

REQUEST FOR BOARD ACTION

HENDERSON COUNTY PLANNING BOARD

MEETING DATE: July 18, 2024

SUBJECT: LDC Text Amendment – TX-2024-02

PRESENTER: Autumn Radcliff, Planning Director

ATTACHMENTS: 1. Text Amendment Application
2. 2045 Plan Consistency

SUMMARY OF REQUEST:

Planning staff received an application for a text amendment (#TX-2024-02) to address pre-existing mining and extraction operations established prior to 2007, which was the adoption of the LDC. These operations operate under a state-issued permit and must adhere to all state-required regulations and setbacks, including reporting, monitoring, and environmental requirements. Under the LDC, uses established prior to 2007 are vested, but the code does not specifically state that these uses can continue to operate under its allowed state permit. These uses are established and permitted through the state, and the state has full authority and oversight of the operation. This amendment allows existing vested operations to continue to operate under their active state mining permit and will allow for the associated accessory uses to the operation. The text amendment application is attached for your review.

BOARD ACTION:

The Planning Board is requested to review the proposed amendment and make a recommendation to the Board of Commissioners. The Board of Commissioners must hold a public hearing before adopting any amendments to the Land Development Code.

Suggested Motion: I move that the Planning Board recommend the proposed text amendment TX-2024-02 as it is reasonable and consistent with the 2045 Comprehensive Plan.

**HENDERSON COUNTY
TEXT AMENDMENT APPLICATION FORM**

GENERAL INFORMATION

Date of Application: May 31, 2024

Previously Submitted (Circle One): Yes No

Date of Pre-Application Conference: May 14, 2024

INFORMATION ABOUT THE PROPOSED TEXT AMENDMENT REQUEST

- A. Will the proposed amendment(s):
 - 1. Change one or more existing sections of the Land Development Code? Yes No
 - 2. Add one or more new sections to the Land Development Code? Yes No
- B. Number(s) and titles(s) of the section(s) proposed to be amended. 42-61 (Table of Permitted and Special Uses)
Subsection 10.11; 42, Article XIX, 42-391 (Definitions); SR 10.11; SR 10.1; SR 10.4
- C. Proposed amendment which explains the purpose for the amendment. See attached

- D. Attached is a copy of the proposed text change(s): Yes No

CONTACT INFORMATION

Applicant:

Name: Vulcan Materials Company Phone: 704-560-5304

Address: 2284 Clear Creek Rd. City, State, and Zip: Hendersonville, NC

Agent:

Name: _____ Phone: _____

Address: _____ City, State, and Zip: _____

Agent Form (Circle One): Yes No

I certify that the information shown above is true and accurate and is in conformance with the Land Development regulations of Henderson County.

Denise Hallett

Print Applicant (Or Agent)

Denise Hallett

May 31, 2024

Signature Applicant (Or Agent)

Date

County Use Only

Fee: \$ _____ Paid: _____ Method: _____ Received by: _____

(Attachment)
Vulcan Materials Company
Text Amendment Application

I. Explanation and Need

Henderson County adopted a new Land Development Code (LDC) in 2007 that carefully protected and created vested rights for established uses. However, the 2007 ordinance inadvertently made it impossible for Vulcan’s Hendersonville quarry adjacent to I-26 to reasonably expand to optimize its long-established pit and existing ancillary operations to responsibly serve this growing region.

The following requested text amendments are true to the intent of the 2007 LDC. These amendments:

- (1) Distinguish pre-existing (vested) mines from new (future) mines;
- (2) Remove the arbitrary setbacks for pre-existing mines as new technologies and best practices have been developed; and
- (3) Acknowledge that pre-existing mines must be able to relocate elements including but not limited to equipment, roads, ponds, erosion and sediment controls, production, stockpiling, shipping and operations, and existing concrete and hot mix asphalt manufacturing facilities inside a State Mine Permit Boundary to accommodate safe and efficient pit design and development; and
- (4) Clarify definitions, setbacks, and other standards.

