

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: December 19, 2007

SUBJECT: Establishment of Criteria for Evaluating Category Three (3) Special Intensity Allocations Under Water Supply Watershed Protection Rules

ATTACHMENTS:

1. Staff Memorandum
2. Draft Criteria for Evaluating Category Three (3) Special Intensity Allocations
3. Water Supply Watershed Boundaries Map
4. Water Supply Watershed and Henderson County Special Intensity Allocation Information Table

SUMMARY OF REQUEST:

Henderson County administers state mandated public water supply watershed protection regulations as part of the Land Development Code. These regulations limit the amount impervious surface areas (buildings, pavement, etc) for new developments. An approval called a special intensity allocation (SIA) allows up to 10% of the acreage of each watershed to have a higher amount of impervious surface (70% as opposed to 12-24%). When the regulations were adopted in 1994 the Board then divided that 10% into three categories. SIAs for categories 1 & 2 are approved by staff while SIAs for category 3 are approved by the Board of Commissioners. The regulations allow the Board to establish criteria for approval of category 3 SIA requests. No criteria have been set and staff has received SIA requests for this category.

BOARD ACTION REQUESTED:

Planning Staff requests the Board of Commissioners approve the draft criteria for evaluating Category 3 SIAs should the Board wish to establish criteria.

Suggested Motion: I move that the Board approve the Draft Criteria for Evaluating Category 3 Special Intensity Allocations with any amendments noted by the Board.

Alternative Motion: I move that the board approve SIAs for category 3 on a first come, first served basis and direct staff to prepare an amendment to the watershed regulations to provide for staff approval of such requests.

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MEMORANDUM

TO: Board of Commissioners
Steve Wyatt, County Manager
Selena Coffey, Assistant County Manager

FROM: Planning Staff

DATE: December 6, 2007

SUBJECT: Draft Criteria for Evaluating Category Three Special Intensity Allocations

The County administers state mandated watershed protection rules as part of the Land Development Code. Among other requirements the regulations limit the amount of impervious surface for new residential and non-residential development. An impervious surface is a surface covered with material that does not allow the ground to absorb rainfall. Examples of impervious surfaces include buildings, pavement, and graveled areas. Grassed, mulched or other areas covered with vegetation are examples of pervious surfaces. There are three watershed classifications in Henderson County that range from level II to level IV with level II being the most restrictive. These watersheds are designated by the State and the County has no control of the boundary areas. The classifications limit impervious surface area to 12 or 24 percent of the project site.

State and County watershed regulations allow for a limited area (10% of watershed) of each watershed to be built with a higher percentage of impervious surfaces. This is referred to as a special intensity allocation (SIA). When Henderson County adopted the required watershed rules in 1994 the provision of granting SIAs was divided into three categories. Categories 1 and 2 are approved by the Watershed Administrator and account for no more than eight (8) percent of the watershed. These Category 1 and 2 requests will eventually be exhausted or are nearing exhaustion as is the case for WP-WS-III-BW. Once Category 1 and 2 are exhausted, Category 3 SIAs are the remaining option. The Board of Commissioners is the approving agency for Category 3 SIAs, and may account for no more than two (2) percent of the balance of the watershed outside the critical area (1/2 mile of public water intake point).

The Watershed Administrator has received a number of requests for SIAs which will soon require the allocation of Category 3 SIAs by the Board of Commissioners. Chapter 200A, Land Development Code, allows the Board of Commissioners to "set any criteria under which allocations in this category [3] may be drawn." Staff proposes that the Board of Commissioners establish criteria under which SIAs will be evaluated in order to: (1) maintain high quality of surface waters, and (2) preserve the public health, safety and general welfare.

Please review the enclosed Draft Criteria for Evaluating Category 3 Special Intensity Allocations. Staff has also included, for the Board's information, a Water Supply Watershed Boundaries Map and information regarding the remaining percentages in each of the three (3) categories of SIA by water supply watershed overlay subdistrict.

