification is to increase the permitted acreage to 34.52 acres and the affected acreage at this site to 8.47 acres as indicated on the Site Development Plan dated April 2002 and received by the Land Quality Section on January 13, 2003 and the supplemental information dated January 10, 2003, August 12, 2003, October 23, 2003, January 20, 2004, and March 18, 2004. The modification includes slight expansion of the pit area, addition of the entire access road to the permit, realignment of said road and redesign of the waste and sediment and erosion control plan. A copy of the modified permit is enclosed.

The conditions in the modified permit were based primarily upon the initial application. Modifications were made as indicated by the modification request and as required to insure compliance with The Mining Act of 1971. The expiration date, mine name and permit number shall remain the same as before the modification. I would like to draw your particular attention to the following conditions where minor additions or changes were made: Operating Condition Nos. 1B, 2A, 3C, 4B, 4D-H, 6C, 8A-J, 10B, 12A-D and 14 and Reclamation Condition No. 3.

The issuance of a mining permit and/or any modification to it does not supersede local zoning regulations. The responsibility of compliance with any applicable zoning regulations lies with you.

As a reminder, your permitted acreage at this site is 34.52 acres and the amount of land you are approved to disturb is 8.47 acres.

Please be aware that Mining Permit No. 45-12 expires July 6, 2005. In order to continue mining operations at this site after July 6, 2005, a renewal request must be submitted to this office and the permit renewal issued by this office prior to said date.



Mr. Grimes
Page Two

Please review the modified permit and contact Ms. Judy Wehner, Assistant Mining Specialist, at (919) 733-4574 should you have any questions concerning this matter.

Sincerely,

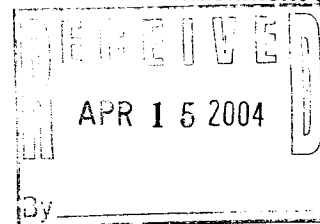
A handwritten signature in black ink, appearing to read "Floyd R. Williams". The signature is fluid and cursive, with a long horizontal stroke at the end.

Floyd R. Williams, PG, CPG, CPESC
State Mining Specialist
Land Quality Section

FRW/jw

Enclosures

cc: Mr. Carson Fisher, PE, Regional Engineer
Ms. Shannon Deaton - WRC, w/enclosures
Mr. Bradley Bennett - DWQ, w/enclosure
Mr. William Gerringger-Mine and Quarry Bureau, w/o enclosure
File



**DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES**

DIVISION OF LAND RESOURCES

LAND QUALITY SECTION

P E R M I T

for the operation of a mining activity

In accordance with the provisions of G.S. 74-46 through 68, "The Mining Act of 1971," Mining Permit Rule 15A NCAC 5 B, and other applicable laws, rules and regulations

Permission is hereby granted to:

J. R. Stone Sales, Inc.

Hoopers Creek Quarry

Henderson County - Permit No. 45-12

for the operation of a

Dimension Stone Quarry

which shall provide that the usefulness, productivity and scenic values of all lands and waters affected by this mining operation will receive the greatest practical degree of protection and restoration.

MINING PERMIT EXPIRATION DATE: July 6, 2005

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In accordance with the application for this mining permit, which is hereby approved by the Department of Environment and Natural Resources hereinafter referred to as the Department, and in conformity with the approved Reclamation Plan attached to and incorporated as part of this permit, provisions must be made for the protection of the surrounding environment and for reclamation of the land and water affected by the permitted mining operation. This permit is expressly conditioned upon compliance with all the requirements of the approved Reclamation Plan. However, completed performance of the approved Reclamation Plan is a separable obligation, secured by the bond or other security on file with the Department, and may survive the expiration, revocation or suspension of this permit.

This permit is not transferable by the permittee with the following exception: If another operator succeeds to the interest of the permittee in the permitted mining operation, by virtue of a sale, lease, assignment or otherwise, the Department may release the permittee from the duties imposed upon him by the conditions of his permit and by the Mining Act with reference to the permitted operation, and transfer the permit to the successor operator, provided that both operators have complied with the requirements of the Mining Act and that the successor operator agrees to assume the duties of the permittee with reference to reclamation of the affected land and posts a suitable bond or other security.

In the event that the Department determines that the permittee or permittee's successor is not complying with the Reclamation Plan or other terms and conditions of this permit, or is failing to achieve the purposes and requirements of the Mining Act, the Department may give the operator written notice of its intent to modify, revoke or suspend the permit, or its intent to modify the Reclamation Plan as incorporated in the permit. The operator shall have right to a hearing at a designated time and place on any proposed modification, revocation or suspension by the Department. Alternatively and in addition to the above, the Department may institute other enforcement procedures authorized by law.

Definitions

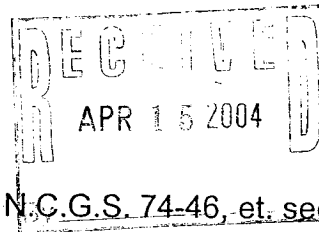
Wherever used or referred to in this permit, unless the context clearly indicates otherwise, terms shall have the same meaning as supplied by the Mining Act, N.C.G.S. 74-49.

Modifications

March 29, 2004: This permit has been modified to increase the permitted acreage to 34.52 acres and the affected acreage at this site to 8.47 acres as indicated on the Site Development Plan dated April 2002 and received by the Land Quality Section on January 13, 2003 and the supplemental information dated January 10, 2003, August 12, 2003, October 23, 2003, January 20, 2004, and March 18, 2004. The modification includes slight expansion of the pit area, addition of the entire access road to the permit, realignment of said road and redesign of the waste and sediment and erosion control plan.

Expiration Date

This permit shall be effective from the date of its issuance until July 6, 2005.



Conditions

This Permit shall be subject to the provisions of the Mining Act, N.C.G.S. 74-46, et. seq., and to the following conditions and limitations:

OPERATING CONDITIONS:

1. Wastewater and Quarry Dewatering

- A. Any wastewater processing or mine dewatering shall be in accordance with the permitting requirements and rules promulgated by the N.C. Environmental Management Commission.
- B. Any storm water runoff from the affected areas at the site shall be in accordance with any applicable permit requirements and regulations promulgated by the Environmental Protection Agency and enforced by the N.C. Environmental Management Commission. It shall be the permittee's responsibility to contact the Water Quality Section, Division of Water Quality, to secure any necessary storm water permits or other approval documents.

2. Air Quality and Dust Control

- A. Any mining related process producing air contaminant emissions including fugitive dust shall be subject to the requirements and rules promulgated by the N.C. Environmental Management Commission and enforced by the Division of Air Quality.
- B. During quarry operation, water trucks or other means that may be necessary shall be utilized to prevent dust from leaving the permitted area.

3. Buffer Zones

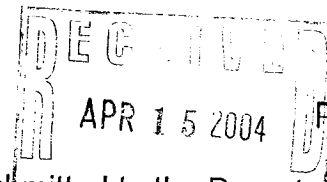
- A. Any mining activity affecting waters of the State, waters of the U. S., or wetlands shall be in accordance with the requirements and regulations promulgated and enforced by the N. C. Environmental Management Commission. .
- B. Sufficient buffer (minimum 50 foot undisturbed) shall be maintained between any affected land and any adjoining waterway or wetland to prevent sedimentation of that waterway or wetland from erosion of the affected land and to preserve the integrity of the natural watercourse or wetland.
- C. All buffer zones that are shown on the Site Development Plan dated April 2002 and received by the Land Quality Section on January 13, 2003, and on the Soil Erosion and Sedimentation Control Plan dated December 2002 and last revised March 18, 2004, shall remain undisturbed with the exception of the installation of required sediment control measures and approved earthen berms.

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- D. Sufficient buffer shall be maintained between any excavation and any mining permit boundary to prevent caving of adjacent property.

