

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: May 5, 2025

SUBJECT: LDC Text Amendment (TX-2025-02), Ecusta Trail Parking

PRESENTER: Autumn Radcliff, Planning Director

ATTACHMENTS: 1. Draft Text Amendment
2. Commissioner Edney Draft Amendment
3. Map of Zoning Along Ecusta Corridor
3. 2045 Comprehensive Plan Consistency Statement

SUMMARY OF REQUEST:

On April 7, 2025, the Board of Commissioners held a public hearing to consider commercial parking options along the Ecusta Trail in the unincorporated areas. The Planning Board and the Rail Trail Advisory Committee (RTAC) discussed options to accomplish this and recommended adding a new use for Ecusta Trail Parking that would be permitted in specific zoning districts with SR (Supplemental Requirements) for parcels that were adjacent to the trail.

The Planning Board noted that an Ecusta Overlay District could be incorporated in the LDC rewrite that could expand parking options and other related trail-oriented developments, but the draft amendment could address the parking concern initially for the first six (6) miles of the trail that will be completed in the summer of 2025.

The public hearing was closed and additional changes to the proposed amendment were suggested. Following Board discussion, the item was tabled until the May 5th meeting to allow the Board members time to review the recommended changes. The Planning Board and RTAC recommended changes are attached, as well as additional changes discussed at the April meeting.

BOARD ACTION REQUESTED:

Action by the Board of Commissioners to approve the proposed text amendment is requested.

Suggested Motion:

I move that the Board of Commissioners approve the proposed text amendment #TX-2025-02 with any changes as discussed and find that these changes are reasonable and consistent with the 2045 Comprehensive Plan.

Text Amendment Summary: The Board of Commissioners has requested a public hearing for April 7, 2025, to consider commercial parking options along the Ecusta Trail in the unincorporated areas. The Planning Board discussed options to accomplish this with staff and recommended adding a new use for Ecusta Trail Parking that would be permitted in specific zoning districts with SR (Supplemental Requirements) for parcels that were adjacent to the trail. The Planning Board noted that an Ecusta Overlay District could be incorporated in the LDC rewrite that could expand parking options and other related trail-oriented developments, but the draft amendment could address the parking concern initially for the first six (6) miles of the trail that will be completed summer of 2025.

The Rail Trail Advisory Committee (RTAC) reviewed the draft amendment at its meeting on March 12, 2025, and voted unanimously to recommend. The Planning Board reviewed the draft amendment at its meeting on March 20, 2025, and voted unanimously to recommend the proposed amendment.

NOTE: The items below in red are some issues discussed at the April meeting and recommended changes to address those concerns.

Amendment: Add new use for Ecusta Trail Parking as follows.

Ecusta Trail Parking use will be added to the Table of Uses and allowed as a permitted use in the RC, CC, LC, I, and OI districts per the supplemental requirements listed below.

Ecusta Trail Parking SR

- (1) Site Plan. Major Site Plan required in accordance with §42-330 (Major Site Plan Review).
- (2) Location. Parking areas shall only be located along parcels that are adjacent to the Ecusta Trail.
- (3) Perimeter Setback. Fifteen (15) feet perimeter setback from the parcel boundary is required. Landscaping may be located within the perimeter setback.
- (4) Parking Lot Landscaping. A planting strip of ten (10) feet in width is required along the perimeter of the parking area/lot per §42-172, Planting Strip.
- (5) Lighting. Lighting mitigation is required.
- (6) Parking Area Surface. The parking area shall be graveled or paved. No grass parking areas shall be allowed. Permeable pavement is allowed.
- (7) NCDOT Driveway Permit. A driveway permit from NCDOT is required **if the parking area is accessed from a NCDOT state-maintained road.**
- (8) Trail Access. Ecusta Trail Parking shall provide an approved encroachment per the Ecusta Trail Encroachment Policy or shall provide a plan to access the Ecusta Trail via sidewalks, greenway, or public street access from the parking area to a public trail access location.
- (9) **The parking area owner/manager is allowed to require payment for use of the parking facility.**

Planning Staff Note: The overlay district could be applied during the LDC rewrite to address these types of uses. The amendment language below, if approved by the Board, could be permitted in all districts for parcels adjacent to the trail, or a similar determination for the short term.

Draft amendment submitted by Commissioner Edney.

