

ZONING ORDINANCE

TOWN OF WEBSTER

NORTH CAROLINA

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TOWN OF WEBSTER

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TOWN OF WEBSTER Guiding Principles

We believe that in order to help maintain what we cherish about Webster and still accommodate growth, we have to create safe and friendly streets for pedestrians, bicyclists and motorists and to encourage protection of the rural nature of our town. That being said, we view these principles as enhancing choices of where to live or how to travel, rather than limiting them.

Principle #1. An Attractive Community with a Strong Sense of Place

We desire to maintain and create a high-quality environment which reflects the unique character of our community. To accomplish this goal:

- a) We should be sure that future development is encouraged to employ good principles of design.
- b) We should encourage pedestrian interaction, where appropriate, and the use of such things as landscaping, vistas, art, and other landmarks to build unique character for the Town of Webster.
- c) We should care for historic properties by encouraging the establishment of National Register and local historic districts, where appropriate, to preserve the unique character of Webster.
- d) We should also encourage good stewardship of our natural resources that have always been a treasured part of our town.

Principle #2. Broad-based Community Participation

- a) Facilitate the creation of community organizations
- b) Conduct periodic public information meetings
- c) Foster a sense of community among residents

Principle #3. Enhanced Public Places

The term “public places” includes all those environments where citizens are invited to travel, congregate, and conduct public business. Thus, public places include streets, sidewalks, public parking lots, parks, and civic buildings. We desire that Webster should provide ample public places that are attractive and conducive to personal interaction. We also encourage green spaces that preserve the river and the mountains that define our town.

Principle #4. Integrated Transportation Choices

We believe that our citizens should have multiple modes of transportation choices (automobile travel, walking bicycling and public transit), which serve multiple users and work together to achieve maximum efficiency and mobility.

- a) Transportation planning should be integrated with land use planning.
- b) To ensure safety for all motorists, bicyclists, and pedestrians, encourage roadway designs other than 5-lane, undivided highways, when expansion or widening projects are being considered.

- c) In order to have a safer environment for all citizens, Webster should encourage the utilization of good access management techniques for roadways, where feasible and appropriate.

Principle #5. Maximize Use of Existing Infrastructure and Ensure Proper Maintenance

We desire to be good stewards of the limited infrastructure that our town oversees, including but not limited to our roads, sidewalks, lighting, and signage. Any infrastructure developed in the future will receive like attention.

ARTICLE 1 - AUTHORITY

Section 1.1 - Authority and Enactment Clause

The Legislature of the State of North Carolina has in Article 8, Section 174, General Ordinance Authority, and Section 175, Enforcement; Article 19, Part 1, General Provisions, and Part 3, Zoning, delegated the responsibility of adopting regulations to promote the public health, safety, and general welfare of its citizenry to local government. The Board of Commissioners of the Town of Webster does hereby ordain and enact into law the following sections as the Zoning Ordinance of the Town of Webster.

Section 1.2 - Jurisdiction

The provisions of this ordinance shall apply within the entire corporate limits of the Town of Webster ("the Town") and the entire extraterritorial area which shall be defined and established on the map entitled, "Zoning Map of the Town of Webster, North Carolina" ("the Zoning Map"), which is adopted simultaneously herewith. The Zoning Map and all explanatory matter thereon accompanies and is hereby made a part of this ordinance and, together with a copy of this ordinance, shall be permanently kept on file in the office of the Town Clerk.

ARTICLE 2 – DEFINITIONS

Section 2.1 – General

- (a) Except as specifically defined within this section or elsewhere within this ordinance, all words shall be construed to have their customary dictionary definitions.
- (b) Words used in the present tense shall include where appropriate, the past and future tense. Where appropriate, words in the singular shall include the plural, and words used in the plural shall conversely include the singular.
- (c) The word "shall" is always mandatory; the word "may" is permissive.
- (d) The words "used" or "occupied," as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be used or occupied."

Section 2.2 – Individual Words or Terms

For the purposes of this ordinance, certain words or terms used herein are defined as follows

Accommodation: Any part of a building used as or constituting a unit used as temporary lodging for an individual or a single family.

Apartment: One or more rooms with private bath and kitchen facilities constituting an independent, self-contained dwelling that is located within a larger dwelling structure.

Bed and Breakfast home: Overnight accommodations and a morning meal in a private dwelling offered to eight or fewer persons per night for a period of less than a week in exchange for compensation.

Building: Any structure having a roof supported by columns or walls and intended for the housing, shelter or enclosure of persons, animals, process, equipment, goods, or property of any kind. The term “building” includes sheds, carports, garages, guest cottages and other accessory buildings, and also includes any extension and extrusion of the building structure such as balconies, decks and porches.

Building, Accessory: A building detached from a principal building located on the same parcel of land and customarily incidental and subordinate to the principal building or use. This definition includes private garages and non-commercial structures such as greenhouses and workshops.

Building height: the vertical distance measured from the lowest grade point adjacent to the building wall to the highest point of the roof surface or parapet for flat and shed roofs, to the highest break line of mansard/gambrel roofs, and to the median height between edge of eave and the highest ridge for pitched/gable and hip roofs. See sketch “A” in the Appendix.

Change in Ownership: When title to real property is transferred in whole or in part to another individual or entity by sale, conveyance, or operation of law.

Commercial vehicle: Any motor vehicle having three or more axles, or which has a length in excess of 47 feet. For purposes of clarification, but without limitation, this definition includes dump trucks, tractor-trailers, tankers, tank trucks, buses, large panel vans, trailers, and construction equipment or any part thereof.

Dwelling: Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

Family: An individual, or two or more persons related by blood, marriage or adoption living together as a single household unit; or a group of not more than four persons, who need not be related by blood, marriage, or adoption, living together in a dwelling as a single housekeeping unit. For purposes of this ordinance, ‘family’ does not include any society, club, fraternity,

sorority, association, lodge, federation, or like organizations; or any group of individuals who are in a group living arrangement as a result of criminal offenses.

Family care home: A home with support and supervisory personnel that provides room and board, personal care, and habilitation services in a family environment for not more than six resident persons with disabilities, as defined and regulated in G.S. 168-21, 168-22, and related sections.

Gross floor space: The entire area of a building, including storage areas, garages, closets, hallways and restrooms, but excluding basement or attic storage areas.

Home occupation: Any activity conducted entirely within a dwelling and carried out for gain by the occupants thereof.

Lot: A parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or a recorded map, and which is recognized as a separate legal entity for purposes of transfer of title.

Manufactured Home or Mobile Home: A structure as defined in G.S. 143-145(7).

Modular home: A dwelling constructed in accordance with the construction standards of the North Carolina Uniform Residential Building Code for one-and two-family dwellings and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly and placement on a permanent foundation. Without limiting the generality of the foregoing, a modular home may consist of two or more sections, each of which is transported to the site on its own chassis or steel frame, or a series of panels or room sections transported to the site on a truck and erected, assembled or joined there.

Outdoor storage. The keeping or display, outside of a building, of any goods, material, or merchandise, in the same place for more than 24 hours.

Parking, shared: Joint utilization of a parking area for more than one use.

Person: An individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.

Political sign: A sign attracting attention to political candidates or political issues or any lawful non-commercial message that does not direct attention to a business operated for profit or to a commodity or service for sale.

Principal Resident: The person of persons who reside in a dwelling and maintain that dwelling as their primary home.

Primary Dwelling: The dwelling in which the Principal Resident resides as their primary home and which also may contain an Apartment, Short-Term Rental, or Room(s) for Rent.

Renter: A Person or Persons who are Tenant(s) currently renting an Apartment, Short-Term Rental, or Room(s) for Rent.

Right-of-way: An area owned or maintained by the Town of Webster or the North Carolina Department of Transportation for the placement of roads or utilities.

Short-Term Rental: Overnight accommodations offered to renters for no more than 30 days in exchange for compensation from the renter or a third party (example: Airbnb, Vrbo, local realty company), that is organizing, booking, and processing the Short-Term Rental reservation.

Sight Visibility Triangle: The triangle formed by a ten-foot side measured along the right-of way of the minor approach from the right-of-way of the major approach, and a 35-foot side measured along the right-of-way of the major approach from the right-of-way of the minor approach. See sketch "A" in the Appendix.

Sign: A visual display designed to advertise, identify, direct, promote or in any way attract attention to a product, service, business, event, person, or specific location.

Sign, Free-standing: A sign that is not attached to or supported by any building or structure. Such signs shall include ground signs and signs mounted on poles or other supports.

Sign, indirectly illuminated: A sign that is illuminated by a white light source that is shielded and directed solely at the sign face.

Sign, Off-premises Advertising: A commercial sign that directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located.

Sign surface area: The entire display area of a sign, including any border or accessory area, but excluding any base supports, posts, roofs, or other structural elements provided they do not serve primarily to attract attention. In the case of three-dimensional letters or letters painted directly on the wall surface, the surface area shall be defined as the total of the areas within the perimeter of each letter.

Sign, Temporary: A sign or advertising display constructed of cloth, canvas, fabric, plywood, or other light material and designed or intended to be displayed for a short period of time.

Structure: A building.

Trailer: A structure standing on wheels, towed, or hauled by another vehicle, and used for carrying materials, goods, or objects.

Trees, street: shade trees planted along street frontages to improve the pedestrian environment and enhance the urban streetscape.

Underground Utilities: The placement of electric, telephone, cable, and other utilities customarily carried on poles, in underground vaults or trenches.

ARTICLE 3 – GENERAL REGULATIONS

Section 3.1 – Designated Planning Agency

The Town of Webster Board of Commissioners hereby established the Planning Board under the authority granted by the General Statutes of the State of North Carolina, Chapter 160D-301. The board shall constitute, function and may be referred to as the Town of Webster Planning Board. (Adopted February 11, 1998.)

Section 3.2 - Exemptions to Applicability

Section 3.2.1 Other Laws and Ordinances

Nothing contained herein shall repeal, modify or amend any Federal or State law or regulation, or any county ordinance or regulation pertaining thereto; nor shall any provision of this ordinance amend, modify or restrict any provisions of the Code of Ordinances of the Town of Webster, North Carolina; however, the adoption of this ordinance shall and does amend by substitution all previously enacted zoning ordinances for the Town and any amendments made thereto; and any and all ordinances, resolutions and regulations in effect in the Town as of the time of the adoption of this ordinance that may be construed to impair or reduce the effectiveness of this ordinance or to conflict with its provisions.

Section 3.2.2 Easements or Other Agreements

It is not intended that these regulations interfere with any easement, covenants, or other agreements between parties. However, if this ordinance imposes greater restrictions or higher standards for the use of a building or land, then the provisions of this ordinance shall control.

Section 3.2.3 Construction of Buildings

These regulations shall not prevent the construction of any structure for which a building permit has been secured prior to the effective date of this ordinance or any amendment thereto, so long as the building permit has not been revoked or allowed to expire. However, once constructed, any structure so erected will be subject to any and all regulations set forth in this ordinance.

Section 3.2.4 Suits and Prosecutions

All suits at law or in equity and all prosecutions resulting from the violation of any ordinance provisions which are now pending in any court of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this amended ordinance, but shall be prosecuted to their finality the same as if this amended ordinance had not been adopted; and any

and all violations of this or the previously existing zoning ordinance, prosecutions for which have not yet been instituted, may be hereafter filed and prosecuted; and nothing in this ordinance shall be so construed as to abandon, abate or dismiss any litigation or prosecution now pending or which may heretofore be instituted or prosecuted.

Section 3.3 - Non-conforming Lots, Uses, Buildings, Premises, and Manufactured Homes

Section 3.3.1 Non-conforming Lots

Any single lot that does not meet the minimum density and set-back requirements described in Section 3.1.2 and 3.1.3 may nevertheless be used as a building site provided that the lot was in existence at the time of the adoption of this ordinance, or, alternatively, complied with the single-family site density requirements of the ordinance in effect at the time it was recorded, as evidenced by a recorded plat or as described in a conveyance recorded among the public records of Jackson County.

Section 3.3.2 Non-conforming Uses

Consistent with Section 3.3.4 the lawful use of any building or premises at the time of the enactment of this ordinance, or immediately preceding any applicable amendment thereto, may be continued even though the use does not conform with the provisions of this ordinance, as amended. However, the non-conforming use shall not be enlarged, changed to another non-conforming use, or reestablished after its discontinuance for a period of 12 consecutive months.

Section 3.3.3 Non-conforming Buildings and Premises

Buildings and premises (including parking areas and other parts thereof) which existed at the time of the enactment of this ordinance, or immediately preceding any applicable amendment thereto, shall be deemed in compliance herewith, except in the following cases:

Section 3.3.3.1 Additions

If an addition is made to any existing building or premises, such addition shall comply with the current provisions of this ordinance.

Section 3.3.3.2 Alterations or Repairs

If alterations or repairs costing in excess of 50 percent of the physical value of an existing building are made to that building within any 12-month period, such building and premises shall be made to conform to the current requirements of this ordinance.

Section 3.3.3.3 Change of Use

If the use of a building changes so that the requirements for the new use are in any way more stringent than the requirements for the previous use of the building, such building and premises shall be made to conform to the current requirements of this ordinance.

Section 3.3.3.4 Discontinuance of Use

If the conforming use of any building or premises has been discontinued for a period of 12 consecutive months, the use shall not be reestablished until said building and premises is made to conform as much as possible to the current requirements of this ordinance.

Section 3.3.3.5 Damage or Destruction of Single-family Homes, Manufactured/Mobile Homes, and Historic Structures

Any single-family home that is non-conforming due to not meeting dimensional requirements that has been damaged or destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, shall be allowed to be rebuilt on its original footprint, so long as such reconstruction does not increase the nonconformity of the original structure.

Any structure located in any historic district, designated as a local landmark, or individually listed on the North Carolina study list or the National Register of Historic Places that has been damaged or destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, shall be allowed to be rebuilt on its original footprint, so long as such reconstruction does not increase the nonconformity of the original structure.

Any single-wide manufactured/mobile home that has been damaged or destroyed by any means to an extent of more than 50 percent of its replacement cost at the time of destruction, shall not be allowed to be replaced by another single-wide manufactured/mobile home, but rather shall be replaced by a manufactured/mobile home meeting the requirements of Section 5.8

Section 3.3.4 Non-conforming Manufactured Homes

Manufactured homes which existed at the time of the enactment of this ordinance, or immediately preceding any applicable amendment thereto, shall be deemed in compliance herewith.

Section 3.4 - Vested Rights

In accordance with G.S. 160D-108.1, a landowner may establish a vested right with respect to property upon the valid approval, or conditional approval, of a site-specific vesting plan as provided in section G.S. 160D-108.1. Such a vested right confers upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the site-specific vesting plan, including any amendments thereto.

Section 3.5 – Uses

Uses not designated as permitted or subject to development standards shall be prohibited.

Section 3.6 – One Principal Building Per Lot

Every building hereafter erected, moved, or structurally altered shall be located on a lot, and in no case shall there be more than one principal building and its customary accessory buildings on the lot, except for buildings in the Government District that are part of approved developments.

Section 3.7 – Conflicts of Interest

Section 3.7.1 Planning Board

Members of the Planning Board providing advice to the Town Board of Commissioners shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Section 3.7.2 Town Board of Commissioners

A member of the Town Board of Commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Section 3.8 – General Design Standards

Section 3.8.1 Sidewalks for New Development and Expansion/Improvement of Existing Development

It is the intent of this section that sidewalks shall be provided for new, non-residential development, including offices, commercial, and houses of worship.

Section 3.8.1.1 Sidewalks Required. Sidewalks shall be required along new and existing streets fronting the following new development and expansions of and improvements to existing development, and through the parking lot(s) to the front entrance(s) of such development to provide safe connections from parking to the entrance(s):

- (a) All new office/commercial or institutional development
- (b) Expansions to an existing office/commercial or institutional development or use where the gross floor area of the expansion is equal to or greater than 50 percent of the gross floor area of the pre-expansion development or use.
- (c) Improvements to an existing office/commercial or institutional development or use when the cost of the improvement is equal to or greater than 50 percent of the value of the existing development (building) or use as determined by the Jackson County Tax Office.
- (d) Along at least one side of private drives serving office/commercial uses in the B-1 and G-1 Districts to provide a pedestrian connection from the building entrance(s) to a public street or road.

Section 3.8.1.2 Construction Standards. Sidewalks must have a minimum five-foot width and meet all current Americans with Disabilities Act (ADA) standards. NCDOT will allow sidewalks within their right-of-way by encroachment and will not accept responsibility for maintenance.

Section 3.8.2 Underground Utilities

All utilities customarily carried on poles such as electric, telephone, and cable for new, non-residential development shall be installed underground except where extreme conditions of topography make this requirement unreasonable, or where inconsistent with flood protection requirements.

Section 3.8.3 Height Regulations

The existing natural grade of the property may not be raised around a new building or foundation in order to comply with the height requirements of this ordinance.

Section 3.8.4 Required Yards and Other Spaces

No part of a yard or open space required in connection with any building, structure or use shall be considered to be part of a required yard or open space for any other building, structure or use.

Section 3.8.5 Sight Visibility Triangle

In order to ensure visibility at intersections, sight visibility triangles shall be maintained at all intersections of public streets, private streets, and driveway access points. This is defined as that triangle formed by a ten-foot side measured along the right-of-way of the minor approach from the right-of-way of the major approach, and a 35-foot side measured along the right-of-way of the major approach from the right-of-way of the minor approach. Within this triangle nothing shall be erected, placed, planted, or allowed to grow in such a manner as to impede vision between a height of two and one-half feet and ten feet. Driveways shall be located so that motorists can see far enough in both directions to be able to safely enter the public roadway. Please refer to the illustration in the Appendix for more information.

Section 3.8.6 Satellite Dish Antennas

Satellite dish antennas greater than one meter in diameter shall be installed on the ground and in the rear yard but only to the extent feasible.

Section 3.8.7 Fuel Storage Tanks

Above-ground fuel storage tanks shall be screened from public view by plantings or fencing.

Section 3.8.8 Vehicle Storage

All vehicles not having current inspection, license plates and registration, will be given 90 days' notice to be garaged or screened from public view.

Section 3.8.9 Water Quality Measures

Ground cover for all parcels of land shall be designed and installed in a manner consistent with minimizing erosion and maximizing control of stormwater runoff; this includes yards, walkways, and driveways. All sites are required to comply with applicable regulations relating to soil, sedimentation, and erosion control as well as stormwater management.

Section 3.8.10 Outdoor Lighting

Outdoor lighting shall comply with the standards established by Jackson County, which can be found in Section 6.1 of the [Jackson County Unified Development Ordinance](#). The standards can also be accessed from the website of the [Jackson County Planning Department](#).

Section 3.9 – Municipal Corporation and Public Utilities Companies

Section 3.9.1 Construction, Installation, or Operation of Facilities

The construction, installation, or operation of facilities necessary to furnish public utility services or municipal services by the Town or by any public utility company serving or franchised to serve the community shall be permitted in all zoning districts. Utility services shall not include business offices in the R-1 Residential District.

Section 3.9.2 Where Permitted

Radio, microwave and television transmitting facilities, towers and similar equipment shall be permitted provided the use is in compliance with the Jackson County ordinance regulating wireless telecommunications facilities. In the locating of transmitting facilities and similar equipment, the use of stealth technology shall be the first option. In applying for approval of permits for transmitting facilities, those facilities not proposing the use of stealth technology shall submit proof that they have investigated this option and no opportunities for use of stealth technology were available.

ARTICLE 4 - DISTRICT REGULATIONS

Section 4.1 – Use Districts and Table

For the purpose of this Ordinance, the Town of Webster, NC, and the area comprising its extraterritorial jurisdiction are divided into use districts. Following is a list of the use districts authorized by this ordinance, and a summary Table of Uses:

R-1	Residential
B-1	Business
G-1	Government

Table 1
Town of Webster Table of Uses

Use	R-1 Residential District	B-1 Business District	G-1 Government District
Site-built single-family dwellings and modular homes	P	P	P
Manufactured homes	DS	DS	DS
Family care homes	DS	DS	DS
Accessory buildings appurtenant to single-family dwellings	DS	DS	DS
Apartments, Rooms for Rent	DS	DS	DS
Short-Term Rentals	DS	X	X
Bed and Breakfast Homes	DS	DS	DS
Day care homes	P	P	P
Day care centers	X	P	X
Government buildings and related uses	DS	DS	DS
Home occupations	DS	DS	DS
Houses of worship	DS	DS	DS
Professional offices or studios (accountants, architects, artists, attorneys, contractors, dentists, engineers, investment/insurance agents, land surveyors, musicians, photographers, medical providers and health care practitioners, real estate agents)	X	P	X
Banks without drive-through facilities	X	P	X
Any use intended to further the educational mission of Southwestern Community College	X	X	DS
Governmental uses and accessory uses, excluding correctional facilities and waste and recycling facilities	X	X	P

- P** Permitted by right; use shall comply with the development standards for the relevant zoning district.
- DS** Permitted by right subject to development standards; same as above except that the use shall comply with one or more additional standards not required of other permitted uses in the district. These additional standards are located in Article 5 in the zoning ordinance. *Refer to Section 5.2.2 for Short-Term Rental development standards.
- X** Not permitted in that particular zoning district.

Section 4.2 - R-1 Residential District

Section 4.2.1 General Description; Permitted Uses

The R-1 Residential District, which includes the extraterritorial jurisdiction for the Town of Webster, is a medium-density residential district for single-family dwellings with accessory, including manufactured/mobile homes and specified home occupations, together with such other related uses which are of a residential character or contribute to the residential character of the district. It is the intent of this ordinance to provide standards to ensure compatibility of manufactured/mobile homes, home occupations, apartments, and rooms for rent, and accessory buildings with other permitted uses as well as clearly establishing their secondary or incidental use so the use, value, and quiet enjoyment of adjacent residential properties is not impaired. It is emphasized that the primary use of the parcel of land is for dwelling purposes, and thus the residential character of the neighborhood and R-1 District will be preserved.

Within the R-1 Residential District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered unless otherwise provided in this ordinance, except for one or more of the following purposes:

Section 4.2.1.1 Single-family dwellings, including the following:

- (a) Site-built and modular homes.
- (b) Manufactured/mobile homes placed in the Town of Webster after September 1, 1998, provided they meet the development standards found in Article 5.
- (c) Family care homes shall meet the development standards found in Article 5.

Section 4.2.1.2 Any accessory outbuildings appurtenant to single-family dwellings, provided they meet the development standards found in Article 5. Such buildings include private garages and non-commercial structures, for example, greenhouses and workshops.

Section 4.2.1.3 Home occupations, provided they meet the development standards found in Article 5.

Section 4.2.1.4 Apartments and rooms for rent, provided they meet the development standards found in Article 5.

Section 4.2.1.5 Bed and Breakfasts, provided they meet the development standards found in Article 3.

Section 4.2.1.6 Day care homes, as defined by the North Carolina Department of Health and Human Services.

Section 4.2.2 Minimum District Standards

Section 4.2.2.1 Minimum lot size 1.0 acres per dwelling

Section 4.2.2.2 Minimum lot width at building line 100 feet

Section 4.2.2.3 Minimum frontage 100 feet

Section 4.2.2.4 Structure height

Maximum height in the R-1 Residential District shall be 30 feet. Please refer to illustrations in Appendix B for additional information.

Section 4.2.3 Setbacks

Section 4.2.3.1 Rights-of-way

No structure within the R-1 Residential District shall be erected within 25 feet of the right-of-way line of any public or private road, or if no right-of-way line is defined among the public records of Jackson County, within 40 feet of the road centerline.

Section 4.2.3.2 Adjoining ownership

No structure shall be erected within 20 feet of the property line of an adjoining ownership.

Section 4.2.3.3 How measured

For the purpose of this section, the setback distance shall be measured horizontally from the right-of-way line, road centerline or adjoining property line to the nearest projection of the structure, including any eave, dormer, deck or other part attached thereto, and any portion of the building located below grade. However, doors, windows, marquees, canopies, and awnings shall be permitted to encroach on the setback area.

Section 4.2.4 Height Regulations

Maximum height is specified in Section 4.2.2.4. The existing natural grade of the property may not be raised around a new building or foundation in order to comply with the height requirements of this ordinance. Chimneys may not extend more than an additional ten feet above the highest point of the roof.

Section 4.2.5 Sign Regulations

The sign regulation as set forth in Article 6 shall apply to the R-1 Residential District.

Section 4.2.6 Off-Street Parking

The minimum requirements for off-street parking are set forth in Article 7. These requirements shall apply to all new buildings and uses and to additions to existing buildings and uses.

Section 4.2.7 Required Yards and Other Spaces

No part of a yard, open space or off-street parking space required in connection with any building, structure or use shall be considered to be part of a required yard or open space or for any other building, structure or use.

Section 4.3 – B-1 Business District

Section 4.3.1 General Description; Permitted Uses

The district regulations are designed to promote convenient access to professional services, while also allowing residential uses.

Within the B-1 Business District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered unless otherwise provided in this ordinance, except for one or more of the following purposes.

Section 4.3.1.1 Professional offices or studios, including those of accountants, architects, artists, attorneys, contractors, dentists, engineers, investment/insurance agents, land surveyors, musicians, photographers, medical providers and health care practitioners, and real estate agents.

Section 4.3.1.2 Banks without drive-through facilities,

Section 4.3.1.3 Day care centers, as defined by the NC Department of Health and Human Services.

Section 4.3.1.4 Houses of worship, provided they meet the requirements of Article 5.

Section 4.3.1.5 All uses permitted in the R-1 Residential District.

Section 4.3.2 District Standards for Uses Other Than Residential

Section 4.3.2.1 Minimum lot size two acres

Section 4.3.2.2 Minimum lot width at building line 200 feet

Section 4.3.2.3 Minimum frontage 200 feet

Section 4.3.2.4 Structure height 30 feet;
chimneys may not extend more than an additional ten feet above the highest point of the roof. Please refer to illustrations in Appendix A for additional information.

Section 4.3.3 Setbacks

Section 4.3.3.1 Rights-of-way

No structure within the B-1 Residential District shall be erected within 25 feet of the right-of-way line of any public or private road, or if no right-of-way line is defined among the public records of Jackson County, within 40 feet of the road centerline.

Section 4.3.3.2 Adjoining ownership

No non-residential structure shall be erected within 20 feet of the property line of an adjoining ownership that is in business/office/institutional use.

No non-residential structure shall be erected within 50 feet of the property line of an adjoining ownership that is in residential zoning or use.

Section 4.3.3.3 How measured

For the purpose of this section, the setback distance shall be measured horizontally from the right-of-way line, road centerline or adjoining property line to the nearest projection of the structure, including any eave, dormer, deck or other part attached thereto, and any portion of the building located below grade. However, doors, windows, marquees, canopies and awnings shall be permitted to encroach on the setback area.

Section 4.3.3.4 No parking in setbacks

Parking shall be located to the side and/or rear of all non-residential buildings, and no parking space shall be located closer to the main access road than the building. No parking shall be located in any side or rear setback.

Section 4.3.4 Other Regulations

Please refer to the standards in Section 3.8 for requirements for sidewalks, underground utilities, outdoor lighting, water quality, vehicle storage, fuel storage tanks, and other issues.

Section 4.3.5 District Standards for Residential Uses

Section 4.3.5.1 Minimum lot size 1.0 acres per dwelling

Section 4.3.5.2 Minimum lot width at building line 100 feet

Section 4.3.5.3 Minimum frontage 100 feet

Section 4.3.5.4 Structure height 30 feet;
chimneys may not extend more than an additional ten feet above the highest point of the roof. Please refer to illustrations in Appendix A for additional information.

Section 4.3.6 Standards for Single-family Dwellings Converted to Business Use

When a single-family dwelling is converted to a business use, then it shall meet all the standards as specified in Section 4.3.2, 4.3.3, and 4.3.4 such as minimum lot size, lot dimensions, height, setbacks, parking, lighting, buffering, and all other requirements.

Section 4.4 – G-1 Government District

Section 4.4.1 General Description; Permitted Uses

The district regulations are designed to promote the educational mission of Southwestern Community College, and to provide for governmental uses. They are also intended to allow residential uses.

Within the G-1 Government District, no structure or land shall be used, and no structure shall be hereafter erected, relocated, reconstructed, or structurally altered unless otherwise provided in this ordinance, except for one or more of the following purposes.

Section 4.4.1.1 Any use intended to further the educational mission of Southwestern Community College as determined by the College Board of Trustees, the State of North Carolina, or other appropriate governing or oversight bodies, provided it meets the development standards found in Article 5.

Section 4.4.1.2 Governmental uses including governmental uses and accessory uses, excluding correctional facilities, and waste and recycling facilities.

Section 4.4.1.3 Houses of Worship

Section 4.4.1.4 All uses permitted in the R-1 Residential District.

Section 4.4.2 District Standards for Government Uses

Section 4.4.2.1 Minimum lot size two acres

Section 4.4.2.2 Minimum lot width at building line 200 feet

Section 4.4.2.3 Minimum frontage 200 feet

Section 4.4.2.4 Structure height

Maximum height shall be 60 feet. Please refer to illustrations in Appendix A for additional information. In order to avoid overshadowing residential properties, for buildings that are located adjacent to property zoned residential or in residential use, for each additional one foot in height above 30 feet, the building is required to be set back an additional two feet from the property line.

Section 4.4.3 Setbacks

Section 4.4.3.1 Rights-of-way

No structure within the G-1 Government District shall be erected within 25 feet of the right-of-way line of any public or private road, or if no right-of-way line is defined among the public records of Jackson County, within 40 feet of the road centerline.

Section 4.4.3.2 Adjoining ownership

No non-residential structure shall be erected within 20 feet of the property line of an adjoining ownership that is in government/office/institutional use.

No non-residential structure shall be erected within 50 feet of the property line of an adjoining ownership that is in residential zoning or use.

Section 4.4.3.3 How measured

For the purpose of this section, the setback distance shall be measured horizontally from the right-of-way line, road centerline or adjoining property line to the nearest projection of the structure, including any eave, dormer, deck or other part attached thereto, and any portion of the building located below grade. However, doors, windows, marquees, canopies, and awnings shall be permitted to encroach on the setback area.

Section 4.4.3.4 No parking in setbacks

Parking shall be located to the side and/or rear of all non-residential buildings, and no parking space shall be located closer to the main access road than the building. No parking or access to parking, such as driveways, shall be located in any side or rear setback.

Section 4.4.4 Other Regulations

Please refer to the standards in Section 5.8 for requirements for sidewalks, underground utilities, outdoor lighting, water quality, vehicle storage, fuel storage tanks, and other issues.

Section 4.4.5 District Standards for Residential Uses

Section 4.4.5.1 Minimum lot size 1.0 acre per dwelling

Section 4.4.5.2 Minimum lot width at building line 100 feet

Section 4.4.5.3 Minimum frontage 100 feet

Section 4.4.5.4 Structure height

Maximum height shall be 30 feet; chimneys may not extend more than an additional ten feet above the highest point of the roof. Please refer to illustrations in Appendix A for additional information.

Section 4.4.6 Setbacks

Section 4.4.6.1 Rights-of-way

No structure within the G-1 Government District shall be erected within 25 feet of the right-of-way line of any public or private road, or if no right-of-way line is defined among the public records of Jackson County, within 40 feet of the road centerline.

Section 4.4.6.2 Adjoining ownership

No residential structure shall be erected within 50 feet of the property line of an adjoining ownership that is in government /office/institutional use.

No residential structure shall be erected within 20 feet of the property line of an adjoining ownership that is in residential use.

Section 4.4.6.3 How measured

For the purpose of this section, the setback distance shall be measured horizontally from the right-of-way line, road centerline or adjoining property line to the nearest projection of the structure, including any eave, dormer, deck or other part attached thereto, and any portion of the building located below grade. However, doors, windows, marquees, canopies, and awnings shall be permitted to encroach on the setback area.

ARTICLE 5 – DEVELOPMENT STANDARDS

Section 5.1 – Accessory Buildings Appurtenant to Single-family Dwellings

Section 5.1.1 Zoning Districts
R-1, B-1, G-1

Section 5.1.2 Development Standards

- (a) Accessory buildings shall be limited in size to 1,000 square feet total.

Section 5.2 – Apartments, Rooms for Rent, Short-Term Rentals

Section 5.2.1 Long-term Rentals

Section 5.2.1.1 Zoning Districts
R-1, B-1, G-1

Section 5.2.1.2 Development Standards

- (a) All Apartments, Rooms for Rent, and Long-Term Rentals must comply with local ordinances, county regulations, and state laws now in force, or which may hereafter be in force, including all applicable codes and ordinances.
- (b) If a portion of the Primary Dwelling is rented for a period of **more than 30 days**,
- (i) No more than three bedrooms shall be provided at a Primary Dwelling as accommodations for purposes of a Room(s) for Rent.
 - (ii) No more than one Apartment with no more than two bedrooms may be provided.
- (c) No Accessory Building shall be used as an Apartment, Room(s) for Rent, or Long-Term Rental, unless the acreage of the property contains at least one acre for the Primary Dwelling and one additional acre for each Accessory Building.
- (d) Parking shall be provided as required in Article 7.
- (e) No signs visible from the street shall be posted indicating the existence of an Apartment, Room(s) for Rent, or Long-Term Rental.

Section 5.2.2 Short-Term Rentals

Accessory Building: For purposes of Section 5.2.2, a Building that is being rented in part or in whole for a period of 30 days or less and said Building is detached from the Primary Dwelling and located on the same parcel of land and customarily incidental and subordinate to the Primary Dwelling/Principal Building or use.

Section 5.2.2.1 Zoning Districts

R-1

Section 5.2.2.2 Development Standards

- (a) All Apartments, Rooms for Rent, and Short-Term Rentals must comply with local ordinances, county regulations, and state laws now in force, or which may hereafter be in force, including all applicable codes and ordinances.
- (b) Entire residential dwellings may not be used as Apartments, Rooms for Rent, or Short-Term vacation rentals for a period of 30 days or less.
- (c) If a portion of the Primary Dwelling is rented for a period of **30 days or less**, it shall be concurrently occupied by both the Principal Resident and the Renter, and
 - (i) No more than three bedrooms shall be provided at a Primary Dwelling as accommodations for purposes of a Short-Term Rental or Room(s) for Rent.
 - (ii) No more than one Apartment with no more than two bedrooms may be provided.
- (d) No Accessory Building shall be used as an Apartment, Room(s) for Rent, or Short-Term Rental for a period of 30 days or less, unless the acreage of the property contains one acre for the Primary Dwelling and one additional acre each for the Accessory Building. Moreover, the Primary Dwelling must be concurrently occupied by the Principal Resident while the Accessory Building is being used as an Apartment, Room(s) for Rent, or Short-Term Rental for a period of 30 days or less.
- (e) Parking shall be provided as required in Article 7.
- (f) No signs visible from the street shall be posted indicating the existence of an Apartment, Room(s) for Rent, or Short-Term Rental.
- (g) **Exemption Provision** - Current Apartments, Short-Term Rentals, and Room(s) for Rent, existing prior to the enactment of this Ordinance, are exempt from Sections 5.2.2.2 b, c, and d; provided, however, any Change of Ownership shall trigger full compliance with ALL Development Standards listed herein.

Section 5.3 – Bed and Breakfast Homes

For the purposes of Section 5.3, a Bed and Breakfast Home is a private home offering bed and breakfast accommodations to eight or fewer persons per night for a period of less than one week, and that meets all of the following requirements:

- (a) Does not serve food or drink to the general public for pay.
- (b) Serves the breakfast meal, the lunch meal, the dinner meal, or a combination of all or some of these three meals only to overnight guests of the business.
- (c) Includes the price of breakfast in the room rate. The price of additional meals served shall be listed as a separate charge on the overnight guest's bill at the conclusion of the guest's stay.
- (d) Is the permanent residence of the owner or the manager of the business.

Section 5.3.1 Zoning Districts

R-1, B-1, G-1

Section 5.3.2 Development Standards

- (a) All Bed and Breakfast Homes must comply with local ordinances, county regulations, and state laws now in force, or which may hereafter be in force, including all applicable codes and ordinances.
- (b) The owner shall reside on the property.
- (c) The Bed and Breakfast Home may be identified by a sign complying with Section 6.5.3.
- (d) No more than two bedrooms may be provided for accommodations in any Bed and Breakfast Home.
- (e) Parking shall be provided as required in Article 7 and shall be located at the side or rear of the principal structure; no parking space shall be located closer to the main access road than the principal structure.
- (f) The dwelling serving as the Bed and Breakfast Home shall be inspected by the Jackson County Health Department and Building Inspections.

Section 5.4 – Family Care Homes

Section 5.4.1 Zoning Districts

R-1, B-1, G-1

Section 5.4.2 Development Standards

- (a) Family care homes are permitted as defined and in accordance with G.S. 168-21, 168-22, and related sections.

Section 5.5 – Government Buildings

Section 5.5.1 Zoning Districts

R-1, B-1, G-1

Section 5.5.2 Development Standards

- (a) Minimum lot size is 1 acre in the R-1 District
- (b) Minimum lot size is 2 acres in the B-1 and G-1 Districts
- (c) Uses shall be limited to offices and related accessory uses in the R-1 District
- (d) Maximum building size in the R-1 District is 2,000 square feet
- (e) As noted in Section 8.6, in any zoning district, when a new, non-residential use is proposed to be constructed next to land either zoned residential or in residential use, then a buffer 10 feet in width is required along the property line.

Section 5.6 – Home Occupations

Section 5.6.1 Zoning Districts

R-1, B-1, G-1

Section 5.6.2 Development Standards

- (a) Only occupants of the dwelling shall work at the home occupation.
- (b) The use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof.
- (c) No mechanical equipment is installed or used except as is normally used for domestic purposes.
- (d) Not over 25 percent of the total floor space of any structure is used for the occupation.
- (e) No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, etc., and any such vehicle shall not be visible from a public street.
- (f) There shall be no structural additions, enlargements or exterior alterations changing the residential appearance of the dwelling or the parcel of land or other visible indications of the conduct of the home occupation except for a sign complying with Section 6.5.2.
- (g) There shall be no structural alterations to the interior of the dwelling to accommodate a home occupation which would render the dwelling undesirable for residential use.
- (h) There shall be no equipment or process used in the home occupation which creates noise, vibration, glare, smoke, fumes, odors, or electrical interference detectable to the normal senses at any point beyond the lot line in such a manner as to annoy, disturb, frighten, or otherwise interfere with the use and quiet enjoyment of adjacent properties, or which creates water usage or the production of sewage other than domestic in nature.
- (i) There shall be no outdoor storage of any kind related to the home occupation.
- (j) No retail sales shall be allowed at the home occupation.

- (k) Pre-planning Conference for Home Occupations. Those considering establishing a home occupation are encouraged to meet with the Zoning Administrator to review applicable regulations, thus avoiding unnecessary expense and preserving neighborhood character, livability, and enjoyment.

Section 5.6.3 Additional Information

By way of example, the following uses, when conducted in compliance with the conditions set forth above, qualify as permitted home occupations: artist's, musician's, or writer's studio; barber/beauty shop (limited to no more than one client at a time); dressmaking, millinery, sewing or tailoring; personal chef; personal office for accountant, broker, consultant, insurance or real estate agent, lawyer, sales representative, and the like; photography studio (limited to not more than one client at a time); teaching or tutoring, including musical instruments or dance, when limited to one pupil at a time.

Section 5.7 – Houses of Worship

Section 5.7.1 Zoning Districts

R-1, B-1, G-1

Section 5.7.2 Development Standards

- (a) The minimum lot size in the R-1, B-1, and G-1 Districts is one acre.
- (b) The maximum lot size in the R-1 District is two acres.
- (c) In the R-1 District, seating in the sanctuary shall be limited to 120 persons.
- (d) Height requirements – in all zoning districts, maximum height shall be 40 feet, not including the steeple
- (e) Front setback shall be 20 feet.
- (f) This provision applies only to the construction of new houses of worship, and also excludes expansions to existing houses of worship: Parking shall be provided as required in Article 5 and shall be located at the side or rear of the sanctuary. No parking spaces shall be located closer to the primary access road on which the house of worship is situated than the sanctuary.
- (g) Any accessory buildings shall be in the same architectural style and use the same exterior building materials as the sanctuary.

Section 5.8 – Manufactured/Mobile Homes (placed in the Town after September 1, 1998)

Section 5.8.1 Zoning Districts

R-1, B-1, G-1

Section 5.8.2 Development Standards

- (a) The tongue, axles, removable towing apparatus and transporting lights shall be removed after final placement on the site.
- (b) A continuous, permanent masonry curtain wall or foundation, unpierced except for ventilation and covered access, shall be installed under the unit.

- (c) The minimum size of a manufactured/mobile home shall be at least 28 x 60 feet, exclusive of all decks, porches and/or carports.
- (d) The roof pitch of a manufactured/mobile home shall have a minimum rise of five feet for each 12 feet of horizontal run. The roof shall be finished with a type of shingle that is commonly used in standard residential construction.
- (e) The exterior siding shall consist predominantly of vinyl or aluminum lap siding whose reflectivity does not exceed that of flat white paint; or wood or hardboard siding, comparable in composition, appearance and durability to the exterior siding commonly used in standard residential construction.
- (f) All manufactured/mobile home development is encouraged to incorporate the following appearance standards:
 - (i) Guttering installed on all drip edges, with proper drainage away from the building foundation.
 - (ii) A front entrance dormer and a minimum 8 feet by 12 feet covered porch or deck.
- (g) The manufactured/mobile home shall be placed on the parcel of land in harmony with existing site-built structures. Where there are no neighboring structures available for comparison, it shall be sited with the front running parallel to the road providing access to the site. On corner lots, the side with the greatest road frontage shall be considered the front; on cul-de-sacs, the home shall be sited with the front of the home being parallel to the road access.
- (h) A manufactured/mobile home shall not be used as a storage unit and shall only be occupied as a dwelling.

ARTICLE 6 - SIGN REGULATIONS

Section 6.1 - Purpose

The purpose of this article is to regulate signs and outdoor advertising throughout the zoning jurisdiction; to limit the size, height and location of signs and outdoor advertising erected therein; to ensure orderly development; to protect and stabilize property values; to preserve the scenic natural environment by allowing signs which are consistent with an attractive town appearance; to promote public health, prosperity, safety and welfare; and to establish procedures through which these purposes can be achieved.

Section 6.2 - Exempt Signs

The following signs are exempt from the requirements in this Article.

- (a) All classes of government signs including but not limited to traffic, health and public safety; crime control and prevention; official notices or advertisements related to any court action; the location of underground utilities; historical markers or monuments; any other community service sign approved by the Town of Webster.
- (b) Temporary lighting and displays as part of customary holiday decoration.

- (c) Signs posted on private property related to trespassing or public safety, such as danger from animals.
- (d) Signs attached to commercial vehicles that are licensed, tagged, and insured.
- (e) “For Sale” signs on private vehicles.
- (f) Names and lettering on mailboxes and newspaper tubes.

Section 6.3 - Prohibited Signs

The signs identified in this section are prohibited.

- (a) Off-premises Signs, Including Outdoor Advertising Signs, with the exception of political signs permitted in Section 6.4.1 (f).
- (b) Roof Signs. Any signs which are painted or erected on a roof or which extend in height above the parapet or roof line of the building on which the sign is erected.
- (c) Simulated Traffic Signs and Obstructions. Any sign which may be confused with or obstructs the view of any public traffic signal or traffic sign; extends into the public right-of-way, obstructs the sight distance triangle at any street intersection or in any way constitutes a hazard to traffic.
- (d) Building Obstructions. Any sign that obstructs or substantially interferes with any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress, or egress for any building.
- (e) Signs Posted Within Public Rights-of-Way. Any sign posted on utility poles, on other officially placed signs or on trees, rocks, ground, etc. within the public right-of-way. In the event a right-of-way is not defined among the public records of Jackson County, this prohibition shall apply to an area within 15 feet of the edge of the wear surface of any public thoroughfare. This shall not apply to real estate signs described in Section 6.4.1 (b).
- (f) Portable Signs. Any sign that is not permanently affixed to a building, stationary structure, or the ground.
- (g) Message Board Signs. Any sign that uses changeable lettering or numbering, with the exception of house of worship signs described in Section 6.4.2.1.
- (h) Animated and Moving Signs. Any moving sign or device to attract attention, all or any part of which moves by any means, including fluttering, rotating, or otherwise moving devices set in motion by the atmosphere or by mechanical means, such as pennants, flags, propellers, or discs, whether or not any said device has a written message.
- (i) Flashing Signs. Any sign or device displaying flashing lights, intermittent lights, or lights of changing degrees of intensity.
- (j) String and Tube Lighting. Any illuminated tubing or string of lights outlining property lines, doors, windows, wall edges, etc.
- (k) Oversized Product Facsimiles. The display of letter, logos, trademarks, emblems, pictures, etc. on oversized facsimiles or three-dimensional structures, such as pieces of furniture, products sold or manufactured on the premises, chicken buckets, human figures, cans or other containers or lettering.

- (l) Internally illuminated signs. Any sign whose light source is within the sign and has a transparent or translucent background or cover which silhouettes opaque or translucent letters or designs.
- (m) Neon Signs. Any sign illuminated in whole or in part by neon lighting.
- (n) Illuminated Signs. Any sign that is illuminated between the hours of 12:00 midnight and 6:00 a.m.

Section 6.4 - Regulated Signs Not Requiring a Permit

The following signs are allowed without a sign permit, provided they conform to the requirements of this section.