4. Erosion and Sediment Control

- A. Adequate mechanical barriers including, but not limited to diversions, earthen dikes, silt check dams, silt retarding structures, rip rap pits, or ditches shall be provided in the initial stages of any land disturbance and maintained to prevent sediment from discharging onto adjacent surface areas or into any lake, wetland or natural watercourse in proximity to the affected land.
- B. All erosion and sedimentation control measures shall be constructed and maintained as per the Site Improvements Plan for J. R. Stone Sales, Inc. sheets 1 through 5, sealed on April 28, 1995 except where items listed below in Operating Condition No. 4D supersede the prior approved erosion and sediment control plan.
- C. The sediment basin shall be inspected after each rainfall event, and shall be cleaned out when the storage capacity becomes one half full of sediment.
- D. All mining activities related to the slight expansion of the pit area, addition of the entire access road to the permit, realignment of said road and redesign of the waste and sediment and erosion control plan, including the installation and maintenance of all erosion and sedimentation control measures, shall be conducted as indicated on the Site Development Plan dated April 2002 and received by the Land Quality Section on January 13, 2003, the Soil Erosion and Sedimentation Control Plan dated December 2002, last revised March 18, 2004 and the supplemental information dated January 10, 2003, August 12, 2003, October 23, 2003 and January 20, 2004 with the stipulation that a professional engineer certify the construction of the sediment basin as having been built in accordance with the approved plans and details.
- E. An on-site pre-construction conference must be held between the design engineer and Land Quality Section personnel of the Ashville Regional Office prior to construction of the new basin embankment and realignment of the access road.
- F. Adequate and appropriate erosion and sediment control measures and/or devices shall be utilized where necessary during reconstruction of the road section to prevent sediment from leaving the disturbed areas.
- G. Appropriate sediment control devices such as re-enforced silt fence with metal posts and wire backing shall be temporarily installed during reconstruction of the redesigned sediment basin and fill area. No disturbance shall occur within the drainage way near the southeastern portion of the redesigned riser basin.



- H. An erosion and sediment control plan(s) shall be submitted to the Department for approval prior to any land disturbing activities not indicated on the revised erosion control plan or mine maps submitted with the approved application for a mining permit and any approved revisions to it. Such areas include, but are not limited to, expansion outside of the approved pit area, creek crossings, or expansion of overburden or waste disposal areas.

5. Groundwater Protection

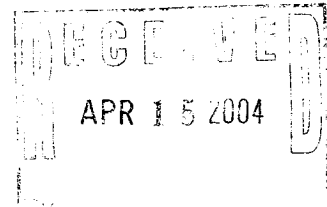
Groundwater monitoring wells shall be installed and monitored as deemed appropriate by the Department.

6. Graded Slopes and Fills

- A. The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control measure, structure, or device. In any event, exposed slopes or any excavated channels, the erosion of which may cause off-site damage because of siltation, shall be planted or otherwise provided with groundcover, devices or structures sufficient to restrain such erosion.
- B. Overburden cut slopes along the perimeter of the quarry opening shall be graded to a minimum 2 horizontal to 1 vertical or flatter and shall be stabilized within 60 days of completion. Furthermore, a minimum ten (10) foot wide horizontal safety bench shall be provided at the top of the rock and at the toe of any overburden slope.
- C. Waste rock piles shall not be constructed with steep, near vertical side slopes. Side slopes shall be constructed in such a manner as to provide for a stable, safe configuration for reclamation and conservation purposes.

7. Surface Drainage

The affected land shall be graded so as to prevent collection of pools of water that are, or likely to become, noxious or foul. Necessary structures such as drainage ditches or conduits shall be constructed or installed when required to prevent such conditions.

8. Blasting

The operator shall monitor each blast with a seismograph located at a distance no farther than the closest off site regularly occupied structure not owned or leased by the operator. A seismographic record including peak particle velocity, air overpressure, and vibration frequency levels shall be kept for each blast (except as provided under Sections B. and D. of this permit). The following blasting conditions shall be observed by the mine operator to prevent hazard to persons and adjacent property from surface blasting:

A. Ground Vibration With Monitoring:

In all blasting operations, the maximum peak particle velocity of any component of ground motion shall not exceed Figure 1 (below) at the immediate location of any regularly occupied building outside of the permitted area such as a dwelling house, church, school, or public, commercial or institutional building.

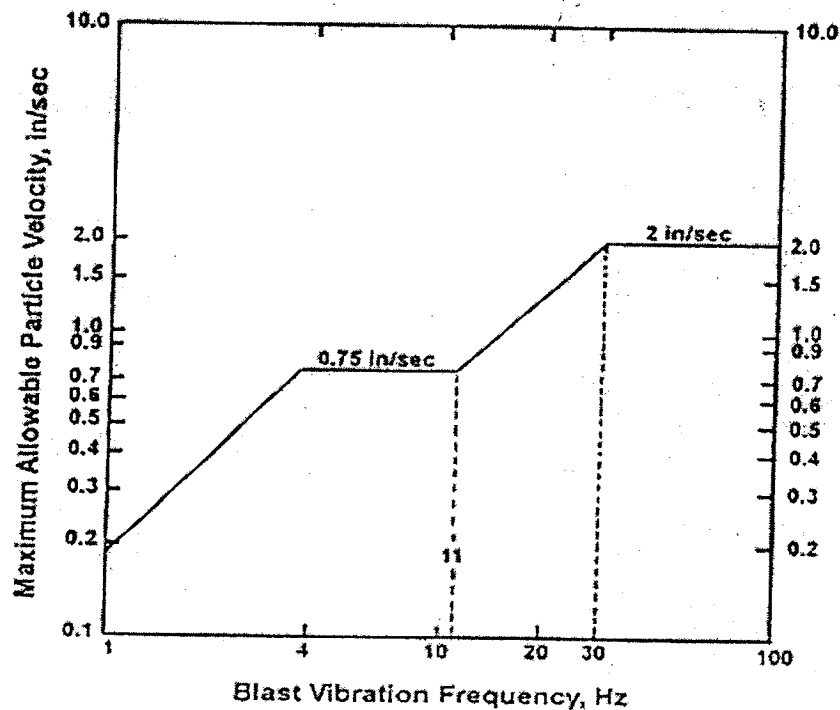
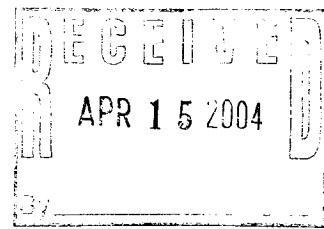


Figure 1 Alternative blasting level criteria
(Source modified from figure B-1. Bureau of Mines R18507)

B. Ground Vibration Without Monitoring:

In the event of seismograph malfunction or other condition which prevents monitoring, blasting shall be conducted in accordance with the following formulas:



$$W = (D/D_s)^2 \quad D_s = \frac{D}{W^{1/2}}$$

$$V = 160(D_s)^{-1.6}$$

- W = Maximum charge weight of explosives per delay period of 8.0 milliseconds or more (pounds).
 D = Distance from the blast site to the nearest inhabited building not owned or leased by the mine operator (feet).
 D_s = Scaled distance factor.
 V = Peak Particle Velocity (inches per second).

The peak particle velocity of any component shall not exceed 1.0 inch per second, for the purposes of this Section.

C. Air blast With Monitoring:

Air blast overpressure resulting from surface blasting shall not exceed 129 decibels linear (dBL) as measured at the immediate location of any regularly occupied building not owned or leased by the operator outside of the permitted area such as a dwelling house, church, school, or public, commercial or institutional building, unless an alternate level based on the sensitivity of the seismograph microphone as specified below is being used:

Lower Frequency Limit of Measuring System, in Hz	Max Level, in dBL
0.1 Hz or lower-flat response	134 peak
2.0 Hz or lower-flat response	133 peak
6.0 Hz or lower-flat response	129 peak

D. Air blast Without Monitoring:

In the event of seismograph malfunction or other condition which prevents monitoring, blasting shall be conducted in accordance with the following formulas:

$$U = 82 (D/W^{0.33})^{-1.2}$$

To convert U (psi) to P (dBL):

$$P = 20 \times \log (U/2.9 \times 10^{-9})$$

Confined Air blast/Overpressure (dBL)
for quarry situation:

$$A = P - 35$$

- U = Unconfined air overpressure (pounds per square inch)
- W = Maximum charge weight of explosives per delay period of 8.0 milliseconds or more (pounds).
- D = Distance from the blast site to the nearest inhabited building not owned or leased by the mine operator (feet).
- P = Unconfined air overpressure (decibels).
- A = Air blast or air overpressure for typical quarry situations (decibels).

The air blast/overpressure shall not exceed 129 decibels, for the purposes of this Section.

E. Record Keeping:

The operator shall maintain records on each individual blast describing: the total number of holes; pattern of holes and delay of intervals; depth and size of holes; type and total pounds of explosives; maximum pounds per delay interval; amount of stemming and burden for each hole; blast location; distance from blast to closest offsite regularly occupied structure; and weather conditions at the time of the blast. Records shall be maintained at the permittee's mine office and copies shall be provided to the Department upon request.

F. Excessive Ground Vibration/Air blast Reporting:

If ground vibration or Air blast limits are exceeded, the operator will immediately report the event with causes and corrective actions to the Department. Use of explosives at the blast site that produced the excessive reading shall cease until corrective actions approved by the Department are taken. However, blasting may occur in other approved areas within the permitted boundary. Authorization to blast at the blast site may be granted at the time of the verbal reporting of the high ground vibration or high air blast reading if the circumstances justify verbal approval. Failure to report will constitute a permit violation.