Allow Commercial / Private Paid parking lots along the entire length of the Ecusta Trail (unincorporated areas) one or two parcels deep through an Overlay District (as a Permitted Use,) subject to the following:

SR 7.12. *Parking Garage or Lot (requiring payment)*

- 1. Site Plan.** *Major Site Plan* required in accordance with §42-330 (Major Site Plan Review).
- 2. Lighting.** *Adequate lighting* shall be placed in areas used for vehicular/pedestrian access including, but not limited to: stairs, sidewalks, crosswalks, intersections, or changes in grade. *Lighting mitigation* required.
- 3. Structure.** A parking garage shall not exceed five (5) (above ground) levels.
- 4. Perimeter Setback.** Fifteen (15) feet.
- 5. Perimeter Buffer.** A minimum of a *Buffer B1* shall be required for a parking garage (see §42-181 (Screen Classification)).

SR 7.12.1 Overlay District – Ecusta Trail Commercial Parking Lots.

An overlay district is hereby established, measuring 150 feet from the centerline of the Ecusta Trail in the unincorporated areas within Henderson County. Within this District, commercial parking lots are allowed as a Permitted Use, subject to the provisions of this Section.

Definitions.

Commercial parking lot means a parking lot whose primary purpose is parking by the general public for a fee, typically based on minutes, hours, or daily rates, allowing parking on a first-come, first served, upon entry, basis. The fact that some of the spaces are leased or rented for part of all of the time shall not change the classification of a commercial parking lot to a leased parking lot. Unless specifically exempted, all commercial parking lots are regulated by this section, whether parking by the general public for a fee is permitted all or part of the time.

Commercial parking lot operator means any owner or operator of a commercial parking lot.

Communal parking lot means a parking lot whose primary purpose is to provide parking spaces to accommodate the following (regardless of whether a fee is charged):

- (1) Owners, clients, employees, customers, tenants and/or other invitees of a nonresidential establishment (i.e., commercial, professional, institutional, for profit, nonprofit, educational, etc.);
 - (2) Owners, tenants, residents, and/or other invitees, of an establishment consisting of attached
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dwelling units utilizing shared parking (i.e., apartments, condominiums, townhomes, dormitories, group quarters, etc.); or

(3) A combination of (1) and (2).

One or more parking spaces dedicated to one or more attached dwelling units shall be considered a communal parking lot, regardless of whether the attached dwelling unit(s) is/are attached to another dwelling unit or is/are part of a nonresidential establishment. If all or part of a communal parking lot is open for parking by the general public for a fee for all or part of the time, compliance

with the posting requirements of a commercial parking lot shall be required during such times as they are open to the general public to park for a fee.

Leased parking lot means a parking lot (that is not a communal parking lot) whose primary purpose is to lease or rent parking spaces to persons, or entities, on a pre-arranged basis, typically charging on a weekly or monthly basis. If all or part of a leased parking lot is open for parking by the general public for a fee for all or part of the time, compliance with the posting requirements of a commercial parking lot shall be required during such times as they are open to the general public to park for a fee.

Motor vehicle means a vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This term shall not include mopeds or electric assisted bicycles.

Nonconsensual booting means the placement of a wheel lock, or other similar device, to immobilize the motor vehicle, without the consent of the owner or operator of the motor vehicle.

Nonconsensual towing means the towing of a motor vehicle without the permission or consent of the owner or operator of the motor vehicle.

Private parking lot means an area, used, or intended to be used, primarily for the parking or storage of one or more motor vehicles, which is privately owned, leased or operated, and which is one of the following:

- (1) A commercial parking lot, including temporary commercial parking lots; or
- (2) A communal parking lot; or
- (3) A leased parking lot.

Private parking lots include both parking lots that are primary uses and accessory uses of real property. All public streets, public rights of way, and public alleys are specifically excluded from this definition, regardless of ownership.

Service provider means a towing service or a wheel lock service.

Temporary commercial parking lot means a commercial parking lot that operates for less than ten days in a calendar year. Temporary commercial parking lots shall not have to comply with the posting requirements herein.

Tow storage lot means a lot that the towing service uses to store the motor vehicles that they have towed.

Tow truck operator means the driver or person in most direct control of a tow truck.

Towing service means any person or entity that engages in the business of towing motor vehicles for a fee.

Wheel lock means a wheel lock, boot, or any other instrument that is attached to a motor vehicle in order to immobilize it.

Wheel lock operator means the person who physically applies a wheel lock onto a motor vehicle or most directly causes the application of a wheel lock onto a motor vehicle.

Wheel lock service means any person or entity that engages in the business of applying wheel locks onto motor vehicles for a fee.

Service provider requirements.