Section 6.4.1 Temporary Signs

- (a) One temporary sign for house of worship functions, located on their property and not exceeding 42 inches in height or nine square feet in surface area. Such signs are not permitted to be erected or displayed more than four weeks before the functions and shall be removed promptly afterwards.
- (b) One temporary on-premises sign advertising the rent, sale, or lease of a residential building provided that the surface area does not exceed four square feet in surface area per building and the sign is not illuminated.
- (c) Not more than three non-illuminated signs advertising the sale of produce out of a home garden on the premises where the produce is sold, provided the signs do not exceed four square feet in surface area per sign face, are not placed within the public right-of-way, or within 15 feet of any road wear surface if no right-of-way is defined, and are displayed only between March and October.
- (d) Residential yard sale signs, provided they do not exceed four square feet in surface area per sign face, and the maximum time for display does not exceed 48 hours.
- (e) Signs uses prior to and during construction to identify the name of the new project and/or the principal contractor or developer, provided they meet the following requirements:
 - (i) Each project site shall have no more than one identification sign with one sign face.
 - (ii) Identification signs shall be either attached to the building under construction or affixed to a secure temporary post and located out of the public right-of-way or beyond 15 feet of any road wear surface if no right-of-way is defined.
 - (iii) Identification signs shall be no greater than four square feet.
- (f) Political signs provided they are placed on private property either by or with permission of the owner and provided they are not illuminated, are not placed within the public right-of-way or within 15 feet of any road wear surface if no right-of-way is defined, do not exceed 16 square feet in surface area per sign face, and do not constitute a hazard to pedestrian or vehicular traffic. Political signs displayed for the purpose of an election shall be removed within five days after said event.

- (g) Flags, badges, or insignia of government or any patriotic or religious organization provided the display does not exceed six feet in length or width. Only flags of the United States and the State of North Carolina may be displayed outside of a business.

Section 6.4.2 Permanent Signs

Section 6.4.2.1 One permanent sign for houses of worship not exceeding 16 square feet per sign face, not more than 8 feet in height, and either non-illuminated or indirectly illuminated by white lighting. House of worship signs may be of a message board type that uses changeable lettering.

Section 6.4.2.2 Individual name plate signs and house numbers for residences, provided they do not exceed two square feet per sign face and are placed no closer than three feet to any road wear surface.

Section 6.5 - Regulated Signs Requiring a Permit

The following permanent signs are permitted subject to the issuance of a permit by the Zoning Administrator (the Jackson County Planning Department provides planning and permitting services for the Town of Webster). Applications for Sign Permits shall be made on the proper form obtainable in the Jackson County Planning Office, or from the Town of Webster's official website, and shall include the name of the owner of the sign, a drawing of the sign indicating its size and height, a site plan indicating its location on the premises and relation to any adjacent rights-of-way, method of illustration and whatever other information the Zoning Administrator deems necessary to ensure compliance with these regulations. Fees for Sign Permits may be set at the discretion of the Town Board of Commissioners. Any substantial change in the copy of a sign shall require application for a new Sign Permit at the prevailing permit fee; no permit shall be issued in the event of such a change in copy unless the sign complies with the current provisions of this article.

Section 6.5.1 Subdivision Developments

Each subdivision development is permitted one free-standing sign at each major entrance, not to exceed two free-standing signs for the entire subdivision development. Such signs shall not be located within any public right-of-way or within 15 feet of the wear surface of any public thoroughfare if no right-of-way is defined among the public records of Jackson County; shall not exceed six feet in height; shall not exceed 24 square feet in surface area per sign face; and may be either non-illuminated or indirectly illuminated by white lighting.

Section 6.5.2 Permitted Home Occupations

Permitted home occupations are permitted one sign not exceeding four square feet in surface area per sign face, which may be free-standing, wall or hanging in type. If free-standing, such signs shall be no higher than six feet.

Section 6.5.3 Bed and Breakfasts

Bed and Breakfasts are permitted one sign not exceeding four square feet in surface area per sign face, which may be free-standing, wall or hanging in type; and may be either non-illuminated or indirectly illuminated by white lighting. If free-standing, such signs shall be no higher than six feet.

Section 6.6 - Sign Construction. Design and Maintenance

Section 6.6.1 Construction Materials

All signs, except those protected by glass or other transparent cover, shall be constructed of materials that will not rapidly deteriorate, fade, fall apart or in any way become a hazard to the public health, safety, and general welfare.

Section 6.6.2 Code Requirements

All signs shall comply with applicable requirements of the N.C. State Building Code, National Electrical Code, and other applicable federal, state, or local codes.

Section 6.6.3 Attachment of Signs

Every sign and its supports, frames, guys, anchors, and electrical equipment shall be securely fastened and placed to withstand adverse weather conditions.

Section 6.6.4 Sign Design

All signs, unless otherwise stated or implied, shall have no more than two faces, displayed on opposite sides and without a space or angled projection to one another. Said signs shall have the same message and general design on both faces.

Section 6.6.5 Sign Maintenance

All signs shall be kept free from defective or missing parts or peeling paint. The Zoning Administrator shall possess the authority to order the painting, repair or alteration of a sign which constitutes a hazard to the public health, safety, or general welfare by reason of inadequate maintenance, dilapidation, or obsolescence. Notice of such repair shall be given to the owner by personal service or registered mail, return receipt requested.

Section 6.6.6 General Appearance

The immediate premises around a sign shall be kept free from litter and debris.

Section 6.7 - Non-conforming Signs

Section 6.7.1 Description

Any sign legally in existence prior to the effective date of this ordinance, or any applicable amendment thereto, which does not satisfy the requirement of this ordinance is declared non-conforming. The eventual elimination of non-conforming signs is as much a subject of health, safety, and welfare as is the regulation of new signs.

Section 6.7.2 Regulations

All non-conforming signs in existence prior to the effective date of this ordinance shall either be made to conform to all provisions or shall be removed within 30 days after the enactment of this ordinance. All non-conforming signs made nonconforming by an amendment to this ordinance shall either be made to conform to all provisions or removed within 30 days after the date of such amendment. Any sign that does not conform at the end of the 30-day period shall be considered an illegal sign and shall be removed at that time.

Section 6.7.3 Alterations and Repairs to Non-conforming Signs

Non-conforming signs shall not be moved, altered, enlarged, or changed in any manner to increase the degree of nonconformity. Ordinary maintenance, such as repainting or repairing is permitted. However, no substantial change in the copy of the sign shall be permitted. Moreover, if within any 12-month period alterations or repairs are anticipated to cost in excess of 50 percent of the physical value of the existing sign, such sign shall be removed or made to conform with the current regulations of this ordinance.

Section 6.8 - Illegal Signs

Section 6.8.1 Signs Located Within a Public Right-of-way

Consistent with Section 6.3 (e), any sign located within a public right-of-way shall be removed by its owner within 30 days of written notice thereof. If ownership of a sign cannot be reasonably established, the Zoning Administrator shall attach a notice to the sign stating the need to remove the sign within 30 days. Temporary signs shall be removed by the Town upon discovery. This section shall not apply to signs described in Section 6.4.2.2.

Section 6.8.2 Signs Erected Without a Permit

The owner of any sign erected without a permit shall either remove the sign or obtain a permit for the sign and ensure that it complies with these regulations within 24 hours of notification by the Zoning Administrator. If the sign has not been removed within 24 hours of notification, it may be removed and confiscated by the Zoning Administrator at the owner's expense.

ARTICLE 7 - OFF-STREET PARKING

Section 7.1 - Applicability

Off-street automobile storage or parking shall be provided on every parcel for all uses established in Section 7.2.

Section 7.2 - Parking Schedule

The number of off-street parking spaces provided shall be at least as great as the number specified in the formula below for various uses, unless the circumstances are present as outlined in Section 7.3.3.4 below. When application of the formula results in a fractional space, the next larger space requirement shall prevail.

Use	Required Parking
Any residential use consisting of one or more dwellings	Two spaces for each dwelling
Bed and Breakfast Homes, Apartments, Short-Term Rentals, and Rooms for Rent	One space for each accommodation plus two spaces for the owner
Day care centers	One space for every four pupils or participants
Government buildings	One space for each 400 square feet of office
Home occupations	In addition to the parking spaces required for the dwelling, one space for the home occupation activity shall be required
House of worship	One space for each four seats in the principal assembly room
Professional offices	One space for each 400 square feet of gross floor area

Section 7.3 - General Provisions

Section 7.3.1 Spaces Abutting NCDOT Roads

Each parcel abutting a thoroughfare maintained by the North Carolina Department of Transportation shall provide adequate space for turning so that no vehicle is required to exit from the premises by backing into the thoroughfare.

Section 7.3.2 Dimensional Requirements

Parking spaces shall be at least 8 feet wide and 18 feet long.

Section 7.3.3 Handicapped Parking Requirements

All new parking lots, other than those for a private residential structure, shall provide handicapped parking in conformance with the North Carolina State Building Code.

Section 7.3.4 Shared Parking

The number of required parking spaces for more than one use may be combined in one parking lot. However, the required space assigned to one use may not be assigned to another use at the same time, except that one-half of the parking space required for houses of worship, whose peak attendance will be at night or on Sundays, may be assigned to a use which will be closed at night or on Sundays.

Section 7.4 – Parking of Commercial Trucks and Vehicles

One commercial vehicle may be parked on any lot containing a principal building in all zoning districts, provided that such vehicle is parked off the street and is not parked in any setbacks. Engine idling of such parked commercial vehicles is strictly prohibited. Any refrigeration equipment that may be part of or contained within a commercial vehicle shall not be in use while it is parked.

This shall not be construed as to prevent the temporary parking of delivery trucks, moving vans, and similar vehicles, which deliver goods and services.

Section 7.5 – Parking of Campers and Recreational Vehicles

A camping trailer, motor home or similar recreational vehicle may be parked on the owner's property provided that it is not occupied, not connected to any water, sewerage or power supply, and is parked in the side or rear yard, and not within applicable setback lines. No such camper or RV may be parked on a vacant lot, even if the lot is owned by the person who owns the camper or RV, unless it is placed in an enclosed building.

ARTICLE 8 – BUFFERING, SCREENING, AND LANDSCAPING

Section 8.1 – Purpose and Intent

The Town of Webster has an abundant and diverse tree and vegetative cover that contributes to the aesthetic value of the Town and provides numerous ecological and economic benefits. The landscaping, buffering, and screening standards set forth below require landscaping in certain circumstances and locations in order to:

- a) Encourage the preservation of existing trees and vegetation and replenish removed vegetation;
- b) Improve the visual quality of the Town of Webster and minimize potential negative impacts of development such as noise, dust, glare of lights, parking lots, traffic, heat, overcrowding, and odor;
- c) Provide environmental benefits such as climate modification, decreased energy consumption, reduced stormwater runoff, decreased erosion, improved water and air quality, and protection of wildlife habitat;
- d) Provide a transition between dissimilar land uses to protect abutting properties from potential negative impacts of neighboring development and preserve the character and value of a property and provide a sense of privacy;
- e) Improve standards for quantity, location, size, spacing, protection, and maintenance of plants and other screening materials to assure a high level of quality in the appearance of Webster while allowing flexibility to promote well designed and creative landscape plantings;
- f) Require the maintenance of landscaping installed to meet the requirements of these standards to ensure that the landscaping continues to thrive and enhance the visual quality of the Town of Webster.

Section 8.2 – Landscaping, Buffering and Screening Required.

Landscaping, buffering, and screening shall be required for developments within the planning jurisdiction of the Town of Webster, including its extraterritorial jurisdiction, as set forth herein.

- a) The following developments must bring the entire site into full compliance with the requirements of this Article:
 - 1) Any new public or private development with the exception of single-family homes.
 - 2) A change of use to commercial.
 - 3) Renovations of an existing commercial building with a total cost exceeding 50 percent of the assessed value of the building according to Jackson County tax records or an appraisal by a state licensed appraiser.
 - 4) Expansions exceeding 50 percent of the pre-expansion floor area or paved surface.
 - 5) Existing unpaved parking lots which are paved over.

Section 8.3 – Alternative Compliance

The landscape requirements are intended to set minimum standards for quality development and environmental protection and are not intended to be arbitrary or inhibit creative solutions. Site conditions or other reasons may justify the need to request an alternate method of compliance with the landscape requirements. The Town of Webster Board of Adjustment may alter the requirements of this section as long as existing or added landscape features of the development site comply with the intent of this article. Requests for alternative compliance shall be accepted if one or more of the following conditions are met:

- a) Topography, geologic features, drainage channels or streams, existing natural vegetation, overhead or underground utilities, or other conditions make it unreasonable or meaningless to plant a buffer or meet other landscape requirements; or
- b) Space limitations, unusually shaped lots, unique relationships to other properties, and/or prevailing practices in the surrounding neighborhood (such as use of a specific type of vegetation) may justify alternative compliance when changing the use type of an existing building in an established mature neighborhood or when developing in an historic district; or
- c) An alternative compliance proposal is equal to or better than normal compliance in its ability to fulfill the intent of this article and exhibits superior design quality.

Section 8.4 – Existing Vegetation

- a) *Preservation of Existing Vegetation.* Preserving trees can improve the aesthetic quality of the site and improve property values, provide environmental benefits, mitigate the impacts of development on the community, and help minimize opposition to a proposed development. It is recommended that groups of trees be

preserved, as well as individual trees. Existing preserved trees and shrubs may be credited towards required buffer trees, street trees, and parking lot trees, in accordance with paragraph b), below.

- b) *Credits and Other Incentives to Preserve Vegetation.* Preserved trees may be credited at the following rate:

2 – 6-inch caliper tree = 1 tree

7 – 12-inch caliper tree = 2 trees

13 – 18-inch caliper tree = 3 trees

19 – 24-inch caliper tree = 4 trees

25+ inch caliper tree = 5 trees.

Shrubs shall be credited at a rate of 1:1.

In order to receive credit, preserved vegetation must be in good health and condition. Trees designated to be preserved must be indicated on the site plan and on landscape and grading plans. Protective barriers, if utilized in accordance with paragraph c), below, must also be shown on the landscape and grading plans. A preserved tree shall be replaced with the total number of trees which were credited to the existing tree if the preserved tree dies within five years of completion of the project.

- c) *Protection of Existing Trees During Construction.* The regulations contained in this paragraph shall apply in those circumstances when a developer has elected to protect trees during construction.

- 1) No grading or other land-disturbing activity can occur on a site with existing trees which are designated to be preserved in order to meet landscaping requirements until protective barriers are installed by the developer and approved by the Zoning Administrator or his designee. Trees designated for preservation which are counted toward the landscape requirements must be protected by barriers, while trees designated for preservation which do not count toward the landscape requirements are encouraged to be protected by barriers. The diameter of the preserved trees and the location of protective barriers must be shown on landscape and grading plans with the dimension between the tree trunk and barrier indicated. Barricades shall be placed around the critical root zone of preserved trees that are within 50 feet of any grading or construction activity. The critical root zone is a circle extending around the tree with a one-foot radius for every one inch of tree diameter. For example, a ten-inch diameter tree would have a barricade surrounding it, erected ten feet away from the trunk. All protective barriers must be maintained throughout the building construction process. Protective barriers shall consist of either:

- a) A fence which is at least three feet high and constructed in a post and rail configuration, using two-by-four posts and one-by-four rails; or

- b) A fence with two-by-four posts placed no farther than ten feet apart covered with a four-foot orange polyethylene laminar safety fencing.
- 2) All contractors must be made aware of the areas designated for protection. No disturbance can occur within the tree protection areas including the following:
 - a) Grading;
 - b) Filling, unless an aeration system, certified by a registered landscape architect, certified arborist, or North Carolina Agricultural Extension Specialist, is installed to protect the tree from suffocation;
 - c) Parking;
 - d) Storage of debris or materials, including topsoil;
 - e) Disposal of hazardous wastes or concrete washout; and
 - f) Attaching of nails, ropes, cables, signs, or fencing to any tree designated for preservation.

If any area within the critical root zone will be disturbed for any reason, a registered landscape architect, certified arborist, or North Carolina Agricultural Extension Specialist must recommend measures to minimize any potential impact and certify that the activity will not damage the tree under normal circumstances.

- 3) The developer should coordinate with utility companies early in the design process to resolve potential conflicts about the placement of utilities and landscape requirements. Utilities must either be placed outside of the tree protection area or, with approval from the Zoning Administrator, tunneled at least two feet directly below the tree roots, to minimize root damage.
- 4) If silt fencing is required to control sedimentation, the fencing must be placed along the uphill edge of a tree protection zone in order to prevent sediment from accumulating in the critical root zone area.

Section 8.5 – General Standards

The following general standards shall apply to all landscaping requirements in this article.

- a) Unless otherwise specified, the exact placement of required plants and structures shall be the decision of the developer. The type of plants used shall be limited to those on the approved “Species List” which shall be published and revised from time to time by the Planning Board in consultation with the Jackson County Planning Director. Required landscaping shall be designed in such a manner as to impart its aesthetic character when viewed from any area accessible to the public or from adjacent properties.
- b) *Plant Material.* Plant materials used for installation shall conform to the standards established by the American Association of Nurserymen in the

“American Standard for Nursery Stock,” for each type (i.e., canopy tree, shrub, etc.) with minimum size as appropriate for the minimum caliper size designated in paragraph a), above. Grass sod, when made a part of a buffer, must be healthy, clean, and reasonably free of weeds, noxious pests, or diseases.

- c) *Installation.* All landscaping/screening shall be installed in a sound, workmanlike manner and according to accepted good planting procedures with the quantity and quality of plant materials as described. All elements of landscaping shall be installed so as to meet all other applicable ordinances and code requirements.
- d) *Maintenance.* The owner, occupant, tenant, and the respective agent of each, if any, shall be jointly and severally responsible for the maintenance of all buffer areas and landscaping. Buffers and landscaping shall be maintained in a good condition so as to present a healthy, neat and orderly appearance at least equal to the original installation and shall be kept free from refuse and debris. Dead vegetation and landscaping material shall be promptly replaced with healthy, living plantings. Evergreen hedges shall be trimmed annually or as needed to provide a full visual screen and, in any event, shall not be allowed to exceed eight feet in height without written approval of the Zoning Administrator.
- e) *Walls and Fences.* Any walls used for screening or as part of a buffer shall be constructed in a durable fashion of brick, stone, or other masonry materials. When concrete block is utilized, it shall be finished with stucco on both sides. Other materials may also be considered through the alternative buffer and screening process described in Section 8.3. No more than 10 percent of the surface of a fence or wall shall be left open, and the finished side of the fence or wall shall face the abutting property. A chain link fence may not be used to satisfy the requirements of this Article.
- f) *Overhead Utilities.* Landscaping plans, including plant spacing and species selection shall be such that landscaping required under this article does not conflict with overhead utilities.
- g) *Species Diversity.* When the total number of trees required under the provisions of this article equals 20 or more, then no single tree species shall comprise more than 25 percent of the trees planted on the development site.

Section 8.6 – Bufferyards

Certain land uses may create an adverse impact when developed adjacent to other less intensive land uses. A bufferyard is a permanent unit of land together with plantings and structure(s), if any, which is designed to ameliorate such adverse impacts. Bufferyards, as required in this section, shall be depicted on any site plans reviewed under this ordinance and shall be depicted and described on drawings submitted for the purpose of zoning compliance review. Unless deferred pursuant to a letter of compliance issued under Section 8.8, below, buffers shall be placed and approved prior to issuance of any certificate of occupancy for the development.

- a) *Location of buffers.* Buffers shall be located on lot or parcel boundary lines. Buffers shall not be located on any portion of an existing public or private street or right-of-way, whether opened or unopened.
- b) *Fences.* A wooden fence may be incorporated into a buffer but shall not be allowed to substitute for evergreen shrubs.
- c) *Use of buffer.* If approved by the Zoning Administrator, a buffer may be used for passive recreation; however, no plant material may be removed, and such use shall not be a nuisance.
- d) *Buffers part of required setbacks.* Where front, side and rear setbacks are required by this Ordinance, buffers may be established within such required setbacks.

When a new, non-residential use is proposed to be constructed next to land either zoned residential or in residential use, then a buffer 10 feet in width is required along the property line, with the following number of plants required per 100 linear feet:

2 broadleaf canopy trees	1-1/2 to 1-3/4 inch caliper
2 evergreen trees	Six feet in height
25 evergreen shrubs, 4-foot centers	18 to 24 inches
32 flowering shrubs	18 to 24 inches

One-half of the required number of flowering shrubs shall be planted on the opposite side of the evergreen shrubs, so they will be visible from both sides of the buffer. The flowering shrubs, broadleaf canopy trees, and evergreen trees may be clustered in groups for aesthetic appearance.

Section 8.7 – Screening

These screening requirements shall apply to any development or use other than single-family residences. A buffer as specified in this Article may be used to meet the requirements of this section. The following uses shall be screened from abutting property and from public view from a public right-of-way or a parking lot:

- a) Dumpsters or trash handling areas;
- b) Utility structures associated with a building;
- c) Loading docks or spaces;
- d) Outdoor storage of materials, stock, and equipment, which shall not include the display of goods for sale.

Any screening used to comply with the provisions of this section shall consist of a planting area which is at least five feet wide. This area may contain any type screening materials sufficient to separate visually the land uses, provided such materials meet the requirements of this Article. If only a wall or fence is used, then the area devoted to the screen need only be wide enough to accommodate the wall or fence and allow for its maintenance. Screening shall be designed and maintained in such a manner as to conceal the use from view from the street, from vehicular use areas, and from adjoining properties.

Section 8.8 – Letter of Compliance

It is recognized that land development occurs continuously, and that vegetation used in buffers should be planted at certain times of the year to ensure the best chance of survival. In order to ensure compliance with this article and to reduce the potential expense of replacing buffering, landscaping or screening materials which were installed in an untimely or improper fashion, a letter of compliance must be filed with the Zoning Administrator at the time of zoning compliance review. A letter of compliance will allow the issuance of a conditional certificate of occupancy. This letter will acknowledge that the applicant for a certificate of zoning compliance is aware of any buffer, landscaping or screening requirements which may apply to his or her property and that he or she will comply with those requirements by a specific date, generally to be within the next planting season, but in no case more than one year after the completion of construction of that portion of the project or building for which the certificate was issued. In no event shall a final certificate of occupancy be issued prior to emplacement and approval of the required buffer, landscaping, or screening. Failure to comply with the provisions of this section within the time noted in the letter of compliance will be a violation of the Zoning Ordinance.

Section 8.9 – Landscaping for Vehicular Use Areas

Trees and shrubs are required in and around vehicular use areas with more than six spaces to provide attractive views from roads and adjacent properties, provide shade to reduce the heat generated by impervious surfaces, reduce glare from vehicular use areas, and to help filter exhaust from vehicles.

- a) *Perimeter and Interior Plantings.* Vehicular use areas must be planted with at least one tree and two shrubs for every 4,000 square feet of vehicular use area, which includes parking spaces, aisles, driveways, and loading areas. Trees shall be spaced so that no parking space is more than 65 feet from a tree. At least 75 percent of the required parking lot trees must be broadleaf canopy trees. Trees and shrubs must be planted within 20 feet of the vehicular use area to count as parking lot landscaping.
- b) When a development contains 20 or more parking spaces, 50 percent of the trees and shrubs required by paragraph a), above, must be planted in islands or medians located within the parking lot. Tree islands shall be evenly distributed throughout the parking lot in order to provide an even tree canopy throughout the lot. At a minimum, such tree islands shall consist of an area at least equal in size to two parking places side- by-side (360 square feet). Parking bays shall be broken up with landscaped islands or medians to avoid long monotonous rows of parking. Planting trees in groups is encouraged to increase the total amount of planting area for roots to grow.

At the time of planting, trees and shrubs required in this section shall meet the following minimum size requirements:

- 1) broadleaf canopy trees: one and one-half to two-inch caliper;
- 2) all other trees: five to six feet in height;
- 3) all shrubs: height or spread of 18 to 24 inches.

- c) *Buffering from Street.* Vehicular use areas greater than 4,000 square feet, any portion of which is located within 50 feet of the right-of-way of a street, shall be buffered from the street. The buffer shall be at least three feet high at maturity and may consist of plant material alone, or berms, fences, walls, or grade change combined with plant material. A vegetative buffer shall consist of at least one evergreen or deciduous shrub planted for every five linear feet of buffer required. If a fence or wall is used, it shall be constructed of wood, brick, stone, or other masonry and be architecturally compatible with the proposed structure. Seventy-five percent of the fence or wall shall be opaque with any spaces evenly distributed. The finished side of the fence or wall shall face the street. At least one shrub shall be planted on the street side for each eight linear feet of fence or wall. Berms and grade changes must be completely covered with vegetation. All shrubs planted can count toward the parking lot landscaping requirements.
- d) *Small lots.* Small lots, defined as lots with less than 100 feet of frontage on a roadway or with less than 100 feet of depth, may have site constraints which make strict compliance with the regulations contained in this section a hardship. In such cases, the Board of Adjustment may approve deviations from such regulations so long as the plans of development are consistent with the goals and objectives stated in this ordinance.

Section 8.10 – Street Trees

In addition to all other requirements of this section, at least one tree of 3 - 3½- inches caliper minimum, measured 6 inches above ground, shall be planted for each 25 feet for small maturing trees and for each 40 feet for large maturing trees of the entire building lot which abuts any public street right-of-way with a minimum of one tree required for any distance up to 40 feet. Trees shall not be planted closer than 2 feet, nor more than 10 feet, from the back of the curb.

For the purposes of this paragraph, all specifications for measurement and quality of trees shall be in accordance with the *American Standard for Nursery Stock* published by the American Association of Nurserymen. All trees planted to meet this requirement shall be well-matched specimen grade and shall be limbed up 6 feet. Trees used to fulfill this requirement may be located on public or private property. Maintenance of street trees required under these provisions shall conform to the requirements of Section 8.5 of this Ordinance, including the requirement to promptly replace dead vegetation with healthy, living plantings.

ARTICLE 9 - BOARD OF ADJUSTMENT

Section 9.1 - Establishment of the Zoning Board of Adjustment; Membership; Rules of Conduct and Procedure; and Meetings

Section 9.1.1 Establishment; Membership

A board of adjustment is hereby established which shall consist of five members. These appointments shall be made by the Town of Webster, and by the Jackson County Board of Commissioners. The members appointed by the Jackson County Board of Commissioners shall be made in accordance with GS 160D-307 to proportionally represent the extraterritorial jurisdiction (ETJ) area. Members appointed by the Jackson County Board of Commissioners shall have the same equal rights and privileges as those appointed by the Town of Webster. All members shall serve a term of three years; provided, however, initial terms may be adjusted so that terms are staggered. Vacancies shall be filled by the governing board that made the initial appointment, to fulfill the unexpired term. At all times, at least one member of the Zoning Board of Adjustment shall reside in the extraterritorial jurisdiction.

Section 9.1.2 Alternate Members

The Webster Board of Commissioners shall appoint at least one alternate member to serve on the Zoning Board of Adjustment in the absence of any regular member. Alternate members shall be appointed for three-year terms. While attending in the capacity of a regular member, the alternate shall have and exercise all powers and duties of the absent regular members. The Jackson County Board of Commissioners shall appoint an alternate to serve on the Board of Adjustment in the absence of any member appointed to represent the extraterritorial jurisdiction area.

Section 9.1.3 Reimbursement

Members of the Zoning Board of Adjustment shall serve without pay but shall be reimbursed for any expenses incurred in pursuit of the board's activities subject to approval by the Town Board of Commissioners.

Section 9.1.4 Rules of conduct for members

Members of the board may be removed by the Town Board of Commissioners for cause, including violation of the rules stated below.

Section 9.1.4.1 Faithful attendance at meetings of the board and conscientious performance of the duties required of members of the board shall be considered a prerequisite of continuing membership on the board.

Section 9.1.4.2 A member of the board or any other body exercising quasi-judicial functions pursuant to Article 19 of the North Carolina General Statutes shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed ex parte communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Section 9.1.4.3 No board member shall discuss any case with any parties thereto before the public hearing on that case.

Section 9.1.4.4 Members of the board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

Section 9.1.4.5 No board member shall accept any gift, whether in the form of a service, a loan, a thing of value, or a promise from any person, firm, or corporation that, in the member's knowledge, is interested directly or indirectly in any manner whatsoever in business dealings with the town.

Section 9.1.4.6 No board member shall grant any improper favor, service, or thing of value in the discharge of duties.

Section 9.1.5 General Proceedings of the Board of Adjustment

The Zoning Board of Adjustment shall elect one member to serve as chair and preside over its meetings, and one member to serve as vice-chair, to serve in the absence of the chair. The term of the chair and other offices shall be for one year, with eligibility for re-election. The board shall appoint a secretary, who may be a municipal officer, an employee of the Town, or a member of the Zoning Board of Adjustment. The chair, or if absent the vice-chair, may administer oaths to any witnesses in any matter coming before the board and compel the attendance of witnesses by subpoena. The board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and also keep records of its examinations and other official actions. The board shall in all respects comply with the requirements of G.S. 60D-109(d); 302; 403(b); 405; 406; 702; 705; 1405. The board shall adopt by-laws in accordance with the provisions of this ordinance.

Section 9.1.6 Meetings

Section 9.1.6.1 Board meetings. The board shall hold regular monthly meetings at a specified time and place. Special meetings of the board may be called at any time by the chairman or by request of three or more members of the board. At least 48 hours' written notice of the time and place of meeting shall be given, by the chairman or the land development administrator serving as clerk for the board, to each member of the board. All board meetings are to be held in accordance with G.S. 143-318.9 et seq., commonly referred to as the Open Meeting Law.

Section 9.1.6.2 Cancellation of meetings. Whenever there are no appeals, applications for variances, or other business for the board, or whenever so many regular and alternate members notify the clerk for the board of inability to attend that a quorum will not be available, the chairman, or the zoning administrator, or the person serving as clerk for the board, may dispense with a meeting by giving written or oral notice to all members.

Section 9.1.6.3 Quorum. The board shall not pass upon any questions relating to an appeal from a decision, order, requirement, interpretation, or determination of the land development administrator, or an application for a variance when there are fewer than five members present. For other general business of the board, such as approval of minutes and election of officers, a quorum shall consist of three members of the board.

Section 9.1.6.4 Voting. All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed herein. The concurring vote of four-fifths, or four, of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to grant a variance from the provisions of an ordinance. For the purposes of this Article, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. In all other general matters of the board where a quorum is present, the vote of a majority of the members present and voting shall decide issues before the board. On all appeals, applications and other matters brought before the Zoning Board of Adjustment, the board shall inform all parties of its decisions and reasons therefore in writing.”

Section 9.2 – Procedural Requirements

Section 9.2.1 Application Process

Matters to come before the Board of Adjustment shall be submitted at least 30 days prior to the date of the next regularly scheduled meeting, on the proper form available from the Jackson County Planning Office or from the Town of Webster’s website.

Section 9.2.2 Hearings

All hearings of the board shall be quasi-judicial in nature and shall comply with the requirements of due process applicable to boards of adjustment. All testimony will be sworn, and parties shall be accorded the right of cross-examination. Notice of the time, date and place of the hearing shall be mailed at least 14 days prior to the hearing date to:

- the clerk to the Board of the Town of Webster;
- the appellant, in the case of an appeal;
- the applicant, in the case of a request for a variance;
- if the appellant or applicant is not the owner of the affected property, notice shall likewise be mailed to such owner(s).
- For variances, notice shall also be mailed to the record owners of adjacent properties.

Section 9.3 – Powers and Duties

Section 9.3.1 Authority to Hear and Decide Appeals

The Zoning Board of Adjustment shall have the power to hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by an administrative official charged with the enforcement of this ordinance. An appeal may be taken by any person aggrieved by such decision. Such appeal shall be taken within 20 days of the rendition of such decision by filing a written notice of appeal specifying the grounds thereof with the clerk of Board of Adjustment. The administrative official shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment, after the notice of appeal has been filed with him/her, that because of facts stated in the certificate a stay would, in his/her opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In such case, proceedings shall not be stayed except by a restraining order, which may be granted by the Board or by a court of record on application, as provided for in the North Carolina General Statutes.

Section 9.3.2 Variances

Section 9.3.2.1 Authority

A variance is a means whereby the Town may grant relief from the effect of the zoning ordinance in cases of hardship. A variance constitutes permission to depart from the literal requirements of the ordinance. The Zoning Board of Adjustment shall have the power to authorize a variance from the terms of this ordinance provided in so doing the action is not contrary to the public interests where, owing to special conditions, a literal enforcement of this ordinance will result in impractical difficulties or unnecessary hardship, so that the spirit of this ordinance is observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by variance.

Section 9.3.2.2 Required Findings

Before the Zoning Board of Adjustment may grant a variance, it shall make the following three findings which shall be recorded in the permanent record of the case and shall include the factual reasons on which they are based:

- (a) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the board must find that the five following conditions exist:
 - (i) If the applicant complies with the provisions of the ordinance, the applicant can secure no reasonable return from nor make reasonable use of the property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the

board in granting a variance. Moreover, the board shall consider whether the variance is the minimum possible deviation from the terms of the ordinance that will make possible the reasonable use of the property.

- (ii) The hardship results from the application of the ordinance to the property rather than from other factors such as deed restrictions or personal circumstances.
 - (iii) The hardship is suffered by the applicant's property directly due to the physical nature of the applicant's property, such as its size, shape, topography, or other physical feature such as the presence of a stream, which is different from that of neighboring property.
 - (iv) The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the ordinance.
 - (v) The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others and would not promote equal justice.
- (b) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. That is, the applicant is not seeking to establish, to expand, or to extend in area, a non-conforming use. Moreover, the existence of a non-conforming use in the same or in any other zoning district shall not constitute a reason for granting the requested variance.
- (c) In granting of the variance, the public safety and welfare have been assured and substantial justice has been done.

Section 9.3.2.3 Conditions

In granting the variance, the board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use, as it may deem advisable in furtherance of the purpose of this ordinance.

Section 9.3.2.4 Rehearings

The Zoning Board of Adjustment shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

Section 9.3.2.5 Expiration of Variance

A variance issued in accordance with this section shall expire if a Zoning Certificate or Certificate of Compliance for such use is not obtained by the applicant within six months from the date of the decision.

Section 9.4 – Decisions

A decision by the board shall be made within 31 days from the time of hearing. Written notice by certified or registered mail of the decision in a case shall be given to the applicant by the clerk for the board as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property, if not the applicant, and to other persons who have made written request for such notice. The final decision of the board shall be shown in the record of the case as entered in the minutes of the board and signed by the clerk for the board and the chairman upon approval of the minutes of the board. Such record shall show the reasons for the determination, with summary of the evidence introduced and the findings of fact made by the board. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the board finds to exist. The decision may reverse or affirm, wholly or partly or modify the order, requirement, decision, or determination appealed from. The record shall state in detail what, if any, conditions and safeguards are imposed by the board in connection with the granting of a variance.

Section 9.5 – Appeals from the Zoning Board of Adjustment

Appeals from the Zoning Board of Adjustment shall be taken to the appropriate court of record, as provided by law.

ARTICLE 10 - ADMINISTRATIVE AND LEGAL PROVISIONS, ENFORCEMENT, PENALTIES, AND AMENDMENTS

Section 10.1 - Zoning Administrator

Section 10.1.1 Powers and Duties

The Zoning Administrator is granted the authority to administer and enforce the provisions of this ordinance, exercising the full police power of the Town. The Zoning Administrator, or his duly authorized representative, may enter any building, structure, or premises to perform any duty imposed by this ordinance, provided entry is made with proper notice and at reasonable hours.

Section 10.1.2 Issuance of Certificates

The Zoning Administrator shall have the sole Authority to issue zoning certificates and certificates of compliance.

Section 10.1.3 Administration

The Town of Webster has entered into an agreement with Jackson County to administer its zoning ordinance. Those interested in contacting the Zoning Administrator should call the County Planning Department at 828-631-2261 during the hours of 8 a.m. to 5 p.m., Monday through Friday. Additional information may be found on the website for the [Jackson County Planning Department](#).

Section 10.1.4 Reporting

The Zoning Administrator will report to the Town Board of Commissioners at least semi-annually, or more often at the Board's request, informing them of issuance of certificates, enforcement, administrative activities, and all other official activities pursuant to his or her duties.

Section 10.2 - Zoning Certificate

Section 10.2.1 Certificate Required

No person shall commence or proceed with construction of any new building or with the reconstruction, renovation, alteration, moving or demolition of any existing building, the cost of which exceeds 50 percent of the assessed value of the existing building, according to the Jackson County Tax Office, prior to the issuance of a Zoning Certificate. Application for a Zoning Certificate shall be filed with the Zoning Administrator and may be made prior to or in conjunction with application for a permit under the North Carolina State Building Code. Application shall include the following information:

- (a) A site sketch, drawn to a scale of at least one inch equals forty feet (1" = 40'), of the parcel of property showing its actual dimensions and indicating the size, location and distance from property lines of the proposed building, any other existing building(s), and any other improvements proposed to be accomplished, including but not limited to driveways, sidewalks, and parking areas.
- (b) A drawing of the proposed building drawn to scale and in sufficient clarity and detail to indicate the nature and character of the work to be done and consisting at minimum of a floor plan and elevations of the building (except, however, that the Zoning Administrator may approve minor construction work without compliance with this requirement).
- (c) A description of the use to which the completed project shall be devoted.
- (d) Any other information the Zoning Administrator may deem reasonably necessary to evaluate compliance of the applicant's proposal with the provisions of this ordinance.

Section 10.2.2 Issuance of Certificate

The Zoning Administrator shall review each element of the application and if satisfied that the work described therein complies with the ordinance, issue a Zoning Certificate. Zoning Certificates may be issued prior to application for a permit under the North Carolina State Building Code. After a Zoning Certificate has been issued, no changes or deviations from the terms of the application, plans or permit shall be made until specific written approval has been obtained from the Zoning Administrator. If the Zoning Administrator finds the application to be deficient or the information contained therein to be contrary to the provisions of this ordinance, the application for a Zoning Certificate shall be denied and a written statement setting forth the reasons for the rejection provided to the applicant.

Section 10.2.3 Expiration of Certificate

A Zoning Certificate shall expire six months after the date of issuance if the work authorized has not commenced. If after commencement the work is discontinued for a period of 12 months, the certificate shall immediately expire. Upon expiration, the certificate shall become void, and no work may be performed until a new certificate has been secured.

Section 10.3 - Certificate of Compliance

Section 10.3.1 Certificate Required

A Certificate of Compliance shall be secured from the Zoning Administrator before the making of a permanent connection to electrical service, water service or sewer service.

Section 10.3.2 Timeframe

If any repairs, improvements, or alterations have been performed for which a Zoning Certificate has been issued, a Certificate of Compliance shall be secured from the Zoning Administrator within 30 days from the completion thereof.

Section 10.3.3 Contents of Certificate

The Certificate of Compliance shall certify that the Zoning Administrator has inspected the completed improvements and that the improvements, together with the proposed use thereof, are in conformity with the Zoning Certificate and the provisions of the ordinance.

Section 10.3.4 Occupancy

No new building or part thereof, no addition or enlargement of any existing building, and no existing building that has been altered or moved shall be occupied until a Certificate of Compliance has been issued.

Section 10.3.5 Temporary Certificate of Compliance

The Zoning Administrator may issue a Temporary Certificate of Compliance permitting occupancy of specified portions of an uncompleted building or project for a limited time, not to exceed six months, if the Zoning Administrator finds that the portion of the building or project may safely be occupied prior to the final completion of the entire building or project. The Zoning Administrator may renew the Temporary Certificate of Compliance for additional periods, each period not to exceed six months.

Section 10.4 - Violations

Section 10.4.1 Remedies

If any building, structure or facility is erected, constructed, reconstructed, altered, repaired, converted or maintained in violation of this ordinance; or if any building, structure, facility or land is used in violation of this ordinance, the Zoning Administrator or other appropriate authority or any adjacent or other property owners who would be damaged by such violation may institute any appropriate action or proceedings available in law or in equity to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; to restrain, correct or abate the violation; to prevent occupancy of the building, structure or land; or to prevent any illegal act, conduct, business or use in or about the premises.

Section 10.4.2 Enforcement procedures

When the Zoning Administrator becomes aware of a violation of this article, it shall be their duty to notify the owner of the land of the violation. The owner shall immediately remedy the violation.

- (a) *Notice of violation.* If the owner of the land fails to take prompt corrective action, the director shall give the owner or occupant written notice (by certified or registered mail to his last known address, by personal service, or by posting notice conspicuously on the property) of the following:
 - (i) That the activity is in violation of this article;
 - (ii) The nature of the violation, and citation of sections of this Ordinance that have been violated;
 - (iii) The measures necessary to remedy the violation; and
 - (iv) Mechanisms available to appeal the decision of the Zoning Administrator.
- (b) *Appeal.* Any owner who has received a notice of violation may appeal in writing the decision of the Zoning Administrator to the Board of Adjustment as outlined in Section 9.3.1 of this ordinance. In the absence of an appeal, the decision of the Zoning Administrator shall be final.

Section 10.5 - Penalties for Violations

Section 10.5.1 Responsibility

The owner of any land and any developer, builder, contractor, agent, or other person who participates or acts in concert, assists, directs, creates, or maintains any condition that is in violation of this article may be held responsible for the violation and subject to the civil penalties and remedies provided herein.

Section 10.5.2 Notice

No civil penalty shall be assessed until the person alleged to be in violation has been notified in accordance with Section 10.4 of this ordinance. If after receiving a notice of violation, the owner or other violator fails to take corrective action, a civil penalty may be imposed in the form of a citation. The citation shall be served in the same manner as of a notice of violation. The citation shall state the nature of the violation, shall state the civil penalty to be imposed upon the violator, and shall direct the violator to pay the civil penalty within 15 days of the date of the citation.

Section 10.5.3 Civil Penalty

Any person who violates any provision of this article shall be subject to assessment of a civil penalty in accordance with the following schedule, which includes administrative fees:

- \$50.00 for the first violation;
- \$100.00 for the second violation;
- \$200.00 for the third violation; and
- \$500.00 for the fourth and each succeeding violation.

Section 10.5.4 Continuing Violation

For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty. Unless expressly stated otherwise in a chapter or appendix, a violation of this ordinance shall not constitute a misdemeanor pursuant to N.C.G.S. 14-4. If the offender fails to correct this violation within ten days after being notified of said violation, the penalty may be recovered in a civil action in the nature of a debt.

Section 10.6 – Ordinance Amendments

Section 10.6.1 Planning Board Review

Subsequent to initial adoption of a zoning ordinance, in conformance with G.S. 160D-604, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the Town Board of Commissioners may proceed in its consideration of the amendment without the planning board report. The Town Board of Commissioners is not bound by the recommendations, if any, of the planning board.

Section 10.6.2 Forms

Any person interested in pursuing a rezoning or a text amendment to the zoning ordinance shall fill out the proper form, available from the Jackson County Planning Office or from the Town of Webster's website.

Section 10.6.3 Public Hearing

Before enacting an amendment to this ordinance, the Town Board of Commissioners shall hold a public hearing. Notice of the public hearing shall be given in the newspaper and by posting the property as required in G.S. 160D-601 and G.S.160D-604.

Section 10.6.4 Planning Board Comment

In accordance with G.S. 160D-604(d); 605(a); 701, the planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the Town Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Board of Commissioners.

Section 10.6.5 Town Board of Commissioners' Statement

In accordance with G.S. 160D-605, prior to adopting or rejecting any zoning amendment, the Town Board of Commissioners shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest.

Section 10.6.6 Rehearings

In no instance shall action be initiated for a zoning amendment affecting the same parcel of property, or any part thereof, more often than once every 12 months.

Section 10.6.7 Protests

Zoning ordinances may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a qualified protest against a zoning map amendment, that amendment shall not become effective except by a favorable vote of three-fourths of all the members of the Town Board of Commissioners. For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered 'members of the council' for calculation of the requisite supermajority.

To qualify as a protest under this section, the petition must be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine the 'owners' of potentially qualifying areas.

The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to an adopted (i), (ii), or (iii) conditional district zoning if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development or reduce the size of any buffers or screening approved for the conditional district zoning.

No protest against any change in or amendment to a zoning ordinance or zoning map shall be valid or effective for the purposes of G.S. 160D-102; 108(d); 603 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received the Town Clerk in sufficient time to allow the Town at least two normal work days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The Town Board may by ordinance require that all protest petitions be on a form prescribed and furnished by the Town, and such form may prescribe any reasonable information deemed necessary to permit the Town to determine the sufficiency and accuracy of the petition. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in G.S. 160D-603 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.

Section 10.7- Severability

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

APPROVAL AND EFFECTIVE DATE:

This amended ordinance became effective on this, the 6th day of March, 2024. It was revised and readopted on the 6th day of March, 2024, after a duly authorized public hearing.

FOR THE TOWN OF WEBSTER, NORTH CAROLINA:

Town of Webster:

Attested By:

Tracy Rodes, Webster Mayor

Stephanie Gibson, Webster Town Clerk

Certification:

I, Stephanie Gibson, Town Clerk of the Town of Webster, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance Amendment adopted by the Board of Commissioners of the Town of Webster, North Carolina, in regular session convened on the 6th day of March, 2024.

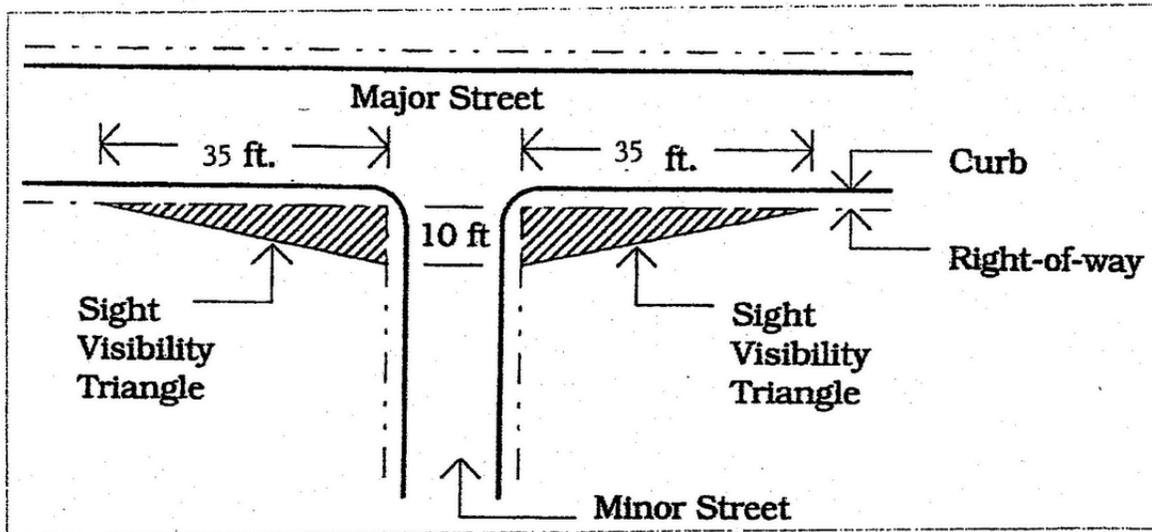
Witness my hand and the corporate seal of the Town of Webster, North Carolina, the 6th day of March, 2024.