G. Flyrock Prevention:

The operator shall take all reasonable precautions to ensure that flyrock is not thrown beyond areas where the access is temporarily or permanently guarded by the operator. Failure to take corrective measures to prevent flyrock and repeated instances of flyrock shall be considered a violation of the Mining Permit.

H. Flyrock Reporting:

Should flyrock occur beyond the permitted and guarded areas, the operator shall immediately report the incident to the Department. Further use of explosives on the mine site shall be suspended until the following actions have been taken:

1. A thorough investigation as to the cause(s) of the incident shall be conducted.

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2. A report detailing the investigation shall be provided to the Department within 10 days of the incident. The report shall, at a minimum, document the cause(s) of the incident along with technical and management actions that will be taken to prevent further incidents. The report shall meet with the approval of the Department before blasting may resume at the mine site.

- I. Studies:

The operator shall provide to the Department a copy of the findings of any seismic studies conducted at the mine site in response to an exceedence of a level allowed by these blasting conditions. The operator shall make every reasonable effort to incorporate the studies' recommendations into the production blasting program.

- J. Notice:

The operator shall, when requested by the Department, give 24-hour advance notice to the Land Quality Section Regional Office prior to any blast during a period for which notice is requested.

9. High Wall Barrier

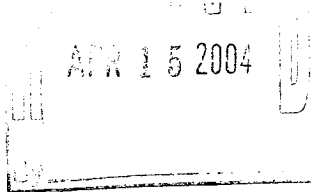
A physical barrier consisting of large boulders placed end-to-end or fencing shall be maintained at all times along the perimeter of any highwall to prevent inadvertent public access. In addition, a minimum 10 foot wide horizontal safety bench shall be provided at the junction between the top of rock and the toe of any overburden cut slope.

10. Visual Screening

- A. Existing vegetation shall be maintained between the mine and public thoroughfares to screen the operation from the public. Additional screening methods, such as constructing earthen berms, shall be employed as deemed appropriate by the Department.
- B. Long leaf and/or Virginia pines or other acceptable evergreen species shall be planted as deemed appropriate by the Department to improve visual and noise buffering.

11. Plan Modification

The operator shall notify the Department in writing of the desire to delete, modify or otherwise change any part of the mining, reclamation, or erosion/sediment control plan contained in the approved application for a mining permit and any approved revisions to it. Approval to implement such changes must be obtained from the Department prior to on-site implementation of the revisions.



12. Refuse Disposal

- A. No on-site disposal of refuse or other solid waste that is generated outside of the mining permit area shall be allowed within the boundaries of the mining permit area unless authorization to conduct said disposal has first been obtained from both the Division of Waste Management and the Land Quality Section, Department of Environment and Natural Resources. The method of disposal shall be consistent with the approved reclamation plan.

- B. Mining refuse as defined by G.S. 74-49 (14) of The Mining Act of 1971 generated on-site and directly associated with the mining activity may be disposed of in a designated refuse area. All other waste products must be disposed of in a disposal facility approved by the Division of Waste Management. No petroleum products, acids, solvents or their storage containers or any other material that may be considered hazardous shall be disposed of within the permitted area.

- C. For the purposes of this permit, the Division of Land Resources considers the following materials to be "mining refuse" (in addition to those specifically listed under G.S. 74-49 (14) of the N.C. Mining Act of 1971):
 - 1. on-site generated land clearing debris
 - 2. conveyor belts
 - 3. wire cables
 - 4. v-belts
 - 5. steel reinforced air hoses
 - 6. drill steel

- D. If mining refuse is to be permanently disposed within the mining permit boundary, the following information must be provided to and approved by the Division of Land Resources prior to commencement of such disposal:
 - 1. the approximate boundaries and size of the refuse disposal area;
 - 2. a list of refuse items to be disposed;
 - 3. verification that a minimum of 4 feet of cover will be provided over the refuse;
 - 4. verification that the refuse will be disposed at least 4 feet above the seasonally high water table; and
 - 5. verification that a permanent vegetative groundcover will be established.

13. Annual Reclamation Report

An Annual Reclamation Report shall be submitted on a form supplied by the Department by February 1 of each year until reclamation is completed and approved.

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Page 11

14. Bonding

The security which was posted pursuant to N.C.G.S. 74-54 in the form of a \$39,100.00 Irrevocable Standby Letter of Credit is sufficient to cover the operation as indicated in the approved application. This security must remain in force for this permit to be valid. The total affected land shall not exceed the bonded acreage.

15. Archaeological Resources

Authorized representatives of the Division of Archives and History shall be granted access to the site to determine the presence of significant archaeological resources.

APPROVED RECLAMATION PLAN

The Mining Permit incorporates this Reclamation Plan, the performance of which is a condition on the continuing validity of that Mining Permit. Additionally, the Reclamation Plan is a separable obligation of the permittee, which continues beyond the terms of the Mining Permit.

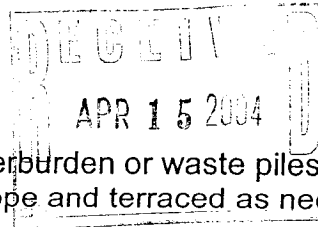
The approved plan provides:

Minimum Standards As Provided By G.S. 74-53

1. The final slopes in all excavations in soil, sand, gravel and other unconsolidated materials shall be at such an angle as to minimize the possibility of slides and be consistent with the future use of the land.
2. Provisions for safety to persons and to adjoining property must be provided in all excavations in rock.
3. All overburden and spoil shall be left in a configuration which is in accordance with accepted conservation practices and which is suitable for the proposed subsequent use of the land.
4. No small pools of water shall be allowed to collect or remain on the mined area that are, or are likely to become noxious, odious or foul.
5. The revegetation plan shall conform to accepted and recommended agronomic and reforestation practices as established by the North Carolina Agricultural Experiment Station and the North Carolina Forest Service.
6. Permittee shall conduct reclamation activities pursuant to the Reclamation Plan herein incorporated. These activities shall be conducted according to the time schedule included in the plan, which shall to the extent feasible provide reclamation simultaneous with mining operations and in any event, provide reclamation at the earliest practicable time after completion or termination of mining on any segment of the permit area and shall be completed within two years after completion or termination of mining.

RECLAMATION CONDITIONS:

1. Provided further, and subject to the Reclamation Schedule, the planned reclamation shall be to allow the quarry excavation to fill with water, provide a permanent barricade (fence) along the top of any high wall, and grade and revegetate any areas in unconsolidated material.
2. The specifications for surface gradient restoration to a surface suitable for the planned future use are as follows:



- A. All areas of unconsolidated material such as overburden or waste piles shall be graded to a 2 horizontal to 1 vertical or flatter slope and terraced as necessary to insure slope stability.
- B. Any settling ponds and sediment control basins shall be backfilled, graded, and stabilized or cleaned out and made into acceptable lake areas.
- C. The processing, stockpile, and other disturbed areas neighboring the mine excavation shall be leveled and smoothed.
- D. Compacted surfaces shall be disced, subsoiled or otherwise prepared before revegetation.
- E. No contaminants shall be permanently disposed of at the mine site. On-site disposal of waste shall be in accordance with Operating Conditions Nos. 12.A. through D.
- F. The affected land shall be graded to prevent the collection of noxious or foul water.

3. Revegetation Plan:

Disturbed areas shall be permanently revegetated according to the Revegetation Plan prepared by Mr. Phillip S. Ward, Jr., Landscape Architect, dated February 20, 1995 with the exception that rye grass shall not be included in the seeding mixtures.

Whenever possible, disturbed areas should be vegetated with native warm season grasses such as switch grass, Indian grass, bluestem and gamma grass.

In addition, the permittee shall consult with a professional wildlife biologist with the N.C. Wildlife Resources Commission to enhance post-project wildlife habitat at the site.

4. Reclamation Plan:

Reclamation shall be conducted simultaneously with mining to the extent feasible. In any event, reclamation shall be initiated as soon as feasible after completion or termination of mining of any mine segment under permit. Final reclamation, including revegetation, shall be completed within two years of completion or termination of mining.

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Attachment 7

Page 14

This permit, issued July 6, 1995, has been modified this 29th day of March, 2004 pursuant to G.S. 74-52.