II. Table of Permitted Uses

Amend LDC Section 42-61 (Table of Permitted and Special Uses), Sub-section 10 (Manufacturing and Industrial Uses) by creating separate categories for pre-existing mines and new mines:

<u>Existing Mining and Extraction Operations (Prior 2007)</u>	<u>“P” (in all districts)</u>	<u>SR 10.11</u>
<u>New Mining and Extraction Operations (After 2007)</u>	<u>“S” (in I districts)</u>	<u>SR 10.11</u>

III. Amended Definitions

Amend Chapter 42, Article XIX, §42-391 (Definitions) to (1) add a definition for “overburden;” (2) correct the definition of an asphalt plant so that it is not inaccurately described as a petroleum refining activity, and to acknowledge that hot mix asphalt by composition is up to 95% construction aggregates; and (3) clarify that a mine is a broader use than the mere extraction of minerals, and includes the onsite preparation of these materials for beneficial economic use, as follows:

Hot Mix Asphalt Plant. An establishment (portable or nonportable) engaged in the conversion of mined aggregates to construction materials for roads and similar uses, and the recycling and reuse of used asphalt pavement and other asphalt materials into new hot mix asphalt material.

Mining and Extraction Operations. An establishment primarily engaged in mining, mine site development and beneficiating (i.e., preparing) metallic and nonmetallic minerals, including coal. This includes ore extraction, quarrying and beneficiating (e.g., crushing, screening, washing, sizing, concentrating and floating customarily done at the mine site), storage of mining overburden, conversion of aggregates to concrete or hot mix asphalt on property within or on industrially zoned parcels immediately adjacent to the State Mine Permit Boundary, and the production and storage of recycled concrete or asphalt pavement for conversion to finished product.

Overburden. The earth, rock, and other materials that lie above or in the natural deposit of materials to be mined.

IV. Supplemental Regulations

A. Mining and Extraction Operations

Amend SR 10.11. *Mining and Extraction Operations* to (1) clarify that mines existing prior to 2007 may reasonably expand subject to pre-2007 setbacks; (2) clarify and acknowledge that mine operations components are typically relocated over time within a State Mine Permit Boundary; (3) acknowledge that vested concrete and hot mix asphalt manufacturing may be relocated within a State Mine Permit Boundary, subject to state permitting; and (4) acknowledge the regulatory role of the State Mining Permit, as follows:

A. Mining Operations Permitted and Constructed Prior to 2007

1. Application. SR 10.11(A) applies to mines that existed prior to September 19, 2007, to facilitate and protect reasonable expansion of pre-existing investments and operations.
2. State Mining Permit. All mining operations shall be governed by the restrictions and allowances of the owner or operator's State Mining Permit.
3. Expansion. Mines may be expanded to adjacent tracts subject to pre-2007 setbacks and subject to the following restrictions:
 1. If the adjacent tracts are zoned Industrial District, the tracts may be used for all operations allowed by the State Mining Permit.
 2. If the adjacent tracts are not zoned Industrial District, the adjacent tracts may be used for the storage of overburden only. No mineral extraction or blasting shall be allowed on adjacent tracts not zoned Industrial District.
4. Accessory Uses. The following activities shall be considered accessory uses to mining extraction if established within the State Mining Permit Boundary: a) aggregate production; b) stockpiling; c) shipping; d) maintenance and office operations; e) overburden storage; and f) recycling and reuse of concrete and asphalt materials to aggregates.
5. Vesting. A mine shall be vested for all operations allowed in its State Mining Permit. If a mine is expanded to adjacent properties, an owner or operator may seek a vested rights determination pursuant to LDC sections 42-363 and 42-364 and consistent with rights established in N.C. Gen. Stat. §§ 160D-108 and 108.1.
6. Relocation. All primary and accessory uses and any other existing and vested uses may be relocated to other areas within the State Mining Permit Boundary as identified in the State Mining Permit.

B. Mining Operations Established after 2007

1. Site Plan. Major *Site Plan* required in accordance with §42-330 (Major Site Plan Review).
2. Lighting. *Adequate lighting* shall be placed in areas used for vehicular/pedestrian access including, but not limited to: stairs, sidewalks, crosswalks, intersections, or changes in grade. *Lighting mitigation* required.
3. Dust Reduction. Unpaved *roads, travelways* and/or parking areas shall be treated to prevent dust from adverse effects to adjacent properties.
4. Separation. A *mining or extraction operation* shall not be constructed or newly located within:
 1. One-half (½) mile of an existing *school, library, day care facility, healthcare facility and/or religious institution*; and
 2. One thousand (1,000) feet of an existing *dwelling unit* (located in a *residential zoning district* and not located on the same property as the *use*).
5. Security. The operations of a *mining and extraction operation* shall be totally enclosed by a security fence or wall at least eight (8) feet in height. Entrances and exits should be secured and locked during non-operating hours.
6. Perimeter Setback. One hundred (100) feet.
7. Operations. A plan outlining rehabilitation procedures and financing options for restoration of the mining or extraction site is required. Within two (2) years after the cessation of a *mining or extraction operation*, rehabilitation processes must be complete.
8. Sedimentation Control. Permanent control measures are required to retain all non-compacted soils on site.