Seal

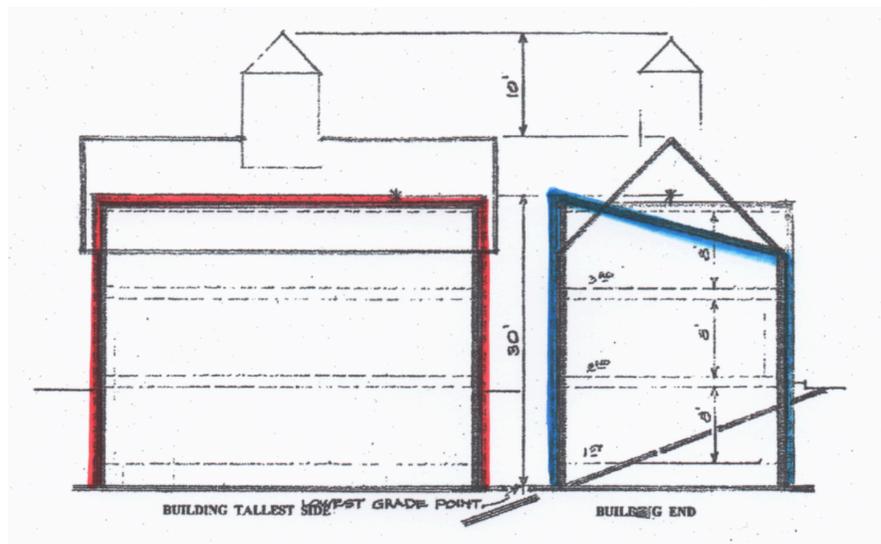
Stephanie Gibson, Webster Town Clerk

APPENDIX A

Sight Visibility Triangle



APPENDIX B



30 feet Maximum Height

Black outline - Pitched Roof

Red outline - Flat Roof

Blue outline - Shed Roof

Recommended Landscape Species List For Street Trees and Land Development Projects In the Town of Webster, North Carolina Planning Jurisdiction

Based on a document prepared in the Fall of 2009, by Cliff Ruth, Extension Area Agent, NC Cooperative Extension, Commercial Horticulture, Henderson/Transylvania Counties, and subsequently edited by Virginia Faust, AICP, NC Department of Commerce, Division of Community Planning and Gerald Green, AICP, Jackson County Planning Director.

Intent

This document does not regulate planting on private property that is not undergoing site plan or development review by the Town of Webster. The species listed here are not intended to be all-inclusive and other species may be approved if selected for climate appropriateness and functional suitability. Developers are highly encouraged to consult local landscape architects, nurseries and/or landscape contractors. Contact information for other governmental agencies that can offer valuable assistance in plant selection is listed below on page 2.

The term "Native" in these lists refers to plants native or indigenous to Eastern North America and not just Western North Carolina. Some plants in this greater area may or may not perform in your particular landscape due to the specific ecosystem or microclimates that you may encounter.

TREES Large, Medium and Small Maturing (page 3), and SHRUBS for screening (page 4)

This list of plants includes large, medium and small trees along with shrubs that may be used to meet the landscaping requirements of the Town of Webster Zoning Ordinance.

UNSUITABLE PLANTS (page 4)

This list of plants have either been deemed as invasive exotic plants by various governmental agencies or institutions, or have been found to be structurally unsound in icy or windy conditions. Use of these plants for new planting is not an option for plans undergoing review by the Jackson County Planning Department for the Town of Webster.

PLANTING UNDER UTILITY LINES (see diagram p. 5)

Many times trees are planted without considering their height at maturity. Mature trees conflicting with overhead utility lines cause power outages and present public safety hazards. In order to avoid this

problem, utility companies prune tree limbs to maintain a safe distance between the tree canopy and utility lines. This pruning often results in an unbalance appearance and can impact the overall health of a tree. A better solution is to plant trees below utility lines that will not interfere with those lines as the tree matures. Please refer to the list for small-maturing trees for ideas on appropriate trees; the particular tree(s) will be reviewed and approved by the Jackson County Planning Department on a case-by-case basis, depending on specific site conditions present at the time of project review.

DROUGHT TOLERANT / XERISCAPE PLANTS (page 6)

This list of plants have been researched and proven to tolerate prolong periods of drought without substantial supplemental irrigation. As with any planting design, the location, soil type, and local climate will play a role in their performance. As with any new planting, any plant in this list will require some supplemental irrigation for the first 3-6 months after they are planted to become established.

PLANTS THAT PREFER DAMP SOIL (page 6)

These plants are appropriate for areas that will remain damp for prolonged periods of time, such as along creek/riverbanks, and in rain gardens.

ADDITIONAL RESOURCES AND CONTACTS

Jackson County Cooperative Extension
538 Scott's Creek Road, Suite 205
Sylva, NC 28779
828-486-4009
<http://jackson.ces.ncsu.edu>

Jackson County Planning Department
401 Grindstaff Cove Road
Sylva, NC 28779
828-631-2255
<http://planning.jacksonnc.org>

NCDOT
District Engineer
345 Toot Hollow Road
Bryson City, NC 28713
828-488-2131
<http://ncdot.org/doh/Operations/Division14/D2/14District2.html>

NC Arboretum
100 Frederick Law Olmstead Way
Asheville, NC 28806
828-665-2492
www.ncarboretum.org

LARGE MATURING TREES >50' tall

BOTANICAL NAME	COMMON NAME	Native
<i>Acer rubrum</i> "Armstrong"	Armstrong Maple	Yes
<i>Acer rubrum</i> "October Glory"; Red Sunset, etc	Red Maple	Yes
<i>Acer saccharum</i>	Sugar Maple	Yes
<i>Betula nigra</i>	River Birch	Yes
<i>Fagus grandifolia</i>	American Beech	Yes
<i>Fraxinus americana</i>	White Ash	Yes
<i>Ginkgo biloba</i>	Maidenhair (male)	Yes
<i>Liquidambar s.</i> "Rotundiloba"	Sweet Gum, Fruitless	Yes
<i>Liquidambar styraciflua</i>	Sweet Gum	Yes
<i>Liriodendron tulipifera</i>	Tulip Tree	Yes
<i>Magnolia grandiflora</i> *	Southern Magnolia	Yes
<i>Pinus strobes</i>	Eastern White Pine	Yes
<i>Platanus occidentalis</i>	Sycamore	Yes
<i>Quercus alba</i>	White Oak	Yes
<i>Quercus borealis</i>	Northern Red Oak	Yes
<i>Quercus coccinea</i>	Scarlet Oak	Yes
<i>Quercus rubra</i>	Red Oak	Yes
<i>Taxodium distichum</i>	Bald Cypress	Yes
<i>Tsuga canadensis</i> *	Canadian Hemlock	Yes
<i>Tsuga caroliniana</i> *	Carolina Hemlock	Yes

MEDIUM MATURING TREES 25' - 50' tall

BOTANICAL NAME	COMMON NAME	Native
<i>Carpinus caroliniana</i>	American Hornbeam	Yes
<i>Cladrastis lutea</i>	American Yellowwood	Yes
<i>Crataegus phaenopyrum</i>	Washington Hawthorn	Yes
<i>Franklinia alata</i>	Franklinia	Yes
<i>Halesia caroliniana</i>	Carolina Silverbell	Yes
<i>Ilex attenuata</i> "Savannah"*	Savannah Holly	Yes
<i>Ilex opaca</i> *	American Holly	Yes
<i>Nyssa sylvatica</i>	Black Gum	Yes
<i>Oxydendrum arboreum</i>	Sourwood	Yes
<i>Thuja occidentalis nigra</i>	Arboritae	Yes

SMALL MATURING TREES < 25' tall

BOTANICAL NAME	COMMON NAME	Native
<i>Amelanchier canadensis</i>	Serviceberry	Yes
<i>Cercis canadensis</i>	Eastern Redbud	Yes
<i>Chionanthus virginicus</i>	Fringe Tree	Yes
<i>Cornus florida</i>	Flowering Dogwood	Yes
<i>Crataegus viridis</i>	Winter King Hawthorn	Yes
<i>Ilex attenuata</i> "Fosteri"*	Foster Holly #2	Yes

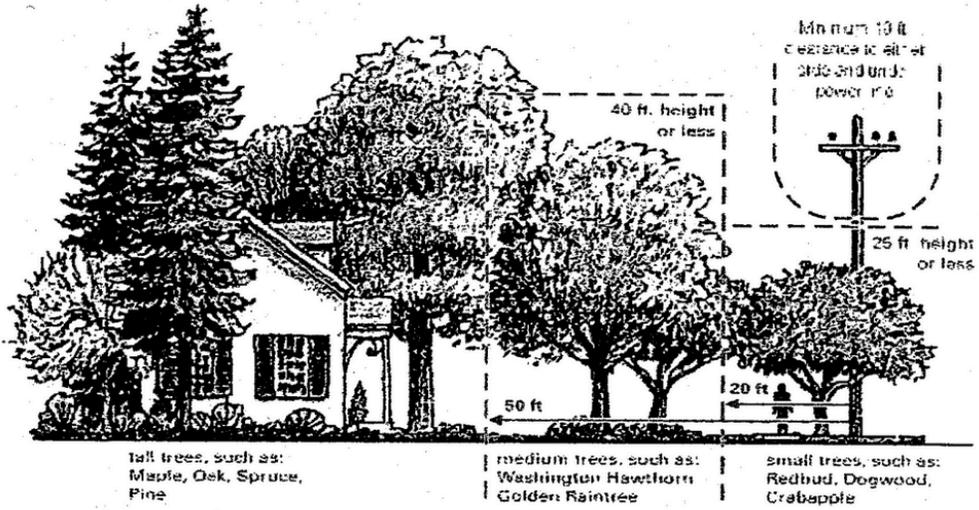
SHRUBS FOR SCREENING

BOTANICAL NAME	COMMON NAME	Native
<i>Aronia arbutifolia</i>	Chokeberry	Yes
<i>Clethra alnifolia</i>	Sweet Pepperbush	Yes
<i>Ilex verticillata</i>	Winterberry holly/Black alder	Yes
<i>Kalmia latifolia</i>	Mountain Laurel	Yes
<i>Myrica cerifera</i>	Southern waxmyrtle	Yes
<i>Pieris floribunda</i>	Mountain andromeda; Fetter-bush	Yes
<i>Rhododendron calendulaceum</i>	Flame azalea	Yes
<i>Rhododendron carolinianum</i>	Carolina Rhododendron	Yes
<i>Rhododendron hybrida</i>	Hybrid Rhododendron	Some
<i>Rhus typhina</i>	Staghorn sumac	Yes

UNSUITABLE PLANTS

BOTANICAL NAME	COMMON NAME
<i>Acer platanoides</i>	Norway Maple
<i>Acer saccharinum</i>	Silver Maple
<i>Albizia julibrissin</i>	Mimosa
<i>Ampelopsis brevipedunculata</i>	Porcelain-berry
<i>Celastrus orbiculatus</i>	Oriental Bittersweet
<i>Elaeagnus angustifolia</i>	Russian Olive
<i>Elaeagnus pungens</i>	Autumn Olive
<i>Elaeagnus umbellata</i>	Thorny Olive
<i>Euonymus alatus</i>	Burning Bush Euonymus
<i>Euonymus fortunei</i>	Wintercreeper
<i>Hedera helix</i>	English Ivy
<i>Ligustrum japonicum</i>	Japanese Privet
<i>Ligustrum sinense</i>	Chinese Privet
<i>Lonicera japonica</i>	Japanese Honeysuckle
<i>Mahonia bealei</i>	Oregon Grape
<i>Microstegium vimineum</i>	Japanese Stilt grass
<i>Miscanthus sinensis</i>	Chinese Silvergrass
<i>Paulownia tomentosa</i>	Princess Tree
<i>Prunus calleryana "Bradford"</i>	Bradford Pear
<i>Rosa multiflora</i>	Multiflora Rose
<i>Vinca minor</i>	Common Periwinkle
<i>Vinca major</i>	Large leaf Periwinkle
<i>Wisteria floribunda</i>	Japanese Wisteria
<i>Wisteria sinensis</i>	Chinese Wisteria

Planting Trees Near Distribution Lines



DROUGHT TOLERANT PLANTS (WOODY)

Shrubs:

Botanical Name	Common Name	Native
<i>Aronia arbutifolia</i>	red chokeberry	Yes
<i>Callicarpa americana</i>	American beautyberry	Yes
<i>Diervilla sessilifolia</i>	southern bush-honeysuckle	Yes
<i>Fothergilla gardenia</i>	dwarf fothergilla	Yes
<i>Ilex verticillata</i>	winterberry holly	Yes
<i>Ilex vomitoria</i>	Yaupon holly	Yes
<i>Itea virginica</i>	Itea	Yes
<i>Myrica cerifera</i>	wax myrtle	Yes
<i>Physocarpus opulifolius</i> Summer Wine	Summer Wine ninebark	Yes
<i>Rhododendron canescens</i>	Piedmont azalea	Yes
<i>Rhododendron spp.</i>	rhododendrons (Catawba or PJM)	Some spp.
<i>Rhus typhina</i> 'Lacianata'	cutleaf staghorn sumac	Yes
<i>Viburnum dentatum</i>	arrowwood viburnum	Yes

Large Trees (larger than 50'):

Botanical Name	Common Name	Native
<i>Carya glabra</i>	pignut hickory	Yes
<i>Carya tomentosa</i>	mockernut hickory	Yes
<i>Quercus alba</i>	white oak	Yes
<i>Taxodium distichum</i>	baldcypress	Yes
<i>Ulmus americana</i> 'Urban'	Urban American elm	Yes

Medium to Small Trees (smaller than 50'):

Botanical Name	Common Name	Native
<i>Aesculus pavia</i>	red buckeye	Yes
<i>Cercis canadensis</i>	eastern redbud	Yes
<i>Chionanthus virginicus</i>	white fringetree	Yes
<i>Cladrastis kentukea</i>	American yellowwood	Yes
<i>Cotinus obovatus</i>	American smoketree or C. x 'Grace'	Yes
<i>Crataegus viridis</i> 'Winter King'	Winter King green hawthorn	Yes
<i>Pinus taeda</i> 'Nana' dwarf	loblolly pine	Yes

PLANTS THAT PREFER DAMP SOIL

Botanical Name	Common Name	Native
<i>Arundinaria Gigantea</i>	Canebreak bamboo or River Cane	Yes
<i>Clethra alnifolia</i>	Summersweet/ Sweet pepperbush	Yes

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Selected Ordinance
Adopted by the Town of Webster from the

JACKSON COUNTY

UNIFIED DEVELOPMENT ORDINANCE

TOWN OF WEBSTER
NORTH CAROLINA



Permits and Procedures

	Contents
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Article III. PERMITS AND PROCEDURES

Section 3.1 Purpose

Article III. - Permits and Procedures Section 3.1 - Purpose

In order to establish an orderly process to develop land within the jurisdiction of the Town of Webster, it is the purpose of this section to provide a clear and comprehensible development process. The Town of Webster has adopted Article III. of the Jackson County Unified Development Ordinance: Permits and Procedures. Therefore, the term "Town of Webster" may be substituted for all instances in which the term "County" is found throughout the following ordinance, subject only to the Inter-local Cooperation Agreement Between the County of Jackson and the Town of Webster for the Provision and Administration of Governmental Services as previously adopted by the Town of Webster and Jackson County. Moreover, all references to the "Board of Commissioners", "Planning Board", and "Board of Adjustment", "Community Planning Council", are hereby replaced with the "Town of Webster" equivalents: Town of Webster Town Board, Webster Planning Board, and Webster Board of Adjustment.

Moreover, in the event of a discrepancy between this the following Ordinance and the Interlocal Agreement, the Interlocal Agreement shall govern. Furthermore, all references to the "Table of Permitted Uses in the Regulated Districts" does not apply in the Town of Webster, which has not adopted said "Table of Permitted Uses."

Section 3.2 General Provisions and Applicability

- (a) The provisions of this article shall be applicable to all development activity under the jurisdiction of Jackson County.

TABLE 3.1: Development Review Procedures identifies the procedures for several processes and permits for Jackson County, the Planning Councils, and several Boards and Commissions for designated development on lands in the County and for the Regulated Districts of the Cashiers Commercial Area, the Cullowhee Community Planning Area, and the US 441 Gateway District.

(a) Authority and Jurisdiction

- (i) This article, enacted in accordance with the provisions of NCGS 160D shall apply to all of Jackson County not within the jurisdictions of the various municipalities and the Qualla Boundary.

Table 3.1 - Development Review Procedures						
Development Permit/Process	Process Type	Review/Recommendation	Decision/Final Action	Appeal	Public Notice Required (Sec 3.5)	Reference
Administrative Adjustment	Administrative	Planning Director ¹	Planning Director	Board of Adjustment ²	N/A	Sec. 3.7.1
Administrative Appeal	Quasi-Judicial	Planning Director	Board of Adjustment	Superior Court	1 & 2	Sec. 3.7.2
Administrative Appeal (Regulated District incl Airport)	Quasi-Judicial	Planning Director	Community Planning Council	Superior Court	1 & 2	Sec. 3.7.2 (c)
Administrative Review	Administrative	Planning Director	Planning Director	Board of Adjustment	N/A	Sec. 3.7.3
Certificate of Appropriateness	Quasi-Judicial	Planning Director	Historic Preservation Committee	Board of Adjustment	1, 2, & 3	Sec. 3.6
Certificate of Occupancy	Administrative	Planning Director/Permitting & Code Enforcement Director ³	Planning Director/Permitting & Code Enforcement Director	Board of Adjustment	N/A	N/A
Design Review - Regulated Districts	Administrative/Quasi-Judicial ⁴	Planning Director	Community Planning Council ⁵	Community Planning Council ⁶	N/A	Sec. 3.7.4
Erosion and Sedimentation Control Plan	Administrative	Permitting & Code Enforcement Director	Permitting & Code Enforcement Director	Sediment & Erosion Control Appeals Board	N/A	Sec. 3.7.5

PERMITS AND PROCEDURES



Development Permit/Process	Process Type	Review/ Recommendation	Decision/ Final Action	Appeal	Public Notice Required (Sec. 3.5)	Reference
Floodplain Development Permit	Administrative	Floodplain Administrator ⁷	Floodplain Administrator	Board of Adjustment	N/A	Sec. 3.7.6
Floodplain Variance	Quasi-Judicial	Floodplain Administrator	Board of Adjustment	Superior Court	1	Sec. 3.7.20
Impervious Surface Area Modifications – Water Recharge	Legislative	Planning Director	Planning Board	Board of Adjustment	1	Sec. 3.4 Sec. 5.5
Industrial Permit	Administrative	Planning Director	Planning Director	Board of Adjustment	N/A	Sec. 3.7.7
Land Development Compliance Permit	Administrative	Permitting & Code Enforcement Director	Permitting & Code Enforcement Director	Board of Adjustment	N/A	Sec. 3.7.8
Manufactured Home Park Construction Permit	Administrative	Permitting & Code Enforcement Director	Permitting & Code Enforcement Director	Board of Commissioners	N/A	Sec. 3.7.9
Map Amendment/Rezoning	Legislative	Planning Director	Board of Commissioners	Superior Court	1, 2 & 3	Sec. 3.7.12
Mountain & Hillside Development Permit	Administrative	Planning Director	Planning Board	Board of Adjustment	N/A	Sec. 3.7.10 Sec. 5.8
Mountain Ridge Protection Permit	Legislative	Planning Board	Board of Commissioners	Superior Court	1 & 2	Sec. 3.7.11 Sec. 5.7
Sign Permit	Administrative	Planning Director	Planning Director	Board of Adjustment	N/A	Sec. 3.7.13
Site Development Plan Permit (Regulated Districts)	Administrative	Planning Director	Planning Director	Board of Adjustment	N/A	Sec. 3.7.14
Special Use Permit	Quasi-Judicial	Planning Director	Multiple Boards and Entities ⁸	Superior Court	1, 2 & 3	Sec. 3.7.15
Stormwater Permit - Regulated Districts	Administrative	Permitting & Code Enforcement Director	Planning Director	Planning Council	N/A	Sec. 3.4
Subdivision, Major Preliminary Plat	Legislative	Planning Director	Planning Board	Board of Adjustment	1	Sec. 3.7.16
Subdivision, Major, Final Plat	Administrative	Planning Director	Planning Director	Board of Adjustment	N/A	Sec. 3.7.16
Subdivision, Minor Plat	Administrative	Planning Director	Planning Director	Board of Adjustment	N/A	Sec. 3.7.17

Development Permit/Process	Process Type	Review/ Recommendation	Decision/ Final Action	Appeal	Public Notice Required (Sec. 3.5)	Reference
Temporary Use Permit	Administrative	Planning Director	Planning Director, Planning Council	Community Planning Council	N/A	Sec. 3.7.18
Text Amendment	Legislative	Planning Director	Board of Commissioners	Superior Court	1 & 2	Sec. 3.7.19
Variance	Quasi-Judicial	Planning Director	Multiple Boards & Entities ^a	Superior Court	1, 2 & 3	Sec. 3.7.20
Vested Rights	Administrative	Planning Director	Planning Director	Planning Board/ Superior Court	N/A	Sec. 1.14 Sec. 3.7.2
Wireless Communications Permit	Quasi-Judicial	Planning Director	Board of Commissioners	Superior Court	1, 2 & 3	Sec. 3.7.15 Sec. 6.3
Zoning Permit - Regulated Districts	Administrative	Planning Director	Planning Director	Community Planning Council	N/A	Sec. 3.7.21

1. Planning Director and/or his/her designee.
2. For the purposes of this article, Board of Adjustment may mean any appeal body (Planning Council, etc.) other than the Superior Court.
3. Permitting & Code Enforcement Director and/or his/her designee.
4. If a Special Use Permit is required, the Design Review Committee makes findings of facts regarding the design standards.
5. The Community Planning Council serves as the Design Review Committee for all regulated districts.
6. The Planning Council is authorized by the Board of Commissioners to make final decision per Section 2.2(b).
7. The Permitting & Code Enforcement Director is also designated as the Floodplain Administrator.
8. Variances may be heard by Board of Adjustment, Planning Board, Regulated District Community Planning Councils, Watershed Review Board, Sediment Control Appeals Board.

Section 3.3 Public Meetings

All meetings of elected or appointed bodies under this Ordinance shall be open to the public in accordance with NCGS 143-318.12 and shall be conducted in accordance with the procedures set forth in these regulations and rules of procedure adopted by the respective bodies and approved by the Board of Commissioners.

Section 3.4 Common Review Procedures

(a) Overview

- (i) This section describes the standard procedural steps and rules generally applicable to development applications reviewed under this Ordinance, except where specified otherwise in this chapter.
- (ii) The flow charts adjacent to the procedures indicate the steps for the specific application for review.

(b) Purpose and Intent

- (i) This common review procedures section establishes the procedures used by the County and its Regulated Districts for the processing of applications for development permits or approvals. It is the intent of this section to establish a uniform set of processes to foster greater efficiency and predictability for applicants, residents, staff, and elected and appointed officials during the review of development applications. Decisions on development applications may be administrative, legislative, or quasi-judicial.

(c) Pre-Application Conference

(i) Purpose

- 1) The purpose of a pre-application meeting is an opportunity in an informal setting for the applicant to learn about the submittal requirements, procedures, and standards applicable to a particular development application. A pre-application meeting is also an opportunity for County staff to become familiar with the proposed development and offer comments as it relates to the standards set forth in this Ordinance.

(ii) Pre-Application Conference

- 1) A pre-application conference between the applicant and County staff is required. This requirement may be waived at the discretion of the Planning Director, Permitting and Code Enforcement Director, and/or his/her designee(s).

(iii) Discussions at a pre-application conference are not binding on the County and do not constitute submittal for formal review of an application.

- 1) Applicants shall contact the appropriate department as listed in Table 3.1: Development Review Procedures, to schedule a pre-application conference.

(d) Application Submittal and Acceptance

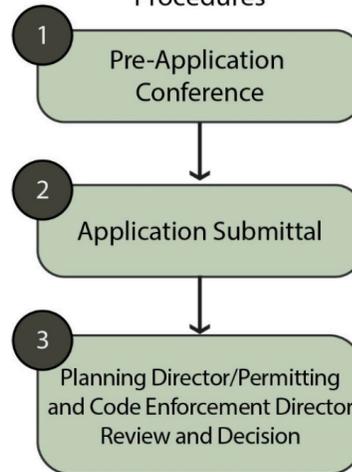
(i) All applications for development approval shall be submitted in accordance with the requirements of this UDO and shall be filed with the Planning or Permitting and Code Enforcement Department as appropriate.

(ii) Applications required under this UDO shall be submitted, fully complete, on forms and in such numbers as required by the County. Required application forms may be found in the office of the Planning Department or the County's website. The County's official application checklists are to provide further guidance to applicants as to the necessary level of detail for certain permit/process types.

(iii) Fees Schedule

- 1) Filing fees have been established to help defray the cost of processing applications. The fee schedule may be found in the office of the Planning Department, Permitting and Code Enforcement, or on the County's website.
- 2) Before review of an application, including applications for re-hearings, all filing fees must be paid in full. No refund of the fee or any part of the fee shall be made unless the application is withdrawn prior to a hearing.

FIG. 3.1 Common Review Procedures



intended

(iv) Completeness Determination

- 1) On receiving a development application, the Planning Director/ Permitting and Code Enforcement Director shall determine, in a reasonable period of time, whether the application is complete or incomplete. A complete application is one that:
 - a) Contains all information and materials identified in the Section as required for submittal of the particular type of application.
 - b) Is in the form and number of copies required by this Section.
 - c) Is legible and printed to scale (where appropriate).
 - d) Is signed by the person with the authority to file the application.
 - e) Includes information in sufficient detail to evaluate whether or not the application complies with the applicable review standards in this Ordinance.
 - f) Is accompanied by the fee established for the particular type of application.
 - g) Includes material associated with a pre-application conference; if applicable.

(v) Application Incomplete

- 1) If the application is incomplete, the Planning Director or Permitting and Code Enforcement Director shall notify the applicant of the deficiencies. The applicant may correct the deficiencies and resubmit the application for completeness determination. The Planning Director or Permitting and Code Enforcement Director may agree to process an application without all required information at the risk to the Applicant as the decision-making body may later require the information prior to acting on the application.

(vi) Application Complete

- 1) On determining that the application is complete, it shall be considered as submitted, and the County shall commence review in accordance with the procedures and standards of this Ordinance.

(e) Staff Review and Action

- (i) Review times for specific permits and procedures shall be listed on the application forms available from the Planning Department, Permitting and Code Enforcement, or County's website.
- (ii) Applications shall be reviewed during the review cycle in place when the application is determined to be complete.
- (iii) When an application is determined to be complete, it shall be distributed by the Planning Director to all appropriate staff and review agencies for review and comment, and the preparation of a staff report, if appropriate.
- (iv) In considering the application, the Planning Director, Permitting and Code Enforcement Director, or other County staff (as appropriate) shall review the application, relevant support material, and any comments or recommendations from other staff and review agencies to which the application was referred.
- (v) In cases where a development application is decided by the Planning Director, Permitting and Code Enforcement Director, or other County staff (as designated), the appropriate County staff member(s) shall approve, approve with conditions, or disapprove the application based on the review standards set forth in this Section.

- (vi) Conditions of approval shall be limited to those deemed necessary to ensure compliance with the standards of this Ordinance and be related in both type and amount to the anticipated impacts of the proposal on the public and surrounding development. All conditions of approval shall be included in the development permit or approval.
- (vii) If deficiencies in complying with applicable standards of this Ordinance are identified, the Planning Director or Permitting and Code Enforcement Director shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to discuss them and revise the application accordingly.

Section 3.5 Public Notification

- (a) Before enacting any amendment to this Ordinance or the district maps, the Board of Commissioners or Community Planning Council shall hold a public hearing. Public notification of such hearing shall comply with the provisions of NCGS 160D-601-602, as amended. Table 3.1, Development Review Procedures, identifies the appropriate notice for specific procedures. The Jackson County Planning Board shall provide review and recommendation of the amendment.
- (b) Level 1- Published Notice
 - (i) In accordance with NCGS 160D-601, a notice of such public hearing shall be published in a newspaper of general circulation in Jackson County once a week for two successive weeks, the first publication of which shall not appear less than ten days or more than 25 days prior to the date fixed for the public hearing. The notice shall include the time, place and date of the hearing and include a description of the property or the nature of the change or amendment to the ordinance and/or map.
- (c) Level 2- Mailed Notice
 - (i) In accordance with NCGS 160D-602, whenever there is an amendment to the district map, the owner of that parcel of land as shown on the county tax listing and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least ten but not more than 25 days prior to the date of the public hearing. The person(s) mailing such notices shall certify to the Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud.
 - (ii) As an alternative to the mailed notice requirements above, the County may elect to serve notice through a full community notification for pending actions that affect at least fifty (50) properties with at least fifty (50) different property owners. The county shall publish notice of the hearing/meeting in a newspaper of general circulation. Two advertisements shall be published in separate calendar weeks. Each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice.
- (d) Level 3- Posted Notice
 - (i) For a proposed amendment to the district map (rezoning), the Planning Department shall post a notice of public hearing sign on the site affected or the adjacent street/highway right of way. In the event that more than one parcel is involved in a particular hearing, at least one sign shall be posted in a central location; however, the Planning Department may post multiple signs. Said sign(s) shall be posted at least ten days prior to the public hearing date. The County may choose to use this method to notice other legislative and quasi-judicial hearings.

Section 3.6 Quasi-Judicial Public Hearing Procedures

(a) Overview

- (i) A quasi-judicial decision is a process that involves the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances per Section 3.6.18, special use permits per Section 3.6.14, and appeals of administrative decisions per Section 3.6.3. In accordance with NCGS 160D, decisions on the approval of major site plans and major subdivision preliminary plats are quasi-judicial in nature if the ordinance authorizes a decision-making board to approve or deny the application based on one or more generally stated standards requiring a discretionary decision on the findings of fact. A list of decision-making boards for quasi-judicial decisions may be found in Table 3.1: Development Review Procedures. As a result, the following standard procedures shall be incorporated as appropriate:

(b) Decision Standards

- (i) In accordance with NCGS 160D, each decision-making board under the provisions of this ordinance shall ensure that the rights of petitioners have not been prejudiced because of the decision-making body's findings, inferences, or conclusions. Standards for quasi-judicial decision-making are located in Sec 3.7.2(c)(iv-vii).

Section 3.7 Procedures for Specific Applications

(a) Purpose and Intent

- (i) This section sets out supplemental procedures, standards, and related information for each of the specific applications in which the County staff, appointed boards or commissions, or the Board of Commissioners must either review, forward a recommendation, or decide. These procedures apply in addition to the common procedures set forth in Section 3.4 Common Review Procedures, unless otherwise specified in this ordinance.

(b) Overview

(i) Structure of Procedures

- 1) For each type of development application reviewed under this Ordinance, the following sections state the purpose of the development permit or approval, the steps in the review process, the review standards for the application, and the provisions addressing expiration and amendment, if applicable.
- 2) Development application provisions in this section are organized in alphabetical order in accordance with the sequence of procedures in Table 3.1.

(ii) Procedural Flowchart Legend

- 1) Each development application review procedure in this section includes a procedural flowchart that depicts the numbered steps in the review process. The numerical value represents the order in which each step of the procedure shall be completed.

Section 3.7.1 Administrative Adjustment

(a) Purpose and Intent

- (i) This section provides an administrative mechanism for allowing certain numeric standards (e.g., setbacks) in this Ordinance, based on specific review criteria, with the intent of providing relief where the strict application of the Ordinance creates practical difficulties in allowing development that otherwise advances the purposes served by this Ordinance and where the adjustment is compatible with the surrounding development. Administrative adjustments are reviewed and approved administratively based upon a set of clear and measurable criteria.

They are accomplished outside of the variance process, and as such do not rely on demonstration of a "hardship".

(ii) Applicability

- 1) Except where otherwise prohibited, an administrative adjustment may be requested for a modification or deviation to any of the following:
 - a) A zoning district dimensional standard in Article IX: Regulated District Standards.
 - b) A numeric use-specific standard in Article IX: Regulated District Standards.
 - c) A numeric requirement in Article VI: Development Standards.
 - d) A numeric requirement in Article IV: Subdivisions.
 - e) In no instance shall an administrative adjustment application seek to reduce the required minimum lot area in a zoning district, the maximum allowable residential density on a lot, the minimum required separation distance between two uses, or the numeric standards in Article V: Environmental Regulations.

(iii) Administrative Adjustment Amount

- 1) An administrative adjustment may allow a deviation from a numeric standard by up to ten (10) percent. In no event shall a variance be granted that would permit the creation of a nonconforming lot that shall conflict with the state building code or any other state code unless otherwise authorized by law or regulation.

(iv) Timing of Review

- 1) An administrative adjustment may be requested either as a stand-alone application, or in combination with another application for development review.
- 2) In cases when submitted concurrently with another application, the administrative adjustment portion of the application shall be reviewed and decided prior to the other portion(s) of the application.

Section 3.7.2 Administrative Appeal

(a) Purpose and Intent

- (i) Unless otherwise provided by statute or this Ordinance, this section sets out the procedure and standards for appealing any decision, determination, or interpretation by the Planning Director or the Permitting and Code Enforcement

FIG 3.2 Administrative Appeal



Director made pursuant to this Ordinance.

(b) Initiation

- (i) An administrative appeal shall be initiated by any person aggrieved by a decision in writing of any administrative official charged with enforcement of regulations, by filing a written notice of appeal with the Planning Director or Permitting and Code Enforcement Director within 30-calendar days of the date the written determination or decision being appealed is made (except where otherwise specified in this Ordinance).

(c) Appeal Procedure

(i) Application Submittal and Acceptance

- 1) Applicable (See Section 3.4(d), Application Submittal and Acceptance).
- 2) The written notice of appeal shall include a statement of the error or improper decision or determination, the date of the decision or determination, the grounds for the appeal, and all related support materials.

(ii) Staff Review

- 1) Applicable (see Section 3.4(e) Staff Review and Action).
- 2) On accepting a notice of appeal, the Planning Director or Permitting and Code Enforcement Director shall transmit to the Board of Adjustment or Community Planning Council the appeal and the record of material considered by the decision-maker in making the decision or determination (including but not limited to, the application and support materials, staff report, other plans, documents, reports, and studies considered in making the decision, and any minutes, transcripts, or record of the meetings held to consider and make the decision).
- 3) The Planning Director or Permitting and Code Enforcement Director shall, as appropriate, review and comment on appeals of their decisions related to the aspects of this Ordinance for which they are responsible for administering.

(iii) Public Notification

- 1) Applicable (see Section 3.5 Public Notification)

(iv) BOA Review and Decision

- 1) Applicable (see Section 3.7.2 (4) and Section 3.6, Quasi-Judicial Public Hearing Procedures).
- 2) The BOA, at the conclusion of a quasi-judicial public hearing, shall decide the application for appeal.
- 3) The decision shall be based on the competent, material, and substantial evidence in the record of the appeal, as supplemented by arguments presented at the quasi-judicial hearing, and the standards in Section 3.7.2 (vi), Appeal Review Standards.
- 4) The decision shall be one of the following:
 - a) Affirmation of the decision or determination (in whole or in part).
 - b) Modification of the decision or determination (in whole or in part).
 - c) Reversal of the decision or determination (in whole or in part).

- 5) A vote to reverse or modify a decision or determination shall require approval of a majority of a quorum present at the hearing.
- 6) Each decision shall be made in writing and reflects the decision-making body's (e.g. BOA and other entities as shown in Table 3.1: Development Review Procedures and as described in the procedures in this Section) determination of contested facts and their application to the standards in this Ordinance.
- 7) The written decision shall be signed by the Chair or other duly authorized member of the BOA.
- 8) The decision of the BOA shall be effective upon the filing of the written decision.

(v) Notification of Decision

- 1) The decision of the BOA shall be delivered by personal service, electronic mail, or by first-class mail to the applicant, the landowner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person providing notification of decision shall certify that proper notification has been made.

(vi) Appeal Review Standards

- 1) The BOA is limited to the following determinations in considering the appeal:
 - a) Whether the decision-maker erred in the interpretation of the standards of this Ordinance.
 - b) Whether the decision-maker erred in determining whether a standard of this Ordinance was met.
- 2) The BOA shall not hear any evidence or make any decision based on hardships or special conditions. (Such matters may only be considered in the context of an application for a variance per Section 3.7.20.)

(vii) Appeal

- 1) Any decision by the BOA shall be subject to Superior Court review by proceedings in the nature of certiorari.

Section 3.7.3 Administrative Review

(a) Administrative Review Procedure

Administrative review is performed by staff, refer to Section 3.4 for Common Review Procedures.

Section 3.7.4 Design Review (Regulated Districts)

(a) Purpose and Intent

- (i) Design review is required for those projects within the Cashiers Commercial Area, the Cullowhee Community Planning Area, and



the US 441 Gateway District that involve a substantial change in the appearance of a building or landscape. The review procedure seeks to encourage rehabilitation and new construction that enhances and preserves the character of the Regulated Districts, promotes visual harmony, and develops creative design solutions.

(b) Applicability

- (i) Design review shall be required for all new construction; rehabilitation projects where the existing building will be substantially altered, special use permit applications, site plans, signage, landscaping, and exterior illumination. The relocation of a building shall also require design review.
- (ii) The design review process is a mandatory review compliance program.
- (iii) Design review shall be conducted by the Design Review Committee with assistance and recommendations provided by the Jackson County Planning Department.
- (iv) Applicants are encouraged to implement their development plans in accordance with the design standards set forth in Article IX: Regulated Districts of this Ordinance. Projects for which design review is required will be evaluated for their compliance with said design standards.

(c) Design Review Procedure

- (i) Pre-application Conference.
 - 1) A meeting with the Jackson County Planning Department staff is recommended prior to the submittal of an application for design review. Advice regarding the information required for submittal and the review schedule can be provided in the pre-application conference.

(d) Application Submittal

- (i) Filing of application. An application for design review shall be filed by the owner of the property or a duly authorized representative of the owner. The application shall be filed with the Jackson County Planning Department on a form provided by the Department.
- (ii) Fees. Any application fee, as designated by the Jackson County Board of Commissioners, shall be due and payable upon submission of the application.
- (iii) Information Required. Each application for design review shall contain a site plan prepared in accordance with the site plan requirements within Article IX (Regulated Districts), building elevations, and additional information regarding the design and materials of the proposed project.
- (iv) Staff Review. The Jackson County Planning Department shall review the application and related information for compliance with the design standards set forth in Article IX (Regulated Districts) of this ordinance within 15 working days of the submittal of the application. The Planning Department staff shall meet with the applicant upon completion of the review to discuss the review findings. Immediately following the completion of the staff review, the Jackson County Planning Department shall schedule the application for review by the Community Planning Council at their next available regular meeting.
- (v) Formal Review.
 - 1) For design review applications associated with projects requiring a zoning permit issued by the Planning Department, the Planning Council will review the application and related information for compliance with the design standards set forth in Article IX (Regulated Districts) of this

Ordinance. This review by the Planning Council may approve proposed project if it complies with the design guidelines, may approve with conditions or recommendations, or may find the proposed project is not in compliance with the design guidelines.

- 2) For design review applications associated with projects that require a special use permit, the Planning Council will review the design guidelines set forth in Article IX (Regulated Districts) as a standard for the granting of a special use permit. The Planning Council may approve proposed project if it complies with design guidelines, may approve with conditions or recommendations, or may find the proposed project is not in compliance with the design guidelines.

Section 3.7.5 Erosion and Sedimentation Control Plan

(a) Purpose and Intent

- (i) The purpose of this section is to establish procedures for certain land disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution and degradation of water and other damage to lakes, watercourses, and other public and private property by sedimentation.

(b) Applicability

- (i) This section shall apply to all land disturbing activities, as defined, within the territorial jurisdiction of the County and to the municipalities including extraterritorial jurisdiction of the municipalities as allowed by the agreement between the local governments or other appropriate legal instrument or law.

(c) Procedures

- (i) Refer to erosion and sedimentation control procedures in Section 5.3.

(d) Exceptions

- (i) This section shall not apply to the following land disturbing activities:
 - 1) Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - a) Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
 - b) Dairy animals and dairy products.
 - c) Poultry and poultry products.
 - d) Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats.
 - e) Bees and apiary products.
 - f) Fur-producing animals.
 - g) Mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.

- h) Trout production and other aquaculture activities.
- 1) An Activity undertaken on forestland for the production and harvesting of timber
 - 2) and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract. Activities for which a permit is required under the Mining Act of 1971, NCGS 74-7;
 - 3) Land disturbing activity over which the state has exclusive regulatory jurisdiction as provided in NCGS 113A-56(a).
 - 4) For the duration of an emergency, activities essential to protect human life.
 - 5) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
 - 6) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2

Section 3.7.6 Floodplain Development Permit

(a) Purpose and Intent

- (i) The purpose of this section is to ensure that proposed development activities within the County's special flood hazard areas comply with all standards set forth in this Ordinance.

(b) Applicability

- (i) This section shall apply to all special flood hazard areas within the County, including the municipal jurisdictions, including extra-territorial jurisdictions of Sylva, Dillsboro, Webster, and Forest Hills.

(c) Floodplain Development Permit Procedure

- (i) Floodplain development permit review is performed by staff, refer to Section 3.4 for Common Review Procedures.

(d) Application Requirements

- (i) Application for a floodplain development permit shall be made to the Permitting and Code Enforcement Director prior to any development activities located within special flood hazard areas. The following items shall be presented to the Permitting and Code Enforcement Director to apply for a floodplain development permit:
 - 1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

- a) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - b) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in subsection 5.6.1(f), or a statement that the entire lot is within the special flood hazard area;
 - c) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in subsection 5.6.1 (f);
 - d) The boundary of the floodway(s) or non-encroachment area(s) as determined in subsection 5.6.1 (f);
 - e) The base flood elevation (BFE) where provided as set forth in subsection 5.6.1 (f), subsection 5.6.1 (b) or 5.6.3 (d);
 - f) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
 - g) The certification of the plot plan by a registered land surveyor or professional engineer may be required.
- 2) Proposed elevation, and method thereof, of all development within a special flood hazard area including but not limited to:
- a) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - b) Elevation in relation to mean sea level to which any nonresidential structure in Zone AE, A or AO will be floodproofed; and
 - c) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed .
- 3) If floodproofing, a floodproofing certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- 4) A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this chapter are met. These details include but are not limited to:
- a) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
 - b) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with subsection 5.6.3 (b)(ii). when solid foundation perimeter walls are used in zones A, AO, AE, and A1-30.
- 5) Usage details of any enclosed areas below the lowest floor.
- 6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

- 7) Certification that all other local, state, and federal permits required prior to floodplain development permit issuance have been received.
- 8) Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of subsections 5.6.3 (b)(iv) and (v) of this Ordinance are met.
- 9) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(e) Permit Requirements

- (i) The floodplain development permit shall include, but not be limited to:
- 1) A description of the development to be permitted under the floodplain development permit.
 - 2) The special flood hazard area determination for the proposed development in accordance with available data specified in subsection 5.6.1(f).
 - 3) The regulatory flood protection elevation required for the reference level and all attendant utilities.
 - 4) The regulatory flood protection elevation required for the protection of all public utilities.
 - 5) All certification submittal requirements with timelines.
 - 6) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
 - 7) The flood openings requirements, if in Zones A, AO, AE or A1-30.

(f) Certification Requirements

- (i) Elevation certificates
- 1) An elevation certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
 - 2) An elevation certificate (FEMA Form 81-31) is required after the reference level is established. Within seven calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

- 3) A final as-built elevation certificate (FEMA Form 81-31) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.
- (ii) Floodproofing certificate. If nonresidential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.
 - (iii) If a manufactured home is placed within zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of section 5.6.3 (b)(iii)(b).
 - (iv) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit .
 - (v) Certification exemptions. The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items (1) and (2) of this subsection:
 - 1) Recreational vehicles meeting requirements of subsection 5.6.3 (b)(iv)
 - 2) Temporary structures meeting requirements of subsection 5.6.3 (b)(v)
 - 3) Accessory structures less than 150 square feet meeting requirements of subsection 5.6.3 (b)(vi).

Section 3.7.7 Industrial Development Permit

(a) Industrial Development Permit Procedure

- (i) Industrial development permits are reviewed by staff, refer to Section 3.4 for Common Review Procedures.

Section 3.7.8 Land Development Permit

(b) Purpose and Intent

- (i) The purpose of this section is to ensure that proposed development activities comply with all standards set forth in this Ordinance.

(c) Applicability

- (i) This section shall apply to all the County except for those areas included within the planning jurisdiction of any incorporated municipalities and those areas within the Qualla Boundary, as provided by law. No person shall undertake any land disturbing activity subject to this section without first obtaining a land development permit and/ or soil and erosion control permit from the County, except that no permit shall be required for any land disturbing activity as outlined in Section 3.7.8(e).

(d) Land Development Permit Procedure

- (i) Pre-Application Conference
 - 1) Optional (see Section 3.4(c) Pre-Application Conference).
- (ii) Application Submittal and Acceptance
 - 1) Applicable (see Section 3.4(d) Application and Submittal Acceptance).
 - 2) From and after the effective date of the Ordinance from which this section is derived, it shall be unlawful for any person or entity to undertake development, as defined herein, without first obtaining a land development compliance permit from the Permitting and Code Enforcement Director.
 - 3) Requests for a permit to conduct land disturbing activities shall contain a sediment control plan. Requests for a permit to conduct land disturbing activities exceeding three acres shall require the developer or property owner to provide a sediment control plan drawn by an appropriately licensed or certified design professional and if that same permit disturbs five or more acres, an appropriately licensed or design professional shall conduct timely inspections.
- (iii) Staff Review and Action
 - 1) The Permitting and Code Enforcement Director shall issue a land development compliance permit only upon determining that the development activity complies with all ordinances and regulations of the County and all other applicable requirements.
 - 2) The Permitting and Code Enforcement Director shall review the application and accompanying plan for completeness and compliance with this section. If the submitted plan is approved by the Code Enforcement Director, a permit to conduct land disturbing activities shall be issued in the name of the applicant. Permits are valid for three years after they are issued; construction shall begin within the three-year time period or the permit shall expire and a new permit shall be required.
 - 3) Permits shall be prominently displayed on the site until the project is certified complete by the erosion control officer. In addition, a copy of the approved sediment control plan shall be kept on hand at the job site at all times for inspection.