By: James D. Simons

James D. Simons, Director
Division of Land Resources
By Authority of the Secretary
Of the Department of Environment and Natural Resources



WILLIAM G. LAPSEY & ASSOCIATES P.A.
CONSULTING ENGINEERS & LAND PLANNERS
HENDEKSONVILLE, NORTH CAROLINA

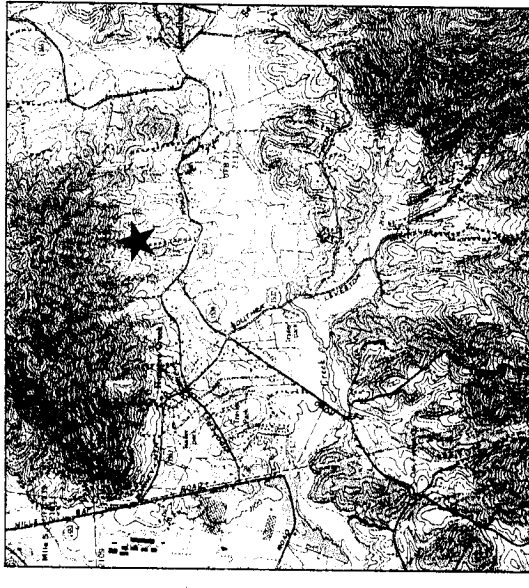
HOOPERS CREEK QUARRY
HOOPERS CREEK TOWNSHIP
HENDEKSON COUNTY,
NORTH CAROLINA

SPECIAL USE PERMIT
SITE PLAN

sheet
1 of 1

Attachment 8

ORTHO PHOTO # 9663



LOCATION MAP

PROJECT SUMMARY

TOTAL SITE	32.53 AC.
PERMITTED QUARRY AREA	4.00 AC.
ACCESS ROAD	1.00 AC.
TOTAL DISTURBED AREA	5.60 AC.
PROPOSED EXPANSION AREA	.030 AC.

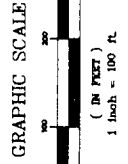
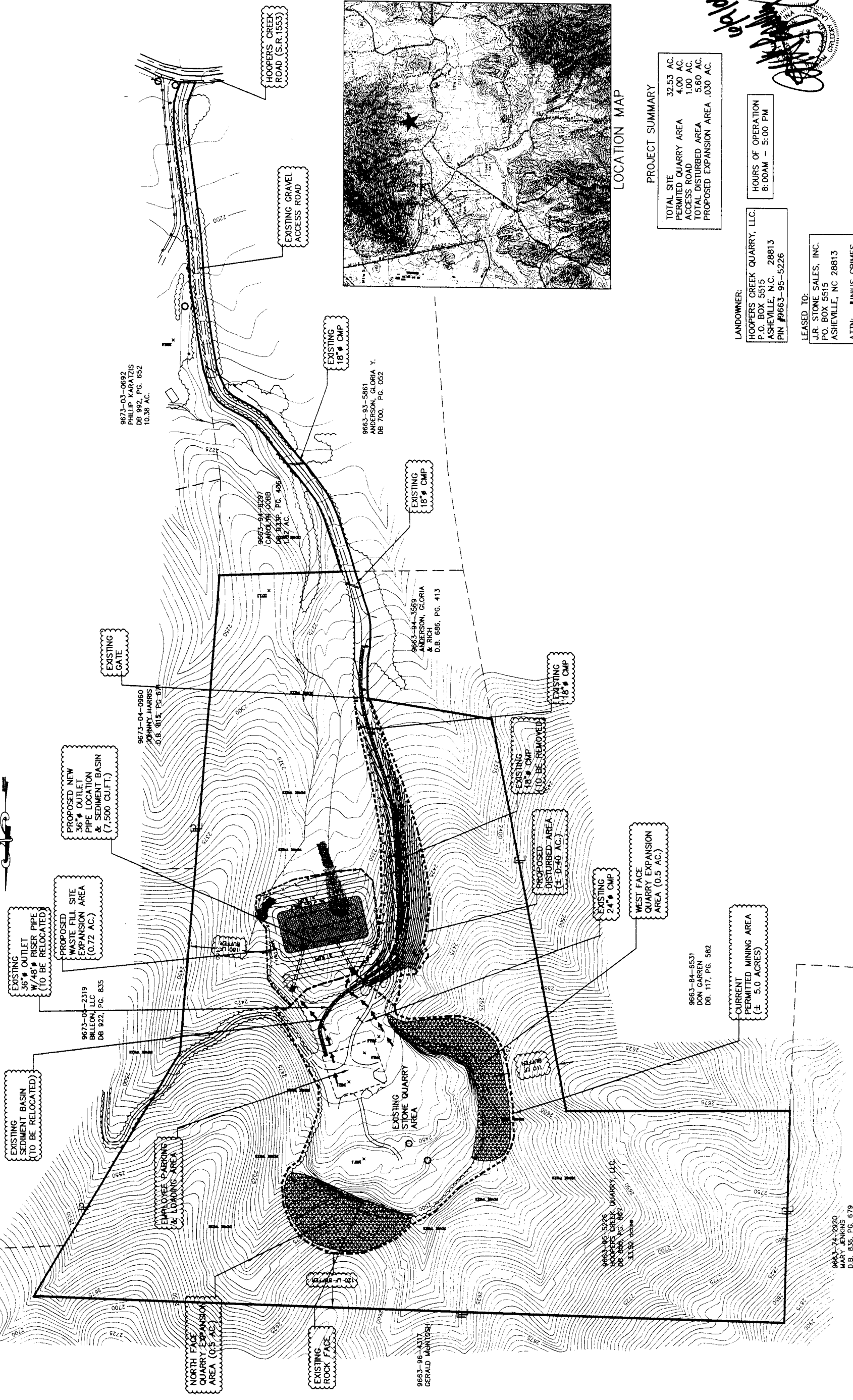
LANDOWNER:
HOOPERS CREEK QUARRY, LLC.
P.O. BOX 5515
ASHEVILLE, N.C. 28813
PIN #9663-95-5226

LEASED TO:
J.R. STONE SALES, INC.
P.O. BOX 5515
ASHEVILLE, NC 28813
ATTN: JUNIUS GRIMES
PHONE: 828-252-6477

Revisions

date: 4/02
job: 02128
drawn: KHC

WILLIAM G. LAPSEY & ASSOCIATES P.A.
Consulting Engineers & Land Planners
1800 American Parkway
Post Office Box 548
Charlotte, North Carolina 28202
888-997-7321, 704-388-9677-1930

