

Non-Utility Encroachment Agreement Policy

Henderson County (“The County”) may grant permission, revocable at its will, to any person, agency, or agency representative for limited encroachment into or across the Ecusta Trail Right-of-Way. The County may require further restrictions or modifications that may stipulate such conditions as it deems necessary.

Encroachment is defined here as any item(s) placed within or on the Ecusta Trail property, including, but not limited to, native planting areas, stream buffers, trees, community gardens, picnic benches, chairs, signage, construction staging areas, artwork, etc. Henderson County reserves the right to add or remove items from these allowed uses.

All applications for driveways or other at-grade crossings are covered under this policy.

This permit application and policy are limited to non-utility encroachments. All encroachments into or across the Ecusta Trail Right-of-Way from utilities or for utility purposes are managed under a [separate policy and license agreement](#).

Instructions

In order for Henderson County to consider any new encroachment into the Ecusta Trail Right-of-Way, applicants must submit:

1. A completed Ecusta Trail Encroachment Permit Application.
2. Site plan showing property boundaries and location of proposed encroachment.
3. Photos of current site conditions, including photos taken from the Ecusta Trail
4. Any additional required documentation supporting a natural encroachment or driveway/at-grade crossing application.

Encroachment Stipulations

1. All construction and maintenance work must be performed in accordance with standards and processes required by Henderson County at applicant's sole expense, regardless of the cost of such standards and processes.
2. No improvements or alterations of a *permanent nature* will be permitted as an encroachment. Each agreement for an encroachment will be terminable by Henderson County at any time, and for any reason, and applicant will be required to remove the encroachment at its sole cost upon the expiration or termination of the agreement.
3. Unless otherwise stated, all agreements granted for encroachments and grade crossings will be non-possessory license permits, will be non-assignable without Henderson County’s prior written consent, and will not grant any right or interest in real property in or over the Ecusta Trail Right-of-Way. Henderson County may consider driveway or at-grade crossing encroachments agreements assignable so long as the use of the accessed property does not change. Changes to the land use of

the accessed parcel, subdivisions of the parcel, or changes in density and zoning may require a new encroachment agreement for a driveway or at-grade crossing.

4. All agreements granted for natural encroachments, such as plantings, vegetation, or similar, shall have additional requirements for approval, including, but not limited to, a signed maintenance agreement for the encroachment, required setback distances from the trail surface, or other requirements the county may deem necessary.
5. All agreements granted for driveways or at-grade crossings shall have additional requirements for approval, including, but not limited to, supplemental information about the crossing and all properties served, anticipated traffic levels, and initial plans, as well as any other requirements the county may deem necessary. Driveway and at-grade crossing applications will also require increased review from county staff.

Prohibited Encroachments & Restrictions

The following items are prohibited from being placed on Ecusta Trail property or approved as an encroachment:

1. Play Structures (Trampolines, Swings, Slides, Etc.)
2. Tree Houses/Forts
3. New Storage Buildings/Sheds
4. Any Permanent Structures

For the purposes of this policy, “Permanent Structure” refers to a distinct asset permanently affixed to the ground by various types of foundation (slabs, piers, poles, or other means allowed by building codes) or a structure placed on the ground that can only be moved through disassembly into its component parts. Structures may be considered permanent if they can reasonably be expected to last indefinitely based on all relevant facts and circumstances.

Fences under six (6) feet in height may be permitted as encroachments.

Setbacks

Fences may be permitted as encroachments, though all fences shall be set back a minimum of fifteen (15) feet from the paved surface of the Ecusta Trail. All proposed encroachments that are not trail amenities (such as benches, signage, bicycle racks, or other improvements) shall be set back a minimum of ten (10) feet from the paved surface of the Ecusta Trail.

Natural Encroachments

Henderson County places increased requirements on encroachments that involve the planting of trees, shrubs, or other vegetation within the Ecusta Trail Right-of-Way.

For the purposes of this policy, “Natural Encroachments” shall include, but not be limited to: memorial plantings, community gardens, beautification plantings, or other vegetation intended to enhance the aesthetic or ecological value of the Ecusta Trail.

Maintenance Agreement: All applicants proposing natural encroachments into must enter into a maintenance agreement for the encroachment with Henderson County. A sample maintenance agreement can be found in Appendix 1 of this policy.

Approved Species: All arboreal plantings should follow the approved trees and shrubs in the Henderson County code §42-165 Subpart F, Landscaping Recommended Species List. The county has created a list of tree species well-suited for Ecusta Trail encroachments in Appendix 2 of this document.

The county may consider natural encroachments with tree species outside of this list if the applicant can show that the tree species poses a low risk of damaging the Ecusta Trail via root intrusion, fruiting, or other methods.

Henderson County will not approve natural encroachments that include invasive plant species.