(e) Appeals

- (i) Applicable (see Section 3.7.2 Administrative Appeal)

(f) Exceptions

- (i) Land Development Permit

- 1) Bona Fide Farms

- a) This section shall not apply to property used for bona fide farm operations except as provided by NCGS 160D-903.

- (ii) Soil and Erosion Control Permit

- 1) This section shall not apply to any land disturbance activity undertaken for the purpose of fighting fires;
- 2) For the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage; or
- 3) That does not exceed 21,780 square feet (one-half acre) in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

Section 3.7.9 Manufactured Home Park Permit

(a) Manufactured Home Park Permit Procedure

- (i) Manufactured home park permits are reviewed by staff, refer to Section 3.7.3 for Common Review Procedures.

Section 3.7.10 Mountain and Hillside Development Permit

(a) Mountain and Hillside Development Permit Procedure

- (i) Mountain and Hillside development permits are reviewed by staff per Section 3.4 Common Review Procedures.

Section 3.7.11 Mountain Ridge Protection Permit

(a) Mountain Ridge Protection Permit Procedure

- (i) Mountain Ridge Protection Permits are reviewed by staff per Section 3.4 Administrative Review Procedures.
- (ii) Refer to 5.7.1(c-d) for application submittal and approval procedures.

Section 3.7.12 Map Amendment/Rezoning

(a) Purpose and Intent

- (i) This section provides a uniform means for reviewing and deciding proposed amendments to the Official Zoning Maps of Cashiers Commercial Area, Cullowhee Community Planning Area, and US 441 Gateway District, the Airport Hazard District, as well as the Mountain and Hillside District Map.

(b) Applicability

- (i) Proposed zoning map amendments may be initiated by the Jackson County Board of Commissioners, the Jackson County Planning Board, Community Planning Council, the Jackson County Planning Department, or any owner of an equitable or legal interest in the property for which the map amendment is requested.
- (ii) County initiated text amendments do not require an application to be submitted.
- (iii) Pursuant to NCGS 160D-601, requests to down-zone a property by a third-party individual or group without the property owner's consent is prohibited. This does not apply to County initiated zoning map amendments.

(c) Rezoning Procedure

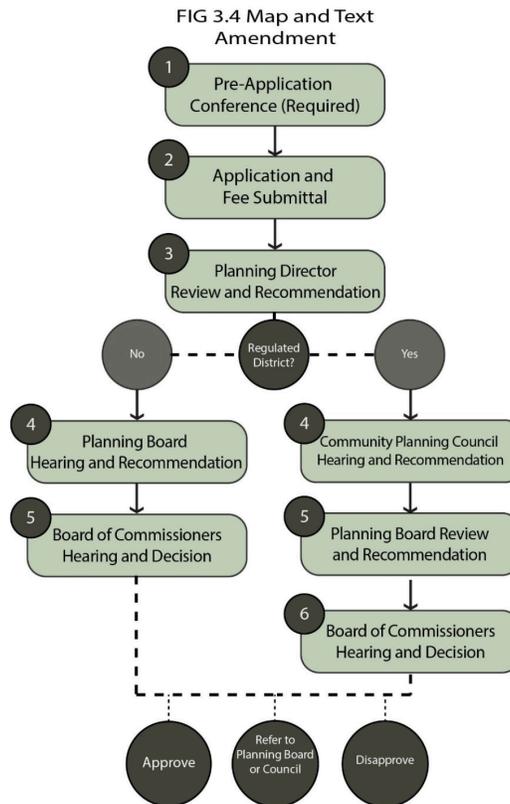
(i) Pre-Application Conference

- 1) Before submitting an application for an amendment, the applicant shall meet with the Jackson County Planning Department to discuss the proposed amendment and to receive information regarding the approval requirements and procedures.

(ii) Application Submittal and Acceptance

- 1) Application for an amendment shall be filed with the Jackson County Planning Department on a form provided by the Department. Any fees, as designated by the Board of Commissioners, shall be due and payable at the time the application is submitted.

- 2) All information required on the application form shall be contained on or accompany the application. Every application for a change in the zoning



district boundary (zoning map amendments) shall be accompanied by metes and bounds description of the property, a survey of the property, or reference to existing lots sufficient to identify the property on the official zoning or district maps of any Regulated District or the Mountain and Hillside Development District.

(iii) Staff Review

- 1) The Planning Director or Designee shall review the application, prepare a staff report, and provide a recommendation to the Planning Council per Section 3.7.12(c)(iv) or the Planning Board per Section 3.7.12(c)(v) below. The Board of Commissioners makes final decision in both processes.

(iv) Community Planning Council Review and Recommendation

- 1) The Community Planning Council shall hold a public hearing to consider proposed amendments.
- 2) A recommendation by the Community Planning Council shall include the adoption of a statement describing how the Planning Council considers the action taken to be consistent with the Comprehensive Plan, reasonable and in the public interest.
- 3) The Community Planning Council shall make its recommendation in writing to the Planning Board for review per Section 3.7.12(c)(v) below. The Community Planning Council shall recommend that the request be approved, approved with conditions, or denied.

(v) Planning Board Review and Recommendation

- 1) Following the receipt of the report regarding the Planning Director's recommendation on a proposed amendment when not in a regulated district, the Jackson County Planning Board shall hold a hearing to review and consider the proposed amendment. The hearing shall be scheduled as provided by the Planning Board's rules of procedure. Notice of the hearing shall be provided as required by Section 3.5.
- 2) Following receipt of the recommendation of the Planning Council on a proposed amendment, the Planning Board shall review and make a recommendation to the Board of Commissioners which will hold a public hearing per Section 3 below. A public hearing of the Planning Board is not required for amendments within regulated districts.
- 3) Recommendations of the Jackson County Planning Board shall be reported to the Jackson County Board of Commissioners for a public hearing and final action according to the process set forth in Section 3.7.12(vi). The Jackson County Board of Commissioners shall schedule the public hearing at their next regularly scheduled meeting after receiving the report.
- 4) A recommendation by the Planning Board shall include the adoption of a statement describing how the Planning Board considers the action taken to be consistent with the Comprehensive Plan, reasonable and in the public interest.
- 5) If the Jackson County Planning Board has made no recommendation on a proposed amendment within 90 days of first considering it, the proposed amendment shall be forwarded to the Jackson County Board of Commissioners for consideration. A record of the Planning Board's comments regarding the proposed amendment shall accompany the proposed amendment.

(vi) Board of Commissioners Review and Decision

- 1) Following the receipt of the report regarding the Community Planning Council's action on a proposed amendment, the Jackson County Board of Commissioners shall hold a public

hearing to consider the proposed amendment. The public hearing shall be scheduled as provided by the Board of Commissioner's rules of procedures. Notice of the public hearing shall be provided as required by statute.

- 2) Before acting on any proposed amendment, the Board of Commissioners shall consider any recommendations made by the Community Planning Council and/ or the Jackson County Planning Department, the comments made at the public hearing, and other relevant information.
- 3) Upon reviewing all pertinent information, the Board of Commissioners may adopt the proposed amendment, reject the proposed amendment, refer the proposed amendment back to the Jackson County Planning Board for further consideration or hearing, or modify the proposed amendment.
- 4) In accordance with NCGS 160D-605, approval by the Board of Commissioners or other decision-making body, shall include adoption of a statement describing how the Board of Commissioners considers the action taken to be consistent with the Comprehensive Plan, reasonable and in the public interest.
- 5) All amendments and changes must be in the form of an ordinance. Copies of adopted ordinances shall be kept on file at the office of the Clerk to the Board of Commissioners.

(d) Appeals

- (i) An appeal from the decision of the Board of Commissioners regarding a map amendment/rezoning may be made by an aggrieved party and shall be made to the Jackson County Superior Court in the nature of certiorari. Any such petition shall be filed with the Clerk of the Superior Court within 30 days after the decision of the Board of Commissioners is filed with the County Clerk, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Board of Commissioners at the time of its hearing of the case, whichever is later. The decision of the Board of Commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

(e) Waiting Period for Subsequent Applications

- (i) When an application for a zoning map amendment has been approved or denied by the Jackson County Board of Commissioners, no rezoning application covering the same property shall be accepted or considered within 12 months after the date of the approval or denial. This restriction shall apply whether or not the new application is for a zoning classification different from the original application.
- (ii) The waiting period required by this section may be waived by a three-quarter ($\frac{3}{4}$) vote of the Jackson County Board of Commissioners if it determines that there have been substantial changes in conditions or circumstances that relate to the request.

(f) Conditional Rezoning

- (i) See Section 9.4.3(j) Conditional Zoning Districts (applicable to Cullowhee).

Section 3.7.13 Sign Permit

(a) Sign Permit Procedure

- (i) Sign permits are reviewed by staff. Refer to Section 3.4 for Common Review Procedures.
- (ii) See also Article IX: Regulated Districts, for additional sign procedures.

Section 3.7.14 Site Development Plan (Regulated Districts)

FIG 3.5 Site Development Plan

(a) Purpose and Intent

- (i) It is the purpose of this section to establish a procedure which will enable the County to consider site plan applications for improvements to land within the County's Regulated Districts.

(b) Applicability

- (i) Site development plan review is applicable to any development activity or subdivision of land within any regulated district. See also Article IX: Regulated Districts for individual district standards and requirements.
- (ii) Cashiers Commercial Area Regulated District requires a Special Use Permit for all development. See also Section 3.7.15 below.

(c) Site Development Plan Procedure

(i) Pre-Application Conference

- 1) It is recommended that a pre-application conference be scheduled with the Planning Director prior to application submittal. Preliminary plans may be shown at this conference in order to receive general guidance.

(ii) Application Submittal and Acceptance

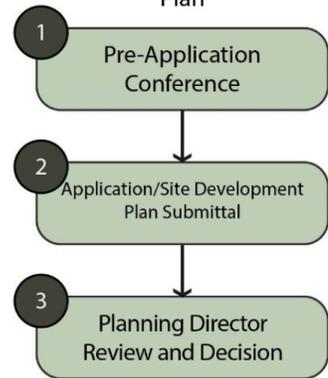
- 1) Each application for a site development plan shall contain the information required on the application form

(iii) Staff Review and Decision

- 1) Following submittal of the application and site plan, they shall be reviewed by the staff of the Jackson County Planning Department for compliance. The Planning Department staff may request input from other local, regional, and/ or state agencies to assist in the thorough review of the site construction plan.
- 2) The Planning Director shall approve the site development plan if staff finds the application and site plan in compliance with the requirements of this Ordinance.

(d) Appeal

- (i) Reference Section 3.7.2, Administrative Appeals.



Section 3.7.15 Special Use Permit

(a) Purpose and Intent

- (i) The special use permit review process is established to provide for the adequate review and consideration of those uses which, because of their unique characteristics and impacts upon the community, require individual consideration of their location, design, configuration, and/ or operation in the community. The individual consideration may also call for the imposition of individualized conditions in order to ensure that the use, including Wireless Communication Facilities, is appropriate in the community. Any use identified as a special use in the Permitted Uses Section of the Regulated Districts in Article IX, shall not be permitted without the approval of the appropriate Community Planning Council in accordance with the requirements and procedures set forth in that section.

(b) Applicability

- (i) Uses identified in the Table of Permitted Uses in the Regulated Districts, shall be approved as a

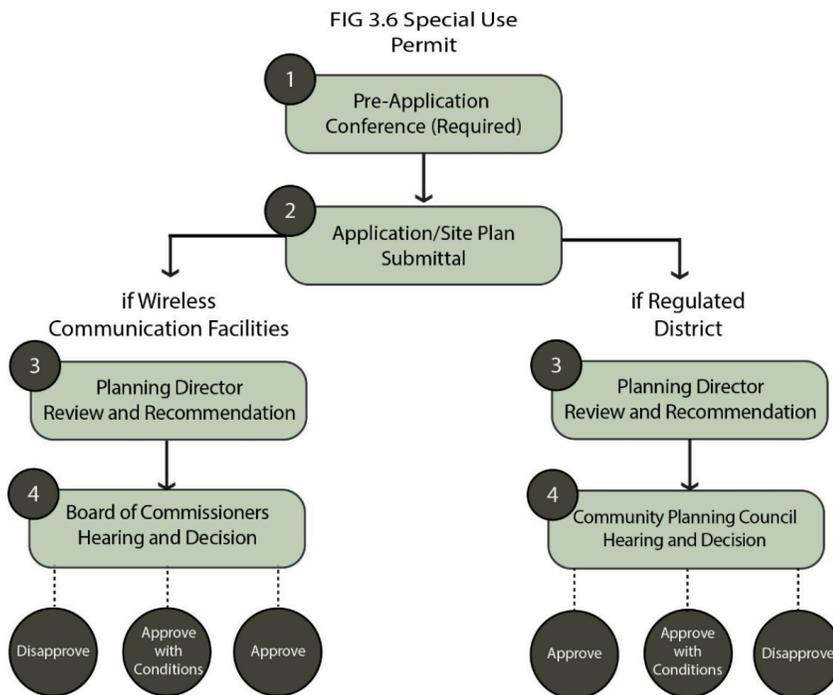
special use in accordance with the procedures and standards of this section, prior to development. This procedure shall also be followed for wireless telecommunications permits.

(c) Wireless Telecommunications Permits

- (i) A wireless communication facilities permit shall be considered a special use permit and shall be subject to the review procedures mandated for such permits.

(d) Special Use Permit Procedure

- (i) Pre-Application Conference
 - 1) Every applicant for a special use permit is required to meet with the Jackson County Planning Department in a pre-application conference prior to the submittal of a special use application. The purposes of the conference are to provide additional information regarding the review process and assistance in the preparation of the application.
- (ii) Application Submittal and Acceptance
 - 1) An application for a special use permit may be filed by the owner of the property or by an agent specifically authorized to submit the application. The application for a special use permit shall be filed with the Jackson County Planning Department on a form provided by the Planning Department or on the County Website.
 - 2) Each application for a special use permit shall contain the information required on the application form and a site plan meeting the requirements set forth on the site plan checklist..
- (iii) Staff Review and Recommendation





- 1) Following submittal of the application and site plan for the special use permit, they shall be reviewed by the staff of the Jackson County Planning Department for compliance with the requirements of this section. The Planning Director may request input from other local, regional, and/or state agencies, such as the Jackson County Health Department and the North Carolina Department of Transportation, to assist in the thorough review of the special use permit application and site plan. The Planning Director shall review the special use permit application and site plan within 15 working days of its submittal.
 - 2) Upon review of an application and site plan for a special use permit, the Director will make one of the following recommendations:
 - a) **Approval.** If the Planning Director finds the application and site plan to be in compliance with the requirements of this Ordinance, they shall forward their report and the special use permit application and site plan to the appropriate Community Planning Council for review and final action (Section 3.7.15 (v)), Community Planning Council Review and Decision). If the application is for a Wireless Communications facilities permit, the permit application shall be forwarded to the Board of Commissioners (Section 3.7.15 (vii)), Board of Commissioners Review and Decision).
 - b) **Approval with Conditions.** If the Planning Director staff recommends approval with conditions, the applicant may revise the plans to address the conditions of the approval and resubmit it. The revised plan shall be reviewed by the Planning Director and, if the identified conditions are adequately addressed, the special use permit application and site plan shall be forwarded to the Community Planning Council or Board of Commissioners for review and final action. If the plan is not revised to meet the conditions within 30 days after the decision by the Planning Director, the request shall be deemed withdrawn and the applicant must resubmit the application with all required information and payment of fees.
 - c) **Denial.** If the Planning Director recommends denial of the request, the reasons for denial shall be provided in writing to the applicant. The special use permit may be revised to address the reasons for denial and resubmitted in accordance with the provisions of this ordinance. A recommendation for denial by the Planning Director shall be considered final action on the request unless, within 30 days of receiving the written determination, the applicant provides a written request for review by the appropriate Community Planning Council or the Board of Commissioners.
- (iv) Public Notification
- 1) Applicable (refer to Table 3.1: Development Review Procedures).
- (v) Community Planning Council Review and Decision (Regulated Districts)
- 1) The Community Planning Council shall consider the special use permit request at a public hearing, within 35 days of receiving the recommendation regarding the special use permit application and site plan from the Jackson County Planning Director.

- 2) The Community Planning Council, after conducting the public hearing may, in accordance with Section 3.7.15 (vi), Special Use Review Standards, deny approval; table the request pending submittal of additional information; or approve the special use permit. The minutes of the Community Planning Council shall state whether the proposed special use does or does not meet each of the standards set forth in Section (vi) of this Ordinance and all other requirements set forth in this Ordinance for the proposed special use. The decision on the special use permit shall be by a simple majority vote of those members of the Community Planning Council present at the meeting at which the action is taken.
- 3) A Design Review Committee, as appointed by and composed of members of the applicable Community Planning Council, shall review all special use permit applications and site plans for compliance with the design standards set forth in Section 3.7.4 of this Ordinance and in accordance with the special use review standards (vi) below.

(vi) Special Use Permit Review Standards (Regulated Districts)

- 1) The Community Planning Council shall not approve the special use permit application and site plan unless and until it makes the following findings, based on the evidence and testimony presented at the public hearing or otherwise appearing in the record of the case:
 - a) That the proposed use or development of the land will not materially endanger the public health or safety.
 - b) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
 - c) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting properties.
 - d) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the community.
 - e) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.
 - f) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

(vii) Board of Commissioners Review and Decision (Wireless Communication Facilities)

- 1) Quasi-judicial hearing. Upon receipt of a report from the Planning Department requesting a quasi-judicial hearing on the application for a wireless communication facility permit, a hearing shall be scheduled by the Jackson County Board of Commissioners on the application. Notice of all quasi-judicial hearings shall be in accordance with the North Carolina General Statutes. In addition, owners of all adjoining properties and all properties abutting any private road to be used to access the proposed site of the proposed facility shall be notified of the hearing by first class mail. Such notice shall be provided as required by law prior to the hearing. The quasi-judicial hearing on the application shall be scheduled by the Jackson County Board of Commissioners and shall meet all requirements for such a hearing.

(viii) Action by the Jackson County Board of Commissioners



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- 1) Designation of approval body. The Jackson County Board of Commissioners is hereby designated as the approval body for wireless communication facilities permits required by this section and is granted all necessary authority to carry out this responsibility.
 - 2) Review of the wireless communication facilities permit request. In order to preserve the integrity of the quasi-judicial hearing and at the same time comply with NCGS 160D-406, the Jackson County Board of Commissioners shall consider the wireless communication facilities permit request, at a quasi-judicial hearing.
 - 3) Conditional use standards. The Jackson County Board of Commissioners shall not approve the wireless communication facilities permit application unless and until it finds that the application meets all requirements set forth in this section and makes the following findings, based on the evidence and testimony presented at the public hearing or otherwise appearing in the record of the case:
 - a) That the proposed use or development of the land will not materially endanger the public health or safety.
 - b) That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed facility, site and access road design and any mitigation techniques or measures proposed by the applicant.
 - c) That adjacent/adjoining property owners have not demonstrated that proposed use or development of the land will substantially injure the value of adjoining or abutting properties.
 - d) That the site can be accessed by service and emergency vehicles.
 - e) That the application, site, and proposed improvements comply with all provisions of this Section.
- (ix) Decision by the Jackson County Board of Commissioners. The Jackson County Board of Commissioners, after conducting the quasi-judicial hearing, may: deny approval; table the request pending submittal of additional information; or approve the wireless communications permit with or without additional conditions. The minutes of the Jackson County Board of Commissioners shall state whether the proposed use does or does not meet the requirements set forth in this Section for the proposed use, and if the permit request is approved, the findings required by this Section for such approval shall be stated within the minutes. The decision on the permit application shall be by a simple majority vote of those members of the Jackson County Board of Commissioners present at the meeting at which the action is taken. Any action taken by the Jackson County Board of Commissioners shall be given to applicant and property owner in writing within 30 days of the date the action is taken. If the application is denied, the Jackson County Board of Commissioners shall state the reason(s) for said denial in its notification to the applicant.
- (x) Transfer of approval
- 1) A special use permit approval may be transferred to a subsequent owner of the property for which the permit was issued but may not be transferred to another property.
- (xi) Resubmission of denied applications

- 1) No application for approval of a special use permit shall be filed with or accepted by the Jackson County Planning Department that is identical or substantially similar to an application that has been denied by a Community Planning Council.
- 2) No application for approval of a wireless communication permit shall be filed with or accepted by the Planning Department that is identical or substantially similar to an application that has been denied by the Jackson County Board of Commissioners.

(xii) Project phasing

- 1) If a project approved as a special use is to be developed in phases, a master plan for the entire development must be approved by the Community Planning Council at the same time and in the same manner the special use permit application is considered. Final plans for phases of the special use may be submitted in stages and approved by the Jackson County Planning Department provided that the following requirements are met:
 - a) All phases must be shown with precise boundaries on the master plan and numbered in the expected order of development.
 - b) Each phase must be able to exist independently of subsequent phases by meeting all applicable standards as if the phase were a separate project.
 - c) All the data required for the project as a whole must be given for each phase shown on the plan.
 - d) A proportionate share of the common facilities must be included in each phase of the development.
 - e) The phasing must be consistent with the traffic circulation, drainage, and utilities plan for the entire master plan, with the infrastructure provided for the phase submitted for approval.
 - f) Each phase of the special use must comply with any and all conditions attached to the approval of the special use permit. No certificate of occupancy will be issued for the project phase until a site inspection has confirmed that all conditions and requirements are met.

(e) Variances

- (i)* Variances from the use standards established by this Ordinance for special uses shall not be permitted.

(f) Appeal

- (i)* An appeal from the decision of the Community Planning Council or Board of Commissioners regarding a special use permit application and site plan may be made by an aggrieved party and shall be made to the Superior Court of Jackson County in the nature of certiorari. Any petition to the Superior Court shall be filed with the Court no later than 30 days after a written copy of the decision of the Community Planning Council is received by the applicant.

(g) Expiration

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(i) Approval of a special use permit shall be valid for one year from the date of approval by the Community Planning Council or Board of Commissioners. Failure to obtain a building permit, or otherwise initiate the permitted use, within this time shall render the special use permit approval void. The Jackson County Planning Department may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension. Permits for the phased development of a special use project shall remain valid for the time approved by the Community Planning Council as part of the special use approval of the master plan for the special use.

Section 3.7.16 Subdivision, Major - Preliminary Plat

(a) Purpose and Intent

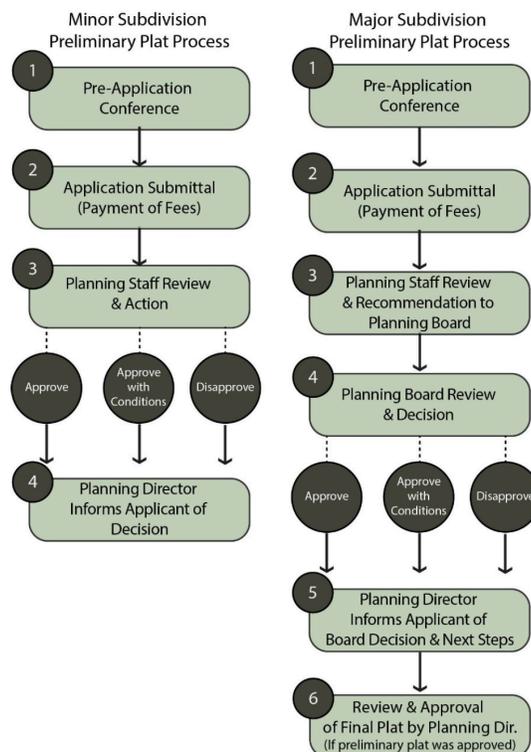
(i) It is the purpose of this section to establish a procedure for the subdivision of land into more than eight lots, more than eight buildings, or 60 or more bedrooms, along with construction of public streets or public infrastructure, in accordance with State and County law.

(b) Major Preliminary Plat Procedure

(i) Pre-Application Conference

1) Optional (see Section 3.4 (c), Pre-Application Conference).

FIG 3.7 SUBDIVISION





(ii) Application Submittal and Acceptance

- 1) Applications for approval of preliminary plats shall be filed with the Jackson County Planning Department in such form and manner as the administrator shall direct. The application shall be accompanied by applicable fees as approved by the Board of Commissioners.
- 2) Applications for major subdivision- preliminary plat shall contain the information required on the application and application checklist.

(iii) Staff Review and Action

- 1) Jackson County Planning staff shall review the applications and make recommendations to the Planning Board, including the recommendations of other affected agencies of government. The Planning Board shall take action as provided in this section.

(iv) Planning Board Action and Decision

- 1) Pursuant to NCGS 160D-803, the Planning Board is authorized to review and approve, approve with modifications, or disapprove applications for approval of preliminary major plats and to take other actions as required by this Section.
- 2) Powers and Duties of Planning Board
 - a) The Planning Board, in relation to this section, shall have the following powers and duties:
 - i) Receive applications for approval of preliminary major plats.
 - ii) Take action under this section to approve, approve with conditions, or disapprove applications for approval of preliminary major plats.
 - iii) Take action on requests for extensions of preliminary plat approvals.
 - iv) Establish, approve, and publish rules of procedure for the conduct of its affairs.
 - v) Maintain a record of its actions, including the votes of its members, attendance, and a summary of the information submitted to it.
- 3) Timing of Actions
 - a) The Planning Board shall take action upon an application for approval of a preliminary major plat within 90 calendar days after acceptance and review of the application by the Planning Director unless the applicant consents in writing to an extension of this time limit.
 - b) If the Planning Board or the Planning Director determines that there are errors or omissions in the application, plat or related materials during the processing period, unless such errors or omissions are minor and promptly correctable, the application and related materials shall be returned to the applicant with written findings as to required corrections and/or completions necessary prior to resubmission. A new 90-day limitation shall begin as of the date of acceptance of such resubmission.
 - c) Where applications are approved without conditions, the Planning Director shall notify the applicant of the approval date.



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- d) Where applications are approved with conditions, the Planning Director shall notify the applicant in writing of the conditions and the reasons.
- e) Where applications are denied, the Planning Director shall notify the applicant of the reasons.
- f) All such notices shall be in writing and dispatched by first class mail to the address required by Section 3.5 within ten working days of the date of decision by the Planning Board.
- g) Approvals of major plats or disapprovals and grounds therefore shall be recorded in the minutes of the Planning Board action.

(c) Administrative Approval of all Final Major Plats.

- (i) If the final major plat conforms to the approved preliminary plat, requirements lawfully established under this section, and all preliminary conditions of approval, the Planning Director shall approve the final major plat within ten working days from receipt of a complete final subdivision submittal. All required improvements shall be complete, or a performance guarantee package shall be submitted in accordance with Section 4.9 and subsequently approved by the Planning Director.

(d) Effect

- (i) When the Planning Board fails to approve, conditionally approve, or disapprove plats within 90 calendar days from the date of acceptance of the application, except where applications have been returned for correction of errors or omissions and resubmittal or applicants have extended time limitations, as provided in Section 3.7.16 (b)(iv)(2), a major plat shall be deemed to have been approved without conditions.

Section 3.7.17 Subdivision, Minor

(a) Purpose and Intent

- (i) This section establishes a procedure for the subdivision of land into less than eight lots or buildings or fewer than 60 bedrooms in accordance with State and County law.

(b) Applicability

- (i) Unless exempted in accordance with Section 160D-802 of the North Carolina General Statutes, all divisions of land including five or fewer individual lots with no construction of public streets or installation of public infrastructure, shall comply with the provisions of this section.

(c) Minor Plat Procedure

- (i) Pre-Application Conference
 - 1) Optional (see Section 3.4 (c), Pre-Application Conference).
- (ii) Plat Submittal and Acceptance
 - 1) Minor subdivision plats and family subdivision plats shall be submitted to the Planning Director for review and processing. The Planning Director shall have up to ten working days to review such plat and make the following findings:
 - a) The application and plat qualify as a minor subdivision or family subdivision, as the case may be, as defined in this chapter.

b) Other applicable subdivision, land development, and other ordinance requirements are met.

(iii) Staff Review and Action

- 1) The Planning Director shall review and decide the application in accordance with Section (d), Minor Plat Review Standards below.

(d) Minor Plat Review Procedures

(i) The Planning Director shall establish procedures for handling applications for approval of minor subdivisions and family subdivisions intended to simplify processing of routine small subdivisions with due regard to protection of the public interest. Some flexibility shall be allowed as to submissions and processing. The main difference in processing shall be the ability of an applicant to avoid the need to seek approval of a preliminary plat. The applicant may apply directly for approval of a final plat. The following general approval process shall apply to minor and family subdivisions:

- 1) If the Planning Director determines there are errors or omissions in the application, plat, or related materials during the review period indicated, unless such errors or omissions are minor and promptly correctable, the application and related materials shall be returned to the applicant with written findings as to required corrections and/or completions necessary prior to resubmission. A new review time limitation shall begin as of the date of acceptance of such resubmission.
- 2) Where applications are approved without conditions, the Planning Director shall notify the applicant in writing for a preliminary plat or by notation on the final plat, which is then to be recorded at the office of the Register of Deeds.
- 3) Where applications are approved with conditions, the Planning Director shall notify the applicant in writing of the conditions and the reasons.
- 4) Where applications are denied, the Planning Director shall notify the applicant of the reasons. All such notices shall be in writing and dispatched by first class mail to the address submitted with the required application information. However, upon request of the applicant, such notice may be verbally presented.

(ii) No person shall utilize the procedures contained herein or claim status as a minor or family subdivision for the purposes of evading any of the applicable provisions of Article IV: Subdivisions. In the event a person is found to have utilized this section for purposes other than a bona fide family or minor subdivision, then such person may be required to comply with any and all requirements of a Major Subdivision (Section 3.7.16). In addition, such action shall be deemed a violation of this section and may subject the violator to any and all applicable penalties.

(e) Recordation

(i) Once a minor plat is approved, a signed statement by the Planning Director shall be entered on the face of the plat. The minor plat may not be recorded without this and all other required certifications.

(f) Appeal

(i) An applicant or other party aggrieved by a decision of the Planning Director in the administration, interpretation, or enforcement of this chapter may appeal said decision to the



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Board of Adjustment by filing a written appeal application with the Planning Director. Said application for appeal shall be filed within 30 days of receipt of the order of denial. The decision of the Planning Director may be overturned by a majority vote of the members of the Board of Adjustment entitled to vote upon the matter. The decision of the Board of Adjustment shall be final, subject, however, to any subsequent action in the County Superior Court or other court of competent jurisdiction.

Section 3.7.18 Temporary Use Permit

(a) Purpose and Intent

- (i) This section allows for the establishment of specific temporary uses of limited duration, provided that such temporary uses are discontinued upon the expiration of a set time period. Temporary uses shall not involve the construction or alteration of any permanent building or structure.

(b) Applicability

- (i) The standards in this section apply to non-permanent uses that take place on a temporary basis whether on the same site or in different locations in the regulated districts.

(c) Temporary Use Permit Procedures

- (i) Pre-Application Conference

- 1) Optional (see Section 3.4(c) Pre-Application Conference).

- (ii) Application Submittal and Action

- 1) An application for a Temporary Use Permit may be filed by the owner of the property or by a duly authorized agent of the property owner. The application shall be filed with the Jackson County Planning Department.
- 2) The application for a Temporary Use Permit shall contain the information required on the application form and a site plan meeting the requirements for such as identified by the Jackson County Planning Department.

- (iii) Staff Review and Action

- 1) The Planning Director shall review and decide the application in accordance with Section 3.4(e) Common Review Standards.
- 2) The Jackson County Planning Department shall review the application and determine if it is complete within five working days of its submittal. If the application is found to be incomplete, the applicant shall be notified of any deficiencies. The applicant may address the deficiencies and resubmit the application. If the application is complete, it will be reviewed for compliance with the requirements of this ordinance. A Temporary Use Permit shall be issued only upon finding that the proposed temporary use meets all the requirements of this ordinance.
- 3) The Planning Department may attach any conditions to the Temporary Use Permit needed to protect the public health, safety, and welfare.

- (iv) Community Planning Council Authorization

- 1) The Community Planning Council may authorize the Jackson County Planning Department to issue a permit for any temporary use not listed in the permitted use sections of the

Regulated Districts in Article IX, provided that the use is clearly of a temporary nature, the use is limited to a period not to exceed 60 days, and the use is in keeping with the intent and requirements of the standards.

- 2) The Planning Council and/ or Planning Director may attach any conditions to the temporary use permit needed to protect the public health, safety, and welfare.

(v) Temporary Use Review Standards

- 1) A Temporary Use Permit shall be issued only if the proposed temporary use meets the following requirements:
 - a) The property contains sufficient space to accommodate the temporary use.
 - b) The temporary use will be located no closer than 100 feet to a dwelling.
 - c) Parking is adequate to meet the needs of the temporary use.
 - d) Restroom facilities, if needed, are provided.
 - e) All inspections and permits required by applicable construction codes have been made and approved.
 - f) That temporary school facilities, model sales homes, and temporary real estate sales offices shall provide landscaping as required by Landscape Section of the Regulated Districts in Article IX of this Ordinance.

(d) Variances

- (i) Requests for variances from the requirements for temporary uses set forth in this Ordinance shall be heard by the Community Planning Council if the subject property is located within a Regulated District, or the Board of Adjustments outside a Regulated District, as set forth in Section 3.7.20 of this Ordinance.

(e) Appeals

- (i) Appeals of the decision of the Planning Director regarding the issuance of Temporary Use Permits within Regulated Districts, shall be heard by the Community Planning Council per Section 2.3.2 or the Board of Adjustment outside a Regulated District, in accordance with procedures established in Section 3.7.2 Administrative Appeal.

(f) Permit Validity

- (i) The Temporary Use Permit shall be valid only for the period stated on the permit, which in no event shall exceed 45 days except for temporary school facilities, model sales homes, and temporary real estate sales offices, as noted above.

(g) Violations

- (i) Violations of the conditions of the Temporary Use Permit, or the failure to obtain a permit for a temporary use, shall be considered a violation of this ordinance and shall be subject to the Article X: Violations and Enforcement of this Ordinance.

(h) Public Emergencies

- (i) In the event of a natural disaster, catastrophic event, or public emergency, the County Manager or his/her designee may waive any Temporary Use Permit requirements and authorize the



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placement of temporary use facilities that are deemed necessary or desirable in conjunction with the management of the emergency.

Section 3.7.19 Text Amendment

(a) Purpose and Intent

- (i) This section provides a uniform means for amending the text of this Ordinance wherever the public necessity, changed conditions, convenience, general welfare, or appropriate land use practices require doing so. A text amendment may be initiated by the Jackson County Board of Commissioners, the Jackson County Planning Board, Community Planning Council, the Jackson County Planning Department, or an applicant.
- (ii) County initiated text amendments do not require an application to be submitted.

(b) Text Amendment Procedure

- (i) Pre-Application Conference
 - 1) Before submitting an application for an amendment, the applicant shall meet with the Jackson County Planning Department to discuss the proposed amendment and to receive information regarding the approval requirements and procedures.
- (ii) Application Submittal and Acceptance
 - 1) An application for an amendment shall be filed with the Jackson County Planning Department on a form provided by the Department or found on the County Website. Any fees, as designated by the Jackson County Board of Commissioners, shall be due and payable at the time the application is submitted.
 - 2) All information required on the application form shall be contained on or accompany the application.
- (iii) Staff Review
 - 1) The Planning Director shall review the application, prepare a staff report, and provide a recommendation to the Planning Council per Section 3.7.19(b)(iv) or the Planning Board per Section 3.7.19 (b)(v) below. The Board of Commissioners makes final decision in both processes.
- (iv) Community Planning Council Review and Recommendation
 - 1) The Community Planning Council shall hold a public hearing to consider proposed amendments relevant to the specific Regulated District.
 - 2) A recommendation by the Community Planning Council shall include the adoption of a statement describing how the Planning Council considers the action taken to be consistent with the Comprehensive Plan, reasonable and in the public interest.
 - 3) The Community Planning Council shall make its recommendation in writing to the Planning Board for review per Section (v) below. The Community Planning Council shall recommend that the request be approved, approved with conditions, or denied.
- (v) Planning Board Review and Recommendation

- 1) Following the receipt of the report regarding the Planning Director's recommendation on a proposed amendment, the Jackson County Planning Board shall hold a hearing to consider the proposed amendment. The hearing shall be scheduled as provided by the Planning Board's rules of procedures.
 - 2) Following receipt of the recommendation of a Community Planning Council on a proposed amendment, the Planning Board shall review and make a recommendation to the Board of Commissioners. Per Table 3.1: Development Review Procedures, a public hearing shall not be required for amendments proposed within a Regulated District.
 - 3) Recommendations of the Jackson County Planning Board shall be reported to the Jackson County Board of Commissioners for a public hearing and final action according to the process set forth in Section 3.7.19 (vi). The Jackson County Board of Commissioners shall schedule the public hearing at their next regularly scheduled meeting after receiving the report.
 - 4) A recommendation by the Planning Board shall include the adoption of a statement describing how the Planning Board considers the action taken to be consistent with the Comprehensive Plan, reasonable and in the public interest.
 - 5) If the Jackson County Planning Board has made no recommendation on a proposed amendment within 90 days of first considering it, the proposed amendment shall be forwarded to the Jackson County Board of Commissioners for consideration. A record of the Planning Board's comments regarding the proposed amendment shall accompany the proposed amendment.
- (vi) Board of Commissioners Review and Decision
- 1) Following the receipt of the Jackson County Planning Board's action on a proposed amendment, the Jackson County Board of Commissioners shall hold a public hearing to consider the proposed amendment. The public hearing shall be scheduled as provided by the Board of Commissioner's rules of procedures. Notice of the public hearing shall be provided as required by statute.
 - 2) Before acting on any proposed amendment, the Board of Commissioners shall consider any recommendations made by the Jackson County Planning Board, the Community Planning Council and/ or the Jackson County Planning Department, the comments made at the public hearing, and other relevant information.
 - 3) Upon reviewing all pertinent information, the Board of Commissioners may adopt the proposed amendment, reject the proposed amendment, refer the proposed amendment back to the Jackson County Planning Board for further consideration or hearing, or modify the proposed amendment.
 - 4) Approval by the Board of Commissioners shall include adoption of a statement describing how the Board of Commissioners considers the action taken to be consistent with the Comprehensive Plan, reasonable and in the public interest.
 - 5) All amendments and changes must be in the form of an ordinance. Copies of adopted ordinances shall be kept on file at the office of the Clerk of the Board of Commissioners.

Section 3.7.20 Variance

(a) Purpose and Intent

- (i) The variance process is intended to provide limited relief from the requirements of this Ordinance in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of the land in a manner otherwise allowed under this Ordinance. Variances may be heard by the Board of Adjustment, Planning Board, Regulated District Community Planning Councils, the Watershed Review Board, and the Sediment Control Appeals Board as referenced in Table 3.1: Development Review Procedures. Refer to Section 5.6.1(m) for variance procedures for development in flood hazard areas (floodplain).

(b) Applicability

- (i) Development that would otherwise be subject to undue and unique hardship from the application of the standards of this Ordinance may seek relief in accordance with this section.
- (ii) In no event shall a quasi-judicial board issue a variance which would allow the establishment of a use which is not otherwise allowed in a zoning district or which would change the district classification or the district boundary of the property in question.
- (iii) In no event shall a quasi-judicial board grant a variance which would conflict with any State code unless otherwise authorized by laws and regulations.

(c) Variance Procedure

- (i) Pre-Application Conference
 - 1) Required (see Section 3.4(c) Pre-Application Conference).
- (ii) Application Submittal and Acceptance
 - 1) An application for a variance may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application.
 - 2) The application shall contain relevant information to allow the applicable quasi-judicial board to understand the proposed need for the variance.
- (iii) Staff Review and Recommendation

- 1) The Planning Director or Permitting and Code Enforcement Director shall review the application to ensure that it is complete and shall prepare a staff report detailing the regulations and interpretation behind the matter being appealed along with their recommendation.

(iv) Quasi-Judicial Board Review and Decision

- 1) Upon receiving the application, the quasi-judicial board shall conduct a quasi-judicial hearing on the variance.
- 2) After conducting the hearing, the quasi-judicial board may: deny the application; conduct an additional public hearing on the application; approve the application; or approve the application with additional conditions. A concurring vote of four-fifths of the members of the quasi-judicial



board shall be necessary to grant a variance.

- 3) A decision by the applicable quasi-judicial board shall be made within 45 days of the date of the hearing.
- 4) Any approval or denial of the request shall be accompanied by written findings of fact supporting the conclusion that the variance meets or does not meet each of the standards set forth in Section (5) below.
- 5) The quasi-judicial board shall not grant a variance unless and until it makes all of the following findings:
 - a) Carrying out the strict letter of the Ordinance would result in an unnecessary hardship. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - d) The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that the public safety is secured, and substantial justice is achieved.

(d) Additional Conditions

- (i) In granting any variance, the quasi-judicial board may attach such conditions to the approval as it deems necessary and appropriate to satisfy the purposes and objectives of this Ordinance. The Board of Adjustment may also attach conditions in order to reduce or minimize any injurious effect of such variance upon other property in the neighborhood and to ensure compliance with other terms of this ordinance. Such conditions and safeguards must be reasonably related to the condition or circumstance that gives rise to the need for a variance.

(e) Appeals

- (i) Any appeal from a decision of the quasi-judicial board may be made by an aggrieved party and shall be made to the Jackson County Superior Court. Any such petition shall be filed with the Clerk of the Superior Court within 30 days after the decision of the Board is filed with the Clerk, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman of the Board at the time of its hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

Section 3.7.21 Zoning Permit (Regulated Districts)

(a) Purpose and Intent

- (i) This section sets out the procedure for consideration of zoning permit applications in Jackson County's Regulated Districts.

(b) Applicability

- (i) A Zoning Permit shall be required for the construction or development of any new use, other than single family dwellings, located within the County's Regulated Districts. In addition to new uses, a Zoning Permit shall be required for:
 - 1) The renovation and/or remodeling of existing structures, other than detached single family dwellings when the cost of the renovation/remodeling exceeds 50 percent of the assessed value (as identified by the Jackson County Tax Office) of the building/ structure being renovated/remodeled; or when the renovation/remodeling increases the footprint or any change to the exterior of the structure.
 - 2) Expansions of existing uses, other than detached single family dwellings.
 - 3) Changes of use, other than detached single family dwellings, including an increase in intensity of use or demolition.

(c) Zoning Permit Procedure

- (i) Pre-Application Conference
 - 1) Optional (see Section 3.4(c) Pre-Application Conference).
- (ii) Application Submittal and Acceptance
 - 1) Application for all permits required by this Ordinance may be made at the Jackson County Planning Department. All required permits may be applied for simultaneously. Any required fees may be paid at the time of permit application. The review procedures set forth in this section are those required by the Jackson County Planning Department. Other agencies, such as the Jackson County Health Department, have separate review and approval procedures. These agencies must be contacted to obtain information regarding the approval procedure for permits required by them.
 - 2) Simultaneous Processing of Applications
 - a) The simultaneous processing of applications for different permits and approvals that may be required for a development or redevelopment project will be accommodated where possible by the review procedures set forth in this section.
 - b) No application for the rezoning of property shall be accepted or processed while an application for any of the approvals or permits required by this section is pending for the same property or vice versa.
 - 3) Each application for a Zoning Permit shall contain the information required on the application form.

(d) Staff Review and Action

- (i) The Planning Director shall review and decide the application in accordance with Section 3.7.21 (e), Zoning Permit Review Standards.
- (ii) The Jackson County Planning Department staff shall review the application and site plan for compliance with the requirements of this ordinance. Provided the application and site plan are complete, the Jackson County Planning Department shall take action on the request within ten working days of receipt of the application. If the application and/or site plan are found to be incomplete, the Planning Department staff shall notify the applicant of the deficiencies. If the application and site plan are found to be in compliance with the requirements of this Ordinance,

the applicant shall be notified by the Planning Department that the application is approved, and a Zoning Permit shall be issued for the proposed project. If the application and site plan are found not to be in compliance with the requirements of this Ordinance, the applicant shall be notified in writing by the Planning Department of the denial. The notification shall list the reasons for denial. Upon notification of denial, the applicant may revise the application and/or site plan to address the reasons for denial and resubmit it for review or appeal the denial in accordance with the provisions of this Section.

- (iii) All development and redevelopment projects exceeding 1,000 square feet in gross floor area for nonresidential projects and 12 dwelling units or 20 bedrooms for multi-family residential projects and requiring a Zoning Permit are also subject to design review, as set forth in Section 3.7.4 of this Ordinance.

(e) Zoning Permit Review Standards

- (i) A zoning permit shall be approved on a decision when the application complies with:
 - 1) The standards in Section (d) above Zoning Requirements.
 - 2) The State Building Code.
 - 3) All standards or conditions of any prior applicable permits and development approvals.
 - 4) All other applicable requirements of this Ordinance and in the Jackson County Code of Ordinances.

(f) Permit Validity

- (i) Upon approval of a Zoning Permit, the applicant shall have one year to apply for the required building permit(s) for the project. Failure to apply for the building permit(s) within this time shall render the Zoning Permit void. The Jackson County Planning Department may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension. Upon issuance of the building permit(s), the Zoning Permit shall remain valid as long as a valid building permit exists for the project. Any unapproved change in the approved plans, or failure to construct the project in accordance with the approved plans, shall render the Zoning Permit invalid.