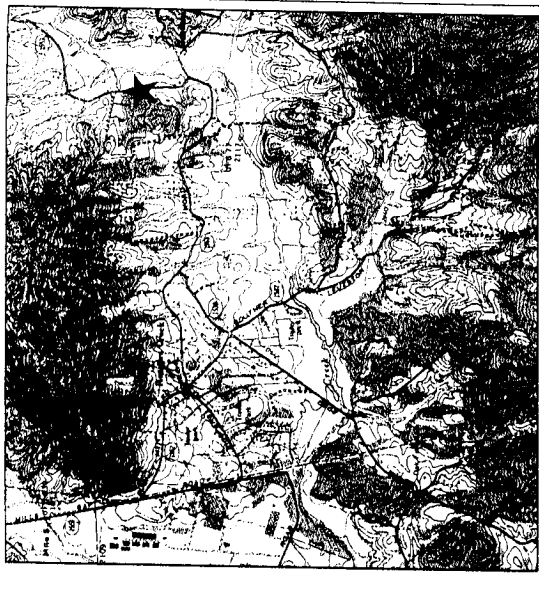


WILLIAM G. LAPSLEY & ASSOCIATES P.A.
CONSULTING ENGINEERS & LAND PLANNERS
HENDERSONVILLE, NORTH CAROLINA

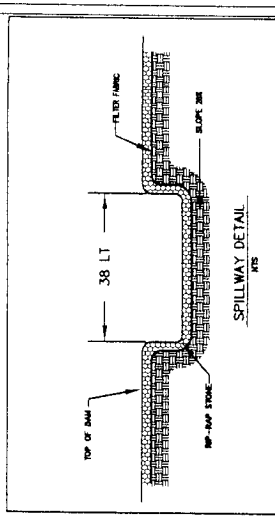
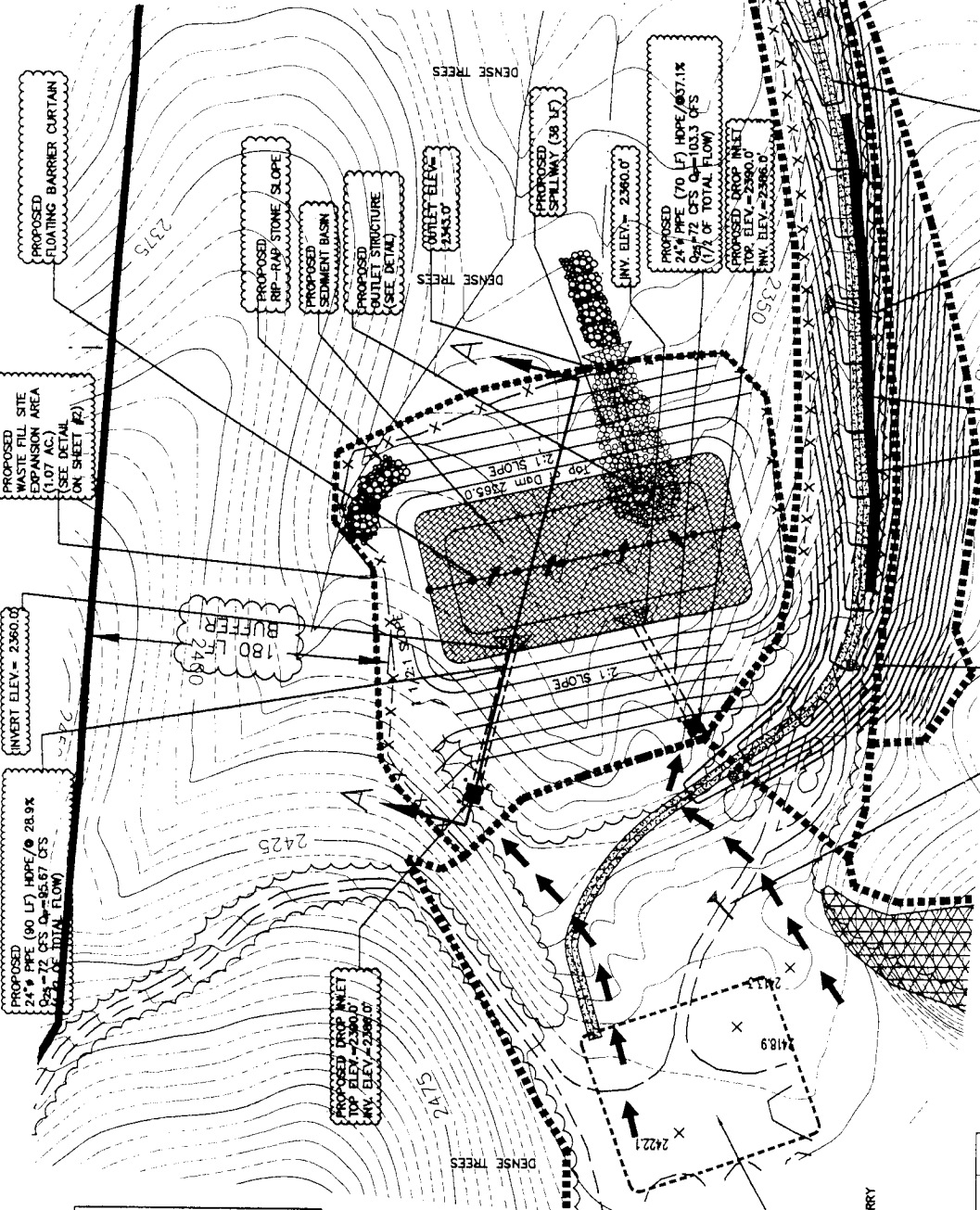
HOOPERS CREEK QUARRY
HOOPERS CREEK TOWNSHIP
NORTH CAROLINA

SOIL EROSION & SEDIMENTATION
CONTROL PLAN

sheet
2 of 2



LOCATION MAP



PROJECT SUMMARY

TOTAL SITE	32.53 AC
PERMITTED QUARRY AREA	4.00 AC
ACCESS ROAD	1.00 AC
TOTAL DISTURBED AREA	5.60 AC
PROPOSED EXPANSION AREA	.030 AC

LANDOWNER:
HOOPERS CREEK QUARRY, LLC.
C/O STEPP STONE WORKS
P.O. BOX 5515
ASHEVILLE, N.C. 28813

LEASED TO:
J.R. STONE SALES, INC.
P.O. BOX 5515
ASHEVILLE, NC 28813

ATTN: JUNIUS GRIMES
PHONE: 828-252-6477

date: 12/02
job: 02148
drawn: KHC

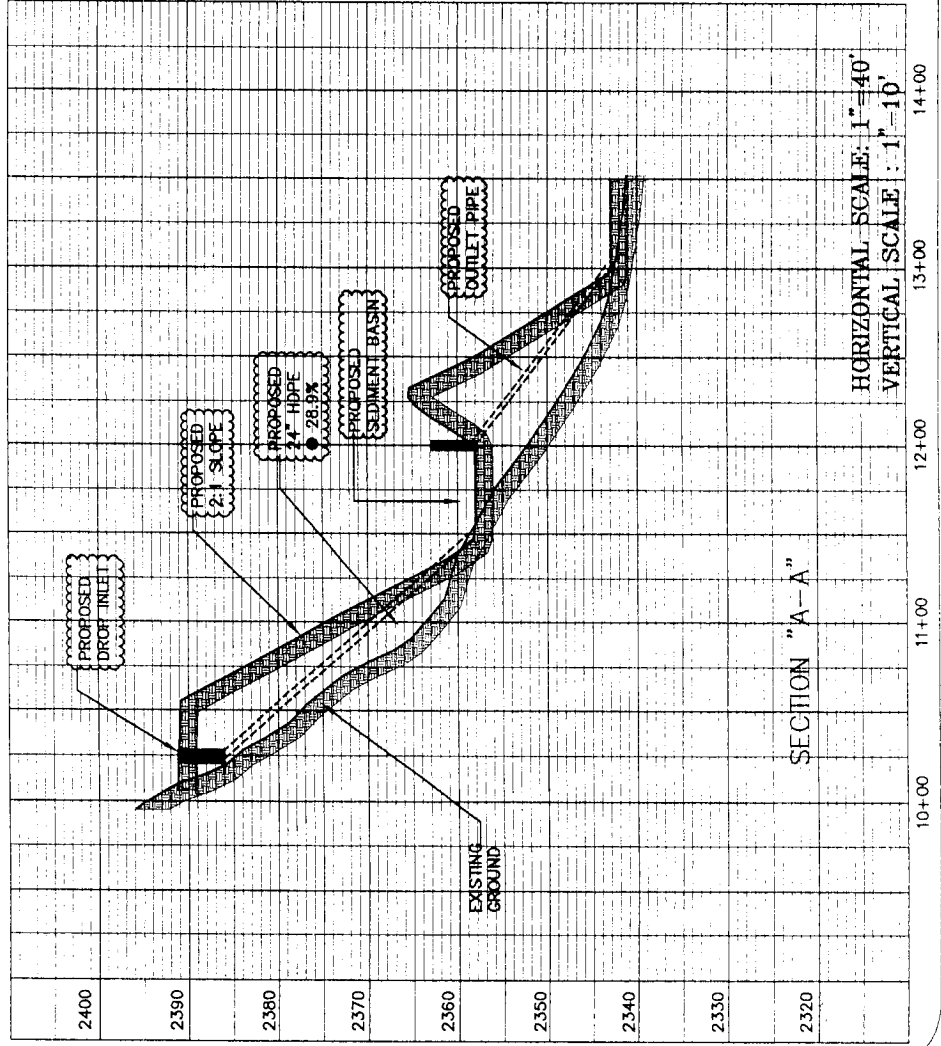
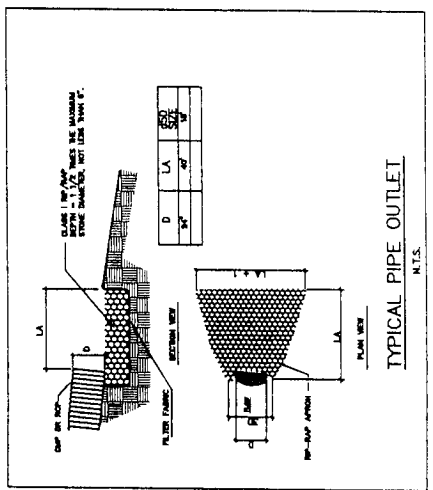
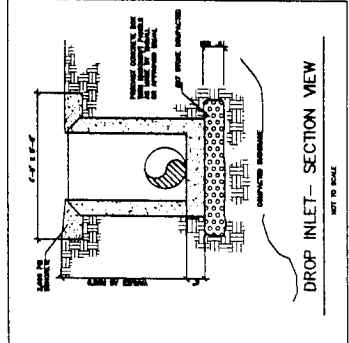
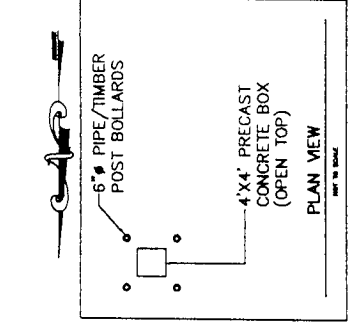
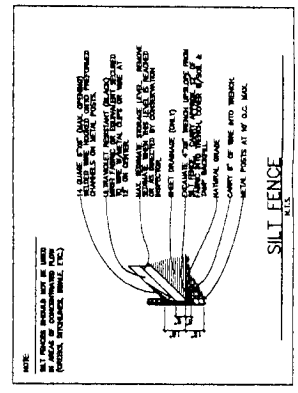
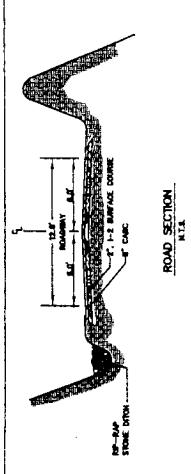
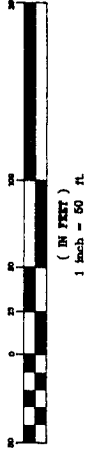
Revisions