Should the Board desire to adopt these criteria, the Watershed Administrator and Planning Staff will utilize these criteria when evaluating these Category 3 SIA requests. SIAs granted by the Board of Commissioners do not require a public hearing as they are an administrative approval.

Alternatively, the Board may decide to establish no criteria and simply approve the SIAs on a first come, first served basis. If the Board decides to use this alternative, staff suggests the watershed regulations be amended to allow the Watershed Administrator to approve these requests since no discretion is required to give approvals based on the order of applications received.

Draft Criteria for Evaluating Category Three (3) Special Intensity Allocations

Special Intensity Allocation Approving Agencies.

According to Henderson County Code Chapter 200A, Land Development Code (LDC), §200A-322, the County may issue Special Intensity Allocations (SIA) on up to ten (10) percent of the total acreage within the balance of specific watershed overlay sub-districts. Special Intensity Allocations (SIAs) allow for the increase in impervious surface from the customary 12 or 24 percent built-upon area to 70 percent built-upon area. Special Intensity Allocations (SIAs) are granted in three (3) separate categories. Categories 1 and 2, which are approved administratively by the Watershed Administrator and together account for no more than eight (8) percent of the acreage within the balance of the watershed outside the critical area. The Board of Commissioners is the approving agency for Category 3, which includes applications for nonresidential development that come in after the allocations in Category 1 and 2 have been exhausted and may account for no more than two (2) percent of the balance of the watershed outside the critical area.

Purposes of Establishing Category 3 SIA Criteria.

According to LDC §200A-322 D(1)c, “The Commissioners may set any criteria under which allocations in this category [3] may be drawn.” The purposes of establishing criteria under which Category 3 Special Intensity Allocations will be evaluated are to: (1) maintain high quality of surface waters, and (2) preserve the public health, safety and general welfare.

Proposed Criteria for Evaluating Category 3 Special Intensity Allocations

Staff recommends that the criteria for evaluating Category 3 Special Intensity Allocations be based on: (1) the standards of review for special use permits, and (2) the water supply watershed regulations intent to maintain high quality surface waters through the regulation of development intensity. When evaluating Category 3 Special Intensity Allocations, the Board of Commissioners should consider the following:

1. The proposed use of the property, size of the proposed use, and size of the property;
2. The proposed use shall be developed in such a manner as to:
 - a. Comply with all applicable local, state and federal statutes, ordinance and regulations;
 - b. Be in accordance with the Henderson County 2020 Comprehensive Plan, Long Range Transportation Plans and Comprehensive Transportation Plans of the County and/or Long Range Transportation Plans and Comprehensive Transportation Plans of any municipality of the County;
 - c. Minimize the effects of noise, glare, dust, solar access and odor on those persons residing or working in the neighborhood of the proposed use;
 - d. Minimize environmental impacts on the neighborhood including the following groundwater, surface water, wetlands, endangered/threatened species, archeological sites, historic preservation sites and unique natural areas;
 - e. Minimize built upon area; and
 - f. Direct stormwater runoff away from surface waters.
3. Provisions/Arrangements have been made concerning:
 - a. Ingress and egress to property and proposed structures thereon (with particular reference to automotive/pedestrian safety/convenience and traffic flow/control);

- b. Off-street parking and loading areas;
- c. Utilities (with particular reference to locations, availability and compatibility);
- d. Buffering and landscaping (with particular reference to type, location and dimensions); and
- e. Structures (with particular reference to location, size and use).