Setbacks: In order to reduce the likelihood of damage to the Ecusta Trail, or any interference with trail users, all tree plantings must be set back a minimum of twenty (20) feet from the paved surface of the Ecusta Trail. Other approved plantings shall be ten (10) feet from the paved surface of the trail.

No Plantings within Utility Encroachments: Henderson County will not permit any natural encroachments or other plantings within an existing utility encroachment.

Memorials

Henderson County recognizes the desire of its residents for memorial or commemorative items along the Ecusta Trail as a lasting tribute to family members and/or organizations. Any proposed memorial within the Ecusta Trail Right-of-Way should be approved by the Parks and Recreation Department under their memorial policy. If a memorial request is approved by the Parks and Recreation Department, the applicant can apply for a non-utility encroachment permit under this policy.

Driveways, Grade Crossings, and Trail Connections

It is the policy of Henderson County to minimize the number of at-grade motor vehicle crossings of the Ecusta Trail Right-of-Way, in order to ensure the safety of trail users, maintain the physical integrity of the Ecusta Trail, and preserve the corridor for future railroad reactivation under the requirements of the railbanking provisions of the National Trails System Act (P.L. 90-543 as it exists and may be amended). Henderson County may grant permission for private, at-grade crossings if the applicant has exhausted other means of obtaining access to the property.

In addition to the required application documents listed above, applications for driveways or other at-grade crossings should include the following supporting information:

1. Proposed width of crossing
2. Angle of crossing in relation to the Ecusta Trail
3. Type of crossing (private driveway, commercial driveway, construction, farm use, etc.)

4. Type of vehicles anticipated to use the crossing
5. Estimated number of daily vehicle crossings
6. Whether the proposed crossing will serve other property owners, and if yes, the addresses of all served properties
7. How the property is currently accessed
8. Any and all existing documentation of legal access to the property or copies of previous agreements covering the crossing.

Henderson County may consider driveway or at-grade crossing encroachments agreements assignable so long as the use of the accessed property does not change. Changes to the land use of the accessed parcel, subdivisions of the parcel, or changes in density and zoning may require a new encroachment agreement for a driveway or at-grade crossing.

Driveways, at-grade crossings, and trail connections are subject to compliance with NCDOT standards and other considerations as determined by the county engineer. Any signage that a driveway or at-grade crossing requires under MUTCD standards will be added at the applicant's expense. All proposed driveway encroachments should have a minimum width of 30 feet.

Any new driveway across the Ecusta Trail Right of Way must be paved, and upon construction, maintained to a reasonable standard by the applicant or property owner. The county may require maintenance of any encroaching driveway that has fallen into disrepair, as determined by the county engineer.

Henderson County may permit pedestrian and bicycle connections to the Ecusta Trail under the driveway/at-grade crossing standards outlined above. Any proposed connection of this type to the Ecusta Trail must be open for public use. Pedestrian and bicycle connections will only be permitted if the proposed connection is over 100 feet from any intersection of the Ecusta Trail that is a public right-of-way.

Henderson County, at its discretion, may assume maintenance responsibilities for a pedestrian and bicycle connection to the Ecusta Trail following a request from the property owners and the establishment of a signed maintenance agreement between the county and the property owners.

Review Process

Review Process: Encroachment applications will be processed by the Henderson County Planning Department. Applications for driveways and trail connections will be reviewed by the Planning Department. All applications will be reviewed to ensure the proposed encroachment:

1. Maintains the safety and integrity of the Ecusta Trail for all users.
2. Does not prevent future reactivation of the Ecusta Trail as a railroad line pursuant to the requirements of the railbanking provisions of the National Trails System Act (P.L 90-543 as it exists and may be amended).
3. Does not harm existing vegetation, drainage, or other environmental conditions along the Ecusta Trail.

4. Does not impair visibility or sight distances along the Ecusta Trail, or cause increased conflicts between trail user types, particularly near grade crossings where trail users interact with automobile traffic.
5. Does not impact previously planned trail amenities or design features and is consistent with the county's or local planning jurisdiction's comprehensive plan or zoning ordinances.

The county will review encroachment applications within 45 days of receipt. Non-driveway encroachment applications will be brought to the Henderson County Rail-Trail Advisory Committee for approval or denial. Driveways and trail connection applications will be approved or denied by the County Engineer's office.

Appendix 1: Natural Encroachment Maintenance Agreement

This Maintenance Agreement (“Agreement”) is entered into this ___ day of _____, 20___, by and between Henderson County, a political subdivision of the State of North Carolina (“County”), and [Applicant Name], an individual or entity (“Applicant”).