CONSTRUCTION SEQUENCE

- EXCAVATE EXISTING 36" Ø OUTLET PIPE & RISER - RELOCATE TO NEW POSITION AS-SHOWN.
- INSTALL SILT FENCE AS SHOWN.
- REMOVE EXISTING 18" Ø CMP AT TWO (2) LOCATIONS.
- REGRADE ROAD TO FLATTER GRADE.
- INSTALL NEW 18" Ø CMP WITH SEDIMENT CHECK DAMS IN DITCHLINE.
- SEED, FERTILIZE & MULCH DISTURBED AREA.
- FURNISH & INSTALL 6" CABC ON NEW ROADWAY.

WILLIAM G. LAPSLEY & ASSOCIATES P.A.
Consulting Engineers & Land Planners
1000 North Hendersonville Road, Hendersonville, NC 28834
Phone: 828-252-6477 Fax: 828-252-7525

GRAPHIC SCALE
1" = 50' FT



HORIZONTAL SCALE: 1" = 40'
VERTICAL SCALE: 1" = 10'

SECTION "A-A"



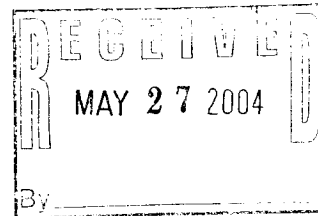
North Carolina Department of Environment and Natural Resources
Division of Land Resources

James D. Simons, PG, PE
Director and State Geologist

Michael F. Easley, Governor
William G. Ross Jr., Secretary

May 18, 2004

Mr. Junius D. Grimes
J. R. Stone Sales, Inc.
PO Box 7147
Asheville, North Carolina 28802



RE: Permit No. 45-12
Hoopers Creek Quarry
Henderson County
French Broad River Basin

Dear Mr. Grimes:

This letter is in response to the May 7, 2004 request by your engineer, Mr. William G. Lapsley, PE, to investigate the affected acreage calculations for your recent permit modification. Mr. Lapsley feels the two 0.5 pit expansion areas were added twice in the affected acreage and reclamation bond calculation.

We have reviewed the file and have discovered that indeed the two 0.5 acre expansion areas were added twice to the mine excavation calculations. In addition, it was found that the two 0.5 acres were never added to the original permitted acreage when the mining permit was issued. The original permit should have had a permitted acreage of 6.0 acres and the amount of land your company was approved to disturb should have been 5.0 acres.

In order to correct the current acreage, your permit is hereby modified to reduce the affected acreage at this site from 8.47 acres to 7.47 acres as indicated on the Site Development Plan dated April 2002 and the supplemental information dated January 10, 2003, August 12, 2003, October 23, 2003, January 20, 2004 and March 18, 2004.

Please attach this approval letter to your existing mining permit for future reference. The expiration date, mine name and permit number on the permit document shall remain the same as before this modification.

The issuance of a mining permit and/or any modification to it does not supersede local zoning regulations. The responsibility of compliance with any applicable zoning regulations lies with you.

As a reminder, your permitted acreage at this site is 34.52 acres and the amount of land you are approved to disturb is 7.47 acres.

HOOPERS CREEK QUARRY
PERMIT TIMETABLE

May 18, 2004	State issues revised permit (no expansion of quarry)
May 7, 2004	WGL notifies State of error in permit.
March 29, 2004	State issues permit modification
March 17, 2004	State requests additional information
January 16, 2004	WGL responds to State's letter.
December 8, 2003	State requests additional information.
October 23, 2003	WGL responds to State letter.
October 6, 2003	State requests additional information.
August 12, 2003	WGL responds to State letter.
June 13, 2003	State requests additional information.
April 23, 2003	State makes a site inspection.
March 5, 2003	Notice issued to adjoining property owners about State Application & Comment process (certified mail RRR)
March 3, 2003	County Commissioners reopen public hearing on zoning permit process. County decides to hold open until State issues the permit.
February 25, 2003	County notifies participants in previous hearing on new meeting to be held on March 3, 2003.
January 15, 2003	County Commission holds Quasi-Judicial Public Hearing on Special Use Permit Application.
January 10, 2003	WGL responds to State letter.
January 2, 2003	County notifies adjacent property owners that Special Use Permit Application public hearing will be held on January 15, 2003.
December 18, 2002	County Commission sets public hearing date.
December 17, 2002	County Planning Board reviews Special Use Permit application.
November 20, 2002	WGL notifies Town of Fletcher of State Application
November 12, 2002	Application for Special Use Permit submitted to County.
October 9, 2002	Application for State Permit modification submitted. Notification to adjacent property owners (copy to County).

Henderson County
Planning Department

101 East Allen Street, Hendersonville, North Carolina 28792
Phone (828) 697-4819 Fax (828) 697-4533

MEMORANDUM

Date: Wednesday, July 15, 2004
To: Henderson County Planning Board
Fr: Henderson County Planning Staff
Re: US Highway 25 North Area Study Update

The purpose of this memo is to introduce members of the Henderson County Planning Board to zoning recommendations proposed by the Land Use/Zoning Subcommittee for the US Highway 25 North Study. Three maps are included in the packet:

1. Subcommittee Recommended and Existing Zoning US Highway 25 North Zoning Study
2. CMR Services Recommended and Existing Zoning US Highway 25 North Corridor Study
3. Existing Zoning US Highway 25 North Zoning Study

Maps are provided for the purpose of comparison between the two sets of recommendations and existing conditions. Please note that CMR Services is not proposing any alteration to current zoning other than in Open Use districts. Conversely, Subcommittee recommendations do propose significant modifications to Open Use districts, as well as others in the Study Area. When examining such changes it is best to reference the existing zoning map to determine what changes are being proposed for each district, and be aware that colors may have different connotations between maps. For instance, orange on the maps depicting existing zoning and Subcommittee recommendations represents the RC-Rural Conservation zoning district. A very similar color is used with the CMR Services map, symbolizing parcels where no zoning recommendation was given.

Over the past six weeks planning staff and members of the Land Use/Zoning Subcommittee thoroughly examined the US Highway 25 North Study Area, along with CMR Services recommendations and have prepared a compilation of zoning recommendations. In many cases, Subcommittee proposals correspond with those recommended by CMR Services, however, a number of variations do exist.

Differences in the Study Area boundary between the two sets of recommendations resulted from the Subcommittee's desire to refrain from "split zoning" parcels. The border used by CMR Services follows existing zoning boundaries and, consequently, bisects numerous parcels along the western and southwestern portions of the Study Area.

Subcommittee members recommended that a significant portion of the Study Area, corresponding to properties owned by the Layman Foundation and the Fletcher Hospital Inc., remain Open Use, as existing use of these parcels did not easily fit with any zoning district under the current zoning ordinance. CMR Services is recommending that these parcels be designated as an Human Services Campus District (a new district that would require an amendment to the text of the Zoning Ordinance), further described in Section VI of the Draft US 25 North Corridor Study document, however, Staff and Subcommittee members agreed that it would be best to postpone the zoning of these parcels until after the revised Zoning Ordinance is adopted, sometime during FY 2005-2006.

Changes to existing zoning proposed by the Subcommittee were based upon the understanding of a few key principles mainly derived from the recently adopted County Comprehensive Plan (CCP):

- Commercial zoning is located at key road intersections. Districts placed at such intersections only allow intensities of use consistent with the nature of each intersection. To control intensity of use in these areas, commercial nodes were created at three different scales: local, community, and regional. Each of these nodes utilizes a different commercial zoning district that serves a specific purpose within the county and each individual community.
- Flood-prone areas are zoned to allow lower densities of development, consistently focusing on large-lot residential districts. R-30 and RC were mainly used to inhibit dense development while permitting some limited commercial uses in RC districts.
- Recommended residential zoning in the Study Area promotes a diversity of housing opportunities by establishing a wide variety of new residential zoning districts. Each residential district was strategically placed to allow equity with respect to type of residential housing, and availability of developable land. The R-10 High-Density Residential District was not used in this area because of the lack of adequate water and sewer infrastructure.