IV

Subdivisions

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Article IV. - Subdivision

Section 4.0 - Excluded Sections and Conflicts

In order to promote uniformity with Jackson County Ordinances, the Town of Webster has adopted the majority of Article IV. of the Jackson County Unified Development Ordinance: Subdivisions. For purposes of clarification, the Town of Webster has not adopted Section 4.3.4. Open Space - Cluster Development. The Town of Webster remains committed to its zoning requirement that all residential lots must be one (1) acre minimum in size. Moreover, in the event of a discrepancy between this Subdivision Ordinance and the Webster Zoning Ordinance, the Webster Zoning Ordinance shall govern. Lastly, the term "Town of Webster" may be substituted for all instances in which the term "County" is found throughout the following ordinance.

Article IV. SUBDIVISIONS

Section 4.1 General Provisions

(a) Authority and Jurisdiction

- (i) This section, enacted in accordance with the provisions of NCGS 160D, Article 8 shall apply to all of Jackson County not within the jurisdictions of the various municipalities and the Qualla Boundary.
- (ii) For the purposes of this section, the term "Director" shall refer to the Planning Director unless otherwise stated.
- (iii) Public health, safety, economy, good order, appearance, convenience, morals, and the general welfare require the harmonious, orderly, and progressive development of land within the jurisdiction of the County. In furtherance of this intent, regulation of land subdivision by the County has the purposes, among others, to:
 - 1) Encourage economically sound and stable development in the County;
 - 2) Ensure the timely provision and coordination of required streets and highways, utilities, and other facilities and services to new land developments;
 - 3) Ensure adequate provision of safe and convenient traffic access and circulation;
 - 4) Ensure provision of needed community open spaces in new land developments through the dedication or reservation of land for recreational, educational, and other public purposes or the provision of funds in lieu of dedication;
 - 5) Ensure, in general, the wise and timely development of new areas, in harmony with the land development plan and other official plans of the County; and
 - 6) Ensure accurate public records of land ownership, to facilitate land ownership transfer, the effective conduct of public and private business, and the protection of private property rights.

(b) Improvements

- (i) Before final plat approval, each subdivision shall either contain the improvements specified in this section which apply to the classification of the subdivision submitted and all conditions of approval or a satisfactory performance guarantee shall have been posted with the County pursuant to Section 4.9, Completion and Maintenance Guarantees. The improvements shall be installed in accordance with the requirements of this section and paid for by the subdivider, unless other means of financing are specifically allowed within the requirements of this article and paid for by the subdivider. Land shall be dedicated and reserved in each subdivision as specified in this article. Each subdivision shall adhere to the minimum standards of design established by this section.

(c) Intent

- (i) This section is intended to provide for the harmonious development of the County jurisdiction and in particular for the following:
 - 1) The coordination of streets within subdivisions with other existing or planned streets or official map streets;
 - 2) Appropriate shapes and sizes of lots;
 - 3) The provision of land and of easements for utilities and other public facilities and services; and
 - 4) A distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, prosperity, and general welfare.

- (ii) Regulations set forth in this section are part of a system of regulations governing land subdivision, development and use and construction and improvements on land, supplementing and supplemented by health, drainage improvement, steep slope, flood hazard, and other land use regulations and controls.
- (iii) Applications for subdivision approval shall be considered in relation to all such regulations applicable in the particular case and not only in relation to the subdivision regulations set forth in this section. Where there are conflicts between the regulations in this section and other lawfully adopted regulations involved in such considerations, those which establish the highest requirements or most stringent limitations shall govern except where specific exceptions are set forth in such regulations.

(d) Applicability

- (i) Unless stated otherwise, the standards contained in this section apply to all subdivisions of land, including family, minor and major subdivisions.
- (ii) Compliance required. Within the jurisdiction of this UDO, no subdivision shall be made, platted, or recorded for any purpose, nor shall parcels resulting from such subdivision be sold or offered for sale unless such subdivision meets all the requirements of this section and applicable related regulations of the UDO.
- (iii) No lot shall be approved unless an adequate portion thereof is suitable for a use permitted by land development regulations or other applicable regulations of the County. In particular, no lot shall be platted for building purposes unless it contains an adequate building site, under applicable regulations.
- (iv) Plat approval required. No plat of any subdivision within such jurisdiction shall be filed or recorded by the County Register of Deeds until it shall have been submitted to and approved by the appropriate authority and such approval entered in writing on the plat per Section 3.7.16-17 of this ordinance.

(e) Exemptions

- (i) Any plat of property exempt from the regulations of this section shall be certified as exempt by the Director or, in the limited circumstances specified in NCGS 47-30(f) (11), a professional land surveyor prior to such plat being recorded. Such plat is not exempt from any zoning, water supply, watershed, or other local ordinances. Any exemption from the regulations of this UDO shall not be deemed an exemption from any other applicable ordinance.
- (ii) The following divisions of land shall also be exempt from the standards of this section.
 - 1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the County as shown in this section.
 - 2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.
 - 3) The public acquisition by purchase of strips of land for widening or opening of streets.
 - 4) The division of a tract in single ownership, the entire area of which is no greater than two acres, into not more than three lots, if no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the County, as shown in this article.
 - 5) A re-subdivision which involves only the removal of interior lot lines, with the outside perimeter of the property remaining unchanged, resulting in fewer parcels than were contained in the original parcel.
 - 6) A re-subdivision which involves only the removal or relocation of easements on the property.

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- 7) A re-subdivision which involves only the changing of notations written on the plat or correction of errors in an existing legal description, provided that no additional building lots are created.
- 8) A division of land pursuant to an allocation of land by court decree.
- 9) The division of land into cemetery plots.
- 10) A division of land involving no more than two (2) parcels for the sale, gift, or exchange of tracts between adjoining land owners, provided that no additional building sites are created.
- 11) A division of a building site containing an existing dwelling which has been located on an agriculturally used site for at least ten (10) years.
- 12) A division or re-subdivision of land for the acquisition by the public or by a utility for street right-of-way or easement.
- 13) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the NCGS.

(f) Phasing

- (i)* A subdivision may be developed in phases, in accordance with the provisions of this section.
- (ii)* Each phase shall contain at least six lots, unless shown on a phasing plan approved by the Director as part of the preliminary subdivision plan review after expressly determining that the proposed phasing makes it unlikely that a subdivider could abandon a final phase that contains a required extension of a road or other infrastructure.
- (iii)* A phasing plan shall be submitted showing the phases of development and the requirements of this section that will be satisfied in each phase which is approved by the Planning Board as part of the preliminary plan.
- (iv)* Open space, if required by Section 4.3.2, 4.3.3 or 4.3.4, shall be measured cumulatively in all approved phases and shall meet the requirements for open space for each phase of the subdivision.
- (v)* The degree and extent of roads, water supply, sewage disposal, stormwater management, erosion and sedimentation control, and other required improvements in the phase and previously approved phases is sufficient to serve or handle all development within the phase. Roads constructed in an earlier phase shall be designed and constructed to accommodate the total number of homes and/or lots, including those proposed for later phases, that will be served by the road(s). Lots may be recorded, and public improvements may be constructed in phases, unless set forth as part of the preliminary subdivision plan.
- (vi)* The Planning Board may not approve a phasing plan when in its opinion such phasing will not provide for adequate public facilities to support any such phase independent of the overall development plan. In approving phasing plans, the Planning Board may require that additional streets, water and sewer facilities or other required public facilities be constructed as part of the phase in order to ensure that sufficient public facilities will be in place to support such phase independent of any future development.
- (vii)* The Planning Board may approve a timeline of up to ten years for the development of the subdivision. A single two-year extension of time for development of the subdivision may be granted by the Planning Board provided justification is given for the request and the request is submitted prior to the expiration of the initial ten-year period. If the final plat for any phase of the subdivision is not submitted in accordance with the approved schedule, the preliminary plat shall be resubmitted to the Director for review and approval. Such resubmittal shall be in accordance with the requirements of Article III: Permits and Procedures.

(g) Acceptance

- (i)* Effect of plat approval on status of dedication, acceptance. The effect of plat approval on the status of dedications is as follows:

- 1) The approval of a plat shall not be deemed to constitute or effect an acceptance by the public for maintenance purposes of the dedication of any road, ground, or other improvements shown upon the plat.
- 2) Acceptance of such dedications shall be only by resolution of the Board of Commissioners or appropriate action by the State Department of Transportation. The Board of Commissioners shall consider such resolutions only on determination that any required improvements have been properly installed and all applicable conditions met, as set out in Article III: Permits and Procedures and Article IV: Subdivisions of this UDO.

(h) Non-applicability

- (i) The enactment of this section shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing land use violations.

(i) Aggregation

- (i) For any tract of land, no more than eight lots may be created by means of the family and/or minor subdivision review process. It is the intent of this section to preclude any attempt to avoid the major subdivision review process by the sequential subdivision of land into two or more family or minor subdivisions. To that end, two or more subdivisions shall be aggregated and treated as a single subdivision under this section when they are either contiguous to one another or contiguous to property owned or controlled by person owning or controlling the land to be subdivided.

Section 4.2 SUBDIVISION CLASSIFICATIONS

(a) Subdivision

- (i) A subdivision includes all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development, whether immediate or future, and includes all divisions of land involving the dedication of a new street or a change in existing streets. See Major and Minor Subdivisions below.

(b) Major Subdivision

- 1) A major subdivision represents the division of property into more than eight lots, more than eight buildings, or 60 or more bedrooms. The map for the major subdivision shall include the design, improvements, as well as the existing conditions in and around, the location, subdivision name, acreage, owner and more as detailed in the Section 3.7.16.

(c) Minor Subdivision

- (i) A minor subdivision refers to the creation of eight lots or less with:
 - 1) Adequate access to an existing state-maintained road or non-state-maintained road which is constructed to minimum state standards as verified by the state department of transportation; and
 - 2) No new public or community wastewater is proposed.
- (ii) There shall be no requirement to establish a property owners' association for a minor subdivision unless required by law; however, adequate provisions shall be made for the maintenance and repair of roads and other community facilities and property, if any.
- (iii) When subdividing a single lot into two lots, the Planning Director may provide exceptions in accordance with Section 3.7.1, Administrative Adjustment, from one or more of such standards where strict compliance would constitute a practical difficulty or unnecessary hardship, and where such exception would not contravene the general intent and purpose of this section or be a detriment to the public safety and welfare.

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(d) Family Subdivision

- (i)* Family subdivisions shall comply with the standards of general applicability contained in subsection 4.1 (d) above, except as provided herein.
- (ii)* The standards relating to easements contained in Section 4.6, preservation of water areas contained in Section 4.10, and public access contained in Section 4.3.5 (g) shall not apply to family subdivisions.
- (iii)* The standards relating to stormwater drainage contained in Section 4.4 shall not apply to family subdivisions provided such subdivision shall comply with the provisions of the County sediment control provisions, if applicable, and provided further that such subdivisions shall comply with the provisions of Section 3.7.8 if land-disturbing activities equal or exceed one acre.
- (iv)* Family subdivisions shall comply with the standards relating to roads contained in Section 4.3.5 with one exception: access to the state highway system may be by means of a minimum 14-foot roadway if compliance with the private roadway standards is unfeasible and a hardship.
- (v)* There shall be no requirement to establish a property owners' association for a family subdivision unless regulated by other law; however, adequate provisions shall be made for the maintenance and repair of roads and other community facilities and property, if any.

(e) Estate Lot Subdivision

- (i)* Estate lot subdivisions may be developed as an alternative to the open space requirements as established by Section 4.3 In addition to other applicable standards of this UDO and other applicable regulations, estate lot subdivisions shall comply with the standards contained in this section.
 - 1) Minimum lot size. Each lot within an estate lot subdivision shall contain at least three acres of land area.
 - 2) Maximum disturbed area. No more than 33 percent of the area of a lot within an estate lot subdivision may be permanently cleared of natural vegetation or otherwise disturbed. A greater area may be cleared of natural vegetation provided that any portion greater than 33 percent of the lot area is revegetated in accordance with a landscape plan approved by the Director. Vegetation shall not be removed from those areas identified in Section 4.9 (e) *(i)* unless approved by the Planning Board.
 - 3) Maximum impervious surface. No more than 15 percent of the area of a lot within an estate lot subdivision may be covered with impervious surfaces.
 - 4) Protection of primary conservation areas. Optimal open space areas, as specified in Section 4.9 (e) *(i)* shall be protected in accordance with the standards of this section with the exception that such areas need not be included within the open space of the subdivision and may be included within the boundaries of an estate lot.
 - 5) Plats and restrictive covenants. The plat of an estate lot subdivision shall bear a notation concerning the maximum disturbed area, the maximum impervious surface and the protection of primary conservation areas, and restrictive covenants so limiting the use and/or development of any such lot shall be recorded in the County office of the Register of Deeds. The restrictive covenants shall be reviewed and approved by the Planning Board prior to recordation.

(f) Conservation Design

- (i) Purpose and Requirements. The requirements in this section are intended to provide for a major subdivision design that is better suited to the natural features of the land or would blend into the character of a rural area. See also Section 4.3.3 Conservation Subdivision Open Space.
- (ii) Protect Assets. It is required that part of the subdivision site which is not devoted to lots and associated roads and utilities be set aside as usable open space. Conservation subdivisions shall be designed with development areas situated on those parts of the subdivision site best suited to accommodate development with the least adverse impact. Conservation design allows smaller and less costly networks of roads and utilities, encourages closer-knit and potentially safer neighborhoods, preserves sensitive farmland, woodlands, scenic views, and open space, and reduces the amount of impervious surface and resulting stormwater runoff. The open space provided by conservation design can be used to provide recreational opportunities for the subdivision's residents or employees, to conserve and protect significant natural areas and environmentally sensitive areas, to conserve important historic resources, and/or to conserve productive farming and forestry uses.
- (iii) Required Open Space. Land within the subdivision site that is not contained in lots or in rights-of-way or parcels devoted to accommodating necessary roads and utilities shall be in one or more connected parcels dedicated or reserved as permanent open space. Lands identified as optimal conservation areas pursuant to Section 4.3.2 (e) shall be deemed permanent open space in accordance with this section. When optimal conservation areas do not equal or exceed 20 percent of the land area of the subdivision, additional open space shall be designated so that at least 20 percent of the area of the subdivision is made permanent open space.
- (iv) Subdivisions within the Cashiers Commercial Area intended for commercial uses shall be exempt from the open space requirement contained herein but shall comply with the requirements for preservation of water areas contained in Section 4.10.

Section 4.3 SUBDIVISION DESIGN**Section 4.3.1 Lots****(a) General Design Criteria**

- (i) Adequate Space. Lot size, width, depth, shape, and orientation shall be appropriate for location within the subdivision and location of the subdivision, and for the type of development and use contemplated. All lots shall provide adequate building space in accordance with the development standards contained in Subsection 4.1(c) of this article. Lots which are smaller than the minimum required for residential lots shall be identified on the plat as: "Not for a residential building site. No residential building permit shall be issued, nor shall any residential building be erected on this lot."

- (v) Lot Lines and Utility Easements. Lot lines shall be so arranged with respect to utility easements as to permit efficient installation of utilities without unnecessary irregularities in alignment.
- (vi) Suitable Building Sites; Identification of Lots Not for Building. Lots for building shall contain suitable building sites, and lots not to be built upon shall be identified in accordance with the following:
 - 1) No subdivision shall be approved unless it has been determined that each lot or parcel intended for building contains a building site:
 - a) Determined by licensed professional engineer, landscape architect, or other qualified professional, to be free from inundation and safely accessible from an approved street during rainfall of ten-year return frequency.
 - b) Of configuration reasonably adapted to building.
 - c) Suitable for potential building use as permitted by any regulations applicable to the area in which the proposed subdivision is located and any other applicable ordinances, including, without limitation, the County flood damage prevention ordinance and mountain and hillside development ordinance.
 - d) Without danger from subsidence, heaving, erosion, or slippage of soils; from hazards or nuisances incidental to airports as related to potential uses of such lots; or from other menaces to health, safety or the general welfare.
 - 2) As guides for such determinations, the applicable approval authority shall give due consideration to limitations, standards and requirements established in ordinances and regulations adopted in conformance with the national flood insurance program, provision of water and sewerage, proposed drainage and potential types of occupancy and the like.
 - 3) Where a lot or parcel is not intended for building, such requirements shall not apply, but such lot or parcel, which might be for utility substations, rights-of-way, and the like, shall be identified on the plat and the limitation noted thus: "Not for a residential building site. No residential building permit shall be issued, nor shall any residential building be erected on this lot."

4.3.2 Open Space - Major Subdivisions

(a) Purpose

The standards in this section seek to achieve the goals of preserving land for recreational opportunities, preferably in a natural or semi-natural state, in perpetuity. Objectives of the open space standards in this section are primarily related to the provision of recreational opportunities, but open space can also serve environmental, scenic, and agricultural purposes and provide habitat for wildlife

(b) Applicability

- (i) Open space standards are applicable to major subdivisions.

(c) Flexibility

- (i) Recognizing that one approach does not work for all situations, the open space features and standards set forth in Section 4.3.2 (e) provide open space options in major subdivisions. Persons wishing to subdivide property should determine which option will work best for them and prepare their subdivision plat in compliance with the requirements of that option.

(d) Designation of Land for Open Space

- (i) Open space areas as required by the Table 4.1 below must be identified on subdivision plats. Areas designated as open space shall be maintained as open space and shall not be developed for purposes other than for recreation.

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- (ii) Maintenance of the open space shall be the responsibility of the homeowner's association or other entity created for this purpose. See also Section 4.8.
- (iii) A percentage of the lot area shall be designated as open space as required by Table 4.1. In determining the amount of open space required the acreage of all lots, excluding road rights-of-way, and easements, shall be totaled. The required open space shall be a percentage of this total as required by Table 4.1 below.
- (iv) Individual areas designated as open space areas shall not contain less than 2,500 square feet, although smaller areas may be approved by the Planning Board if the intent of this section is determined to be met. The Planning Board, in their review of the preliminary plat, shall assure that open space areas are conveniently located and accessible to all lots. Open space areas shall have connections to subdivision roads and/or trail systems that will permit access by all subdivision residents.
- (v) Except in a family subdivision, no lot shall contain any areas protected as water areas as defined herein. No lot in a major subdivision shall contain areas identified as open space.
- (vi) Land to be designated as open space shall meet the standards set forth in Section 4.3.2 (e). In addition to these standards, any land designated as a future greenway on any official plan adopted by the County shall be designated as open space. The land to be designated as open space must be approved by the County Planning Board as part of the subdivision preliminary plat approval process.

Table 4.1: Open Space Requirements

Number of lots or buildings	Open Space Requirement ¹
Less than 8	None
8-20	10% of total lot area
21-50	15% of total lot area
More than 51	20% of total lot area

¹ Total lot area = area of all lots excluding road rights-of-way, easements, etc.

(e) Open Space Use Standards

- (i) The following areas within the proposed subdivision are considered optimal for preservation as open space and shall be given highest priority for designation as open space on the plat of any major subdivision.
 - 1) Designated floodways and special flood hazard areas identified on the flood insurance rate maps for the County prepared by the Federal Emergency Management Agency (FEMA).
 - 2) Natural watercourses and any adjoining areas required to be maintained in a natural vegetated and unaltered state by the County watershed protection regulations.
 - 3) Steep slopes as defined by the County mountain and hillside development provisions.
 - 4) Areas adjacent to rivers, creeks, streams, and other water bodies that may serve as buffers for the water bodies.
 - 5) Any environmentally sensitive areas where development might threaten water quality or ecosystems (e.g., watershed buffers, groundwater recharge areas).
 - 6) Any identified important historic resources (e.g., homesteads, mills, barns, archeological sites) identified from a local archeological or architectural survey or an individual site survey.
 - 7) Productive farmland or forest land intended for continued agricultural and/or forestry use and placed in the County's farmland preservation program and/or covered by a forestry management plan.

(f) Limitations

- (i) No more than 50 percent of the area(s) designated as open space may have the natural ground cover substantially altered or converted to a recreational use.
- (ii) No more than 50 percent of the net open space shall be covered by permanent water bodies or streams; their buffers shall not be included in the calculation of this 50 percent restriction.
- (iii) Impervious surfaces shall not exceed 12 percent of open space areas.
- (iv) On golf courses, natural areas that are a part of the course are considered open space. Unnatural streams, ponds, or water hazards are not considered open space.
- (v) A developer or landowner may submit a written request for a waiver from these rules. The request shall come before the Planning Board and be decided upon with a simple majority vote.
- (vi) Open space may be used to provide active and/or passive outdoor recreation opportunities, either for the general public or for the subdivision's residents or employees and their guests provided that all standards as set forth in applicable local, State, and Federal ordinances and regulations for use of these areas are followed.

(g) Allowable/ Qualified Open Space

- (i) Wooded, uncleared, and undeveloped areas in a natural state that may provide wildlife habitat.
- (ii) Recreation areas including those that alter the natural ground cover, such as swimming pools, tennis courts, basketball courts, shuffleboard courts, batting cages, and other uses befitting the intent of this article.
- (iii) Water bodies and streams and their buffers, including trout stream buffers.
- (iv) Greenways dedicated to environmental, scenic, or recreational purposes.
- (v) Lands for passive, non-motorized recreation, including activities such as running/walking, hiking, biking, primitive camping, disc (Frisbee) golf, and similar low-impact outdoor activities.
- (vi) Active recreational facilities including volleyball courts, playing fields, and playgrounds provided they have pervious surfaces.
- (vii) Community and private gardens.
- (viii) Farmland for crop and livestock fields including horse pastures, but not including structures or homes on farm properties.
- (ix) In the community open space, community amenities such as public decks, plazas, picnic shelters, gazebos, outdoor stages, or similar accessory structures.

(h) Areas Not Allowed as Open Space

- (i) Public or private sheds, open or enclosed storage facilities, barns, or similar accessory structures.
- (ii) Areas for motorized recreational use such as boat ramps and off-road/four-wheeling trails.
- (iii) Any public or private road, driveway, or parking area, regardless of whether it is paved, unpaved, gravel, tile, brick, or pervious pavers. Rights-of-way and areas reserved for any existing or future road are also excluded.
- (iv) Solid waste disposal areas (including dumpster location sites).

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- (v) Areas for aboveground utility structures as well as cleared areas for solar panels or telecommunications installations (such as satellite dishes), whether for public or private use.
- (vi) Land that is contaminated with hazardous or toxic waste or materials as defined by state or federal regulations (except land covered by an approved mitigation plan and deemed acceptable to the County).
- (vii) All other impervious or unnatural ground covers or land uses.

(i) Location and Design

- (i) The location, size and character of required open space shall be appropriate to its intended use (e.g., open space proposed to be used for recreation, particularly active recreation, shall be located and designed so as to be conveniently and safely reached and used by those persons it is intended to serve, and open space proposed to be used for ball fields, playing fields, or other extensive active recreational facilities should be located on land that is relatively flat and dry.
- (ii) Open space shall be spatially arranged to provide connections among open space areas. Connected open space provides channels for stormwater flow and infiltration, useable recreation areas, and wildlife corridors. When possible, open space shall be arranged so as to connect across property lines. Natural areas in conservation subdivisions should connect to adjacent areas of open space and existing habitat on surrounding properties. Open space areas should maintain a minimum 50-foot width for the entire extent of the open space, except for trails or other connections between open space areas.
- (iii) Sidewalks may be provided per Section 4.3.5 (j).
- (iv) The State requires a riparian protection zone (minimum 30-foot buffer from top of bank) on both sides of named trout waters and their tributaries. The protection of stream banks provides many benefits, including providing natural habitat corridors for native species and protecting the quality and integrity of streams and their banks. Additionally, it limits development in areas prone to flooding and actually helps decrease the volume of stormwater runoff, particulate matter, and contaminants entering the streams. The mandated stream buffers shall be incorporated into open space requirements.

(j) Open Space Dedication or Reservation

- (i) Open space shall be dedicated or reserved in accordance with the standards contained herein.
 - 1) Land designated as open space to meet the requirements of this section shall be conveyed to a property owners' association or similar legal entity or to a public agency or nonprofit organization that is organized for, capable of, and willing to accept responsibility for managing the open space for its intended purpose and that will ensure subdivision property owners access to and use of the open space.
 - 2) Each dedicated or reserved open space parcel shall be shown on all subdivision plans and on a record plat recorded with the County Register of Deeds, with a notation of its area and its intended open space use. The owner of an open space parcel may rededicate or re-reserve the parcel for another open space use allowed under this section by recording a record plat showing the parcel and its new intended open space use.
 - 3) Open space area, with the prior written consent of the County, shall be designated prior to, or concurrent with, the recording of the final subdivision plat. The method of conservation shall be stated on the submitted subdivision plat(s) and shall be approved by the County planning department. Open space shall be dedicated to, owned, and maintained in perpetuity by any of the following:
 - a) A homeowners' association, having acquired fee simple title to the open space from the developer, in which membership is mandatory for all homeowners within the development.

- i) Any conveyance to a homeowners' association shall be subject to restrictive covenants and easements reviewed by the Director and recorded and filed at the time the subdivision plat for the project area is recorded.
- ii) The covenants and easements shall provide for the establishment of a homeowner's association before any homes are sold, where membership is mandatory for the initial home buyer and any successive buyer, the association is responsible for liability insurance and local taxes on common open space and recreational facilities owned by it, and any fees levied by the association that remain unpaid will become a lien on the individual property in accordance with procedures established under the dedication or organization document.
- b) A perpetual conservation easement on the open space held and enforced by an established land trust or conservation organization;
 - i) With its prior express written consent, a governmental body (e.g., the County Department of Parks and Recreation, State of North Carolina, United States government); or
 - ii) Any other structure or entity designed to afford such perpetual maintenance for the open space as same may be approved in advance by the County Planning Board.

(k) Open Space Maintenance

- (i) The owner of the open space shall be responsible for maintaining the open space so that it continues to effectively function for its intended use, and any dedication or conveyance of an open space parcel shall provide for such responsibility. Where the subdivision is located within a Watershed Protection District, retention of undeveloped open space in a vegetated or natural state shall be ensured by maintenance provisions filed with the County Planning Department, either as part of recorded documentation providing for establishment of a property owners' association or similar legal entity that is to be responsible for maintenance and control of open space or in a maintenance agreement recorded with the property deeds.

(l) Fee-In-Lieu

- (i) For all open space requirements not involving property designated as a greenway on any official plan adopted by the County, a property owner may elect to pay a fee-in-lieu of open space instead of providing the required open space provided that the Planning Board finds during the preliminary plat review that there is reasonable existing or future open space proximate to the subject parcel available for use by the future residents of the proposed subdivision.
- (ii) This fee shall be calculated by using the pro rata value of the designated property relative to the value of the entire site to be developed using tax appraisal data; for properties covered by agricultural or other exemptions, the County may utilize a separate appraisal method in its sole discretion. Funds collected in this manner shall be maintained in a separate account and shall be used to purchase property, or to enhance recreational use of property, or to implement projects identified in the Greenway Master Plan and/or the County parks and recreation master plan provided such features are reasonably proximate to the site(s) from which the funds are collected (located in the same County commissioner district as the subdivision providing the fee in lieu). Where practical, the collected fees for each project shall be designated for specific parks and recreation acquisitions and/or enhancements by the County.
- (iii) For developments and subdivisions containing more than 50 residential units, the fee-in-lieu option may only be used for up to 50 percent of the open space requirements in order to ensure that these larger projects provide on-site open space for their residents.

(m) Mitigation Program

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- (i) For all open space requirements not involving property designated as a greenway on any official plan adopted by the County, a property owner may elect to donate property of equal value located in any area of the County to a program that would preserve it as public open space accessible to all residents of and visitors to the County in lieu of providing open space within the proposed development. The value of the property required for open space shall be calculated by using the pro rata value of the designated property relative to the value of the entire site to be developed using tax appraisal data. The value of the property to be donated shall be calculated in the same way. The value of properties covered by agricultural or other exemptions may be calculated by the County using a separate appraisal method in its sole discretion.
- (ii) Standards for Property to Be Donated
 - 1) Property to be donated to the County in lieu of dedicating open space within a subdivision shall meet the following standards:
 - a) The property shall be maintained as public open space, with a written agreement guaranteeing the preservation of the open space.
 - b) The property must be donated to a unit of government, public agency, or nonprofit organization that is organized for, capable of, and willing to accept responsibility for managing the property for its intended purpose as open space and that will ensure County residents and visitors direct access to and use of the property as public open space.
 - c) Direct access to the property by the public must be maintained in perpetuity, with a written agreement guaranteeing direct access by the public.
 - d) Donation of the property as mitigation in lieu of providing all or any portion of the required open space within the subdivision must be approved by the Planning Board.
 - e) The property to be donated as mitigation must be identified in an official plan adopted by the County as suitable (desirable) for public open space.
 - 2) Standards for Dedication of Land
 - a) Property to be provided as mitigation in lieu of providing open space within a subdivision shall be donated to a public agency or nonprofit organization. Said public agency shall be organized for, capable of, and willing to accept responsibility for managing the property for open space purposes. The final recorded plat for subdivisions that donate land as mitigation in lieu of providing open space in the subdivision shall have a note stating that land has been donated as mitigation and providing the acreage, location, and deed reference of the property donated. The standards set forth in Section 4.3.2(d) above for dedication of open space shall be met when donating land as mitigation in lieu of providing open space within a subdivision.

4.3.3 Open Space - Conservation Subdivisions

(a) Required Open Space

- (i) The open space provided by conservation design can be used to provide recreational opportunities for the subdivision's residents or employees, to conserve and protect significant natural areas and environmentally sensitive areas, to conserve important historic resources, and/ or to conserve productive farming and forestry uses.

- 1) Land within the subdivision site that is not contained in lots or in rights-of-way or parcels devoted to accommodating necessary roads and utilities shall be in one or more connected parcels dedicated or reserved as permanent open space.
 - 2) Lands identified as optimal conservation areas pursuant to subsection (b) of this section shall be deemed permanent open space in accordance with this section. When optimal conservation areas do not equal or exceed 20 percent of the land area of the subdivision, additional open space shall be designated so that at least 20 percent of the area of the subdivision is made permanent open space.
- (ii) Subdivisions within the Cashiers Commercial Area intended for commercial uses shall be exempt from the open space requirement contained herein but shall comply with the requirements for preservation of water areas contained in Section 4.10.

(b) Open Space Use, Location and Design

- (i) The following areas are considered optimal conservation areas and shall be designated as open space on the plat of any conservation subdivision as necessary to meet the required 20 percent of land area:
- 1) Designated floodways and special flood hazard areas identified as part of a flood insurance study prepared by FEMA.
 - 2) Natural watercourses and any adjoining areas required to be maintained in a natural vegetated and unaltered state by this article or other applicable regulations.
 - 3) Any environmentally sensitive areas where development might threaten water quality or ecosystems (e.g., watershed buffers, groundwater recharge areas).
 - 4) Any identified important historic resources (e.g., homesteads, mills, barns, archeological sites) identified from a local archeological or architectural survey or an individual site survey.
 - 5) Productive farmland or forest land intended for continued agricultural and/or forestry use.
 - 6) Steep slopes (those exceeding 35 percent).
 - 7) Any identified sensitive natural area as defined herein.
- (ii) Open space may be used to provide active and/or passive outdoor recreation opportunities, either for the general public or for the subdivision's residents or employees and their guests provided that all standards as set forth in applicable local, state, and federal ordinances and regulations for use of these areas are followed. Impervious surfaces in required open space are limited to ten percent of the open space not contained within the optimal conservation area. Note: This does not preclude a membership requirement or monetary charge for use of recreation facilities, such as a golf, swim, or tennis club, as long as subdivision residents have an opportunity to join the club or pay to use club facilities;
- (iii) Sidewalks may be provided by the developer, if approved by the Planning Board, to access a pedestrian destination point, such as a school, park, etc., and may constitute part of the open space requirements.
- (iv) The location, size, character, and shape of required open space shall be appropriate to its intended use (e.g., open space proposed to be used for recreation, particularly active recreation), shall be located and designed so as to be conveniently and safely reached and used by those persons it is intended to serve, and open space proposed to be used for ball fields, playing fields, or other extensive active recreational facilities should be located on land that is relatively flat and dry).

(c) Design Procedure

- (i) The following conservation design procedures shall be used in evaluating major subdivision applications:

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- 1) Existing features/site analysis. An existing features/site analysis map shall be submitted to the Planning Department. The map shall indicate all features that exist on the subject site as described in this section.
- 2) Identification of open space conservation areas. Open space areas shall be identified. Guidance as to which parts to classify as open space areas shall be based upon three factors:
 - a) On-site visits by the Director, the subdivider and the site designer.
 - b) The open space standards described in Section 4.3.3(b).
 - c) The evaluation criteria as shown in Section 4.3.3(d).
- 3) Principal structure setback from open spaces. Any principal structures must be set back a minimum of 30 feet from all open space lot lines. Provided, however, the Director may reduce this setback requirement when, due to soil types, topography or other site considerations, strict compliance would result in practical difficulty or unnecessary hardship and when adequate assurances have been given for the protection of the open space.
- 4) Street, trail, and sidewalk locations and alignments. All streets, sidewalks, and trails shall be located and aligned on the site in the most reasonable and economical manner. Trails shall be provided from housing clusters to the designated open space.

(d) Evaluation Criteria

- (i) For any given site, resources may vary widely by importance. Likewise, for each type of resource, there should be examples of greater or lesser significance. In evaluating the layout of a site, the following evaluation criteria will be considered in determining the site's features and allowing for site design flexibility:
 - 1) The open space shall be reasonably contiguous and shall abut existing open space on adjacent sites.
 - 2) Wetlands, flood hazard areas and natural watercourses with associated buffers shall not be cleared, filled, or graded except as authorized by State, Federal and other applicable regulations and as may be approved by the Planning Director. Water features shall constitute no more than 50 percent of the open space area.
 - 3) Dwellings shall be located in unwooded parts of the site to prevent unnecessary clearing practices. Exceptions may be made when a site investigation by County staff reveals all or part of wooded areas are not worth saving due to tree decay/disease or unsightly overgrowth.
 - 4) The impacts on larger woodlands over five acres shall be minimized as much as practical.
 - 5) Where farmland preservation is the goal of a site design, dwellings shall be located away from active farming areas, as is practical.
 - 6) Where preserving scenic views is the goal of a site design, such scenic views should remain unblocked and uninterrupted. In wooded areas, where enclosure (i.e., a tree canopy) is a feature to be maintained, a no-cut and no-build buffer shall be considered along the public roadway.
 - 7) Where historic or archeological preservation is the goal of a site design, new streets, driveways, fences and/or utilities shall not interfere with the historic site. Building designs of the new homes shall reflect the qualities and designs of the historic buildings, as much as is practical.
 - 8) Where power line rights-of-way are proposed to be included as part of the open space, the right-of-way shall not exceed 50 percent of the required permanent open space.

Section 4.3.5 Street Standards

(a) Relation to Transportation and Land Development Plans

- (i) Arrangement, character, extent, width, grade, and location of all roads shall conform to the officially adopted Thoroughfare Plan or Comprehensive Transportation Plan, the adopted County Land Development Plan or elements thereof and any other adopted plan and shall be considered in relation to the following:
 - 1) Existing and proposed transportation patterns.
 - 2) Topographic and other natural features.
 - 3) Public convenience and safety.
 - 4) Appropriate relation to proposed uses of land to be served by such streets and existing or potential land uses in adjoining areas.
- (ii) The subdivider shall dedicate lands and fund necessary road improvements in conformity with adopted transportation or land use plans to the extent that such are adequately related to the traffic expected to be generated by the subdivision.

(b) Public Roads

- (i) All subdivision lots shall abut a public or private road for a distance of at least 30 feet. Public subdivision roads shall be designed and built according to the standards in the North Carolina Department of Transportation's *Subdivision Roads Minimum Construction Standards*. These roads shall be maintained by the developer/owner until the North Carolina Department of Transportation assumes responsibility for maintenance. Roads which are not eligible to be put on the State Transportation system because there are too few residences shall nevertheless be

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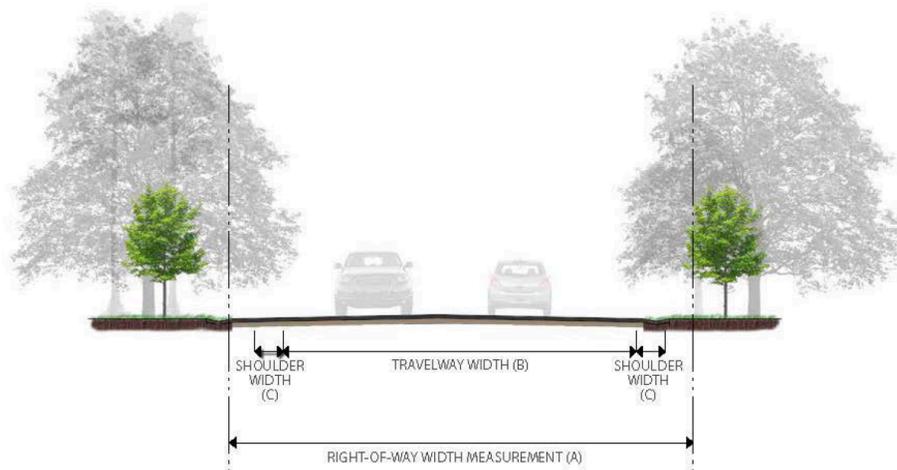
dedicated for public use and shall be built in accordance with State Department of Transportation Standards. Where a road has been offered for public dedication, that offer may not be withdrawn without prior approval from the Director.

(c) Private Roads

(i) Design Criteria

- 1) Roads that are not required to be constructed to state standards will be privately maintained, and maintenance responsibilities shall be noted on the final plat. Regardless of the designation of the road, every lot shall have access to a road that is sufficient to provide a means of ingress and egress for emergency vehicles as well as all those likely to need or desire access to the property for its intended use. (Sec. 28-62.1.B)
- 2) Roads shall be designed by a registered professional engineer or professional land surveyor licensed to work in North Carolina, as provided for by NCGS 89C-3. Prior to approval of a final plat for a subdivision the engineer or land surveyor who designed the roads shall certify that the roads have been constructed in accordance with the approved plans. If a surety bond or other financial guarantee is provided in lieu of constructing roads prior to approval of the final plat, the financial guarantee shall not be considered to be satisfied until the engineer or land surveyor who designed the roads has certified that the roads have been constructed in accordance with the approved plans.
- 3) Minimum Private roads proposed to serve lots and/or home sites in subdivisions shall comply with the following minimum design standards in Table 4.2.

Figure 4.5: Typical Street Cross-Section



Source: Stewart

TABLE 4.2: Subdivision Road Requirements

ROAD TYPE	MIN. ROW WIDTH (A)	TRAVELWAY WIDTH (B)	SHOULDER WIDTH (C)
SHARED DRIVE (UP TO 8 UNITS SERVED)	30'	10'	2'
MINOR RESIDENTIAL (9-12 UNITS SERVED)	35'	14'	2'
RESIDENTIAL (13-20 UNITS SERVED)	45'	16'	2'
MAJOR RESIDENTIAL (21-50 UNITS SERVED)	45'	18'	3'
COLLECTOR (OVER 50 UNITS SERVED)	45'	20'	3'

Notes:

- The minimum road right-of-way width shall be increased to the extent necessary to keep all grading and land disturbing activity within the road right-of-way.
 - Traffic generated by amenities such as golf courses, restaurants, etc. located within the proposed subdivision shall be considered in determining the appropriate standards for the road(s) serving the development and/or providing access to the amenity. This shall be done by identifying the vehicle trips estimated to be generated by the proposed amenity and relating these vehicle trips to those generated by a single-family dwelling. It shall be assumed that a single-family dwelling generates eight vehicle trips per day. Estimated traffic generation shall be as set forth in the NCDOT Traffic Engineering Manual.
 - If the shared drive or minor residential road is more than 500 feet long, a turnout must be provided as set forth in Section 4.3.5 (c)(i)5) below.
- 4) Turnouts. The turnouts must be a minimum of 50 feet long and provide for a total travelway width of 18 feet with an additional three feet width cleared of trees, brush, and undergrowth. If the turnout is located on the fill side of the road, it shall have a total travelway width of 20 feet with an additional three feet width cleared of trees, brush, and undergrowth. The location of turnouts on shared drives and minor residential roads shall be approved by the Planning Board. Items to be considered in the review of turnout locations shall include the road grade, slope of the bank (if turnout to be located on fill side of the road), width of the turnout, vertical and horizontal curves, and compaction of the subsoil and base as set forth in Table 4.3.

Table 4.3: Grades, Centerline Radius, and Turnouts

Road Section Grade	Road Centerline Radius	Turnout Spacing
≤ 12%	> 90 Feet	700 Feet
≤ 12%	90—70 Feet	600 Feet
≤ 12%	69—60 Feet	500 Feet
≤ 12%	59—50 Feet	400 Feet
≤ 12%	< 50 Feet	300 Feet
> 12%	> 90 Feet	350 Feet
> 12%	90—70 Feet	300 Feet
> 12%	69—60 Feet	250 Feet
> 12%	59—50 Feet	200 Feet
> 12%	< 50 Feet	150 Feet

- 5) The maximum length for road types shall be as follows:

Table 4.4: Road Length Standards¹

Shared Drive	2,650 feet (approximately ½ mile)
Minor Residential	5,300 feet (approximately 1 mile)
Residential	10,600 feet (approximately 2 miles)

¹ If the road length exceeds the maximum for that road type, the road shall be constructed to the standards of the next type regardless of the number of homes/lots served.

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- 6) Maximum cut slope: 1 ½ :1; maximum fill slope: 2:1. Steeper slopes may be permitted if certified by a professional engineer and approved by the Subdivision Ordinance Enforcement Officer. A bench with a minimum width of 5 feet shall be provided at the toe of all fill slopes greater than 10 feet in vertical height. All cut and fill slopes greater than 20 feet in vertical height shall have a bench with a minimum width of 5 feet for every 10 feet in vertical height. An illustration depicting the benching of cut and fill slopes is available on the County Planning Department website <https://www.planning.jacksonnc.org/planning.html> and from the Planning Department office.
- 7) Development access roads in subdivisions with more than 100 lots and/or dwelling units proposed and sections of roads within a subdivision providing access to more than 100 lots shall be constructed to NC DOT subdivision roads minimum construction standards.
- 8) All lots in a residential subdivision shall abut an access road meeting one of the classifications identified in the Table 4.2: Subdivision Road Requirements.
- 9) Subdivisions shall abut and be accessed from a public road or have a deeded right-of-way (minimum width of 45 feet) to a public road. If access is provided by a deeded right-of-way, an access road meeting the road construction standards for the number of lots served shall be constructed within the deeded right-of-way.
- 10) Sections of road, including shared drives, with a grade in excess of 15 percent shall be paved, with the pavement extending 100 feet from the section of road with a grade in excess of 15 percent. The length of road sections with a grade greater than 15 percent shall not exceed 300 feet in length, and a leveling area shall be provided at each end of the road segment with a grade exceeding 15 percent. The grade of the leveling area shall not exceed 12 percent and shall be at least 100 feet in length.
- 11) The grade of residential roads and major residential roads may be increased up to a grade of 20 percent upon approval of the Planning Board in order to minimize grading and/or vegetation removal. The section of road with a grade in excess of 15 percent shall be paved, shall not exceed 300 feet in length, and a leveling area shall be provided at each end of the road segment with a grade exceeding 15 percent. The grade of the leveling area shall not exceed 12 percent and it shall be at least 100 feet in length.
- 12) The grade of collector roads may be increased up to a grade of 18 percent upon approval of the Planning Board in order to minimize grading and/or vegetation removal. The section of road with a grade in excess of 15 percent shall be paved, shall not exceed 300 feet in length, and a leveling area shall be provided at each end of the road segment with a grade exceeding 15 percent. The grade of the leveling area shall not exceed 12 percent and it shall be at least 100 feet in length.
- 13) A two-foot-wide shoulder shall be provided on each side of shared driveways, minor residential, and residential roads. A three-foot-wide shoulder shall be provided on each side

of major residential and collector roads. The shoulder shall be at approximately the same finish grade as the roadbed and shall be compacted to a minimum compaction rating of 95 proctor. Shoulders may be grassed, graveled, or paved.

- 14) The travelway width for all roads except collector and development access roads may be reduced to one lane (minimum width nine feet) in areas with steep slopes to reduce grading and preserve existing vegetation upon approval of the Planning Board. The maximum length of the one lane segment shall be 1,000 feet and a pull out(s) meeting the standards set forth above shall be provided. A road shoulder with a minimum width of two feet shall be maintained on each side of the one lane road segments.
- 15) Leveling areas must be provided for all roads at all intersections. The leveling area shall have a maximum grade of five percent extending 50 feet from the intersection.
- 16) The travelway width shall be increased when the road centerline radius is less than 90 feet. For centerline radii between 90 feet and 70 feet, the travelway width shall be increased 25 percent; for centerline radii between 70 feet and 60 feet, increase the travelway width 35 percent; for centerline radii between 60 feet and 50 feet, increase the travelway width 45 percent; and for centerline radii less than 50 feet, increase the travelway width 50 percent.
- 17) The width of the corridor cleared/graded for road construction shall not exceed 90 feet for 80 percent of the length of the road. For 20 percent of the length of the road, the corridor may be cleared/graded to a maximum width of 135 feet for the road construction. The maximum height of the corridor (combined cut and fill slopes) shall be 60 feet.
- 18) An overhead clearance of 14 feet shall be provided on all roads.
- 19) Alternatives and modifications to these standards that reduce land disturbance and vegetation removal, such as one-way roads and loop roads, and/or that are necessitated by the natural physical features of the property and not otherwise provided for in these standards may be approved by the Planning Board. The request for such alternative or modification shall be submitted by the property owner/developer to the planning department for review and conveyance to the Planning Board.
- 20) Vertical Curves. Formula for determination of length of vertical curve required to provide minimum sight distances shall be as follows:

a) $[L = KA]$

L = Length of vertical curve in feet

K = Rate of vertical curvature in feet per percent of A

A = Algebraic difference in grades in percent

Table 4.5: Vertical Curvature Standards

Crest	10
Sag	10
Stop	5

- 21) Minimum private roads proposed to serve lots and/or home sites in subdivisions shall comply with the following minimum construction standards:

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Table 4.6: Private and Subdivision Road Construction Standards

Road Type	Base Course	Pavement Surface
Shared Drive	4" ABC ¹ or STBC ²	Not required unless grade > 15%
Minor Residential	6" ABC or STBC	AST ³
Residential	6" ABC or STBC	1 ½" SF9.5A ⁴ or S9.5B ⁵
Major Residential	8" ABC or STBC	1 ½" SF9.5A or S9.5B
	Or 6" ABC or STBC	2" SF9.5 or S9.5B
Collector	8" ABC or STBC	2" SF9.5A or S9.5B

¹ ABC Aggregate Base Course

² STBC Soil Type Base Course

³ AST Asphalt Surface Treatment, Mix design to be approved by Planning Board

⁴ SF9.5A Asphalt Concrete Surface Treatment, Type SF9.5A

⁵ S9.5B Asphalt Concrete Surface Course, Type S9.5B

- 22) Approved pervious paving materials are encouraged to be used in lieu of the paving materials listed above. Pervious paving materials shall be approved by the Planning Board.
- 23) The right-of-way widths and construction standards specified above are for private roads. NCDOT will not assume maintenance of these roads. In order for NCDOT to assume maintenance of roads, they must meet NCDOT standards as set forth in the publication "NCDOT Subdivision Roads Minimum Construction Standards." Base and subsoil shall be compacted to a minimum rating of 95 proctor.