B. Hot Mix Asphalt Plants

Amend SR 10.1. *Asphalt Plants* to clarify that existing hot mix asphalt plants inside a State Mining Permit Boundary are not subject to setbacks applied to stand-alone plants, as follows:

1. Site Plan. Major *Site Plan* required in accordance with §42-330 (Major Site Plan Review).
2. Lighting. *Adequate lighting* shall be placed in areas used for vehicular/pedestrian access including, but not limited to: stairs, sidewalks, crosswalks, intersections, or changes in grade. *Lighting mitigation* required.
3. Dust Reduction. Unpaved *roads, travelways* and/or parking areas shall be treated to prevent dust from adverse effects to adjacent properties.
4. Separation. Except where an existing hot mix asphalt plant is located within the State Mining Permit Boundary of an active mine operating pursuant to a State Mining Permit, a hot mix asphalt plant shall not be constructed or newly located within:

1. One-half (½) mile of an existing *school, library, day care facility, healthcare facility and/or religious institution*; and
 2. Five hundred (500) feet of an existing *dwelling unit* (located in a *residential zoning district* and not located on the same property as the *use*).
 3. Hot mix asphalt plants located inside Mine Permit Boundaries require no setbacks to other uses within the permit boundary.
5. Perimeter Setback. One hundred (100) feet.
 6. Security. The operations of an *asphalt plant* shall be totally enclosed by: (1) a security fence, wall or berm at least eight (8) feet in height; or (2) a fireproof *building*. Entrances and exits should be secured and locked during non-operating hours.

C. Concrete Batch Plants

Amend SR 10.4. *Concrete Batch Plants* to clarify that existing concrete batch plants inside a State Mine Permit Boundary are not subject to setbacks applied to stand-alone plants, as follows:

1. Site Plan. Major *Site Plan* required in accordance with §42-330 (Major Site Plan Review).
2. Lighting. *Adequate lighting* shall be placed in areas used for vehicular/pedestrian access including, but not limited to: stairs, sidewalks, crosswalks, intersections, or changes in grade. *Lighting mitigation* required.
3. Dust Reduction. Unpaved *roads, travelways* and/or parking areas shall be treated to prevent dust from adverse effects to adjacent properties.
4. Separation. Except where an existing concrete batch plant is located within the State Mine Permit Boundary of an active mine operating pursuant to a State Mining Permit, a concrete batch plant shall not be constructed or newly located within:
 1. One thousand (1,000) feet of an existing *school, library, day care facility, healthcare facility, park and/or religious institution*; and
 2. Three hundred (300) feet of an existing *dwelling unit* (located in a *residential zoning district* and not located on the same property as the *use*).
 3. Concrete batch plants located inside State Mine Permit Boundaries require no setbacks to other uses within the permit boundary.
5. Security. The operations of a concrete batch plant shall be totally enclosed by: (1) a security fence at least eight (8) feet in height; (2) a wall or berm at least eight (8) feet in height; or (3) a fireproof *building*. Entrances and exits should be secured and locked during non-operating hours.
6. Dust Reduction. Unpaved *roads, travelways* and/or parking areas shall be treated to prevent dust from adverse effects to adjacent properties.



PLANNING BOARD REVIEW – APPLICATION TX-2024-02 CONSISTENCY WITH THE 2045 COMPREHENSIVE PLAN

On July 18, 2024, the Planning Board reviewed text amendment application TX-2024-02. Based on the following determinations, the Board finds that the application is consistent with the 2045 Comprehensive Plan.

1. The Board determined that TX-2024-02 is reasonable, in the public interest, and is consistent with the 2045 Comprehensive Plan located therein because of the following:
 - The 2045 Comprehensive Plan intends for the County to grow where infrastructure and services exist, in and around municipalities, community investments, and anchors.
 - The plan states that regulations should ensure zoning districts around Neighborhood Anchors and Community Centers allow, by right compatible land uses.
 - The plan also directs the County to ensure the Land Development Code is consistent with state and federal regulations.
 - Henderson County will continue to develop a thriving economy across scales, from smaller local businesses to large employers.
2. The Board determined that the proposed amendment provides for the sound administration of the Land Development Code while balancing property rights and promoting reasonable growth within the County.