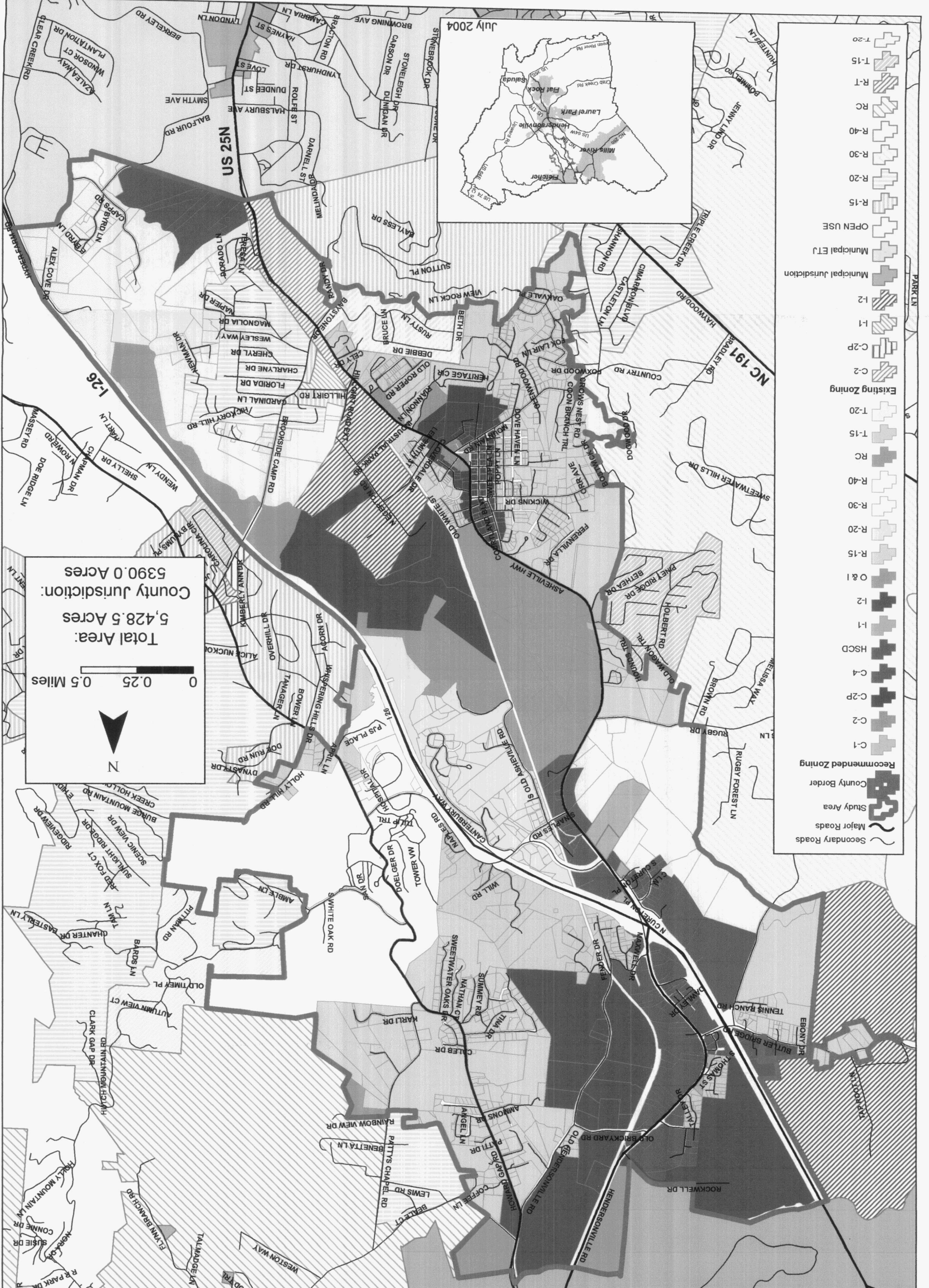
The Subcommittee has discussed holding a special called meeting of the Planning Board, if necessary, to review its zoning recommendations in more detail prior to holding public input sessions on these recommendations. The Planning Board will further discuss this matter at the July 20, 2004 meeting.

Please also note that Michael Harvey of CMR Services has indicated that he is sending copies of his final report to the Planning Department, however, as of the date of this memorandum, the documents have not arrived.

With the delivery of the final report, CMR Services will no longer be directly involved in the US Highway 25 North Study. At this point the Planning Board may want to discuss the process for preparing comments on the non-zoning recommendations of the CMR Services Report. Staff is comparing such recommendations to the CCP for further discussion by the Planning Board.

Please contact the Planning Department if you have any questions prior to the July 20, 2004 meeting.

Subcommittee Recommended and Existing Zoning US Highway 25 North Zoning Study

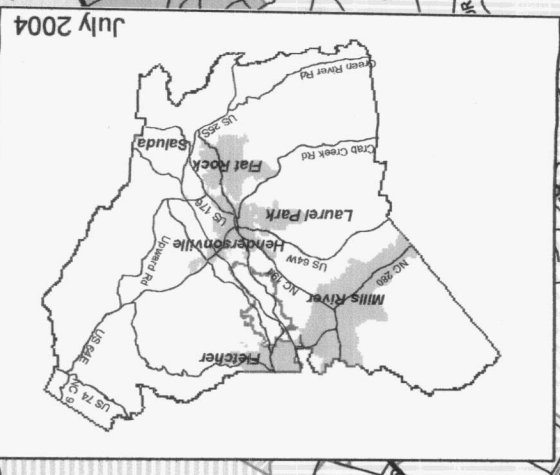


Recommended Zoning		Existing Zoning	
C-1	[Symbol]	C-2	[Symbol]
C-2	[Symbol]	C-2P	[Symbol]
C-4	[Symbol]	C-2P	[Symbol]
HSCD	[Symbol]	C-2	[Symbol]
I-1	[Symbol]	I-1	[Symbol]
I-2	[Symbol]	I-1	[Symbol]
O & I	[Symbol]	I-2	[Symbol]
R-15	[Symbol]	R-15	[Symbol]
R-20	[Symbol]	R-20	[Symbol]
R-30	[Symbol]	R-20	[Symbol]
R-40	[Symbol]	R-30	[Symbol]
RC	[Symbol]	R-40	[Symbol]
T-15	[Symbol]	RC	[Symbol]
T-20	[Symbol]	T-15	[Symbol]
Municipal ETJ		Municipal ETJ	
Municipal Jurisdiction		Municipal Jurisdiction	
OPEN USE		OPEN USE	