Any service provider engaged in the nonconsensual towing or nonconsensual booting of motor vehicles from a private parking lot must comply with the following:

- (1) All service providers must have in place a general liability policy of insurance covering the service provided.
- (2) All service providers must be authorized to conduct business in the state.
- (3) All service provider shall provide to the County, and keep current, on a form provided by the County the following information:
 - a. Name of the towing service or booting service;
 - b. Whether they will be engaged in towing or booting of motor vehicles, or both;
 - c. The physical address of the service provider;
 - d. The name and contact number for the service provider's primary manager, operator, or supervisor;
 - e. The make, model, and tag number of each tow truck in service within the County;
 - f. The address of all tow storage lots; and
 - g. The service provider's fee schedule.

Posted notice required for nonconsensual towing or nonconsensual booting from a private parking lot.

The owners or operator of any Private Parking Lot which allows nonconsensual towing or nonconsensual booting shall post a notice as follows:

- (a) The notice required by this section shall be by signs, placed upon the private parking lot, which meet all of the following requirements:
 - (1) All signs shall be a minimum of 18 inches by 24 inches, and a maximum of six square feet in size (a combination of signs adjacent to one another may be considered as one sign.)
 - (2) Signs shall be:
 - a. Prominently placed on the private parking lot at each access or curb cut allowing vehicular access to the property (whether such access be from a street or adjacent property) and in at least one other location (not at an access point) on the private parking lot. Notwithstanding the foregoing, at least one sign must be visible and legible from all spaces within the private parking lot; or
 - b. Placed at each parking space that restricts or prohibits parking within the private parking lot.
 - (3) Each sign required by this section shall display, at a minimum, the following:
 - a. In not less than two-inch high letters on a contrasting background, the words "tow-away zone," "towing enforced," or a similar phrase, or in the case of a wheel lock being applied, the words "unauthorized vehicles booted," "wheel locks in use," or similar phrase.
 - b. In not less than two-inch high letters on a contrasting background, a statement indicating that parking by is prohibited or otherwise restricted by the use of a phrase such as "leased parking only," "no parking," "parking for customers only," "parking for residents only," "paid parking only," or a similar phrase. If parking is not prohibited or restricted on a continuous basis, the days of the week and hours of the day during which parking is prohibited or restricted shall be posted.

c. In not less than one-inch high letters on a contrasting background, the name and telephone number of the service provider at which a person available to release the motor vehicle that has been towed, removed, or immobilized may be reached at any time, 24 hours per day, seven days per week.

d. In not less than one-inch high letters on a contrasting background, the fees and charges of the service provider.

(d) The signs displaying the notice required by this section shall not be placed on a sidewalk or other area designated for pedestrian traffic.

(e) The signs displaying the notice required by this section shall be kept clear of visual obstruction, such as vegetation, so that they are plainly visible by drivers entering and parking on the property.

Exceptions to notice requirements for towing from a private parking lot.

No notice shall be required to be posted on a private parking lot for the nonconsensual towing or removal of a motor vehicle in any of the following circumstances:

(1) The towing of motor vehicles is authorized by the North Carolina General Statutes.

(2) The motor vehicle is towed pursuant to the order of a court of competent jurisdiction.

(3) The motor vehicle is towed pursuant to the order of a law enforcement officer.

Posted notice requirements for commercial parking lots.

The owners or operator, including any person acting for, on behalf of, or with the permission of, the commercial parking lot operator, of any Commercial Parking Lot which allows nonconsensual towing or nonconsensual booting shall post a notice as follows:

(a) The notice required by this section shall be by signs, placed upon the property which meet all of the following requirements:

(1) All signs shall be a minimum of 18 inches by 24 inches, and a maximum of six square feet in size (a combination of signs located adjacent to one another may be considered as one sign);

(2) Signs shall be prominently placed on the commercial parking lot so that at least one sign, containing all required information, is plainly visible and legible to all persons parking in the commercial parking lot. Notwithstanding the foregoing, a minimum of two signs shall be placed on all commercial parking lots.

(b) Each sign required by this section shall display, at a minimum, the following:

(1) In not less than two inch high letters on a contrasting background, the words "Paid Parking Lot" or similar phrase indicating that all persons parking must pay for parking in the lot, and the hours during which payment is required, and the hours that parking is otherwise restricted, if applicable.

(2) In not less than two-inch high letters on a contrasting background, a statement indicating the fees applicable to parking in the lot, the method and place for payment, and the types of payment accepted.