(d) Dead-End Roads

- (i) Dead end roads shall provide a turnaround at the end of the road to permit general traffic, emergency vehicles, and general service vehicles to turn. If a bulb turnaround is provided, the turnaround shall meet the following standards:
 - 1) Minimum ROW radius: 45 feet.
 - 2) Minimum pavement radius: 30 feet.
 - 3) T-turnarounds and hammerhead turnarounds may be used in lieu of a bulb turnaround on dead end roads. The minimum length of the maneuvering segment shall be 45 feet and the minimum width shall be 18 feet.

(e) Driveways

- (i) Curb cuts, where provided in the subdivision, shall begin not less than three feet from lot lines as projected to meet the line of the pavement edge. Design and construction of portions of driveways within rights-of-way shall be constructed in accordance with the requirements of the NCDOT. The approving authority may permit the establishment of shared driveways on property lines provided that mutual access easements are delineated upon the subdivision plat and all relevant deeds.
- (ii) If extraordinary surface or subsurface conditions, terrain, the general drainage pattern in the area, existing or probable development in the vicinity, or other circumstances exist or occur, the Planning Director, upon making supporting written findings, may establish greater requirements in particular cases.

(f) Access to Public Lands

- (i) Cemeteries and gravesites shall be identified during the application process and protected during development of subdivisions by a 20-foot buffer, and family members shall be assured reasonable access thereto during development and thereafter. Anyone subdividing properties containing roads, trails and other travel ways which have historically provided public access to national forests and other public lands is encouraged to provide for continued public access thereto.

(g) Traffic Control

- (i) All subdivision road intersections including those with existing state-maintained roadways shall be constructed using traffic control standards as designated in the "Manual on Uniform Traffic Control Devices" (MUTCD,) "North Carolina Supplement to the Manual on Uniform Traffic Control Devices." All signage shall meet the requirements of the MUTCD.

(h) Intersections

- (i) The most desirable intersections are those with angles of 75 to 90 degrees. Intersections with angles from 60 to 75 degrees are acceptable under extreme conditions as determined by the Planning Director.
- (ii) Minimum sight distance triangle for stop condition when connecting new local residential roads or residential collector roads to existing state-maintained roads is 70 feet along the existing road right-of-way and 10 feet along the new road right-of-way.
- (iii) All internal intersections shall have minimum 20 feet radius.

(i) Sidewalks and Ramps

- (i) **General.** Sidewalks may be provided for all major subdivisions to access a pedestrian destination point, such as a school, park, etc., and may constitute part of the open space requirements.
- (ii) **ADA Compliance.** All sidewalks shall meet requirements of the "Americans With Disabilities Act." In accordance with NCGS 136-44.14, all street curbs in the State of North Carolina being constructed or reconstructed for maintenance procedures, traffic operations, repairs, correction of utilities or altered for any reason after September 1, 1973, shall provide wheel chair ramps for the physically handicapped at all intersections where curb and gutter is provided and at other major points of pedestrian flow. Wheel chair ramps and depressed curbs shall be constructed in accordance with details contained in NCDOT's, Division of Highways publication entitled, "*Guidelines, Curb Cuts and Ramps for Handicapped Persons.*"

(j) Street Names and Signage

- (i) In accordance with Chapter 26, Article II of the Jackson County Code of Ordinances, street names, prefixes, suffixes, and addresses shall conform to the guidelines and policies set forth by Jackson County. Appropriate street name signs which meet standard County specifications shall be placed at all street intersections. The developer shall bear the expense.
- (ii) Proposed street names shall be submitted and subject to the approval of the Jackson County, as appropriate. New names shall not duplicate or be similar to existing street names. Existing street names, however, shall be extended where appropriate.

Section 4.4 STORMWATER DRAINAGE STANDARDS (Sec. 28-62(4))

(a) General Requirements

- (i) Drainage systems shall be designed utilizing low-impact design to limit disruption of natural water flows by eliminating stormwater runoff, increasing on-site infiltration, and eliminating contaminants.
- (ii) This system design shall be rendered in a drainage plan, which is a written or graphic concept plan of the proposed post-development stormwater management system. The drainage plan shall, at a minimum, include the following: preliminary selection and location of proposed structural stormwater controls; low impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of flood plain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

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- (iii) The approval of the drainage plan of any subdivision shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.
- (iv) Where major new drainage ways are required in a subdivision, they shall be coordinated with existing and proposed general drainage systems and designed with due regard for safety, appearance, and geological effects.

Figure 4.8: Examples of Stormwater Control Measures



Source: Stewart

- (v) Aboveground drainage ways shall be:
 - 1) Located and constructed to maintain a natural appearance;
 - 2) Limited to safe water depths in easily accessible areas; and
 - 3) Designed to avoid excessive rates of flow, erosion, or overflow into developed areas subject to damage.
- (vi) Watercourses and natural water areas downstream, from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity in accordance with the County sediment control provision. In circumstances where the impact of new drainage would be likely to damage or destroy significant existing natural water areas, such drainage shall not be discharged through or into such areas.
- (vii) The development area of any lot shall conform with subsection (iii) of this section.
- (b) Development Standards for Low Density Projects**
 - (i) Stormwater runoff from the development area shall be transported from the development by vegetated conveyances to the maximum extent practicable.
- (c) Development Standards for High Density Projects**
 - (i) The measures shall control and treat the difference in stormwater runoff volume leaving the development area between the pre- and post-development conditions for, at a minimum, the ten-year, 24-hour storm. This standard refers to the surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in ten years. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours.
 - (ii) All structural stormwater treatment systems used to meet the requirements of this section shall be designed to have a minimum of 85 percent average annual removal for total suspended solids (TSS).

(d) Stormwater Drainage Facilities

- (i) The application shall be accompanied by a description of the proposed method of providing stormwater drainage. The subdivider shall provide a drainage system that diverts stormwater runoff away from surface waters and incorporates best management practices to minimize water quality impacts. Consistent with Section 5.3.9 (Stormwater Provisions), subdivisions qualifying for the special intensity allocation shall provide non-structural methods of managing stormwater runoff.

(e) Erosion and Sedimentation Control

- (i) The application shall, where required, be accompanied by a written statement that a sedimentation and erosion control plan has been submitted to and approved by the State Division of Land Quality.

(f) Roads Constructed in Critical Areas and Watershed Buffer Areas

- (i) Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed so to minimize their impact on water quality.

(g) Erosion Protection; Preservation of Topsoil and Vegetation

- (i) In general, during the preparation of the subdivision and installation of improvements, appropriate measures shall be taken to prevent erosion and damaging siltation on the property and on adjoining land or water areas in accord with the Article V, Section 5.3, Erosion and Sedimentation Control.
- (ii) In any grading or filling operations, desirable topsoil shall be conserved and redistributed as such, particularly to cover exposed subsoils.
- (iii) Trees, shrubs and ground cover existing at the beginning of development operations shall be preserved to the maximum extent reasonably feasible where they are of species and in locations likely to add amenity to the completed development.
- (iv) Ground cover. All land within the subdivision right-of-way which is not used for structures, vehicular or pedestrian traffic, or for other approved landscaping shall be provided with grass or other ground cover, appropriately installed, and consistent with the requirements of the County sediment control regulations. Ground cover may include appropriate plant materials preserved in place.
- (v) The Planning Director may require preservation of specified trees or other vegetation in connection with a particular development, except upon findings that such preservation is not feasible in view of the requirements for the installation of public utilities and facilities.
- (vi) The Planning Director may grant a conditional approval of a preliminary subdivision plat, provided that an erosion control plan approval letter is submitted to the Planning Department within 90 days and prior to commencement of site preparation or other land-disturbing activities.

(h) Adequacy

- (i) All storm drainage shall be adequate so that the road may be maintained without excessive cost, and not cause flooding on private property from storm runoff of the design frequency. The minimum design frequency shall be as follows:
 - 1) Storm sewer collector and lateral ditches: ten years.
 - 2) Cross drainage: 25 years.
 - 3) Minimum cross pipe diameter is 18 inches; minimum driveway pipe diameter is 15 inches.
 - 4) All drainage shall be consistent with criteria found in NCDOT Guidelines for Drainage Studies and Hydraulic Design.

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- 5) In areas where ditch grades or quantities of flow make it impracticable to establish and maintain vegetation, an erosive resistant lining such as paving, matting or rip rap shall be required. Subsurface drainage shall be adequate to maintain a stable subgrade.
- (i) Structures (Culverts, Dams, Retaining Walls, and Bridges)**
- (i) Design, construction, and installation of culverts, dams, and retaining walls shall comply with NCDOT standards as set forth in NCDOT Subdivision Roads Minimum Construction Standards, unless other standards are approved by the Planning Board. Bridges shall have a travelway width equal to that required for the road type (including required shoulder width) and shall comply with the requirements of the U.S. Army Corps of Engineers and other permitting agencies. All bridge designs shall be prepared and/or approved by a licensed professional engineer registered in North Carolina. The Planning Director shall review permit documentation for bridges to assure that all required approvals have been obtained prior to construction.

Section 4.5 UTILITY AND INFRASTRUCTURE STANDARDS

(a) General

- (i) Subdivision development shall comply with the standards established by the utility company or agency providing the utility service and with the standards of the NCDOT as set forth in NCDOT's Subdivision Roads Minimum Construction Standards (latest edition).

(b) Above Ground Utilities

- (i) Poles and other above-ground utilities which are to remain inside the right-of-way shall be located at or as near as practical to the right-of-way line. As a minimum, above-ground utilities shall be located outside the shoulder/ditch for the road section involved.
- (ii) Where there are curbed sections, above-ground utilities should be located as far as practical behind sidewalks. There is no single minimum dimension for setback of poles, fire hydrants, etc., behind curbs; however, where there are curbed sections and no sidewalks, six feet will be used as a design safety concept guide. Where dimensional or other characteristics of such land are such that they could not be used for other purposes under the zoning applying in the district, the plan shall indicate and restrict use to easement or substation purposes, and requirements generally applicable to access, dimensions or other characteristics of that land shall not apply. Departmental reports in such cases shall include findings as to the effect of the proposed location in adjacent uses, preservation of areas of major ecological importance, and as to whether sites for substations, if involved, are adequate to provide required screening.

(c) Public Water Supply

- (i) Public water supply is required in a subdivision as follows:
 - 1) Any subdivision, including estate, family, minor and major, which has public water system lines available shall be required to extend the public water system throughout the subdivision to each lot located therein.
 - 2) All required water line extensions shall include appropriate valves, hydrants, taps and service to the property line of each lot as required by the standards of the provider of the service.
 - 3) For subdivisions located within the jurisdiction of this section, the term "available" shall mean that there is an existing water line of adequate size and water flow and/or pressure, as determined by the water provider, abutting the property and/or right-of-way, provided there are no legal or documented topographic constraints which prevent the subdivider from connecting onto and extending the existing system to the subdivision.

- 4) Every lot in a major subdivision shall be served by a permitted public or community water system or served by individual wells approved by the County division of environmental health.

(d) Public Sanitary Sewer

- (i) Public sanitary sewer is required as follows:
 - 1) Any subdivision, including estate, family, minor and major subdivisions, which has public sewer system lines available shall be required to extend the public sewer system throughout the subdivision to each lot located therein.
 - 2) All required sewer line extensions shall include appropriate manholes, lift stations, pumps, cleanouts, taps and service to the property line of each lot as required by the standards of the provider of the service.
 - 3) For subdivisions located within the jurisdiction of this section, the term "available" shall mean that there is an existing sewer line of adequate size and flow, as determined by the utility provider, abutting the property and/or right-of-way, provided there are no legal or topographic constraints which prevent the subdivider from connection onto and extending the existing system to the subdivision.
- (ii) Every lot in a major subdivision shall be served by a public sewer or, where public sewer is not required, by a permitted community sewer system or an individual on-site septic system approved by the County Public Health Department.

(e) Exceptions

- (i) Where subdivisions are proposed, and no public or community sewer is available, the applicant should review a soils map of the property and be knowledgeable of the suitability of ground absorption systems for the development.

(f) Fire Protection

- (i) All lots served by a municipal public water supply system in a subdivision shall also be afforded fire protection by means of hydrants, installed under uniform standards and specifications. Final plats shall indicate that any qualified water ponds shall be made available to emergency personnel for the purpose of pumping water.

Section 4.6 EASEMENTS

(a) Utility Easements

- (i) Easements for utilities shall be provided where necessary along front, rear, or side lot lines in the subdivision, but shall not be required to center on such lines. Such easements shall be sufficiently wide to provide for installation of such utilities and access for maintenance and operation.
- (ii) Where it is proposed to locate major utilities easements (defined for purposes of this section as being 20 feet or more in width) and/or sites for substations, such as pumping stations, relay towers, pressure regulating stations and the like, in a subdivision, procedures shall be as generally provided for minor and family subdivisions.

(b) Minor Drainage Easement

- (i) For purposes of this section, minor drainage easements are defined as those providing for drainage of surface waters from four or fewer lots, and not involving water bodies of substantial significance in the ecology of the area, as determined by the Planning Director. Minor drainage easements, where required, shall be permitted to cross lots at other points only where such arrangement is found by the Planning Director to be practically necessary as a result of topography or soils conditions or improved flow and where such arrangement will

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leave a suitable buildable area, safe from inundation, erosion, or subsidence, and safely accessible from approved roads. Where necessary for operation, construction or maintenance, the Planning Director may require, in accord with the terms of the easement, minor drainage easements to be kept free of trees and other obstructions.

(c) Utilities in Drainage Easements

- (i) Utilities in drainage easements shall be permitted only upon specific authorization by the Planning Director and only in locations authorized.

SECTION 4.7 MARKERS AND MONUMENTS

- (a) Monuments, complying with the requirements of NCGS 47-30 and the current edition of the Standards of Practice for Land Surveying in North Carolina, shall be placed in all subdivisions.
- (b) Any permanent monuments or markers displaced or destroyed during the course of development or construction in the subdivision shall be accurately witnessed and replaced upon completion of such development or construction.

SECTION 4.8 HOMEOWNER/PROPERTY OWNER ASSOCIATIONS

(a) Establishment

- (i) If a property owners' association or similar legal entity is to be responsible for the maintenance and control of roads, open space, recreational facilities, or other common areas and facilities associated with a subdivision, it shall be established so that it has clear legal authority to maintain and exercise control over the common areas and facilities, including the power to compel contributions from subdivision residents to cover their proportionate shares of the costs associated with the maintenance of the common areas and facilities. Such association or similar legal entity shall be established before any dwelling unit or lot in the subdivision is sold or any building in the subdivision is occupied.

(b) Documentation

- (i) Documents providing for the establishment of a property owners' association or similar legal entity in accord with this section shall be submitted to and approved by the County Attorney before any plat for the development is recorded. The review by the County Attorney shall be limited to ensuring that the property owners' association or similar legal entity is established so that it has clear legal authority to maintain and exercise control over the common areas and facilities, including the power to compel contributions from subdivision residents to cover their proportionate shares of the costs associated with the maintenance of the common areas and facilities.

(c) Maintenance of Private Subdivision Road

- (i) Private subdivision roads shall be maintained privately by a property owners' association. Subdivisions of eight lots or less and family subdivisions shall not be required to establish a property owner's association for the maintenance of private roads in the subdivision. A maintenance agreement that establishes responsibility for maintenance of these roads shall be required for subdivisions of eight lots or less. The maintenance agreement for private subdivision roads shall include, but not be limited to, the items listed below. In lieu of the legally incorporated property owners' association identified below, subdivisions of eight lots or less may provide an agreement including all lot owners.
 - 1) A legally incorporated property owners' association shall be established for the property owners within the entire subdivision.

- 2) All property owners within the subdivision shall be members of the property owners' association.
- 3) The subdivider shall convey, in a fee simple ownership, all neighborhood private roads within the subdivision to the property owners' association.
- 4) The passage of the responsibility for maintenance of neighborhood private roads from the developer to the property owners' association shall be noted in the deed of each purchaser of property within the subdivision.
- 5) At the time of preparation of the sales agreement, the developer shall include a disclosure statement to the prospective buyer. The disclosure statement shall:
 - a) Provide an explanation of the consequences and responsibilities regarding the maintenance of a private road and shall fully and accurately disclose the party who shall be responsible for the construction and maintenance of the subdivision roads.
 - b) Shall state that the owners of property in this subdivision are responsible for maintaining and repairing the roads as well as paying the costs thereof if the roads are private and will not be dedicated to NCDOT for maintenance.
 - c) Shall state that County and other governmental services may be restricted or not provided for owners of property using private roads for access.
- 6) The buyer of the subject real estate shall receive and sign an acknowledgment of receipt of a separate instrument known as the subdivision streets disclosure statement.
- 7) A copy of the disclosure statement required by this section shall be provided to the Planning Department at the time of the submittal of the final plat.

SECTION 4.9 COMPLETION AND MAINTENANCE GUARANTEES

(a) Completion

- (i) All applicants shall be required to complete all the street, sanitary sewer and storm drainage, sidewalks, street signs, monuments, erosion control, street lights, and other required improvements as approved by the Planning Director, prior to approval of the final plat or Certificate of Occupancy for projects not requiring a platting process, except as provided in Subsection (b) below concerning performance guarantees.
- (ii) All required improvements shall be inspected and approved by appropriate public officials or agencies.

(b) Performance Guarantees

- (i) In lieu of completion of all or part of required improvements prior to approval of subdivision final plats or approved phased development, the applicant may post a performance guarantee in the amount as indicated under Subsection (d) of this section for the construction, installation, and dedication of the uncompleted portion of the required improvements.
 - 1) Type of guarantee. The type of the guarantee shall be as provided herein.
 - a) Surety bond issued by any company authorized to do business in this State.
 - b) Letter of Credit issued by any financial institution licensed to do business in this State. The terms of the letter shall include the absolute right of the County Manager to withdraw funds from the bank forthwith upon the County Manager's certifying to the bank that the terms and conditions of the performance guarantee have been breached. The expiration date of the letter of credit shall be at least six months past the anticipated completion date of the required improvements.

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- c) Other forms of guarantee that provides equivalent security to a surety bond or letter of credit.
- d) No person shall have or may claim any rights under or to any performance guarantee provided pursuant to this subsection or in the proceeds of any such performance guarantee other than the following:
 - i) The local government to whom such performance guarantee is provided.
 - ii) The developer at whose request or for whose benefit such performance guarantee is given.
 - iii) The person or entity issuing or providing such performance guarantee at the request of or for the benefit of the developer.

(c) Guarantee Time Limits

- (i) Extensions for performance guarantees may be granted by the Planning Director subject to a review of the circumstances surrounding the request for an extension and the record of the applicant. Property owners in the development shall be notified and shall be given an opportunity to comment on the request for an extension of the performance guarantee.

(d) Amount and Terms of Guarantee

- (i) The amount and terms of the guarantee shall be as provided herein. Following receipt of such recommendations, the Planning Director shall review the information submitted as to the amount and terms of the performance guarantee, including the time of initiation and completion of the work; provisions concerning extensions for cause; and provisions for release of the guarantee upon completion of the work. If the information is complete and the guarantee amount is deemed satisfactory, the Planning Director shall administratively approve the performance guarantee package.
- (ii) The guarantee shall be 1.25 times the executed construction contract amount or the certified cost estimate, whichever is provided. The amount of the guarantee shall be sufficient to provide adequate funds to the County to ensure, in the case of default, the installation of all required improvements uncompleted at the time of default. In reviewing the amount of the performance guarantee, the Planning Director shall consider the difficulty of restarting a closed project, the size and complexity of the required improvements, the record of the applicant and the site conditions.
- (iii) The Planning Director may authorize reductions in the amount of the performance guarantee in light of the completion of guaranteed improvements when doing so is fair and equitable and would not be contrary to the public interest.
- (iv) The performance guarantee shall only be used for completion of the required improvements and not for repairs or maintenance.

(e) Inspections; Reports; Cost Responsibility

- (i) Procedures for inspections and reports and the responsibility shall be as provided herein.
 - 1) The applicant shall have a registered, licensed professional make regular inspections to document progress based on the required construction schedule and provide a final inspection report to confirm work has been completed per ordinance regulations.
 - 2) Within ten days of such inspections, copies of reports of the results thereof shall be provided to the Planning Director.
 - 3) The full cost of making such inspections and preparing such reports shall be paid by the applicant.

(f) Action on Inspection Reports

- (i) The following actions may be taken on inspection reports:
 - 1) Reports indicating satisfaction of requirements. Where such reports indicate satisfactory completion of work within time limits set and in accord with other terms of the performance guarantee, for agreed-upon stages or for the entire work, the Planning Director shall so indicate by first class mail to the applicant, any surety company involved and the County Manager. The County Manager, upon such notification and any further assurance he may require from the County attorney or governmental bodies exercising operating control, shall then release the performance guarantee in accordance with the terms thereof.
 - 2) Reports indicating failure to satisfy requirements. Where such reports indicate failure to complete work on schedule in full compliance with the terms of the performance guarantee, the Planning Director shall so indicate by first class mail to the applicant, governmental bodies exercising control, any surety company involved, and the County Manager. Such notice shall indicate that, unless action required under the terms of the performance guarantee is completed within 30 days of the date of such notification, the performance guarantee or portions thereof, set forth in its terms, shall be called. Unless such action is completed, as evidenced by inspections and reports from governmental bodies exercising control transmitted through the Planning Director, the County Manager shall call the performance guarantee or affected portions thereof.
 - 3) Reports indicating unsatisfactory progress. Where such reports indicate that work initiated appears unlikely to be completed on schedule, and where the performance guarantee provides for extension of time for cause, the Planning Director shall notify the applicant by first class mail and any surety company involved concerning the potential need for an application for such extension. Where such notice has been given, no application for an extension shall be given after expiration of the original schedule date.

(g) Failure to Complete Work Under Performance Guarantee

- (i) Where work required under the terms of any performance guarantee given pursuant to this article is not completed by the applicant as specified therein, the County Manager, following the call of the guarantee, shall take such action as is appropriate in the circumstances of the case to

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procure the completion of the required improvements at the earliest reasonable time, according to the plans and specifications.

(h) Maintenance of Land and Improvements

- (i) The applicant shall maintain all land and required improvements offered for dedication in a subdivision in satisfactory condition until acceptance of the dedication.

(i) Guarantee of Other Governmental Agency or Public Utility

- (i) Where all or part of required subdivision improvements are to be completed by another government agency or public utility, the Planning Director may accept the written guarantee of such agency to complete such improvements within a time to be mutually agreed upon, with time for completion limited as provided in Section (d)(1) this section.

(j) Building Permits and Certificates of Occupancy

- (i) Building permits may not be issued for construction of residential structures in a subdivision prior to completion of required improvements unless a performance guarantee has been approved by the Planning Director.
- (ii) Certificates of occupancy may be issued, and buildings occupied only when all of the following improvements are available and as further provided in Section (iii) below:
 - 1) Roads and driveways shall be passable for private, service and emergency vehicles under normal weather conditions.
 - 2) Drainage shall be installed and operative, thus ensuring that, under normal weather conditions, there will be no flooding of the building site or access ways to the site.
 - 3) Erosion protection, acceptable under normal weather conditions, shall be installed.
 - 4) Domestic water supply and sanitary sewerage shall be installed and operative.
- (iii) No such permits or certificates shall be issued unless all remaining required improvements are covered by a performance guarantee and the applicant accepts responsibility pending completion of all required improvements.

SECTION 4.10 PRESERVATION AND STORMWATER CONTROL MEASURES FOR WATER AREAS

- (a) Intent.** It is the intent of this article both to safeguard existing and potential development in appropriate locations and to preserve and promote a desirable ecological balance. Insofar as is reasonably practicable, subdivisions shall, therefore, be located, designed and improved to:

- (i) Preserve important natural water areas and related vegetation and wildlife habitats;
- (ii) Avoid creation of upstream impoundments or downstream runoff harmful to such complexes or to existing or potential development in appropriate locations; and
- (iii) Maintain desirable groundwater levels.

- (b) Maintenance of Natural Watercourses.** Standards for maintenance of natural watercourses areas provided herein.

- (i) Where a proposed subdivision is traversed by or includes in whole or in part a natural watercourse, as defined herein, the following requirements shall apply:
 - 1) Such natural watercourse shall be maintained in its natural state except for those vehicular or utility crossings which are necessary and deemed unavoidable by the approving authority;
 - 2) Bordering lands within 30 feet of the edge of any natural watercourse shall be maintained in a naturally vegetated and unaltered state;
 - 3) Bordering lands likely to be inundated at the period of high water during periods of rainfall of ten-year return frequency shall be maintained in a naturally vegetated and unaltered state;

- 4) Any area designated as a floodway on the most recently adopted flood insurance rate map for the County shall be maintained in a naturally vegetated and unaltered state;
 - 5) Any area designated as a special flood hazard area inundated by the 100-year flood on the most recently adopted flood insurance rate map for the County shall be designated as open space on any plat for a major subdivision. It shall not be necessary that it be maintained in a naturally vegetated and unaltered state except as required by subsection 4) of this section.
 - 6) Any other suitable protective strips deemed necessary by the Planning Director shall be protected.
- (ii) The Planning Director and/or his/her designee, as a condition for plat approval, may make such requirements as are reasonable for the protection of such areas, including the following:
 - 1) The Planning Director may require that streets and/or parkways shall border such areas, setting them apart from residential or other intensive uses; or
 - 2) The Planning Director may require that all or part of such area shall be platted as part of residential or other lots.
 - (iii) In making decisions concerning such requirements, the Planning Director shall consider topography, drainage patterns, soil types, character of existing and potential upland uses, ground cover, erosion control requirements, character of the area to be protected, the adequacy of proposed filter areas, and the like.
 - (iv) The development area for any lot shall be delineated on subdivision plats. Those areas described in Section(b)(i) above shall not be included in the area of any lot intended for development and shall be set aside for the common use and enjoyment of occupants of the subdivision, and arrangements for maintenance by a property owners' association, management group or other acceptable arrangement shall be made. These areas shall be designated for permanent protection on the subdivision plat and recorded deeds, with appropriate recorded deed restrictions for the use and protection of these areas stipulated, and all management responsibilities set forth in property owners' association bylaws or other appropriate and binding documents for the development.
- (c) **Changes in Location or Extent of Significant Natural Waterways and Water Areas.** The Planning Director may approve plats depicting changes in the location or extent of significant natural waterways and/or water areas only in the following circumstances:
- (i) When necessary to accommodate unavoidable vehicular or pedestrian crossings;
 - (ii) When such changes will not adversely affect desirable ecological conditions, drainage or water retention or result in undesirable location or amount of upstream impoundment or downstream discharge; and
 - (iii) The subdivider has obtained all necessary state and federal permits.
 - (iv) No-rise certifications shall be required where regulatory floodways are concerned.
- (d) **Minor Incursion for Recreational Purposes.** Minor incursions into areas protected under this section may be permitted for the purpose of providing pedestrian and bicycle access for passive recreational activities. Such incursions shall be permitted only if shown on the preliminary and final plats and approved by the Planning Director.

SECTION 4.11 REQUIRED CERTIFICATIONS

- (a) **Certifications are required per North Carolina General Statutes.**



Environmental Regulations

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Article V. - Environmental Regulations

Section 5.0 - Adoption by the Town of Webster

In order to promote uniformity with Jackson County Ordinances, the Town of Webster has adopted the following sections of Article V of the Jackson County Unified Development Ordinance: Section 5.1 - General Provisions; Section; 5.3 - Erosion and Sediment Control; 5.6 - Flood Damage Prevention; Section 5.7 - Mountain Ridge Protection; and Section 5.8 - Mountain and Hillside Development. The term "Town of Webster" may be substituted for all instances in which the term "County" is found throughout the following ordinance.

Article V. ENVIRONMENTAL REGULATIONS

Section 5.1 General Provisions

(a) Purpose and Intent

- (i)* The intent of this section is to protect the general health, safety, and welfare of the public by establishing criteria which define, regulate, prohibit, mitigate activities that negatively affect the environment.

(b) Jurisdiction

- (i)* The standards in this section are applicable to the areas within unincorporated Jackson County or its Regulated Districts.

(c) Administration

- (i)* The following environmentally related sections, may be administered, reviewed, and decided by different entities as referenced in Table 3.1: Development Review Procedures. For the purposes of this section, the term "Director" shall refer to the Planning Director unless otherwise stated (e.g., Permitting and Code Enforcement Director).

(d) Enforcement

- (i)* Violations of this section shall be remedied in accordance with the provisions set forth in Article X: Violations and Enforcement of this Ordinance.

Section 5.3 Erosion and Sedimentation Control Regulations

Section 5.3.1 Purpose and Intent

- (a) The purpose of this section is to regulate certain land disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution and degradation of water and other damage to lakes, watercourses, and other public and private property by sedimentation.

Section 5.3.2 Applicability

- (a) This section shall apply to all land disturbing activities, as defined, within the territorial jurisdiction of the County and to the municipalities including extraterritorial jurisdiction of the municipalities as allowed by the agreement between the local governments or other appropriate legal instrument or law.

Section 5.3.3 Exemptions

- (a) This section shall not apply to the following land disturbing activities:
- (b) Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
- 1) Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
 - 2) Dairy animals and dairy products.
 - 3) Poultry and poultry products.
 - 4) Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats.
 - 5) Bees and apiary products.
 - 6) Fur-producing animal.
 - 7) mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances. Trout production and other aquaculture activities.
- (ii) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department Agriculture and Consumer Services. If land disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this section shall apply to such activity and any related land disturbing activity on the tract.
- (iii) Activities for which a permit is required under the Mining Act of 1971, NCGS 74, Article VII;
- (iv) Land disturbing activity over which the State has exclusive regulatory jurisdiction as provided in NCGS 113A-56(a).
- (v) For the duration of an emergency, activities essential to protect human life.
- (vi) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- (vi) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2.

Section 5.3.4 Permits and Procedures

- (a) The Permitting and Code Enforcement Director shall administer this section per the Table 3.1 Development Review Procedures, and in doing so shall incorporate all necessary steps to ensure that development and other land disturbing activities comply with the terms of this section. See also Section 3.7.5 for procedures to obtain Erosion and Sedimentation Control permit procedures.
- (b) **Plan required.**
- (i) No person shall initiate any land disturbing activity which uncovers one-half or greater acres or more than 21,780 square feet without having an erosion and sedimentation control plan approved by the county.
 - (ii) An erosion and sedimentation control plan shall be prepared for all land disturbing activities subject to this article whenever the proposed activity is to be undertaken on a tract comprising of one-half or greater acres or more, if one-half or greater acres or more is to be uncovered. The plan shall be filed with the Permitting and Code Enforcement Department and a copy shall be simultaneously submitted to the County Soil and Water Conservation District at least 30 calendar days prior to the commencement of the proposed activity.
 - (iii) Persons conducting land disturbing activity on a tract which covers one-half or greater acres or more shall file three copies of the erosion control plan with the County at least 30 calendar days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving the plan, if the County, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the County will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority.
 - (iv) The County will review each complete plan submitted to them and within 30 calendar days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Incomplete plans shall be returned for completion. The 30-day review period will not begin until all required items are submitted. The erosion control officer shall have five business days to check the plans for completeness. Failure to approve, approve with modifications, or disapprove a complete erosion and sedimentation control plan within 30 calendar days of receipt shall be deemed an approval. Disapproval of a plan must specifically state in writing the reasons for disapproval. The County must approve, approve with modifications, or disapprove a revised plan within 15 calendar days of receipt, or it is deemed to be approved. If, following commencement of a land disturbing activity pursuant to an approved plan, the County determines that the plan is inadequate to meet the requirements of this article, the County may require any revision of the plan that is necessary to comply with this article. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 calendar days of receipt shall be deemed approval of the plan. The County shall establish an expiration date of three years for erosion control plans approved under this article.
 - (v) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this article. Plan content may vary to meet the needs of specific site requirements. Detailed

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guidelines for plan preparation may be obtained from the County. A professional is not required to design plans for ground disturbance of three or less acres. For ground disturbance exceeding three acres a professional drawing by an appropriately licensed or certified design professional is required, and if that same permit disturbs five or more acres an appropriately licensed or design professional shall conduct monthly inspections, a schedule of which is to be filed with the planning office.

(c) Financial responsibility statement.

- (i) Erosion control plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of the state, a state agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this article, or rules or orders adopted or issued pursuant to this article.

(d) Soil and Water Conservation District review.

- (i) The County Soil and Water Conservation District shall review the plan and submit any comments and recommendations to the County within 20 calendar days after the soil and water conservation district received the erosion control plan, or within any shorter period of time as may be agreed upon by the Soil and Water Conservation District and the County. Failure of the Soil and Water Conservation District to submit its comments and recommendations within 20 calendar days or within any agreed-upon shorter period of time shall not delay final action on the plan.

(e) Coordination with the North Carolina Environmental Policy Act.

- (i) Any plan submitted for a land disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1et seq.) shall be deemed incomplete until a complete environmental document is available for review. The County shall promptly notify the person submitting the plan that the 30-calendar day time limit for review of the plan pursuant to Section 5.3.4 (b)(3) shall not begin until a complete environmental document is available for review.

(f) Plan disapproval.

- (i) An erosion and sediment control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:
 - 1) Is conducting or has conducted land disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the commission or a local government pursuant to the Act and has not complied with the notice within the time specified in the notice;
 - 2) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;
 - 3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
 - 4) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act. For purposes of this section an applicant's record may be considered for only the two years prior to the application date.

(g) Plan amendment.

- (i) Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said

amendment is approved by the County, the land disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

(h) Failure to file a plan.

- (i)* Any person engaged in land disturbing activity who fails to file a plan in accordance with this article, or who conducts a land disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this article.

(i) Compliance with water quality laws.

- (i)* The approval of an erosion control plan is conditioned on the applicant's compliance with federal and state water quality laws, regulations, and rules.

(j) Plans involving ditches to lower the water table.

- (i)* A copy of the erosion control plan for any land disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table must be forwarded to the director of the division of water quality and the Army Corps of Engineers.

(k) Plan approval.

- (i)* If the submitted plan is approved by the erosion control officer, a permit to conduct land disturbing activities shall be issued in the name of the applicant.

(l) Notification procedures for land disturbing activity not meeting the erosion control plan requirements.

- (i)* In cases where less than one-half acre will be disturbed, applicants will be asked to complete a form that explains how erosion control will be managed during construction. The form will provide an opportunity to choose among simple approaches to keep mud and sediment from leaving the property. The information provided on the form will serve as an erosion control plan for the new construction. Applicants will need to know the downhill slope of the lot to complete the form.
- (ii)* Should the applicant fail to fill out the notification form in advance of clearing land, give false or misleading information on the form or fail to install the procedures as called for on the form, a penalty will be assessed as outlined in Article X.

(m) Protection of property

Persons conducting land disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

Section 5.3.5 General Requirements

(a) Responsibilities of Persons Conducting Land Disturbing Activities

- (i)* Persons conducting land disturbing activities shall be held responsible for understanding the requirements:
 - 1) Persons conducting land disturbing activities shall take all reasonable measures to prevent damage to public and private property resulting from those activities.

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- 2) Persons conducting land disturbing activities shall apply to the Permitting and Code Enforcement Department for any permit required and receive said permit contingent upon an approved erosion and sediment control plan, before beginning any land disturbing activity which uncovers one or greater acres.
- 3) If any land disturbing activity requires a permit as defined in this section, a building permit shall not be issued until a plan has been approved by the Permitting and Code Enforcement Director.

(b) More Restrictive Rules Apply

- (i) Whenever conflicts exist between Federal, State, or local laws, ordinance, or rules, the more restrictive provision shall apply.

(c) Access and Haul Roads

- (i) Temporary access and haul roads, other than public roads, constructed or used in connection with any land disturbing activity shall be considered a part of such activity.

(d) Operations in Lakes or Natural Watercourses

- (i) Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel.
- (ii) The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.
- (iii) The applicant shall consult with the Army Corps of Engineers and the North Carolina Department of Environment and Natural Resources to determine if a permit is required before undertaking any land disturbing activity in or near a watercourse, wetlands, or swamp.
- (iv) Said permits or approvals shall be submitted as part of the erosion and sediment control application.

(e) Borrow and Waste Areas

- (i) When the person conducting the land disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials, other than landfills regulated by the County solid waste management, shall be considered as part of the land disturbing activity where the borrow material is being used or from which the waste material originated.
- (ii) When the person conducting the land disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land disturbing activity.

(f) Additional Measures

- (i) Whenever the County determines that significant sedimentation is occurring as a result of land disturbing activity, despite application and maintenance of protective practices, the person conducting the land disturbing activity will be required to and shall take additional protective action.

(g) Restoration of Areas Affected by Failure to Comply

- (i) The County may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by NCGS 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation.
- (ii) This includes damage to properties adjacent to, nearby or downstream of the permitted property that are not owned by the person engaging in the land disturbing activity.

(iii) This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this section.

(h) Prior to obtaining building permits for multi-family developments:

- (i) All building pads must be established, roadways entering and throughout the development should have an initial layer of compacted stone in place.
- (ii) All slopes must be seeded and ground cover established.
- (iii) All sediment basins and erosion control devices shown on the approved erosion control plan must be in place.

Section 5.3.6 Basic Control Objectives

- (a) An erosion and sedimentation control plan may be disapproved pursuant to Article 111, Permits and Procedures, if the plan fails to address the following control objectives:
- (i) Identify Critical Areas
 - 1) On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/ or sedimentation, are to be identified and receive special attention.
 - (ii) Limit Time of Exposure
 - 1) All land disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
 - (iii) Limit Exposed Areas
 - 1) All land disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
 - (iv) Control Surface Water
 - 1) Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
 - (v) Control Sedimentation
 - 1) All land disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
 - (vi) Manage Stormwater Runoff
 - 1) When the increase in the velocity of stormwater runoff resulting from a land disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

Section 5.3.7 Mandatory Standards for Land Disturbing Activity

- (a) No land disturbing activity subject to the control of this section shall be undertaken except in accordance with the following mandatory standards:
- (i) Buffer zone
 - 1) No land disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity. This provision shall not apply to a land disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
 - 2) Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to

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- confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity, whichever is greater; provided, however, that the County may approve plans which include land disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This provision shall not apply to a land disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
- 3) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land disturbing activity containing natural or artificial means of confining visible siltation.
 - 4) The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.
 - 5) Where a temporary and minimal disturbance is permitted as an exception by subsection (a)(i)(1) of this section, land disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Permitting and Code Enforcement Director.
 - 6) No land disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations in these waters, as set forth in 15 NCAC 2B.0211 "Fresh Surface Water Classification and Standards".
- (ii) Graded slopes and fills
- 1) The angle for graded slopes and fills shall be no greater than a maximum 1 ½ :1 on cut slopes and a maximum 2:1 on fill slopes.
 - 2) In any event, slopes left exposed will, within seven calendar days of ground disturbing activity, be provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion.
- (iii) Ground cover
- 1) Whenever land disturbing activity that will disturb more than one-half acre is undertaken on a tract, the person conducting the land disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development.
 - 2) Except as provided in Section 5.3.8 (c)(v), provisions for a ground cover sufficient to restrain erosion must be accomplished within seven calendar days following ground disturbing activity, excluding building structure footprint areas.
- (iv) Prior plan approval
- 1) No person shall initiate any land disturbing activity on a tract if more than one-half acre or greater is to be uncovered unless, 30 or more calendar days prior to initiating the activity, an Erosion and Sedimentation Control Plan for such activity is filed with and approved by the Permitting and Code Enforcement Director.

Section 5.3.8 Design Performance Standards

- (a) Except as provided in subsection (c)(ii) of this section, erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the ten-year storm.

- (b) Runoff rates shall be calculated using the procedures in the USDA, Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices" or other acceptable calculation procedures.
- (c) In high quality water (HQW) zones the following design standards shall apply:
 - (i) Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Permitting and Code Enforcement Director.
 - (ii) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed and constructed to provide protection from the run off of the 25-year storm which produces the maximum peak rate of run off as calculated according to procedures in the United States department of Agriculture Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
 - (iii) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70 percent for the 40 micron (0.04 mm) size soil particle transported into the basin by the runoff of that 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
 - (iv) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than 2 horizontal to 1 vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.
 - (v) Ground cover sufficient to restrain erosion must be provided for any portion of a land disturbing activity in a HQW zone immediately, not to exceed ten calendar days maximum, after ground disturbance activity.

Section 5.3.9 Stormwater Provisions

(a) Stormwater Outlet Protection; Velocity Limitation

- (i) Persons shall conduct land disturbing activity so that the post-construction velocity of the ten-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - 1) The velocity established by Table 5.1
 - 2) The velocity of the ten-year storm runoff in the receiving watercourse prior to development.
 - 3) If conditions 1) or 2) of this subsection cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the velocity prior to development by ten percent.
- (ii) Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The North Carolina Sedimentation Control Commission recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:

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- 1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
 - 2) Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections;
 - 3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures;
 - 4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.
- (iii) This rule shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.
- (iv) Table 5.1 represents maximum permissible velocity for stormwater discharge:

TABLE 5.1: Maximum Permissible Velocity for Stormwater Discharge

Material	Maximum Permissible Velocities	
	F.P.S.	M.P.S.
Fine sand (non-colloidal)	2.5	0.8
Sandy loam (non-colloidal)	2.5	0.8
Silt loam (non-colloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (non-colloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source: Adapted from recommendations by the Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

Section 5.3.10 Maintenance of Temporary and Permanent Measures

(a) Responsibility for Maintenance

- (i) During the development of a site, the person conducting the land disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as

required by the approved plan or any provision of this section, the Act, or any order adopted pursuant to this section or the Act.

- (ii) The landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.
- 1) Exposed areas shall be planted or otherwise provided with permanent ground cover, devices, or structures sufficient to restrain erosion, within 7 calendar days of ground disturbing activity.
 - 2) The Permitting and Code Enforcement Director shall perform a final inspection verifying that all disturbed areas have been stabilized, that all permanent erosion control measures and stormwater management BMPs, facilities and improvements have been installed per the approved plan(s) and all requirements set forth in this section. A certificate of occupancy shall not be issued until there is a final inspection verifying compliance with these requirements.

Section 5.3.11 Surety

Application for a permit to disturb five or more acres shall require the posting of a performance bond with the county. Such performance bond shall be in the form of a surety bond guaranteed by an established surety company, irrevocable letter of credit, or a certified cashier's check. The bond shall be in the amount of the anticipated cost necessary for the installation of sufficient erosion and sediment control measures and devices on the site in accordance with this article, but in an amount not less than \$500.00 nor more than \$5,000.00 per acre of disturbed area as set forth in the approved sediment control plan. Such bond shall be valid until the land disturbing activity is completed in accordance with the approved sediment control plan and released by the erosion control officer as discussed in the following sections.

- (1) Land disturbing activities not in compliance with this article or an approved sediment control plan for 90 working days after notice of violation is received through registered or certified mail or other means detailing specific items of violation, shall be subject to forfeiture of all applicable surety.
- (2) Forfeiture of applicable surety shall in no way relieve responsible parties of penalties, fines or other requirements of this article.
- (3) Forfeited surety shall be used to establish erosion control structures or ground cover in accordance with an approved sediment control plan. Any monies in excess of cost of establishing protective measures shall be refunded to the person responsible for the land disturbing activity.
- (4) Upon completion of improvements as required by this article, written notice shall be given by the applicant, through registered or certified mail, to the erosion control officer who shall perform an inspection of the improvements. If the conditions of this article are met, within 30 calendar days of the date of notification of completion the county shall authorize in writing the release of applicable surety.

Section 5.3.12 Appeals

- (a) Unless otherwise noted, appeals shall be governed by the provisions found in Section 3.7.2, Administrative Appeals.

SECTION 5.6 FLOOD DAMAGE PREVENTION

Section 5.6.1 General Provisions

(a) Statutory Authorization

- (i)* The Legislature of the State of North Carolina has in 160D-923 of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.
- (ii)* Therefore, the Board of Commissioners of Jackson County, North Carolina, has enacted the following floodplain development regulations.

(b) Findings of Fact

- (i) The flood prone areas within the County are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (ii) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

(c) Statement of Purpose

- (i) It is the purpose of this section to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:
 - 1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities
 - 2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction
 - 3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters
 - 4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage
 - 5) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters, or which may increase flood hazards to other lands

(d) Objectives

- (i) The objectives of this section are to:
 - 1) Protect human life, safety, and health
 - 2) Minimize expenditure of public money for costly flood control projects
 - 3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public
 - 4) Minimize prolonged business losses and interruptions
 - 5) Minimize damage to public facilities and utilities (i.e., water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas
 - 6) Help maintain a stable tax base by providing for the sound use and development of flood prone areas
 - 7) Ensure that potential buyers are aware that property is in a special flood hazard area

(e) Applicability

- (i) This section shall apply to all special flood hazard areas within the County, including the municipal jurisdictions, including extra-territorial jurisdictions (ETJs), of Sylva, Dillsboro, Webster, and Forest Hills.