Total Area:
 5,428.5 Acres
County Jurisdiction:
 5390.0 Acres

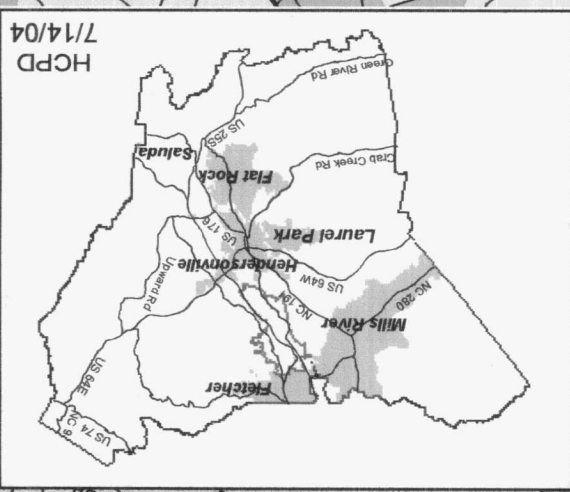
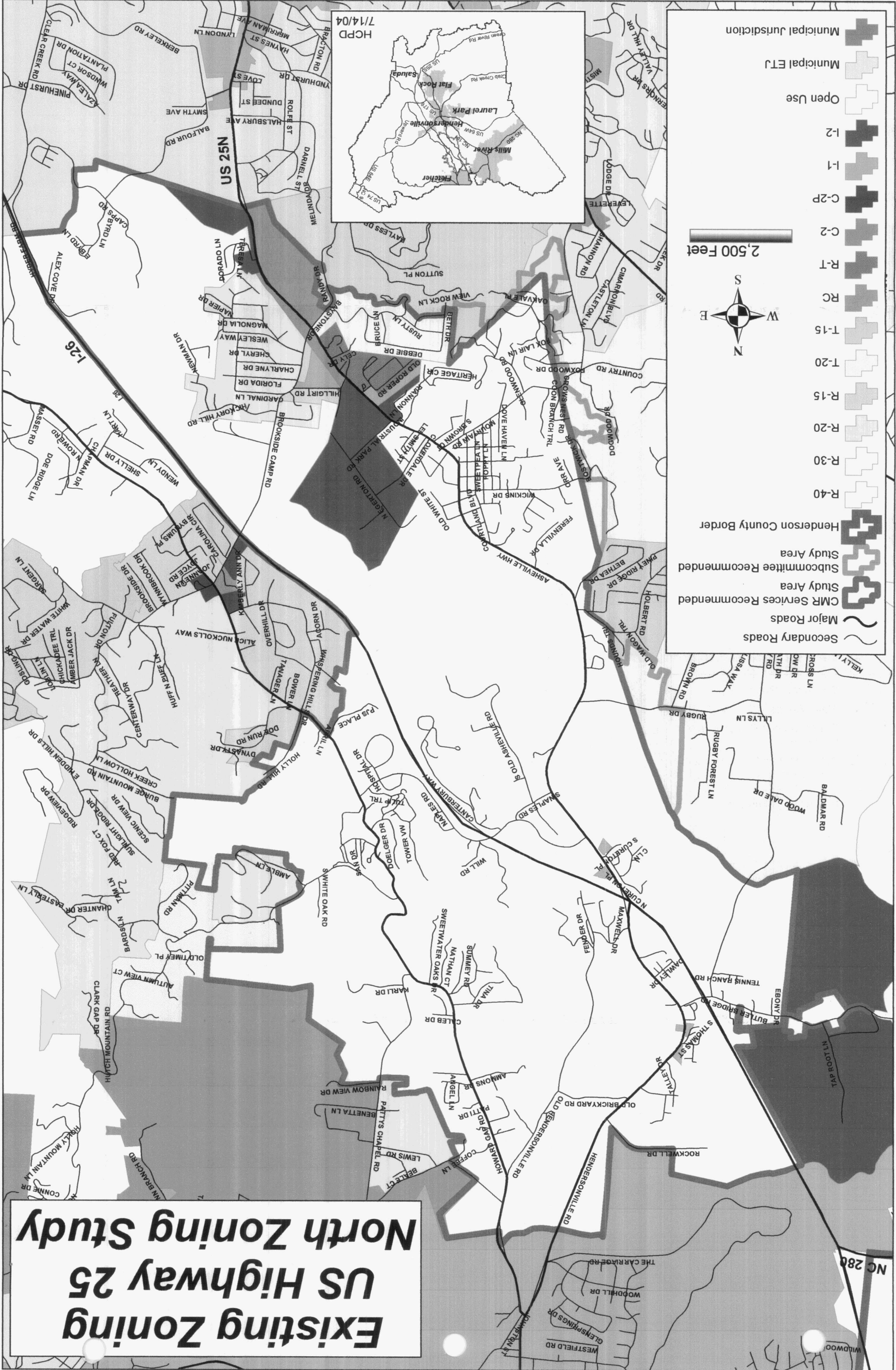
0 0.25 0.5 Miles

N



NC 28

Existing Zoning US Highway 25 North Zoning Study



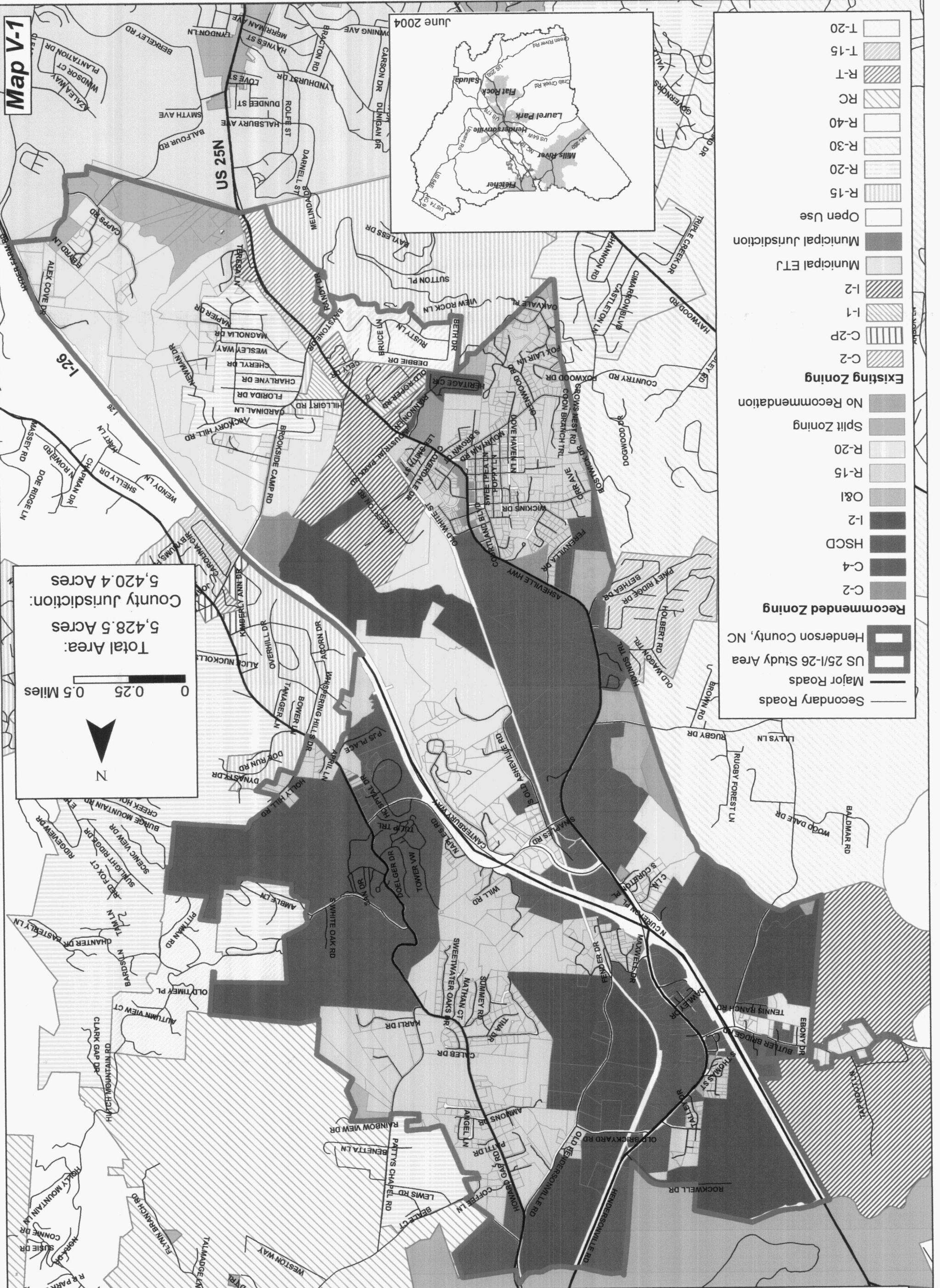
2,500 Feet

Legend:

- Secondary Roads
- Major Roads
- CMR Services Recommended
- Study Area
- Subcommittee Recommended
- Study Area
- Henderson County Border
- R-40
- R-30
- R-20
- R-15
- T-20
- T-15
- RC
- R-T
- C-2
- C-2P
- I-1
- I-2
- Open Use
- Municipal ETJ
- Municipal Jurisdiction

NC 280

CMR Services Recommended and Existing Zoning US Highway 25 North Corridor Study



Recommended Zoning	
[Solid Gray Box]	C-2
[Solid Gray Box]	C-4
[Solid Gray Box]	HSCD
[Solid Gray Box]	I-2
[Solid Gray Box]	O&I
[Solid Gray Box]	R-15
[Solid Gray Box]	R-20
[Solid Gray Box]	Split Zoning
[Solid Gray Box]	No Recommendation
Existing Zoning	
[Hatched Box]	C-2
[Hatched Box]	C-2P
[Hatched Box]	I-1
[Hatched Box]	I-2
[Hatched Box]	Municipal ETJ
[Hatched Box]	Municipal Jurisdiction
[Hatched Box]	Open Use
[Hatched Box]	R-15
[Hatched Box]	R-20
[Hatched Box]	R-30
[Hatched Box]	R-40
[Hatched Box]	RC
[Hatched Box]	R-T
[Hatched Box]	T-15
[Hatched Box]	T-20

Total Area:
 5,428.5 Acres
 County Jurisdiction:
 5,420.4 Acres

0 0.25 0.5 Miles

N

Map V-1