(3) In not less than 1½-inch high letters on a contrasting background, any parking rules which apply to the commercial parking lot. If there are fees for overtime parking or for failing to pay for parking, this must be clearly stated, including the amounts of such fees.

(4) In not less than one-inch high letters on a contrasting background, the name and telephone number of the name of the owner or operator of the commercial parking lot and a phone number at which the owner or operator may be reached during normal business hours, Monday through Friday.

(c) The signs displaying the notice required by this section shall not be placed on a sidewalk or other area designated for pedestrian traffic.

(d) The signs displaying the notice required by this section shall be kept clear of visual obstruction, such as vegetation, so that they are plainly visible by drivers entering and parking on the property.

Fees and other requirements.

(a) *Fees for towing and storage; other requirements.*

(1) All service providers shall have a fee schedule for the different services provided. The service provider must provide the fee schedule to the County. Any changes in fees must be provided to the County and posted on the signs required by this article at least 24 hours before they go into effect. Only fees reflected in the fee schedule filed with the County and posted on the private parking lot may be charged.

(2) The service provider shall provide a receipt for each payment at the time the payment is made. Each receipt shall be legible and shall contain the following information:

- a. The name address and telephone number of the service provider.
- b. First and last name of the tow truck operator or wheel lock operator.
- c. An itemized breakdown of all fees charged.
- d. A clear and accurate reason for the nonconsensual towing or nonconsensual booting, and the date, location of private parking lot, and time of the towing or booting.

(3) All service providers shall, at a minimum, accept payment by cash, debit card, and at least two major national credit cards. All tow truck operators and wheel lock operators must be able to accept all required forms of payment at the private parking lot, and at the tow storage lot.

(4) A person with the authority and ability to release the motor vehicle must answer the call, or return the call, within 15 minutes of a message being left on a voice mail or answering machine type device. The vehicle must be available for release at the tow storage lot within 30 minutes of the call being answered or the call being returned, whichever is later, but in no event less than 45 minutes from the message being left.

(b) *Fees for commercial parking lots; other requirements.*

(1) If persons are charged a fee for parking in a commercial parking lot, for overtime parking, or for not paying for parking, a commercial parking lot owner or operator may not use the words "citation", "ticket", "penalty", "fine", or other words that would tend to deceive the public that such fee is being assessed by the County or other governmental body.

(2) All commercial parking lot operators shall provide a method for persons charged a fee to contest or otherwise question the fee that was charged by the commercial parking lot operator.

(3) All commercial parking lot owners and operators shall, at a minimum, accept payment by debit card, and at least two major national credit cards.

(4) A person with the authority must answer a call, received during the commercial parking lot operator's normal business times, Monday through Friday, or return the call, within 24 hours of a message being left on a voice mail or answering machine type device. Calls received, or messages left, outside of the operator's normal business times shall be returned no later than the business day next following the call.

Release prior to tow or immobilization.

If, prior to the nonconsensual towing or nonconsensual booting of a motor vehicle on a private parking lot, the owner or operator or other person able to move the motor vehicle returns to the private parking lot, the tow truck operator or wheel lock operator shall release the motor vehicle to that person upon payment of the applicable fees.

Regulations towing to a tow storage lots.

(a) A towing service towing a motor vehicle from a private parking lot may only use a tow storage lot that accepts cash, debit, and at least two nationally recognized credit cards for payment of the storage fees.

(b) A towing service shall store all motor vehicles towed from a private parking lot at a tow storage lot located within 15 miles as the crow flies from the point of tow.