(f) Basis for Establishing the Special Flood Hazard Areas

- (i) The special flood hazard areas are those identified under the cooperating technical state (CTS) agreement between the State of North Carolina and FEMA in its flood insurance study (FIS) and its accompanying flood insurance rate maps (FIRM), for Jackson County and its incorporated areas, dated April 4, 2010, which are adopted by reference and declared to be a part of this Section.

(g) Establishment of Floodplain Development Permit

- (i) A floodplain development permit shall be required in conformance with the provisions of this section prior to the commencement of any development activities within special flood hazard areas determined in accordance with the provisions of Section 5.6.1(f)(i).

(h) Compliance

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

(i) Abrogation and Greater Restrictions

- (i) This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this section and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(j) Interpretation

- (i) In the interpretation and application of this section, all provisions shall be:
 - 1) Considered as minimum requirements
 - 2) Liberally construed in favor of the governing body
 - 3) Deemed neither to limit nor repeal any other powers granted under State statutes

(k) Warning and Disclaimer of Liability

- (i) The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering consideration.
- (ii) Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes.
- (iii) This section does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages.
- (iv) This section shall not create liability on the part of the County or by any officer or employee thereof for any flood damages that result from reliance on this section or any administrative decision lawfully made thereafter.

(l) Lands to which this Section applies:

- (i) The municipalities of Sylva, Dillsboro, Forest Hills, and Webster have entered into an officially approved inter-local agreement to authorize and designate that the Permitting and Code Enforcement Director will be serving as the administrator of this section within the corporate and extra-territorial jurisdictions of their municipality.
- (ii) This section shall apply to all special flood hazard areas within the county, including those within municipal jurisdictions, including the extra-territorial jurisdictions (ETJs), of Sylva, Dillsboro, Webster, and Forest Hills.

(m) Variance Procedure.

- (i) The County Board of Adjustment shall hear and decide requests for variances from the requirements of this Section within the unincorporated areas of the County and make appeals to the Superior Court per Table 3.1: Development Review Procedures and Section 3.7.20, Variances.
- (ii) Variances may be issued for:
 - 1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - 2) Functionally dependent facilities if determined to meet the definition as stated in Article XI Definitions, provided provisions of subsection *viii*(2), (3), and (5) below have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

- 3) Any other type of development, provided it meets the requirements of this Section.
- (iii) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:
- 1) The danger that materials may be swept onto other lands to the injury of others;
 - 2) The danger to life and property due to flooding or erosion damage;
 - 3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - 4) The importance of the services provided by the proposed facility to the community;
 - 5) The necessity to the facility of a waterfront location as defined in Article XI of this chapter as a functionally dependent facility, where applicable;
 - 6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - 7) The compatibility of the proposed use with existing and anticipated development;
 - 8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - 9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - 10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - 11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (iv) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (v) Upon consideration of the factors listed above and the purposes of this chapter, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this chapter.
- (vi) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (vii) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the state upon request.
- (viii) Conditions for variances:
- 1) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
 - 2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - 3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - 4) Variances shall only be issued prior to development permit approval.
 - 5) Variances shall only be issued upon:
 - a) A showing of good and sufficient cause;
 - b) A determination that failure to grant the variance would result in exceptional hardship; and

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- c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (ix) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met.
 - 1) The use serves a critical need in the community.
 - 2) No feasible location exists for the use outside the special flood hazard area.
 - 3) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
 - 4) The use complies with all other applicable federal, state, and local laws.
 - 5) The Permitting and Code Enforcement Director has notified the Secretary of The State Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

Section 5.6.2 Administration

(a) Designation of Director

- (i) It is the responsibility of the Permitting and Code Enforcement Director to administer and implement the provisions of this section as the Jackson County Floodplain Administrator per Section 2.1.2.
- (ii) The municipalities of Sylva, Dillsboro, Webster, and Forest Hills have entered into an officially approved inter-local agreement with the County for the Permitting and Code Enforcement Director to serve as the Administrator of this Section within the corporate and extra-territorial jurisdictions of said municipalities.

(b) Application Requirements

- (i) For floodplain development permit procedures, refer to Section 3.7.6.

(c) Duties and Responsibilities of the Director

- (i) The Permitting and Code Enforcement Director shall perform, but not be limited to, the following duties:
 - 1) Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this Section have been satisfied.
 - 2) Review all proposed development within special flood hazard areas to assure that all necessary local, state, and federal permits have been received.
 - 3) Notify adjacent communities and the State Department of Crime Control and Public Safety, Division of Emergency Management, state coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
 - 4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
 - 5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of subsection 5.6.3 (e) are met.

- 6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Section 3.7.6 (f).
- 7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Section 3.7.6 (f).
- 8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Section 3.7.6 (f).
- 9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Section 3.7.6 (f) and subsection 5.6.3(b)(i)2).
- 10) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this section.
- 11) When base flood elevation (BFE) data has not been provided in accordance with the provisions of subsection 3.7.6 (f): Floodplain Development Permit, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to subsection 5.6.3 (c)(i)2)(b) in order to administer the provisions of this section.
- 12) When base flood elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Section 3.7.6: Floodplain Development Permit, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this section.
- 13) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a special flood hazard area is above the base flood elevation (BFE), advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
- 14) Permanently maintain all records that pertain to the administration of this section and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- 15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Permitting and Code Enforcement Director shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Permitting and Code Enforcement Director has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- 16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this section, the Permitting and Code Enforcement Director may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

- 17) Revoke floodplain development permits as required. The Permitting and Code Enforcement Director may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- 18) Make periodic inspections throughout the special flood hazard areas within the jurisdiction of the community. The Permitting and Code Enforcement Director and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- 19) Follow through with corrective procedures of Article X: Violations and Enforcement.
- 20) Review, provide input, and make recommendations for variance requests.
- 21) Maintain a current map repository to include, but not limited to, the FIS report, FIRM and other official flood maps and studies adopted in accordance with the provisions of subsection 5.6.1(f)(i) of this section, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.
- 22) Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-Fs) and letters of map revision (LOMRs).

Section 5.6.3 Provisions for Flood Hazard Reduction

(a) General Standards

- (i) In all special flood hazard areas, the following provisions are required:
 - 1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
 - 2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - 3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
 - 4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/ or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the regulatory flood protection elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/ kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
 - 5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
 - 6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
 - 7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
 - 8) Any alteration, repair, reconstruction, or improvement to a structure, which is in compliance with the provisions of this section, shall meet the requirements of "new construction" as contained in this section.

- 9) Nothing in this section shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this section and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this Section.
- 10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in subsection 3.7.20. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified in accordance with the provisions of subsection 3.7.6.
- 11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- 12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- 13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- 14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- 15) When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.
- 16) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation (BFE) shall apply.

(b) Specific Standards

- (i) In all special flood hazard areas where base flood elevation (BFE) data has been provided, as set forth in subsections 5.6.1(f)(i) or 5.6.3 (c), the following provisions, in addition to the provisions of subsection 5.6.3 (a) are required:
 - 1) Residential construction
 - a) New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Article XI: Definitions of this Ordinance.
 - 2) Nonresidential construction.
 - a) New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Article XI: Definitions.
 - b) Structures located in A, AE, AO, and A1-30 zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the

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effect of buoyancy. For AO zones, the floodproofing elevation shall be in accordance with subsection 5.6.3 (c)(i)(2).

- c) A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Permitting and Code Enforcement Director as set forth in subsection 3.7.6 (f), along with the operational plan and the inspection and maintenance plan.
 - 3) Manufactured homes.
 - a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Article XI: Definitions.
 - b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15.
 - c) Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.
 - 4) All enclosures or skirting below the lowest floor shall meet the requirements of subsection 5.6.2 (b)(ii).
 - 5) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Permitting and Code Enforcement Director and the local emergency management coordinator.
- (ii) Elevated buildings. Fully enclosed area of new construction and substantially improved structures, which is below the lowest floor.
- 1) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
 - 2) Shall be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation; and
 - 3) Shall include, in zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of flood waters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
 - a) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - b) The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;
 - c) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - d) The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;

- e) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 - f) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.
- (iii) Additions/improvements.
- 1) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - a) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - b) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
 - 2) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
 - 3) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - a) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
 - b) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (iv) Recreational vehicles.
- 1) Recreational vehicles shall either:
 - a) Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
 - b) Meet all the requirements for new construction.
- (v) Temporary nonresidential structures.
- 1) Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Permitting and Code Enforcement Director a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Permitting and Code Enforcement Director for review and written approval:
 - a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;
 - b) The name, address, and phone number of the individual responsible for the removal of the temporary structure;
 - c) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
 - e) Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.
- (vi) Accessory structures.

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- 1) When accessory structures (sheds, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria shall be met:
 - a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 - b) Accessory structures shall not be temperature-controlled;
 - c) Accessory structures shall be designed to have low flood damage potential;
 - d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - e) Accessory structures shall be firmly anchored in accordance with the provisions of subsection 5.6.3 (a);
 - f) All service facilities such as electrical shall be installed in accordance with the provisions of subsection 5.6.3 (a); and
 - g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of subsection 5.6.2 (b)(ii)3).
 - h) An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above, does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with subsection 5.6.2 (b)(ii)3).

(c) Standards for Floodplains Without Established Base Flood Elevations

- (i) Within the special flood hazard areas designated as approximate zone A and established in section 3.7.6, where no base flood elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of subsection 5.6.3(a) shall apply:
 - 1) No encroachments, including fill, new construction, substantial improvements, or new development shall be permitted within a distance of 20 feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
 - 2) The BFE used in determining the regulatory flood protection elevation shall be determined based on the following criteria:
 - a) When base flood elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this section and shall be elevated or floodproofed in accordance with standards in subsections 5.6.3(a) and 5.6.3(b).
 - b) When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of subsections 5.6.3(b) and 5.6.3(e).
 - c) All subdivision, manufactured home park and other development proposals shall provide base flood elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. Such base flood elevation (BFE) data shall be adopted by reference in accordance with 5.6.1(f) and utilized in implementing this section.
 - d) When base flood elevation (BFE) data is not available from a federal, state, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the regulatory flood protection elevation, as defined in

subsection 5.6.3(b). All other applicable provisions of subsection 5.6.3(b) shall also apply.

(d) Standards for Riverine Floodplains with Base Flood Elevations but without Established Floodways or Non-Encroachment Areas

- 1) Along rivers and streams where base flood elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a special flood hazard area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:
 - a) Standards of subsections 5.6.3(a) and 5.6.3(b); and
 - b) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(e) Floodways and Non-Encroachment Areas

- (i) Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in 5.6.1(f). The flood ways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in subsections 5.6.3(a) and 5.6.3(b), shall apply to all development within such areas:
 - 1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
 - a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Permitting and Code Enforcement Director prior to issuance of floodplain development permit, or
 - b) A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained upon completion of the proposed encroachment.
 - 2) If subsection 5.6.3(c)(i)(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this Section.
 - 3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
 - a) The anchoring and the elevation standards of subsection 5.6.3(b)(ii); and
 - b) The no encroachment standard of subsection 5.6.3(e)(i)1).

Section 5.6.4 Legal Status

(a) Effect on Rights and Liabilities under the Existing Flood Damage Prevention Ordinance

- (i) This section in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted April 5, 2010, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this section shall not affect any action, suit or proceeding instituted or

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pending. All provisions of the flood damage prevention ordinances of Jackson County enacted on March 18, 1982, May 17, 1989, and April 5, 2010, which are not reenacted herein, are repealed.

- (ii) Additionally, this section in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinances of each of the participating municipalities, as noted below. It is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this section shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinances of the Towns of Sylva, Dillsboro and Webster, and the Village of Forest Hills, which are not reenacted herein are repealed.
 - (iii) The dates of the initial flood damage prevention ordinance for Jackson County and each of the participating municipalities are as follows:
 - 1) Jackson County Unincorporated Area, dated May 17, 1989
 - 2) The Town of Sylva dated July 28, 1975
 - 3) Town of Dillsboro dated July 23, 1975
 - 4) The Town of Webster dated March 18, 1992
 - 5) The Village of Forest Hills N/A
 - (iv) The dates of the initial flood insurance rate maps are as follows:
 - 1) Jackson County Unincorporated Area, dated May 17, 1989
 - 2) The Town of Sylva dated July 3, 1986
 - 3) The Town of Dillsboro dated May 15, 1986
 - 4) The Town of Webster dated April 19, 2010
 - 5) The Village of Forest Hills dated May 17, 1989
- (b) Effect upon outstanding floodplain development permits.
- (c) Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Permitting and Code Enforcement Director before the time of passage of this section; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this Section.

Section 5.7 MOUNTAIN RIDGE PROTECTION REGULATIONS

Section 5.7.1 General Provisions

(a) Purpose

- (i) In accordance with NCGS Article 14, 113A, the Board of Commissioners finds that the construction of tall (greater than 40 feet in height) buildings or structures on mountain ridges may cause unusual problems and hazards to the residents of and visitors to the mountains. The purpose of this Ordinance therefore is to regulate the construction of tall buildings or structures on mountain ridges to insure that: adequate water supply is available to such building or structure; the disposing of sewage will not infringe on the ground water rights and endanger the health of those persons living at lower elevations; adequate fire protection can be made available; such buildings or structures will not be a hazard to air navigation and to persons on the ground, and such tall buildings will not detract from the natural beauty of the mountains.

(b) Jurisdiction

- (i) The provisions of this section shall apply to the construction of tall buildings or structures, as defined in this ordinance, on protected mountain ridges, as defined in this Ordinance, within Jackson County, and outside the territorial jurisdiction of any municipality within Jackson County.
- (ii) This section may also apply to any and all areas lying within the territorial jurisdiction of any municipality within Jackson County if the municipality by resolution requests such application.
- (iii) Protected mountain ridges are further identified by the map entitled "Identification of Protected Mountain Ridges in the County of Jackson" and which is on file in the office of the Jackson County Permitting and Code Enforcement Department and the Jackson County Planning Department.

(c) Application for permit.

- (i) All applications for permits shall be submitted to the enforcement officer and shall be accompanied by a map or plat prepared by a registered land surveyor or engineer and a development plan containing, where applicable, the following information:
 - 1) Title block containing the name of the development, name of owner, name of developer, scale, and north arrow.
 - 2) Existing site conditions, including contours, water courses, any unique natural or manmade features such as vegetation and ground cover.
 - 3) Exact boundary lines of the property containing the proposed construction.
 - 4) Exact location and use of all existing and proposed buildings or structures.
 - 5) Plans of proposed water and sewer layouts shall show the location of lines, line sizes, approximate location of manholes, pumps, hydrants, force mains, and the connection of the proposed system with existing systems.
 - 6) Location of existing and proposed easements and rights-of-way.
 - 7) The proposed treatment of the perimeter of the development including materials and/or techniques such as screens, fences, and walls.
 - 8) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features.
 - 9) Existing and proposed road access to and within the development showing rights-of-way and pavements widths. Notation of the proposed ownership of the street system (public or private) and the method or manner of assuring maintenance and repair.
 - 10) A front and side elevation profile, drawn to scale, of all existing and proposed buildings.
 - 11) Landscaping and provisions showing the type of vegetation to be used to stabilize slopes and to beautify the site. The landscape plan shall indicate that natural vegetation has been preserved wherever possible during site development. Landscaping shall include types of vegetation native to the soils of the area and easily adaptable to the conditions of the site.
 - 12) The area to be graded, contour lines of the area graded upon completion, and the manner or method of disposing or utilizing the graded material.
- (ii) In addition to the development plan, all applications for permits shall be accompanied by the following documentation:
 - 1) If a street is to be dedicated for public use, a letter of approval for the proposed street plan shall be submitted indicating that street plans have been reviewed and approved in the following manner:
 - a) Street plans shall be reviewed and approved by the North Carolina Department of Transportation or whatever public agency is to accept the dedication and assume maintenance of the streets.

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- b) Street plans shall contain all data, calculations, and information as required by the North Carolina Department of Transportation or other appropriate public agency.
- c) The developer shall meet all other requirements of NCGS 136-102.6 if the development constitutes a subdivision.
- 2) If the proposed water and/or sewer system is to connect onto an existing system, a letter of approval from the owner of said existing system for such connection shall be submitted. In addition, a letter of approval from the appropriate regulatory agency shall be submitted indicating that the proposed connection will not cause any problems related to overloads, discharges, shortages, etc., on said existing system.
- 3) If individual wells and/or septic tanks are to be utilized, a written statement from the Jackson County Health Department indicating approval of wells and/or septic tanks for use in the development shall be submitted.
- 4) If an on-site package water and/or sewer treatment system is to be utilized, a letter of approval from the North Carolina Department of Human Resources and/or the North Carolina Department of Environmental Quality shall be submitted.
- 5) Documentation of an approved sedimentation and erosion control plan shall be submitted where required.
- 6) A letter of approval from the appropriate fire department indicating the adequacy of the development facilities for emergency medical and fire services. Such determination shall take into consideration the street access, water pressure and availability, building height, and any other relevant factors that will insure adequate emergency medical and fire services.
- 7) A letter from the applicant indicating the land in the proposed development is under single ownership or management by the applicant or proper assurance (legal title or execution of a binding sales agreement) shall be provided indicating that the development can be successfully completed by the applicant.
- 8) The number of copies of all items to be submitted by the developer under this ordinance shall be determined by the Jackson County Permitting and Code Enforcement Department.

(d) Application approval.

- (i) The Permitting and Code Enforcement Director shall review the application for compliance with the provisions of Section 5.7.1(c). Any application not containing all information required in Section 5.7.1(c) shall be returned to the applicant for correction and resubmission. After the Permitting and Code Enforcement Director has determined the application contains all information required in Section 5.7.1(c), they shall have ten days to recommend to the Planning Board either approval or disapproval of the application. In making a recommendation, the Permitting and Code Enforcement Director may include any appropriate conditions they feel should be placed on the issuance of the permit.
- (ii) First consideration of the application shall be at the next regularly scheduled meeting of the planning board after receiving the recommendation of the Permitting and Code Enforcement Director. The Planning Board shall take action on the application at its first consideration or within 45 days of its first consideration. In taking action, the Planning Board shall recommend to the Board of Commissioners either approval or disapproval of the application. If the Planning Board fails to take action within the time period specified in this subsection, it shall be deemed to have recommended approval of the application. The Board of Commissioners shall tentatively approve or shall disapprove the application, and if tentatively approved the developer shall be notified within 30 days after submission of the recommendation from the planning. If tentatively approved, the developer shall then submit to the Board of Commissioners the things called for in Section 5.7.1(d)(v) of this ordinance and any

other matters and things requested by the Board of Commissioners. After the submission by the developer to the Board of Commissioners of the financial matters set forth in said Section 5.7.1(d)(v)(7), the Board of Commissioners shall approve or disapprove the application, and if approved authorize the enforcement officer to issue a permit within 30 days after submission of the financial information as required of the developer. In making its recommendation, the planning board may include any appropriate conditions it feels should be placed on the issuance of the permit.

- (iii) The Board of Commissioners shall not approve an application until it has determined that the intent of this ordinance has not been violated. In making such determination, the Board of Commissioners shall not approve the issuance of a permit if the application for said permit fails to provide for:
- 1) Sewering that meets the requirements of a public wastewater disposal system that it discharges into, or that is part of a separate system that meets applicable state and federal standards.
 - 2) A water supply system that is adequate for fire protection, drinking water and other projected system needs; that meets with requirements of any public water supply system that it interconnects with; and that meets any applicable state standards, requirements, and approvals.
 - 3) Compliance with applicable state and local sedimentation control regulations and requirements.
 - 4) Adequate consideration to protecting the natural beauty of the mountains as determined by the Board of Commissioners.
- (iv) In making such determination, the Board of Commissioners may impose any additional conditions on the permit it deems necessary.
- (v) In its consideration of whether or not adequate consideration has been given to protecting the natural beauty of the mountains, the following factors shall be among those considered:
- 1) Does the development plan show that natural vegetation will be preserved wherever possible?
 - 2) Does the development plan indicate that slopes will be stabilized by use of vegetation or by other means?
 - 3) Does the proposed landscaping utilize types of vegetation native to and compatible with the soils of the area?
 - 4) Assurance that the developer will landscape the site.
 - 5) Do the buildings and infrastructure blend in with the landscape?
 - 6) That the architectural style and design of the building is appropriate to the site.
 - 7) It shall not be necessary for the developer to present financial information with the application or for financial information to be considered by the department of construction standards and permits or by the Planning Board. However, if the Board of Commissioners tentatively approves the application, as forwarded to it by the planning board, the developer shall then submit directly to the Board of Commissioners, before final approval of the application, a copy of all contracts with the general contractor and any subcontractors, copies of surety bonds and performance bonds, letters of credit, firm and binding loan commitments, financial statements certified by a certified public accountant, or any other information and/or certifications required by the Board of Commissioners, which in its

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- opinion is deemed necessary, to ensure that the entire project as approved by it and for which the permit is issued will be completed in its entirety and will not be abandoned or left uncompleted which would or might have a detrimental effect on the natural beauty of the mountains, have a detrimental effect on other property owners in the area, in any other way or manner defeat the purpose for which this ordinance is enacted, or be detrimental to the public interest advanced by this ordinance.
- (vi) If the application is approved by the Board of Commissioners, such approval shall be stated in a letter. One copy of said letter shall be sent to the applicant, one copy shall be sent to the enforcement officer, and one copy shall be retained by the Board of Commissioners. Said letter shall be sent within five days of approval of the application. Upon receipt of the letter indicating approval, the enforcement officer shall issue a permit for construction. Said letter shall contain a listing of all conditions imposed on the issuance of the permit.
 - (vii) The Board of Commissioners shall, if it disapproves the application, make findings of fact to justify such disapproval. These findings of fact shall be entered in the minutes of the board's meeting. In addition, a letter containing the findings of fact and specifying the provisions of this ordinance with which the application does not comply shall be prepared. One copy of said letter shall be sent to the applicant, one copy shall be sent to the enforcement officer, and one copy shall be retained by the Board of Commissioners. Said letter shall be sent within five days of disapproval of the application. If the application is disapproved, the applicant may make such changes as will bring the application into compliance with this ordinance and resubmit same for reconsideration by the enforcement officer as provided in Section 5.7.1(c).

Section 5.8 MOUNTAIN AND HILLSIDE DEVELOPMENT

Section 5.8.1 General Provisions

(a) Findings

- (i) The mountains of Jackson County, North Carolina, are characterized by steep slopes and thin soils. Land-disturbing activity on high-elevation, steep-slope mountains potentially threatens the public health, safety, welfare, and economic progress of Jackson County. Such land-disturbing activity has the potential to do the following: (a) endanger the quality of surface water by increasing erosion, stream sedimentation, and stormwater runoff; (b) induce landslides; (c) adversely affect ground water due to the difficulty in providing proper sewage disposal; (d) damage the habitat for some species of wildlife (both plants and animals); and (e) detract from the mountains' scenic and natural beauty which is vital to the recreation and tourism industry of Jackson County.
- (ii) The Jackson County Board of Commissioners finds the following:
 - 1) Steep hillsides are inherently unstable.
 - 2) Changes to slopes-Through undermining by humans, flowing rivers, heavy rains, or the focusing of stormwater runoff by human-built channels or storm drain outlets can cause erosion or land sliding. Soil slips, which cause avalanche-type failures, and slower-moving earth flows can occur on slopes of 25 percent and more. Serious erosion can occur on much shallower slopes. Steeper slopes are less forgiving of construction errors than are shallower slopes.
 - 3) When steeper slopes fail, such failures can have disastrous consequences. Disturbed surfaces create loose materials which tend to move downhill. Development can result in alteration of land surfaces that can contribute to slope destabilization. Alterations that have

- the potential for creating unstable slopes include placing fills on top of marginally stable slopes, cutting slopes at too steep an angle or undermining the toe of a slope, redirecting storm runoff in a way that artificially concentrates flows onto portions of the landscape not prepared to receive such flows, removing woody vegetation, and adding water by means of hillside septic systems. These factors work together and can cumulatively decrease the stability of slopes and eventually lead to disaster. Landslides and slope failures pose a variety of hazards to persons and property.
- 4) Hillside development, if unregulated, can take place at the expense of environmental concerns. Stormwater runoff from slopes is greater in both quantity and velocity than it would be from level ground. Preserving existing vegetation reduces erosion by maintaining roots which increase infiltration and bind soils. Vegetation also reduces the velocity of raindrops and slows the velocity of surface water flow by increasing the roughness of the ground, thereby increasing groundwater recharge. Constructing hillside roads involves cuts in the upslope side and fills on the down slope side. Such cuts and fills are often much wider than the minimum required road right-of-way and can be more susceptible to failure.
 - 5) Hillsides and ridge lines are unique vegetation communities and wildlife habitats. Hillsides in developing areas are often the last remaining natural areas and are the final refuges for many species of wildlife. Development needs to be sensitive to the hillside's function of providing biodiversity.
 - 6) Hillsides have aesthetic value to Jackson County and its municipalities and contribute to the community's sense of identity, as well as its tourism economy. Prominent mountains, peaks, hills, and ridges have significance as identifiable landmarks to area residents. Hillside development, if unregulated, can take place at the expense of aesthetic concerns. Hills and ridges are highly visible from surrounding areas.
 - 7) Vegetation clearance and landform grading practices, if unregulated, can upset the natural shape of hills. The bulk, shape, height, and color of buildings can contrast with the natural landscape if unregulated and thus intrude on the natural character of the landform. Regulations are needed to ensure that buildings and structures blend in with the natural environment through their placement on the land, shape, materials, and colors.

(b) Purpose, Intent and Objectives

- (i) It is the purpose of this section to provide development regulations applicable to mountains and hillsides to ensure that development occurs in the following manner:
 - 1) Protects the natural conditions and respects existing topography;
 - 2) Prevents inappropriate development;
 - 3) Preserves the aesthetic and scenic qualities of such areas;
 - 4) Ensures the public health, safety, and general welfare.
- (ii) The provisions of this section are intended to prevent developments that will erode hillsides, result in sedimentation of lower slopes and bodies of water, cause damage from landslides or create the potential for damage from landslides, flood downhill properties, or result in the severe cutting of trees or the scarring of the landscape. It is the intent of this section to encourage a sensitive form of development and to allow for a reasonable use that complements the natural and visual character of the community. These purposes cannot be met fully with existing development regulations such as subdivision, soil erosion and sedimentation control, and flood damage prevention. This section is considered the minimum necessary to attain these purposes. These regulations are also intended to encourage the application of principles of landscape architecture, architecture, planning, and civil engineering to preserve the appearance and protect the resources of mountains and hills.

(c) Establishment of the Mountain and Hillside Development District

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- (i) The Mountain and Hillside Development District is hereby established, the boundaries and extent of which are depicted on the map entitled "Mountain and Hillside Development District Map" (herein referred to as the district map), which is hereby adopted as if fully set forth in this Ordinance. Said map shall be attached to the copy of this Ordinance filed with the Clerk of the Board of Commissioners upon adoption and shall be available for public inspection in the office of the Jackson County Planning Department. The district map identifies all those areas with a slope of 35 percent or more and is to be used to identify properties on which further analysis is required.

(d) Applicability

- (i) This section shall apply to any subdivision plat, land-disturbing activity, building permit, or any other development proposal on property situated within the Mountain and Hillside Development District.
- (ii) This section shall apply, and the Planning Director shall apply and enforce the provisions of this Ordinance, to the earliest application for development or building approval required of the applicant.
- (iii) When an application for a preliminary subdivision plat, preliminary development plan as may be required by other provisions of the ordinances of Jackson County, land-disturbing activity (e.g., soil erosion and sedimentation control plans), or a building permit pertaining to property regulated by this Ordinance is filed, said application shall be required to demonstrate compliance with applicable provisions of this ordinance, unless compliance has already been satisfactorily demonstrated by prior application and approval as determined by the Planning Director.

(e) Exemptions

- (i) The following land uses or activities are exempt from the requirements of this Ordinance provided they comply with any limitations or conditions specified herein.
 - 1) Agriculture and forestry. Agriculture and forestry on protected mountains, provided such uses or activities, including associated roads, are consistent with the best management practices established by the North Carolina Division of Forest Resources or the North Carolina Natural Resources Conservation Service, consistent with all State and Federal laws, and all applicable regulations promulgated by the State of North Carolina. Logging roads shall be reclaimed in accordance with practices of the division of forest resources when they are no longer in service.
 - 2) Landscape maintenance. Landscape maintenance activities, including the removal of diseased, dead, or damaged trees; provided, however, that such activities shall be carried out in conformance with applicable regulations of this Ordinance.
 - 3) Additions to single-family residences. On lots of record with existing residences that were approved prior to the effective date of this section, said existing residences may be expanded without demonstrating compliance with this ordinance, provided that the height of the building addition does not exceed the height limitation contained in subsection 5.8.4(a)(v), no more than minimal land disturbance is required to accomplish the building addition, and the building addition is in conformity with the purposes and intent and consistent with regulations and guidelines of this ordinance as determined by the Planning Director.
- (ii) Existing Lots of Record.
 - 1) The owner, or any successor in interest, of any lot of record existing as of the effective date of this Ordinance shall be entitled to build one single-family home thereon.
 - 2) Such lot shall be exempt from the requirements contained in this Ordinance provided that the development of such home shall be done in compliance with the following provisions:

- subsection 5.8.2(b)(i), minimum alterations, subsection 5.8.2 (b)(ii), cut and fill, subsection 5.8.2(b)(iii), compaction of fill, subsection 5.8.3, regarding driveways, subsection 5.8.4(a)(vii), partial screening, subsection 5.8.4(a)(viii), hazardous waste facilities, as well as requirements contained within Section 5.8.6, Best Management Practices.
- (iii) Prior Development Plan Approval.
- 1) It is recognized that some or all of the lots in subdivisions for which a determination of vested rights has been made, either pursuant to the Jackson County Vested Rights Ordinance or by final judgment of a court of competent jurisdiction, may not be lots of record.
 - 2) For a period of two years subsequent to the effective date of this Ordinance, or such longer period as may have been granted in the determination of vested rights, the building of homes in subdivisions determined to be vested shall be treated as if they were lots of record and regulated in accordance with subsection 5.8.1(e)(ii).
 - 3) Subsequent to this vesting period, the building of homes or other improvements on lots in such subdivisions which have not been recorded shall comply with applicable requirements of this ordinance unless the Planning Director determines that such compliance would result in practical difficulty or unnecessary hardship.
- (iv) Non-Regulatory Lots.
- 1) Lots of record which are not situated on a protected mountain ridge, as defined herein, and for which the average slope, as determined by subsection 5.8.2 (c), below, is less than 35 percent, shall be exempt from the requirements of this ordinance.

Section 5.8.2 Administration

(a) Relationship to Other Regulations

- (i) Nothing in this Ordinance shall be construed to modify or exempt development from applicable requirements of the State and other ordinances or regulations of Jackson County, including but not limited to the following:
- 1) Land disturbance
 - a) Proposed land-disturbing activity shall meet all applicable State standards and all regulations of Jackson County relating to soil erosion and sedimentation control. The provisions of this Ordinance are more restrictive and require the submission of plans and a permit which may not be required by said land-disturbance and soil erosion requirements.
 - 2) Septic tanks
 - a) Where one or more septic tanks are to be used for individual sewage disposal, the proposed land-disturbing activity shall meet all applicable State standards and all applicable regulations of Jackson County relating to septic tanks.
 - 3) Sewage disposal
 - a) If sewage treatment is to be provided by any means other than one or more individual septic tanks, the sewage treatment shall meet all applicable State standards and all applicable regulations of Jackson County relating to sewage disposal.
 - 4) Individual wells
 - a) Where one or more wells are to be used for water supply, the proposed land-disturbing activity shall meet all applicable state standards and all applicable regulations of Jackson County relating to water wells.
 - 5) Water systems

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- a) If a public water supply system is to be provided, the water supply system shall meet all applicable State standards and all applicable regulations of Jackson County relating to public water systems.

(b) General Regulations for all Development and other Land-Disturbing Activity

The following minimum standards shall apply to earth moving and land-disturbing activity which is not otherwise exempt:

- (i) Minimum alterations
 - 1) Earth moving shall be limited to the minimum required for building foundations, driveways, drainage control structures and immediate areas surrounding the building, structure, road driveway, or drainage structure required by this section.
 - 2) With the exception of approved stockpiling or restoration efforts, substantial earth moving beyond that required for the installation or construction of approved buildings, structures, driveways, roads, or drainage structures shall not be permitted.
- (ii) Cut and fill
 - 1) Unless otherwise specifically approved by the Planning Director, cut slopes shall be no steeper than one foot horizontal to one foot vertical and fill slopes shall not be steeper than one-and-one-half feet horizontal to one foot vertical.
 - 2) Artificial slopes exceeding 35 feet in height shall be benched at 35-foot intervals.
- (iii) Compaction of fill
 - 1) All fill shall be stabilized in conformance with generally accepted engineering standards, including a compacted density of at least 95 percent proctor.
 - 2) Vegetation which has been cut or cleared shall be removed from the site and shall not be covered by, or imbedded in, fill material.
 - 3) The Planning Director may require certification of compaction by a qualified professional if necessary to determine compliance with this ordinance.
- (iv) Control of stormwater run-off
 - 1) Run-off from concentrated impervious surfaces shall be collected and transported in a pipe or other approved manner to an approved stormwater system if available, or if unavailable, to the bottom of the drainageway or other location specified by the Planning Director and in a safe, adequate, and non-erosive manner.
 - 2) Where required by other ordinances or regulations or by the Planning Director, stormwater retention facilities shall be installed.
 - 3) Where required, interceptor ditches shall be established above steep slopes in such a way as not to avoid saturation or erosion of soil, and the intercepted water shall be conveyed in a pipe or other manner to the bottom of the drainageway or other location specified by the Planning Director.
 - 4) The overall drainage system shall be completed and made operational at the earliest possible time during construction.
- (v) Buffering of natural watercourses and lakes
 - 1) An undisturbed buffer shall be required around all natural watercourses (creeks, streams, branches, etc.) and lakes.
 - 2) The required buffer width shall be equal in feet to the calculated average slope (percent) of the property/parcel. Example: If the average slope of a property is 38 percent, then the minimum undisturbed buffer shall be 38 feet wide.
- (vi) Impact on adjacent property
 - 1) Realignment of streams and natural drainage channels shall not be permitted except for the purpose of effecting a stream crossing and only as specifically approved by the Planning Director upon issuance of all necessary state and federal permits.

- 2) In such cases, natural or typical flow of surface or subsurface water shall not be altered or obstructed in any way by grade changes if such alteration may adversely affect the property of another by either contributing to pooling or collection of waters, or to the concentration or intensification of surface water discharge.

(vii) Density limits

Development on lands that are subject to this section shall meet the density requirements shown in the Table 5.3:

Table 5.3: Minimum Lot Area

Slope%	Minimum Lot Area in Acres ¹
35	2.0
36	2.24
37	2.51
38	2.81
39	3.15
40	3.52
41	3.95
42	4.42
43	4.95
44	5.55
45	6.21
46	6.96
47	7.79
48	8.73
49	9.77
50 and>	10.0

¹ Only one dwelling unit is permitted per minimum lot area.

(c) Determining Slope

Average slope shall be determined for each separate land tract in accordance with the methods and procedures contained herein.

- (i) Prior to commencing any development or land disturbing activity and prior to making application for any permits and/or other approvals, the calculated average slope for a particular land tract shall be approved by the Planning Director.

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- (ii) Average slope calculations and supporting documentation shall be submitted to the Planning Director for review.
- (iii) Within 20 days of receipt, the Planning Director shall:
 - 1) Request additional information
 - 2) Request revisions to the average slope calculation submittal; or,
 - 3) Issue written concurrence with the determination of average slope, as submitted.
- (iv) Each slope calculation submitted to the Planning Director for review shall include a scaled map, accurately showing:
 - 1) Topography for the entire land tract;
 - 2) A closed perimeter line delineating a single area proposed for any type(s) of land of land-disturbing activity; and,
 - 3) The deeded land tract boundary.
- (v) The accuracy and detail of the map shall be acceptable to the Planning Director for site specific conditions and the particular land-disturbing activities proposed.
- (vi) In certain cases, the Planning Director may, at his/her discretion, require that the slope calculation and associated mapping be prepared by a NC Professional Land Surveyor, a NC Professional Engineer, or a NC Professional Landscape Architect.
- (vii) For an individual building site, the basis of the average slope calculation will include only the building and grading envelope for such site.
- (viii) For subdivisions, the average slope calculation shall be based on the entire tract to be subdivided unless the subdivider has elected to exclude areas subject to a non-buildable protected area or conservation easement pursuant to subsection 5.8.2 (d) or the Planning Director has approved a division of area pursuant to subsection 5.8.2 (e), below.
- (ix) For the purpose of determining entitlement to an exemption pursuant to subsection 5.8.1(e) above, the average slope calculation shall be based on the lot or parcel for which a determination of exemption is sought.
- (x) When used for determining slope, the term "delineated area" shall refer to the relevant parameters described herein.
- (xi) The formula for conducting a slope analysis of the property shall be:

$$S = \frac{0.0023(I)(L)}{A}$$

Where:

S = Existing grade of parcel in percent

I = Contour interval of map in feet, with said contour intervals to be five feet or less

L = Total length of the contour lines within the parcel in feet

A = Area of the parcel in acres

0.0023 = Product of two constants, one of which converts feet into acres and one of which converts a decimal fraction into a percentage

Once "S" is calculated, it shall be rounded to the nearest whole number.

- (xii) The Planning Board may, at its discretion, approve other methods for conducting a slope analysis of property subject to this Ordinance.
- (xiii) A slope analysis conducted by an NC Professional Land Surveyor, a NC Professional Engineer, or a NC Registered Landscape Architect may be provided in cases where the applicant/property owner does not agree with the slope analysis conducted by Jackson County staff. The alternate slope analysis shall be approved by the Jackson County Planning Board.

(d) Non-Buildable Protected Area/ Conservation Easement

- (i) Lands subject to a Non-Buildable Protected Area or conservation easement may, at the landowners' option, be excluded when determining average natural slope under this Ordinance.
- (ii) The following activities are prohibited in the Non-Buildable Protected Areas:
 - 1) The construction or placing of buildings
 - 2) Signs, billboards, or other advertising
 - 3) Dumping of soil or other substance or materials as a landfill
 - 4) Dumping or placement of trash, waste or unsightly or offensive materials
 - 5) Removal or destruction of trees, shrubs, or other vegetation unless such trees, shrubs or vegetation pose a threat to health or safety
 - 6) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other mineral substance
 - 7) Utilities such as wells and septic systems,
 - 8) Surface uses except for agriculture, farming, forest, or outdoor recreational uses
 - 9) Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation
- (iii) All conservation easements and non-buildable protected areas must be identified on a recorded plat and in a recorded legal document at the Jackson County Register of Deeds office.

(e) Division of Area

- (i) Where there is a drastic variation in the landform character within one site, the site may be divided into several distinct areas for the purposes of slope determination. This division must be approved by the Planning Director. Generally, this provision shall only be used in cases where large tracts of property encompass flat land as well as significant mountain and hillside terrain. Details for each division must be provided.

Section 5.8.3 Requirements for Roads and Driveways

- (a) No new public road, private road, or driveway, including undeveloped lots of record, shall be permitted or constructed unless it complies with the regulations located within Section 4.3.5 Street Standards.
 - (i) All new public and private roads and driveways shall be designed and constructed to minimize the potential for landslides, erosion, and runoff.
 - (ii) Roads and driveways shall be located such that the maximum number of existing trees on the site is preserved.
 - (iii) Roads and driveways shall be designed to create the minimum feasible amounts of land coverage and the minimum feasible disturbance of the soil.
 - (iv) Variations in road design and road construction specified by the County in its land subdivision regulations shall be permitted, as may be approved by the Planning Director, to prevent the dedication of unnecessarily large amounts of land to such roads or driveways.
 - (v) One-way streets shall be permitted and encouraged where appropriate for the terrain and where public safety would not be jeopardized in the opinion of the Planning Director. For instance, a two-way road may have the directions of flow split into one-way pairs that differ in elevation, circumnavigate difficult terrain, or avoid tree clearance.

Section 5.8.4 Requirements for Construction of Buildings

V ENVIRONMENTAL REGULATIONS

(a) Unless exempted pursuant to subsection 5.8.1 (e), above, no residential or nonresidential building or manufactured home shall be erected within the area governed by this section except in compliance with the provisions of this ordinance.

(i) Plot plan

- 1) A plot plan of the lot or site on which the building is to be located shall be submitted to the planning office for review and approval by the Planning Director.
- 2) The plot plan for a single home site lot can be prepared using the Jackson County GIS Mapping system without the assistance of professionals provided sufficient accuracy of detail is maintained.
- 3) The plot plan shall be prepared by a registered surveyor, professional civil engineer, or other qualified professional and shall show the finished floor elevation of the building in relation to the natural ground surface and in relation to the uppermost point of the crest, summit, or ridge top of the mountain or hill on which said building is constructed.
- 4) The plot plan shall also indicate the limits of the area to be disturbed and the slope of the buildable area.
- 5) Areas proposed or required to remain undisturbed shall be marked on the plot plan and in the field with tape, orange plastic fencing, or other approved marker until a certificate of occupancy is issued or as otherwise approved by the Planning Director.

(ii) Disturbance limits for lots intended for single family homes

- 1) The building and grading envelope shall not exceed the greater of 10,000 square feet or twice the size of the building footprint unless approval is obtained from the Planning Board.
- 2) Furthermore, impervious surfaces within the building and grading envelope shall comply with the standards in Table 5.2: Maximum Allowable Impervious Surface.
- 3) No other disturbance or impervious surfaces are permitted on the lot other than for a driveway to provide ingress and egress.

(iii) Disturbance limits for lots intended for other than single-family homes

- 1) For lots intended for development as other than single-family homes, the building and grading envelope and impervious surfaces shall be the minimum necessary to develop the property for its intended use.

(iv) Building and grading envelopes

- 1) Building and grading envelopes shall be sited so that any structure to be placed thereon shall not be readily visible from public rights-of-way or public lands, the elevation of which is equal to or less than such structure. This may be accomplished through natural terrain, existing vegetation or other means approved by the Planning Director.

(v) Building height

- 1) The height of any building shall not extend closer than 20 feet to the uppermost point of any protected mountain ridge, as that term is defined herein, on which said building is constructed. For the purposes of this Ordinance, the uppermost point of the crest, summit, or ridge top refers to geological formations and not vegetation.

(vi) Exempted appurtenances

- 1) The building height restriction specified in this Ordinance shall not apply to any of the following which are attached to the single-family dwelling:
 - a) Equipment for the transmission of electricity or communications;
 - b) Chimneys, flag poles, flues, poles, or wires;

- 2) Provided, however, that such appurtenances shall not extend to or beyond the uppermost point of the crest, summit, or ridge top of the mountain or hill on which said dwelling is constructed.
- (vii) Partial screening
- 1) A portion of natural on-site vegetation shall be retained sufficient to partially screen (along 50 percent of the building face, or that achieves 50 percent opacity or more along the building face) the building, structure, use, or activity from views from public roads not serving the building, or landscaping shall be installed and designed to partially screen the building, structure, use, or activity from views from public roads, or other measures have been included in the project and approved by the Planning Director to reduce the visual impacts of such development from views from public roads.
 - 2) View corridors from the proposed development to surrounding areas may be provided, but such corridors shall not extend for more than 50 percent of the width of building face between the view sought and the building face from which the view is sought.
- (viii) Hazardous waste facilities
- 1) Handling areas for the receiving and storage of hazardous waste and hazardous waste or solid waste disposal facilities are prohibited in areas regulated by this Ordinance.
- (ix) Mining
- 1) Mining activity which requires a new permit from the North Carolina Department of Environmental Quality shall be prohibited in the areas regulated by this ordinance. Expansion of an existing mining activity that would require a permit modification from the North Carolina Department of Environment Quality shall be prohibited in the areas regulated by this ordinance.

Section 5.8.5 Fire Protection

- (a) Adjacent to residences or structures to be occupied, in areas of high risk of forest fires there shall be required a fire-buffer zone of no less than 30 feet on all sides of said residences or structures, or to the property line, whichever is nearer.
- (b) Within the fire-buffer zone, all brush, flammable vegetation, or combustible growth shall be maintained in a fire-safe manner. This provision shall not apply to single specimens of trees, ornamental shrubbery, or similar plants used as ground cover, provided that they do not form a continuous means of rapidly transmitting fire from the native growth to a residence or structure to be occupied.
- (c) In areas of high risk of forest fires as determined by the fire marshal, the following provisions may be made a condition of development or building permit approval:
 - (i) Roofs shall be covered with noncombustible materials, such as clay or concrete shake, or tile, or other fire-retardant materials;
 - (ii) Exterior walls shall be surfaced with noncombustible or fire-resistant materials; and,
 - (iii) Chimneys shall be provided with approved spark arresters.
- (iv) Where no public water is available to serve a development or subdivision, the Planning Director may, in the interests of public safety, require the establishment of ponds and dry hydrants to serve such development or subdivision.

Section 5.8.6 Best Management Practices

Applications for development authorization shall demonstrate compliance with the best management practices set forth herein unless waived by the Planning Director in those circumstances where (1) strict

compliance would result in practical difficulty or unnecessary hardship, (2) the public safety and welfare are assured, and (3) the purposes of this ordinance are not compromised.

(a) Accepted Professional Practices

- (i) All development proposals subject to the requirements of this Ordinance shall be designed to meet generally accepted principles of land use planning, soil mechanics, engineering geology, civil engineering, environmental management, civic design, architecture, landscape architecture, landscape ecology, and related disciplines.

(b) Planning

- (i) Planning of the development shall take into account the topography, soils, geology, hydrology, vegetation, and other features of the proposed site. Areas not well suited for development due to soil characteristics, geology, vegetation, existing plant and animal life, or hydrology limitations, should not be developed.

(c) Innovation

- (i) Site designers are encouraged to propose and apply innovative concepts for slope and soil stabilization, grading, landscaping, and building placement and design to meet the purposes and intentions of this ordinance.