Processing Special Intensity Allocations (SIAs)

1. **Pre-application Conference.** Each applicant for an SIA shall meet with the Watershed Administrator prior to, or at the time of, submittal of an application.
2. **Application.** Each application for an SIA shall be submitted along with the appropriate fee(s) and site plan to the Watershed Administrator. The Watershed Administrator shall determine if the application is complete before it may proceed. ***Complete applications will be evaluated by the Watershed Administrator and Board of Commissioners in the order received.***
3. **Staff Review.** The Watershed Administrator shall process all applications for an SIA after submitted. The Watershed Administrator shall consult with the Planning Department before sending a recommendation on Category 3 SIAs to the Board of Commissioners.
4. **Formal Review.** The Board of Commissioners shall consider the SIA as an administrative matter which does not require a public hearing.
5. **Award of SIA.** SIAs shall be awarded in the order of applications received that are in compliance with all conditions of Chapter 200A, Land Development Code.
6. **Validity of SIA.** The applicant shall have six (6) months from the date of issuance of the SIA to obtain a building permit or begin substantial construction work on the project. The Board of Commissioners may grant a single extension of this time period of up to six (6) months upon submittal by the applicant of sufficient justification for the extension via written request. An SIA may not be transferred to another parcel of land.

Henderson County
Water Supply Watershed
Boundary Map

Watershed Critical Area

WS I CA

WS II CA

WS III CA

WS IV CA

Balance of the Watershed/Protected Areas

WS II BW

WS III BW

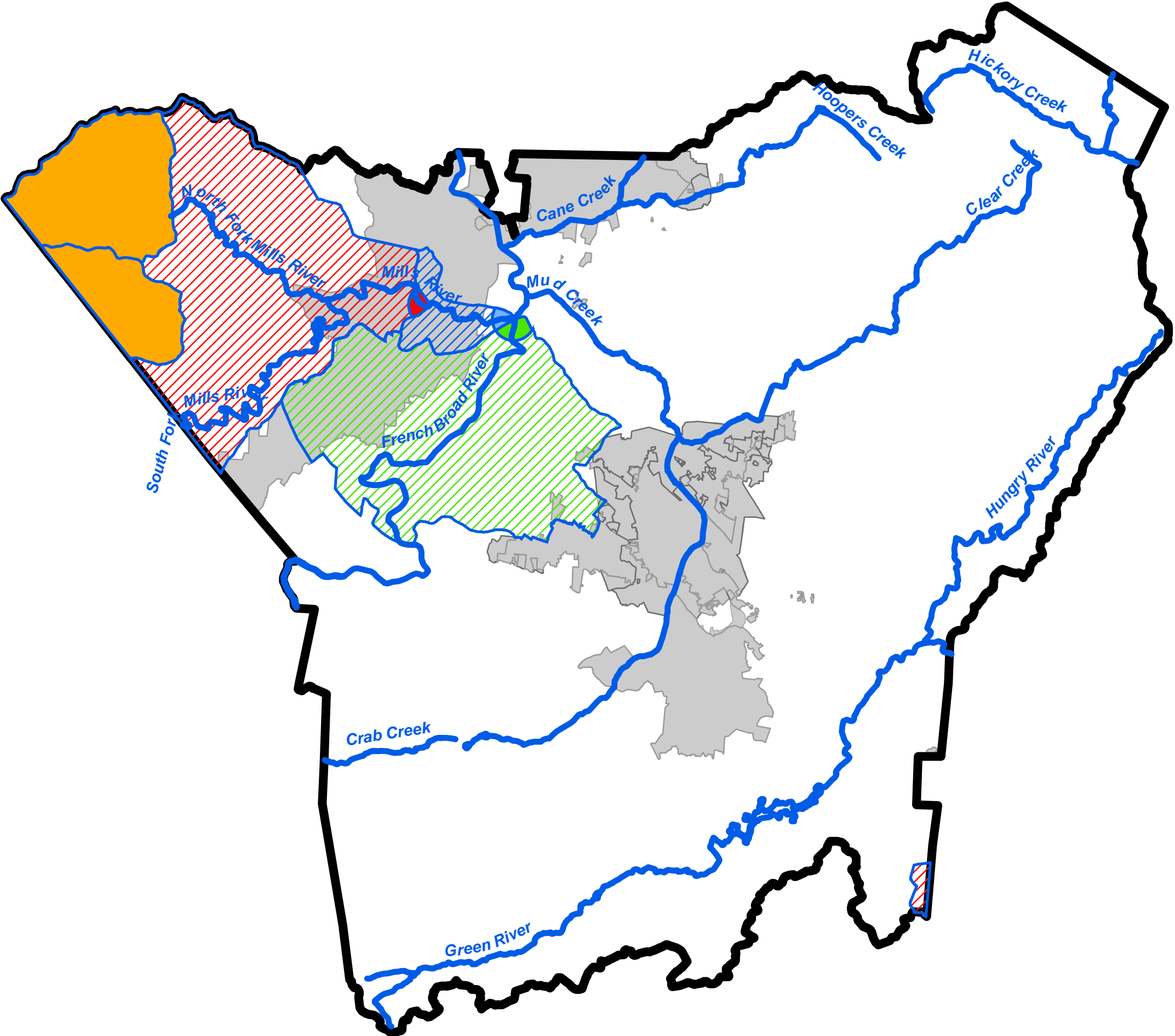
WS IV PA

Major Streams

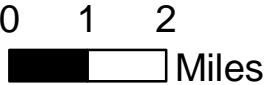
Municipal Limits

Municipal ETJ

County Border



1 inch equals 2 miles



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