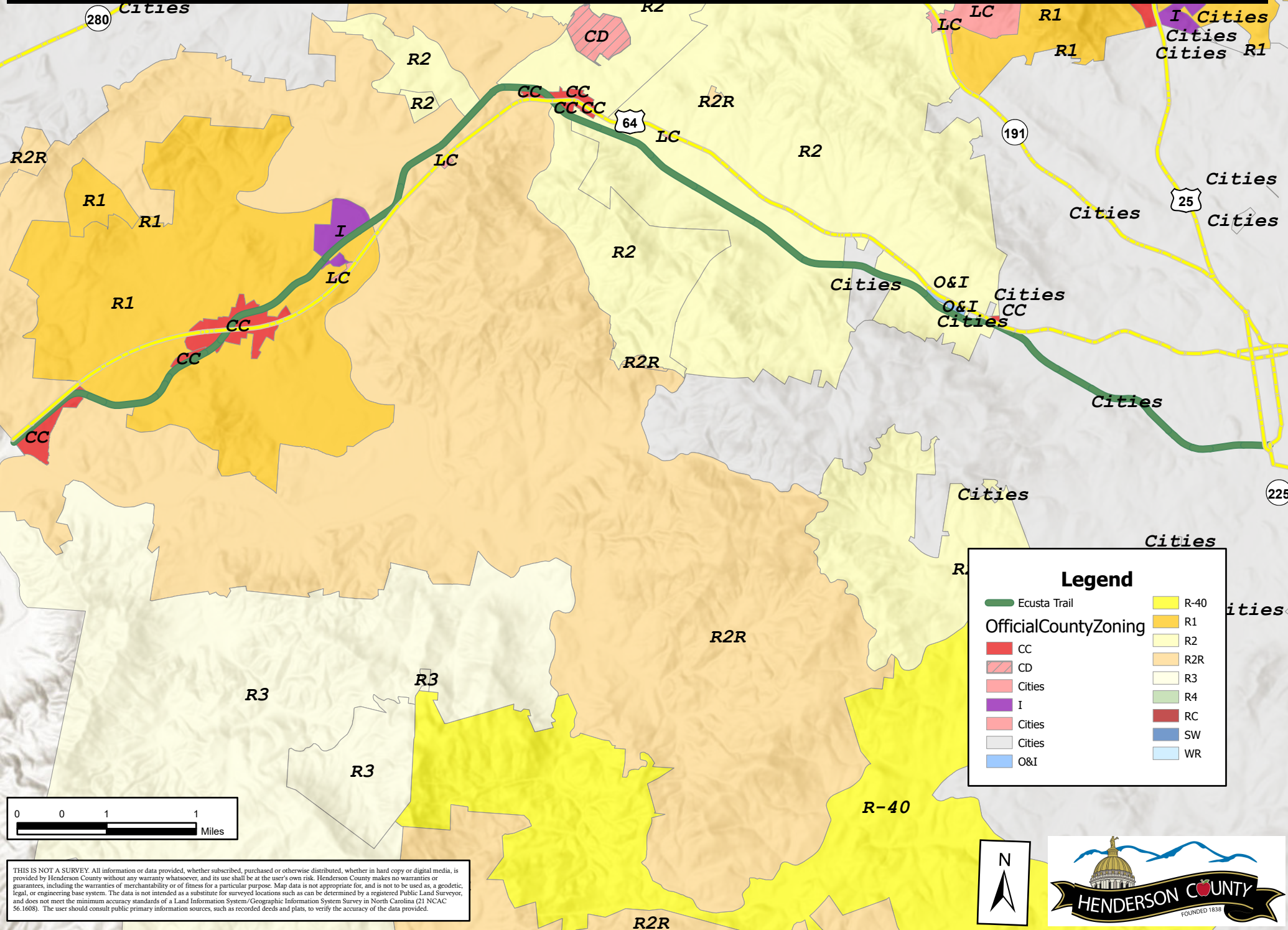
(c) A towing service shall only store motor vehicles towed from a private parking lot at tow storage lots that are clearly identified with a sign stating the name of the tow storage lot, that are secured with a fence and a locked gate, and that provide security lighting meeting the requirements of the Henderson County zoning ordinance.

(d) Tow storage lots may be subject to annual inspections by the County for compliance with this article.

Regulations for wheel locks.

Immediately upon installing the wheel immobilization device, a blaze orange warning decal at least 24 square inches in size shall be prominently placed in the center of the driver's side window or on the front windshield directly in front of the vehicle steering wheel. The warning decal must clearly and legibly inform the operator of the vehicle that a locking device has been installed on the front wheel of the vehicle and that attempting to move the vehicle will cause serious damage to the vehicle. The decal must display the telephone number and address of the wheel lock service provider. Upon payment of the applicable fees, the wheel lock service provider shall remove the decal and shall have in possession the appropriate materials needed to remove all parts of the decal and residue.

Zoning Along Ecusta Trail





LAND DEVELOPMENT CODE TEXT AMENDMENT
#TX-2025-02, Ecusta Trail Parking
COMPREHENSIVE PLAN STATEMENT

Related to LDC Text Amendment #TX-2025-02, the Comprehensive Plan states the following:

- **Plan Goal 1: Coordinate Development Near Existing Community Anchors**
 - Rec 1.1: Grow where infrastructure and services exist, in and around municipalities, community investments, and anchors.
 - (D): Develop a mechanism that could expand allowable uses that are compatible with the Ecusta Trail.

The Board should determine if the proposed amendment provides for the sound administration of the Land Development Code while balancing property rights and promoting reasonable growth within the County.