RECITALS

WHEREAS, the County leases and maintains the Ecusta Trail (“Trail”), a public corridor intended for recreational and transportation use;

WHEREAS, the Applicant desires to install and maintain a natural encroachment within the Ecusta Trail’s right-of-way;

WHEREAS, the County is willing to permit such encroachment subject to the terms and conditions set forth in the Ecusta Trail Non-Utility Encroachment Policy;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. Definition of Natural Encroachments

For the purposes of this Agreement, “Natural Encroachments” shall include, but not be limited to:

Memorial plantings, community gardens, beautification plantings, or other vegetation intended to enhance the aesthetic or ecological value of the Ecusta Trail.

2. Setback Requirements

In order to reduce the likelihood of damage to the Ecusta Trail or any interference with trail users, all tree plantings must be set back a minimum of twenty (20) feet from the paved surface of the Ecusta Trail. Other approved plantings shall be set back a minimum of ten (10) feet from the paved surface of the trail.

3. Scope of Maintenance Responsibilities

The Applicant shall be solely responsible for the installation, ongoing maintenance, and removal (if required) of the Natural Encroachment. Maintenance shall include, but not be limited to:

- Regular watering, pruning, weeding, and litter removal
- Replacement of dead or damaged plantings
- Ensuring that the encroachment does not obstruct visibility, access, or drainage of the Ecusta Trail
- Ensuring that the encroachment does not interfere with the county’s maintenance of the Ecusta Trail or development of trail amenities.

If the maintenance standards outlined above are not met over a period longer than 30 days, the county may remove the encroachment at its discretion. Any costs incurred during the removal of the encroachment will be the responsibility of the applicant.

4.Coordination with Henderson County

Encroachment Access: Applicant will be responsible for coordinating with the County Parks and Recreation Department to access to the encroachment for regular maintenance and to avoid interfering with existing county maintenance operations.

Pesticides and Herbicides: Applicant must receive approval from the Parks and Recreation Department before using any pesticides or herbicides on approved natural encroachments.

5. Terms and Termination

This Agreement shall remain in effect for a period of five (5) years from the date of execution, unless earlier terminated by the County. The County may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to the Applicant.

Upon termination, the Applicant shall remove all encroachment materials and restore the affected area to its original condition, unless otherwise directed by the County.

6. Liability and Indemnification

The Applicant agrees to indemnify, defend, and hold harmless the County, its officers, employees, and agents from any and all claims, damages, or liabilities arising out of or related to the installation, maintenance, or removal of the Natural Encroachment.

7. No Property Interest

This Agreement does not convey any property interest or easement to the Applicant. The encroachment is permitted solely at the discretion of the County and may be revoked at any time.

8. Compliance with Laws

The Applicant shall comply with all applicable federal, state, and local laws, ordinances, and regulations in connection with the encroachment and its maintenance.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Henderson County

Applicant

By: _____

By: _____

Title: _____

Name: _____

Date: _____

Date: _____

Appendix 2: Recommended Tree Species for Natural Encroachments

Henderson County will accept tree plantings as natural encroachments along the Ecusta Trail. Any tree plantings in the Ecusta Trail Right-of-Way must be set back a minimum of 20 feet from the paved surface of the trail. Trees in encroachments should follow Henderson County code §42-165 Subpart F, Landscaping Recommended Species List.

Other Resources: The City of Hendersonville’s Tree Board additionally maintains a list of recommended native tree species. The county may consider natural encroachments with tree species from this list, or other native species if the applicant can show that the tree species poses a low risk of damaging the Ecusta Trail via root intrusion, fruiting, or other methods.

Recommended Species for the Ecusta Trail: Below is a list of tree species the county specifically recommends for suitability with the Ecusta Trail. The tree species below were selected based on alignment with Henderson County Landscape Ordinances and on suitability for a ‘grove’ near the Ecusta Trail, with a required setback of 20ft from the paved surface of the trail.

Serviceberry, Fringe Tree, and Redbud are specifically recommended for aesthetics, wildlife/environmental value, and hardness in built environments.

Common Name	Scientific Name	Height at Maturity (ft)	Deciduous?	Notes
Serviceberry	Amelanchier arborea	15	Deciduous	shallow root system; prefers moist, well-drained soil; flower and fruit producing
Eastern Redbud	Cercis canadensis	30	Deciduous	shallow roots system; showy flowers; tolerates rocky and clay soils
Fringe Tree	Chiananthus virginicus	20	Deciduous	showy flowers; tolerates most soil conditions
American Hornbeam	Carpinus caroliniana	30	Deciduous	deep root systems; tolerates wet or compacted soils
American Holly	Ilex opaca	40	Evergreen	winter interest; prefers well drained, moist, slightly acidic soils; does not tolerate flooding
Yellowwood	Cladrastis kentukea	45	Deciduous	tolerant of most soil conditions;
Eastern Red Cedar	Juniperus virginiana	50	Evergreen	tolerant of most soil conditions;
Black Gum	Nyssa sylvatica	60	Deciduous	tolerant of most soil conditions;