Water Supply Watershed and Henderson County Special Intensity Allocation (SIA) Information						
Watershed Classification	Name of Watershed	County Acreage	Mills River Acreage	SIA Allocation-10% of County Acreage	SIA Acreage Utilized thus Far*	SIA Acreage Available*
WS-I	North Fork Mills River	6,244.79	N/A	N/A	N/A	N/A
WS-I	Bradley Creek	3,162.83	N/A	N/A	N/A	N/A
WS-II	Colt Creek	271.55	N/A	27.155	0.000	27.155
WS-II CA	Mills River	134.55	134.55—100% in Mills River	N/A	N/A	N/A
WS-II	Mills River	18,770.96	2440.225—13% in Mills River	1877.096	0.000	1877.096
WS-III CA	Mills River (Asheville)	108.12	N/A	N/A	N/A	N/A
WS-III	Mills River (Asheville)	1,649.81	1517.825—92% in Mills River	164.981	105.297	59.683
WS-IV CA	French Broad River (Asheville)	192.05	N/A	N/A	N/A	N/A
WS-IV	French Broad River (Asheville)	17,587.30	4572.698—26% in Mills River	1758.730	22.919	1735.811
TOTAL		48,121.96	8,604.50	3,827.962	128.216	3,699.745

SIA Allocations in Watersheds by Category [192-13.G(3)]	Acreage Available	Acreage Granted for SIA / SIA Acreage Balance Available
WS-II (Colt Creek)		
Category 1- Six percent (Staff Review)	16.293	0/16.293
Category 2- Two percent (Staff Review)	5.431	0/5.431
Category 3- Two percent (Board of Commissioners Review)	5.431	0/5.431
WS-II (Mills River)		
Category 1- Six percent (Staff Review)	1126.258	0/1126.258
Category 2- Two percent (Staff Review)	375.419	0/375.419
Category 3- Two percent (Board of Commissioners Review)	375.419	0/375.419
WS-III (Mills River-Asheville)		
Category 1- Six percent (Staff Review)	98.988	98.988 / 0
Category 2- Two percent (Staff Review)	32.996	6.309 / 26.687
Category 3- Two percent (Board of Commissioners Review)	32.996	0 / 32.996 (30.066**) = 2.93 left
WS-IV (French Broad River-Asheville)		
Category 1- Six percent (Staff Review)	1055.238	22.919 / 1032.319
Category 2- Two percent (Staff Review)	351.746	0 / 351.746
Category 3- Two percent (Board of Commissioners Review)	351.746	0 / 351.746

** application awaiting approval in WS-III Category 3