(d) Land Disturbance and Grading

- (i) When grading is necessary, rigid contouring should be avoided; contours should be rounded to appear undulating and natural.
- (ii) Projects involving more than one use or phase should be phased into workable units in a way that minimizes the amount of soil disturbance at any given point in time.
- (iii) When grading must occur, it should blend with the natural land form as much as possible.
- (iv) Grading to form level pads and building sites is strongly discouraged and when required such grading should be minimized.
- (v) Earth berms, rock forms, or stone retaining walls should be used to minimize visual impacts of cuts.
- (vi) Hedges and fences may also be appropriate in some locations.
- (vii) Large, continuous surfaces of smooth concrete and related structures are considered inappropriate.
- (viii) The height of any retaining wall should not exceed four feet unless required to be higher for engineering reasons. In areas where cuts are steeper, a stepped or terraced wall should be used.

(e) Vegetation, Landscaping, and Habitat

- (i) Plans for development should consider any characteristics of the area that make it unique or significant in the conservation of flora and fauna including threatened, rare, and endangered species.
- (ii) Existing deep-rooted vegetation, including trees, bushes, and ground covers, should be removed only in cases where necessary for buildings, roads, driveways, parking, and minimal yards.
- (iii) Plant materials should be used that blend with the mountainside or hillside. Landscape schemes that are rough, natural and/or subdued in character are encouraged.

- (iv) Extensive areas of exotic plants and sod are discouraged where they would be visible from the public right-of-way.

(f) Historic and Archaeological Resources

- (i) Plans for development should consider the preservation of significant state historical and archaeological resources (defined as properties on or eligible for the National Register of Historic Places) within areas subject to the requirements of this ordinance.
- (ii) Cemeteries and gravesites shall be protected, and family members shall be assured reasonable access thereto.
- (iii) Anyone developing properties containing roads, trails and other travel ways connecting to national forests and other public lands shall assure continued public access thereto.

(g) Sensitive Natural Areas

- (i) Plans for development shall comply with requirements concerning sensitive natural areas contained in Article IV and shall be sensitive toward and mitigate any negative effects of development activities on immediately adjacent sensitive natural areas.

(h) Building Colors

- (i) It is strongly encouraged that exterior colors for new buildings and structures, including roofs, be coordinated with the predominant colors of the surrounding landscape to minimize contrast between the structure and the natural environment. Furthermore, it is strongly encouraged that dark or earth-tone colors be used to make the home less conspicuous as seen from off site.

(i) Clustering of Buildings and Building Locations

- (i) Buildings and structures should be clustered where possible to reduce disturbance and removal of vegetation.
- (ii) Buildings should be sited with different floor elevations to achieve height variation.
- (iii) For multi-family projects, stagger alignments of buildings both horizontally and vertically to create unit identity, privacy at entry and private outdoor space, and to share common open space.

(j) Building Setbacks

- (i) Where appropriate, buildings and structures should be located as close to the road as possible to preserve the natural terrain and to minimize disturbance and the length of driveways.

(k) Screening and View Corridors

- (i) The thinning of limbs of individual trees is preferred over tree removal as a means to provide a view corridor. Dwellings or buildings that are proposed to be sited to maximize views from the lot or that require removal of vegetation to produce a view corridor are strongly discouraged.

(l) Roads and Driveways

- (i) Road and driveways should follow the natural terrain. Road and driveway alignments should follow the natural terrain unless the project engineer can justify additional cuts or fills. Roads, walkways, and parking areas should be designed to parallel the natural contours of the site.

(m) Shared Driveways and Parking

- (i) Combinations of collective private driveways, shared parking areas and on-street parallel parking bays should be used where possible to minimize land and soil disturbance, minimize impervious surface coverage, and achieve excellence of design and aesthetic sensitivity.

(n) Lighting

- (i) Outside lighting should be muted and directed so that it does not spill over onto neighboring properties. See also Section 6.1 Outdoor Lighting.
- (ii) Light emanating from a development on a mountainside or hillside should be minimized since lighting from buildings located on mountainsides or hillsides can be highly visible at night and may affect the night character of the community.
- (iii) High-pressure sodium lights are prohibited.

(o) Building Pads

- (i)* For subdivisions and developments with multiple buildings, building pads (i.e., clearing and grading for buildings and structures) should be varied in elevation above or below road level to avoid the appearance of monotonous, flat, level pads.
- (ii)* Step-down design
 - 1) Single-family dwellings and other structures should "step down" the hillside or mountainside to limit the amount of grading required.
 - 2) Large building pads and footings should be split into more than one (i.e., split-level homes that step down the hillside) where possible to allow the building pad and structure to more closely follow the existing slope of the land.
 - 3) Building footprint coverage should be minimized where possible by using multiple-level (two or more stories) buildings.
 - 4) The visible mass of larger buildings and structures should be reduced by utilizing below-grade rooms cut into the natural slope.
 - 5) Natural drainage channels
 - 6) Natural drainageways shall be preserved to the maximum extent possible.

(p) Setbacks

- (i)* Setbacks should be used to protect natural features of the mountain and hillside terrain.
- (ii)* Placing structures away from the shoulder reduces the visual impact of development as well as erosion on steep slopes.
- (iii)* All structures should be set back a minimum of 20 feet from the shoulder of a ridge line. The shoulder is defined as the plane at which the slope of the land changes from greater than 20 percent to a ridge top of less than 20 percent.
- (iv)* Natural vegetation should be maintained undisturbed within the setback area except for access to a lot or limited cutting to provide a view.
- (v)* All other setbacks including, but not limited to, those from streams, creeks, springheads, and property lines shall be met as required by this Ordinance.



VI

Development Standards

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6.2 Wireless Communications Facilities

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Article VI. - Development Standards

Section 6.2 - Wireless Communication

Facilities Section 6.2.0 - Adoption by the Town of Webster

In order to promote uniformity with Jackson County Ordinances, the Town of Webster has adopted Article VI. Section 6.2 of the Jackson County Unified Development Ordinance: Wireless Communication Facilities. For purposes of clarification, the Town of Webster has only adopted Section 6.2, Wireless Communication Facilities, of Article VI - Development Standards. The term "Town of Webster" may be substituted for all instances in which the term "County" is found throughout the following ordinance.

Section 6.2 Wireless Communications Facilities

Section 6.2.1 Purpose and Legislative Intent

- (a) The purpose of this wireless communications section is:
- (i) To provide for the public health, safety and welfare by ensuring that residents, businesses and public safety operations in Jackson County have reliable access to wireless communications networks and mobile broadband communications services while also providing for the protection of Jackson County's communities, residents, and natural resources;
 - (ii) To encourage colocation of communications facilities on existing towers;
 - (iii) To encourage the use of existing buildings and structures as locations for communications facilities; and
 - (iv) To establish a fair and efficient process for review and approval of applications.
 - (v) To accomplish the above stated objectives and to ensure that the placement, construction, or modification of wireless communication facilities complies with all applicable federal laws, including without limitation Section 6409 of the Federal Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, and to assure compliance with applicable state laws, including Session Law 2013-185, Jackson County adopts this wireless communications ordinance. By enacting this section, it is Jackson County's intent to ensure Jackson County has sufficient wireless infrastructure to support public safety communications throughout Jackson County and to ensure access to reliable wireless communications services throughout all areas of Jackson County while protecting communities, residents, and natural resources.

Section 6.2.2 Approvals Required for Wireless Communication Facilities and Wireless Support Structures

- (a) General procedure and desired outcomes for approving and issuing permits for wireless communication facilities. In order to ensure that the placement, construction, and modification of wireless communication facilities protect the county's health, safety, public welfare, environmental

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features, the nature and character of communities and neighborhoods and other aspects of the quality of life within the County, while providing an adequate level of wireless communications service within the County, Jackson County hereby adopts an overall policy with respect to the review, approval and issuance of permits for wireless communication facilities for the express purpose of achieving the following outcomes:

- (i) Implementing an application process for person(s) seeking approval of wireless communication facilities.
- (ii) Requiring review of applications for any new wireless communication facilities as required or otherwise specified in this section.
- (iii) Establishing a procedure for examining an application and issuing the required permit(s) for wireless communication facilities that is both fair and consistent.
- (iv) Promoting, and requiring wherever possible, the sharing and/or collocation of wireless communication facilities among service providers.
- (v) Requiring, promoting, and encouraging, wherever possible, the placement, height and quantity of wireless communication facilities in such a manner as to minimize the physical and visual impact on the community, including, but not limited to, the use of concealment technology and camouflaging.
- (vi) Providing for a level of service that provides access to adequate wireless communication throughout Jackson County.
- (vii) In approving a wireless communication facility, the county shall find that the proposed facility site is the most appropriate in regard to being the least visually intrusive within the community.

(b) Requirements for review and approvals.

- (i) No person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of a wireless communication facility as of the effective date of this section without having first obtained the required permit for a wireless communication facility as defined in section (f) below and Article III: Permits and Procedures.
- (ii) If constructed as required by permit, all legally permitted wireless communication facilities that existed on or before the effective date of this section shall be allowed to continue as they presently exist, provided however, that they are operating as originally permitted and that any modification of an existing wireless communication facilities permitted by this section complies with the applicable provisions of this section.
- (iii) Ordinary maintenance of a wireless communication facilities as defined in this section and that does not exceed the conditions of the wireless communication facilities permit does not require an application for a wireless communication facility permit but may require a building permit. Additional construction or site modification shall not be considered to be ordinary maintenance.

(c) Exclusions. The following shall be exempt from this section:

- (i) Any facilities expressly exempt from the County's siting, building and permitting requirements.
- (ii) Any reception or transmission devices expressly exempted under the communications Act of 1996.
- (iii) Facilities used exclusively for private, noncommercial radio and television reception and private citizen's bands, licensed amateur radio and other similar noncommercial communications.
- (iv) Facilities used exclusively for providing unlicensed spread spectrum technologies, such as IEEE 802.11 a, b, g services (e.g., Wi-Fi and Bluetooth) where the facility does not require a new tower or increase the height of the structure to which it will be attached.

(d) Exemptions

- (i) Exempt from all approval processes. The following are exempt from all Jackson County plan approval processes and requirements:
 - 1) Removal of equipment on an existing wireless tower or wireless communication facility.

- 2) Ordinary maintenance of existing wireless communication facilities and wireless support structures, as defined in this section.
- 3) COWs placed for a period of not more than 120 days at any location within Jackson County or after a declaration of an emergency or a disaster by the governor and/or by the Jackson County Board of Commissioners.
- 4) Facilities owned or leased by Jackson County or County authorities, e.g., airport authority.
- 5) Facilities used exclusively for state and local emergency management communications systems.

(e) Administrative review and approval.

- (i) The following types of applications are subject to the application and administrative review process as provided in Section 3.4: Common Review Procedures. No additional plan review is necessary.
- 1) Concealed wireless communication facilities that are 60 feet or less in height, in any location.
 - 2) COWs, if the use of the COW is either not in response to a declaration of an emergency or disaster by the governor and/or by the Jackson County Board of Commissioners or will last in excess of 120 days.
 - 3) Collocations.
 - 4) Facilities used exclusively for providing unlicensed spread spectrum technologies, such as IEEE 802.11 a, b, g services (e.g., Wi-Fi and Bluetooth) where the facility requires a new tower or increases the height of the structure to which it will be attached.
 - 5) Wireless communication facilities placed on utility poles.
 - 6) Placement of new transmission equipment on an existing wireless support structure or tower.
 - 7) Replacement of transmission equipment on an existing wireless support structure or tower or base station that does not result in a substantial modification as defined in this Section. This includes both "like kind" replacement and upgrades with dissimilar equipment.
 - 8) Facilities used exclusively for providing broadband services, provided that the structure to which facilities are attached does not exceed 120 feet in height and does not require the construction of an access road to the property.
 - 9) Facilities owned by the State of North Carolina.

(f) Wireless Communication Facilities Permit (Special Use Permit).

- (i) The following types of applications are subject to the application and review process as provided in section 3.7.15.
- 1) New wireless support structures, including towers;
 - 2) Substantial modifications to existing wireless communication facilities.

Section 6.2.3 Location and Design Standards for Wireless Communication Facilities

(a) Location of Wireless Communication Facilities.

- (i) It is recommended that applicants for all wireless communication facilities locate, site and construct said wireless communication facilities in accordance with the following priorities, in order:
- 1) On existing wireless support structures without substantial modification of the tower or structure.
 - 2) On existing wireless support structures with substantial modification(s).
 - 3) On existing structures other than wireless support structures, such as electrical transmission towers and buildings, capable of accommodating the facilities.

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- 4) On properties in areas developed for business use.
 - 5) On properties in areas developed for rural use.
 - 6) On properties in areas developed for residential use.
- (ii) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation and documentation (i.e., intermodulation study) must be provided in the application as to why a site of a higher priority designation was not selected.
- (iii) The County may approve any site located within an area in the above list of priorities, provided that the County finds that the proposed site is in the best interest of the health, safety and welfare of the County and its inhabitants.

(b) Type and Height of Wireless Support Structures and Towers.

- (i) The usual maximum height for wireless support structures shall be 100 feet. The Jackson County Board of Commissioners may approve increases in wireless support structure height up to a maximum height of 180 feet based on a showing of need and after consideration and satisfaction of the other requirements of this section.
- (ii) Wireless support structures and towers may be monopole or lattice type.
- (iii) Wireless support structures and towers may be located on a protected mountain ridge as defined in the Jackson County Mountain and Hillside Development Ordinance provided that:
- 1) The wireless support structure does not extend more than 20 feet above the average height of the tree canopy within 100 feet of the tower site. If any antenna extends more than two feet from the side of the support structure, the portion of the tower extending above the vegetative canopy shall be camouflaged to appear like the top of a coniferous tree with all antennas concealed within simulated foliage.
 - 2) The wireless support structure or tower is not visible from a public road within one-half mile of the proposed site.
 - 3) There is no other wireless support structure or tower located on a ridge within one mile of the proposed site.
 - 4) The proposed wireless support structure or tower is a monopole.
 - 5) The proposed wireless support structure or tower is not visible from and within two miles of the Blue Ridge Parkway.
 - 6) There are no other structures, including electrical transmission towers, within the search area capable of accommodating the wireless communications equipment.

(c) Reserved.

(d) Visibility and Noise of Wireless Communication Facilities.

- (i) Lighting. Wireless communication facilities shall not be artificially lighted or marked, except as required by federal regulations. If lighting is legally required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. For any wireless communication facilities for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least one mile in a level-terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA. If lighting is required by the FAA or other government agency, then such lighting shall be installed pursuant to the FAA or other government agency standards. The applicant shall present the options for selection by the County, being mindful of the impacts of the proposed lighting upon people whose residences are located at higher elevations.

- (ii)* Retrofitting. In the event a wireless communication facility that is lighted is modified, at the time of the modification the County may require that the tower be retrofitted with the technology set forth in the preceding subsection.
 - (iii)* Camouflage/concealment. All new wireless communication facilities are encouraged to utilize camouflage and/or concealment techniques to the maximum extent feasible. Wireless communications facilities to be located within residential areas, rural areas, and scenic areas are encouraged to employ camouflage or concealment techniques.
 - (iv)* Wireless communication facilities finish/color. Structures shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this section and subject to FAA requirements.
 - (v)* Noise. All facilities at a wireless communication facility, regardless of the owner of the facilities, shall comply with the County's noise control regulations, without exception.
- (e) Security of wireless communication facilities.** All wireless communication facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:
- (i)* All wireless communication facilities, including antennas, towers, and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
 - (ii)* Transmitters and communications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.
- (f) Signage.** Wireless communication facilities shall contain a sign no larger than four square feet shall be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.
- (g) Setbacks.**
- (i)* Unless otherwise stated herein, each wireless support structure shall be set back from all property lines a distance equal to its engineered fall zone plus ten percent. The setback shall be measured from the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile. Further, the nearest portion of any new access road leading to a wireless communication facility shall be no closer than 15 feet to the nearest property line.
 - (ii)* Accessory structures shall be located within the footprint of the approved facility and meet the minimum property line setbacks for the district or 30 feet from adjacent property lines whichever is more restrictive.
 - (iii)* There shall be no development of habitable buildings within the wireless support structure setback set forth in the preceding subsection.
- (h)** The accessory structures associated with wireless communication facilities shall maximize the use of building materials, colors, and textures designed to blend with and harmonize with the natural surroundings.
- (i)** All utilities at a wireless communication facilities site shall be installed underground if practical and in compliance with all laws, ordinances, rules, and regulations of the County, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- (j)** At a wireless communication facilities site an access road and turnaround space for an emergency vehicle shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction

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shall at all times minimize ground disturbance and the cutting of vegetation. Road design and construction shall comply with the private road standards set forth in Article IV: Subdivisions. Maintenance of the access roads shall be provided to assure vehicular access to the site at all times. All erosion control and storm water management facilities shall be maintained at all times. A maintenance log that documents inspections of the site and access roads shall be maintained at the communications facility site. The required maintenance log shall be placed in a location accessible at all times to the Jackson County employees charged with review of the log. Inspections shall be made at least quarterly by the owner/lessee of the site to confirm that the access road and site are maintained with no erosion or storm water issues and that all equipment is in good order. The employee of the site owner/lessee conducting the inspection shall note the date of the inspection and condition of the site and access road on the inspection log. Inspections logs shall be reviewed at least biennially by the Jackson County Planning Department. Any failure to maintain the inspection log and/or to maintain the erosion control and storm water management measures at the site and on the access roads shall be considered a violation of this Section.

- (k) All wireless communication facilities, shall be constructed, operated, maintained, repaired, provided for removal of, modified, or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the County, state, or United States, including, but not limited to, the most recent editions of the ANSI Code, National Electrical Safety Code, and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- (l) A holder of a wireless communication facilities permit granted under this section shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the County or other governmental entity or agency having jurisdiction over the applicant.
- (m) A building permit shall not be issued for construction of the wireless support structure unless there is an FCC authorized or licensed spectrum carrier which has indicated it will be installing equipment to use such spectrum on the wireless support structure.

Section 6.2.4 Application and Review Process

- (a) A wireless communication facilities permit shall be considered a Special Use Permit and shall be subject to the review and approval processes set forth in Section 3.7.15. The Board may, at its discretion, delegate or designate other official agencies or officials of the County or outside consultants to accept, review, analyze, evaluate, and make recommendations to the Board with respect to the granting or not granting or revoking wireless communication facilities permits for wireless communication facilities. However, outside consultants shall have no authority to make or change policy for the County.
- (b) When placing wireless communication facilities or wireless support structures on government-owned property or facilities, only noncommercial wireless carriers and users are exempt from the permitting requirements of this section.
- (c) No wireless communication facilities or wireless support structures shall be installed, constructed, or modified until the wireless communication facilities permit has been approved and a building permit has been issued.

- (d) The applicant must provide documentation to verify it has the right to proceed as proposed on the site. This requires an executed copy of the lease with the landowner or landlord or a signed letter of agency acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.
- (e) The application shall include a statement in writing:
 - (i) That the applicant's proposed wireless communication facilities shall be maintained in a safe manner, and in compliance with all conditions of the wireless communication facilities permit, without exception, unless specifically granted relief by the board in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable county, state and federal laws, rules, and regulations.
 - (ii) That the construction of the wireless communication facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the State.
 - (iii) The applicant acknowledges and understands that should the facility not be used for a period of 180 days, the applicant will remove the facility at its expense within 90 days of abandonment as set forth in section 6.2.8.
- (f) Where an engineering certification is required in the application materials, such certification shall bear the signature and seal of a professional engineer licensed in North Carolina.
- (g) In addition to all other information required by this section, all applications shall contain the following information:
 - (i) Ownership and management:
 - 1) The name, address and phone number of the person preparing the application.
 - 2) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided.
 - (ii) The 911 address and tax map parcel number of the property.
 - (iii) A copy of the FCC license applicable for the intended use of the wireless communication facilities.
 - (iv) Written acknowledgement that any new wireless support structure facility shall be structurally designed to accommodate a minimum of three antenna arrays and shall be managed so as to not restrict, prevent or prohibit competition among carriers. Further, applicant acknowledges that any charges made to other users of the facility, shall be reasonable and shall not exceed those charges made by other facility users in Jackson County using similar facilities.
 - (v) The applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new wireless support structure that it constructs.
 - (vi) A site plan depicting the following:
 - 1) The zoning district (in the case of Regulated Districts) or designation in which the property is situated, if applicable.
 - 2) The size of the property footprint on which the proposed facility to be built or attached is located, stated both in square feet and lot line dimensions, topography of the subject property and the adjacent properties, and a survey showing the location of all lot lines. The location, size, and height of all existing and proposed facility on the property on which the facility is to be located and adjoining properties.

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- 3) The footprint and type, location and dimensions of any access drive, camouflage, landscaping buffers, fencing and any other improvements existing on or proposed for the site.
 - 4) Plans for any access road to be constructed to provide access to the site.
 - 5) Erosion control and storm water management plans for the proposed access road and the facility site.
 - 6) A drawing showing a circle around the proposed facility equal to the setback requirements of Jackson County, if any; for such a facility.
 - 7) A drawing showing any landscaping proposed for the site by the applicant.
- (vii) Elevations showing the profile or the vertical rendition of the wireless support structure identifying proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the pre-existing grade, surrounding trees, materials, camouflage, color and lighting.
- (viii) The azimuth, size, and center line height location of all proposed antennas on the supporting structure.
- (ix) Technical information regarding noise and/or sound generated by any generators or other equipment to be used on site, if applicable; if multiple generators are to be used, then the data should show the cumulative impact of noise generated. A specification sheet from the generator manufacturer providing this information is sufficient to meet this requirement.
- (x) Safety: If substantially modifying an existing wireless communication facility:
- 1) The age of the facility in years, including the date of the grant of the original permit.
 - 2) A description of the type of tower, e.g., guyed, self-supporting lattice or monopole.
- (xi) A structural report certified and signed by a professional engineer licensed to do business in North Carolina and bearing that engineer's currently valid stamp, showing the structural adequacy of the proposed or existing structure to accommodate the proposed wireless communication facilities, including any equipment shelter, unless the equipment shelter is located on the lowest floor of a building.
- (xii) Compliance with FAA regulations. Applicant shall comply with all FAA regulations and shall supply any FAA determination for the proposed site. This applies to any modification to a pre-existing tower that adds additional height to the structure.
- (xiii) The owner of a proposed new wireless support structure, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed wireless support structure by other wireless service providers in the future. Failure to abide by the conditions outlined above may be grounds for revocation of the wireless communication facilities permit.
- (xiv) In order to better inform the public, in the case of a new wireless support structure (tower), the applicant shall conduct a "balloon test" prior to the initial public hearing on the application. The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a ten-foot length, brightly colored balloon at least three feet in diameter at the maximum height of the proposed new wireless support structure (tower).
- 1) At least 14 days prior to the conducting of the balloon test, the applicant, in coordination with the planning department, shall cause a sign to be erected so as to be clearly visible from the public road nearest the proposed site and shall be removed no later than 14 days after the conduct of the balloon test. The sign shall be readable from the road by a person with 20/20 vision.

- 2) Such sign shall be placed off, but as near to, the public right-of-way as is possible.
 - 3) Such sign shall contain the location, purpose, times and date(s) of the balloon test and contact information.
 - 4) The dates (including a second date, in case of poor visibility or wind in excess of 15 mph on the initial date), times, purpose, and location of this balloon test shall be advertised by the applicant seven and 14 days in advance of the first test date in a newspaper with a general circulation in the County and as agreed to by the County. The applicant shall inform the Planning Department in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four consecutive hours between 10:00 a.m. and 2:00 p.m. on the dates chosen. The primary date shall be on a weekend, but the second date, in case of poor visibility on the initial date, may be on a weekday. A report with photographs from various locations of the balloon shall be provided with the application. Locations from which photographs are to be taken shall be reviewed and approved by the planning department.
 - 5) The applicant shall provide written notice to all property owners and residents of property located within 2,000 feet of the nearest property line of the subject property of the proposed construction of the wireless support structure (tower) and of the date(s), location, and time(s) of the balloon test. Such notice shall be provided at least 14 days prior to the conduct of the balloon test and shall be delivered by first class mail to a resident at the address of such property and to the owner at the mailing address for such owner as listed in the Jackson County property records.
- (xv) All applications for proposed wireless support structures shall contain a demonstration that the facility is sited and designed so as to create the least visual and physical intrusiveness reasonably possible given the facts and circumstances involved, and thereby will have the least adverse visual and physical effect on the environment and its character, on existing vegetation, and on the community in the area of the wireless support structure. The County expressly reserves the right to require the use of camouflage and/or concealment technology or techniques to achieve this goal and such shall be subject to approval by the board.
- (xvi) To assist the County in making this determination, the applicant shall furnish a visual impact assessment, which shall include:
- 1) Pictorial representations (photo simulations) of "before and after" views from key viewpoints inside of the county, including, but not limited to, state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers, or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the application shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed wireless support structure;
 - 2) A pictorial representation or photo simulation of the visual impact of the proposed facility, including, as applicable, the tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as related to the need or appropriateness of screening.
- (xvii) The applicant shall demonstrate and provide by drawing and/or photo simulation how it shall effectively screen from view the base and all related equipment and structures of the proposed wireless communication facilities.

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- (xviii) Applications will not be transmitted to the Board of Commissioners for consideration until the application is deemed complete.
- (xix) The holder of a wireless communication facilities permit shall notify the county of any proposed modification of a wireless communication facility and shall apply to the county to modify, relocate, or rebuild a wireless communication facility.
- (xx) All applications for a conditional use permit and administrative review in the following sections shall be accompanied by the following statements.
 - 1) The information contained in this application is true and accurate.
 - 2) Is signed and sworn before a notary public.
- (h) Transfer of Approval.** A wireless communication permit approval may be transferred to a subsequent owner of the property for which the permit was issued but may not be transferred to another property.
- (i) Resubmission of Denied Applications.** No application for approval of a wireless communication permit shall be filed with or accepted by the Planning Department that is identical or substantially similar to an application that has been denied by the Jackson County Board of Commissioners.
- (j) Modifications.** Modifications from the standards established by this section for wireless communication facilities are subject to the procedure and standards set forth in Section 6.2.10.
- (k) Permit validity.** Approval of a wireless communications permit (Special Use Permit) shall be valid for one year from the date of approval by the Jackson County Board of Commissioners. Failure to obtain a building permit, or otherwise initiate the permitted use, within this time shall render the wireless communications permit approval void. The Jackson County Planning Department may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension.
- (l) Wireless Communication Facilities Permit Administrative Review Application Requirements**
 - (i) All applicants for administrative review to collocate on an existing wireless support structure, to upgrade equipment on an existing wireless support structure, to replace existing equipment, and/or any other activity not meeting the definitions of substantial modification or ordinary maintenance provided in this Section shall comply with the administrative review requirements in Section 3.4 Common Review Procedures.
 - (ii) An application to "substantially modify" the parameters of an approved wireless communication facilities as relates to the approved height, profile, number of collocations or footprint shall not qualify for administrative review under Section 3.4: Common Review Procedures.
 - (iii) Approval of a wireless communication facility permit (Special Use Permit) shall not be required for an application to modify or to co-locate an antenna array on an existing and properly permitted wireless support structure so long as the co-location or modification does not exceed the parameters set forth in NCGS 160D-933, unless for good cause such approval shall be required by the Planning Board or Planning Department. Administrative review shall be required for such application.
 - (iv) Documentation shall be provided to demonstrate that the applicant has the legal right to proceed as proposed on the site, including an executed copy of the lease with the owner of the facility proposed to be attached to, or a letter of agency, showing the right of the applicant to attach to the structure.
 - (v) The applicant shall include a written statement that:

- 1) The applicant's proposed wireless communication facility shall be maintained in a safe manner, and in compliance with all conditions of all applicable permits and authorizations, without exception, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable County, State and Federal laws, rules, and regulations.
 - 2) The construction of the wireless communication facility is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the state of North Carolina.
- (vi) An application for attaching an antenna array, which shall include equipment upgrades and replacement of equipment, under this section shall contain the following information:
- 1) The name, address and phone number of the person preparing the application.
 - 2) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided.
 - 3) The 911 address and tax map parcel number of the property.
 - 4) A copy of the FCC license or other authorization applicable for the intended use of the wireless communication facilities.
 - 5) A site plan depicting the following:
 - a) The zoning district (in the case of Regulated Districts) or designation in which the property is situated, if applicable.
 - b) For applications that involve expansion of the ground compound, the size of the property on which the structure to be attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines.
 - c) The location, size and height of all existing and proposed structures on the property on which the structure is located and that is the subject of the application;
 - d) The footprint, location and dimensions of access drives, landscaping and buffers, fencing and any other existing or proposed site improvements.
 - e) Unless it is deemed inappropriate or unnecessary by the planning department given the facts and circumstances, the method proposed to effectively buffer and screen from view the base and all related equipment and structures of the proposed Wireless Communication Facility up to a height of ten feet.
 - f) Unless already contained in the structural analysis required by Section 6.2.3 (b) elevations showing the vertical rendition of the wireless communication facilities identifying all attachments, and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 - 6) All attachments and exposed cabling shall use concealment techniques to match as closely as possible the color and texture of the structure, whenever practical.
 - 7) The applicant shall provide a certification by a professional engineer licensed in North Carolina, along with documentation (a structural analysis), including calculations, that prove that the wireless support structure and its foundation as proposed to be utilized, including all proposed attachments, existing attachments, and reserved future attachments, are

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designed and were constructed to meet all local, county, state, federal and ANSI EIA/TIA 222 as amended requirements for loads, including wind and ice loads and the placement of any equipment on the roof of a building after the addition of the proposed new facilities.

All utilities installed for a new wireless communication facility shall be installed underground when practical and in compliance with all laws, ordinances, rules, and regulations of the county, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

- (vii) Permit validity. Approval of a request for administrative review and approval shall be valid for one year from the date of approval by the planning department. Failure to obtain a building permit, or otherwise initiate the permitted use, within this time shall render the approval void. The Jackson County Planning Department may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension.

Section 6.2.5 Retention of Consultant/Expert Assistance Cost to be Borne by Applicant

- (a) The County may hire any consultant and/ or expert necessary to assist the County in reviewing and evaluating the application for substantial modifications, new wireless communication facilities, and collocations, including the construction and modification of the site, once permitted, and any site inspections.
- (b) To prevent the taxpayers from having to bear the cost related to the issue of the regulation of wireless communication facilities, an applicant shall pay the consultant's fee as set forth in the contractual agreement between the consultant and the County. The amount of the fee shall be based on the cost of services provided and what is usual and customary in Jackson County for the review and permitting assistance related to wireless communication facilities to cover all reasonable costs of consultant and expert evaluation and consultation with the County in connection with the submittal, review and permitting of any application, and where applicable, any lease negotiation, preapproval evaluation and including any construction and modification of the site, once permitted. The payment of the consultant's fee to the County shall precede any work being done as regards to processing an application.
- (c) Records of all outside costs associated with the review and permitting process shall be maintained and available for public inspection, in compliance with applicable North Carolina law.

Section 6.2.6 Removal and Performance Security

- (a) The Applicant and the owner of record of any proposed wireless communication facilities property site, at its cost and expense, shall be jointly required to execute and file with the County a bond, or other form of security acceptable to the County as to type of security and the form and manner of execution, in an amount and with such sureties as are deemed sufficient by the County to assure the faithful performance of the terms and conditions of this section and conditions of any communications facility permit issued pursuant to this section. The amount of the bond or other security shall be at least \$75,000.00, with the amount based upon cost estimates for the removal of the wireless support structure or tower and the restoration of the site. Such cost estimates shall be submitted by the applicant and shall be provided by independent contractors. The full amount of the bond or security shall remain in full force and effect throughout the term of the communications facility permit and/ or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original communications

facility permit. All bonds or other forms of security provided as required by this section shall be reviewed every five years to assure that the amount of the security is adequate to cover the cost of the structure removal and site restoration. An increase in the amount of the security shall be required if it is determined that the amount of the security is insufficient to adequately restore the site.

Section 6.2.7 Reservation of Authority to Inspect Wireless Communication Facilities

- (a)** In order to verify that the holder of a wireless communications facility permit for wireless communication facilities and any and all lessees, renters, and /or licensees of such place and construct such facilities, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the County may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, wireless support structures, antennas and buildings (excluding exteriors) or other structures constructed or located on the permitted site.

Section 6.2.8 Removal of Wireless Communication Facilities

- (a)** Under the following circumstances, the County may determine that the health, safety, and welfare interests of the County warrant and require the removal of wireless communication facilities.
- (i)* Wireless communication facilities with a permit have been abandoned (i.e., not used as wireless communication facilities) for a period exceeding 180 days, except for periods caused by force majeure or acts of God, in which case repair or removal shall commence within 90 days of abandonment;
 - (ii)* Permitted wireless communications facilities fall into such a state of disrepair that it creates a health or safety hazard;
 - (iii)* Wireless communications facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required communications facility permit, or any other necessary authorization and the special permit may be revoked.
- (b)** If the County makes such a determination as noted in subsection (a), then the County shall notify the holder of the wireless communications facility permit within 48 hours that said wireless communication facilities are to be removed, the County may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless communication facilities.
- (c)** The holder of the wireless communication facility permit, or its successors or assigns, shall dismantle and remove such facility, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the County. However, if the owner of the property upon which the facility is located wishes to retain any access roadway to the facility, the owner may do so.
- (d)** If wireless communication facilities are not removed or substantial progress has not been made to remove the wireless communication facilities within 90 days after the permit holder has received notice, then the County may order officials or representatives of the County to remove the wireless communication facilities at the sole expense of the owner or wireless communication facility permit holder.
- (e)** If the County removes, or causes to be removed, wireless communication facilities, and the owner of the wireless communication facilities does not claim and remove it from the site to a lawful location within ten days, then the County may take steps to declare the wireless communication facilities abandoned and sell them and their components.

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- (f) Notwithstanding anything in this section to the contrary, the County may approve a temporary use permit/agreement for the wireless communication facilities, for no more than 90 days, during which time a suitable plan for removal, conversion, or relocation of the affected facility shall be developed by the holder of the communications facility permit, subject to the approval of the County, and an agreement to such plan shall be executed by the holder of the permit and the County. If such a plan is not developed, approved and executed within the 90-day time period, then the County may take possession of and dispose of the affected facilities in the manner provided in this section and utilize the bond in this section.

Section 6.2.9 Liability Insurance

- (a) A holder of a wireless communication facility permit shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the wireless communication facility permit in amounts as set forth below:
 - (i) Commercial general liability covering personal injuries, death and property damages \$1,000,000.00 per occurrence/ \$2,000,000.00 aggregate; and
 - (ii) Umbrella coverage: \$3,000,000.00.

Section 6.2.10 Modifications

- (a) Any applicant desiring modification, waiver, or exemption from any aspect or requirement of this section may request such at the pre-application meeting, provided that the request for modification is detailed in the submitted application for either a communications facility permit or, in the case of an improvement requiring administrative review, in the application submitted for administrative review. All requests shall be heard and decided by the Jackson County Board of Commissioners, which must find that justification is provided for the requested modification, waiver, or exemption. Such relief may be temporary or permanent, partial, or complete. However, the burden of proving the need for the requested modification, waiver, or exemption is solely on the applicant to prove. All requests for a modification, waiver, or exemption shall be accompanied by an application fee as set forth in the schedule of fees and charges. No modification, waiver, or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that the request is justified and is necessary to prevent unnecessary hardship and that, if granted, the modification, waiver, or exemption will have no significant effect on the health, safety, and welfare of the County, its residents, property owners and other service providers and preserves the intent of this section.



Violations and Enforcement

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**Article X. - Violations and
Enforcement Section 10.1.1 -**

Purpose and Intent

Purpose: This Article establishes procedures through which the Town of Webster seeks to ensure compliance with the provisions of this Ordinance and to obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this Article are intended to encourage the voluntary correction of violations, where possible. The Town of Webster has adopted Article X. of the Jackson County Unified Development Ordinance: Violations and Enforcement. Therefore, the term "Town of Webster" may be substituted for all instances in which the term "County" is found throughout the following ordinance.

Article X. VIOLATIONS AND ENFORCEMENT

Section 10.1 General Provisions

Section 10.1.1 Purpose and Intent

This Article establishes procedures through which the County seeks to ensure compliance with the provisions of this Ordinance and to obtain corrections for Ordinance violations. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this Article are intended to encourage the voluntary correction of violations, where possible.

Section 10.1.2 Jurisdiction

Enforcement of this Ordinance shall be limited to the area within the planning jurisdiction of the County which may be modified from time to time depending on the planning activities of municipalities and regulated districts in accordance with NCGS 160A-360.

Section 10.1.3 Enforcement Authority

- (a)** This section shall be enforceable in accordance with the provisions of NCGS 153 A-123, 160D-404, and any other applicable North Carolina General Statutes.
- (b)** It shall be the duty of the Planning Director or the Permitting and Code Enforcement Director to enforce this Ordinance and, when necessary, bring to the attention of the County Attorney certain violations or lack of compliance. The Planning Director or Permitting or Code Enforcement Director is authorized to deny, withhold or revoke permits or inspections permissions on any new or existing projects or applications pursuant to this Ordinance or other regulations of the County where the applicant, applicant business or agent has failed or refused to comply with this Ordinance.

Section 10.1.4 Liability

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance is jointly and severally liable for the violation and subject to all available penalties and remedies.

Section 10.2 Violation Types

- (a)** All buildings and land used, and all buildings and structures erected, converted, enlarged, reconstructed, moved, or structurally altered, must comply with all applicable provisions of this Ordinance. Failure to comply with applicable provisions constitutes a violation of this Ordinance. Express violations include but are not limited to the following:
 - (i)* Using land or buildings in a way not consistent with the requirements of this Ordinance.
 - (ii)* Erecting a building or other structure in any way not consistent with the requirements of this Ordinance.
 - (iii)* Engaging in the development of land in any way not consistent with the requirements of this Ordinance.

- (iv) Developing or subdividing land inconsistent with the standards and procedures of this Ordinance.
- (v) Subdividing, transferring, or selling land unless the subdivision has been approved and recorded, as provided in this Ordinance.
- (vi) Installing or using a sign in any way not consistent with the requirements of this Ordinance;
- (vii) Failing to maintain any structure, landscape feature, or natural resource required to be maintained by this Ordinance.
- (viii) Engaging in the use of a building or land, the use or installation of a sign, or any other activity requiring one or more permits or approvals under this Ordinance without obtaining all such permits and approvals.
- (ix) Failing to comply with any condition imposed on a permit approval, specifically including conditions of approval of a special use permit, site plan, administrative adjustment, or variance.
- (x) Adult Business. Any person violating any provision of Section 6.5 shall, upon conviction, be guilty of a Class 3 misdemeanor and be punishable by a fine not to exceed \$500.00 or imprisoned for not more than 30 days. Each day such violation shall continue shall constitute a separate offense.
- (xi) Flood Damage Prevention.
- (xii) Subdivisions.
- (xiii) Erosion Control (see Section 10.4).
- (xiv) Otherwise undertaking any development or establishing any use in a manner that does not comply with this Ordinance.

Section 10.3 Procedures

(a) Notice of Violation

- (i) When the Planning Director or Permitting and Code Enforcement Director receives a written, signed complaint alleging a violation of this Ordinance, the Planning Director or Permitting and Code Enforcement Director shall investigate the complaint.
- (ii) When staff determines work or activity has been undertaken in violation of the Ordinance or other local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State or in violation of the terms of the development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided and the certificate shall be deemed conclusive in the absence of fraud. Except as provided in NCGS 160D-1123, 160D-1206, or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to NCGS 160D-405.

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(b) Appeal

- (i)* Pursuant to 160D-405, anyone who has received a notice of violation may appeal in writing the decision of the Planning Director or Permitting and Code Enforcement Director to appropriate decision making body within 30 days following the date of the notice of violation per Table 3.1: Development Review Procedures. In the absence of an appeal, the decision of the Planning Director or Permitting and Code Enforcement Director shall be final.

(c) Remedies Cumulative

- (i)* The remedies and enforcement powers established in this Ordinance are cumulative. All remedies and penalties are in addition to all other provisions, and not in lieu or exclusive thereof.
- (ii)* The violation of any section or provision of this Ordinance shall not constitute a criminal violation, unless otherwise indicated, but shall be enforceable through civil procedures.
- (iii)* The County shall issue civil citations and penalties for any violation of this Ordinance.
- (iv)* Equitable Relief. The County may apply to any court of competent jurisdiction for an appropriate equitable remedy. It shall not be a defense to the County's application for equitable relief that there is an adequate remedy at law.
- (v)* Combination of Remedies. The County may choose to enforce this section by any one, all, or a combination of civil remedies or equitable relief.
- (vi)* For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.
- (vii)* In accordance with NCGS 160D-403 (f), 160D-404, the Planning Director or Permitting and Code Enforcement Director is authorized to deny, withhold or revoke permits or inspections permissions on any new or existing projects or applications pursuant to this Ordinance or other regulations of the County where the applicant, applicant business or agent has failed or refused to comply with this Ordinance.
- (viii)* The Planning Director or Code Enforcement Director is authorized to deny, withhold, or revoke County issued permits and inspections permissions on any new or existing project or applications where the applicant or applicant business or agent is not in compliance with federal or state issued permits as determined by the permitting agencies.

(d) Forfeiture and Confiscation of Signs

- (i)* Any sign installed or placed on public property, except with the regulations of this Ordinance, will be subject to forfeiture to the public and confiscation. In addition to other remedies and penalties of this section, the County has the right to recover from the sign owner, or person who has placed the sign, the full costs of sign removal and disposal.

(e) Stop Work Order

- (i)* When the violation is in relation to the construction and/or modification of a structure, a stop work order may be issued in accordance with NCGS 160D-404 (b). Individuals may appeal stop work orders with the Planning Director or Permitting and Code Enforcement Director within 15 business days of receiving the order.

- (ii) When the violation is in relation to erosion and sedimentation control, a stop work order may be issued in accordance the following process:
- 1) Per NCGS 160D-1113, the erosion control officer may issue a stop work order if he finds that a land disturbing activity is being conducted in violation of this article or of any rule adopted or order issued pursuant to this article, that the violation is knowing and willful, and that either:
 - a) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent.
 - b) Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent.
 - c) The land disturbing activity is being conducted without an approved plan.
 - 2) The stop work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the erosion control officer pursuant to subsection (a) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials which does not contribute to the violation may continue while the stop work order is in effect. A copy of this section shall be attached to the order.
 - 3) The stop work order shall be served by the county sheriff or by some other person duly authorized by law to serve process as provided by G.S. 1A-1, Rule 4, and shall be served on the person who is in operational control of the land disturbing activity; the erosion control officer shall forward a copy of the order to the person financially responsible. The sheriff or other person duly authorized by law to serve process shall post a copy of the stop work order in a conspicuous place at the site of the land disturbing activity. The erosion control officer shall also deliver a copy of the stop work order to any person that the erosion control officer has reason to believe may be responsible for the violation.
 - 4) The directives of a stop work order become effective upon service of the order. Thereafter, any person notified of the stop work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in section 10.4.2. A stop work order issued pursuant to this section may be issued for a period not to exceed three working days.
 - 5) The Permit and Code Enforcement Director or his agent shall monitor compliance with the stop work order. The Permit and Code Enforcement Director or his agent shall rescind the stop work order if all the violations for which the stop work order is issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken. The Permit and Code Enforcement Director or his agent shall rescind a stop work order that is issued in error.
 - 6) The issuance of a stop work order shall be a final agency decision subject to judicial review in the same manner as an appeal of a penalty in accordance with section 10.4.2. The petition for judicial review shall be filed in the superior court of the county.
 - 7) As used in this section, days are computed as provided in G.S. 1A-1, Rule 6. Except as otherwise provided, the board of county commissioners may delegate any power or duty under this section to the Permit and Code Enforcement Director or to any person who has supervisory authority over the erosion control officer. The erosion control officer may delegate any power or duty so delegated only to a person who is designated as acting erosion control officer.

(f) Schedule for Civil Penalties

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- (i) Unless otherwise provided in the Ordinance, the penalty fee schedule for civil penalties shall be set forth in the fee schedule established by the Board of Commissioners and available through the office of the County Manager.

Section 10.4 Soil and Erosion Control Enforcement Procedures

Section 10.4.1 Inspections and Investigations

- (a) **Inspection.** Agents, officials, or other qualified persons authorized by the County, will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required in the Plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each Plan.
 - (i) An initial erosion control permit site inspection is required, must be scheduled by the permit holder and approved, prior to scheduling the first building inspection.
- (b) **Willful Resistance, Delay or Obstruction.** No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the County, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
- (c) **Notice of Violation.** If the County determines that a person engaged in land-disturbing activity has failed to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to this ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance.
- (d) **Investigation.** The County shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.
- (e) **Statements and Reports.** The County shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

Section 10.4.2 Penalties

(a) Civil Penalties

- (i) **Civil Penalty for a Violation.** Any person who violates any of the provisions of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The maximum civil penalty amount that the County may assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).
- (ii) **Civil Penalty Assessment Factors.** The governing body of the County shall determine the amount of the civil penalty based upon the following factors:
- (1) the degree and extent of harm caused by the violation,
 - (2) the cost of rectifying the damage,
 - (3) the amount of money the violator saved by noncompliance,
 - (4) whether the violation was committed willfully, and
 - (5) the prior record of the violator in failing to comply with this ordinance.
- (iii) **Notice of Civil Penalty Assessment.** The governing body of the County shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4. A notice of assessment by the County shall direct the violator to either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the County (as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program), or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based.

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- (iv) Final Decision: The final decision on contested assessments shall be made by the governing body of the County in accordance with (the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program.)
- (v) Appeal of Final Decision. Appeal from the final decision of the governing body of the County shall be to the Superior Court of the county where the violation occurred. Such appeals must be made within 30 days of the final decision of the governing body of the County.
- (vi) Collection. If payment is not received within 60 days after it is due, the County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (vii) Credit of Civil Penalties. The clear proceeds of civil penalties collected by the County under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by each County for the prior fiscal year.

[In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected.]

- (b) **Criminal Penalties.** Any person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in G.S. § 113A-64.

Section 10.4.3 Injunctive Relief

- (a) **Violation of Local Program.** Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the County, or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the County, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.

- (b) **Abatement of Violation.** Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this ordinance.

Section 10.4.4 Restoration After Non-Compliance

The County, may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57 (3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this ordinance.