

Proposed Substantive Amendments to Chapter 200A, Land Development Code

ARTICLE I. GENERAL PROVISIONS – No change.

ARTICLE II. ZONING DISTRICT REGULATIONS

LDC Text Amendment 1:

Issue: R-O Residential Open Space Development is allowed in the R-40 Residential zoning district upon the approval of a special use permit. A requirement of the R-O Development is the tract must consist of not less than 40 acres.

Recommended Solution: Remove the acreage requirement in Section 200A-37, D(9)b1 (Pg. 30).

(9) R-O Residential Open Spaces Development.

- a. Any use permitted in the R-40 District, with any conditions pertaining thereto, shall be a permitted use.
- b. Establishment of R-O Development. An R-O Development shall be considered to conform to the requirements of such district when the following circumstances exist:
 1. An entire tract of land under one (1) ownership is being subdivided at one (1) time pursuant to an overall plan of development which includes open spaces, such as golf courses, lakes, recreational areas, meadows, parks, woods or other open or green spaces. ~~The tract shall consist of not less than 40 acres.~~ All required open space shall be dedicated to the public and accepted by the County or transferred to a property owners' association or transferred to a private club, subject to deed restrictions forbidding its later subdivision or development for other than residential open space purposes.

LDC Text Amendment 2:

Issue: The County has an area that falls within the North Carolina's designated WS-IV Critical Area for the Upper French Broad River. This area is mapped on the County's official Water Supply Watershed Protection Map. There is currently no associated text for the WP-WS-IV-CA Upper French Broad River Critical Area Watershed Overlay Sub-District. This was an apparent oversight when the regulations were originally adopted in 1994.

Recommended Solution: Add the following language (provided by the State model Water Supply Watershed Protection Ordinance) for the WP-WS-IV-CA to LDC §200A-53 and Table 2.14.

WSW Language (appropriate references to this section included elsewhere but not shown herein).

Table 2.14. Water Supply Watershed Protection Sub-District Regulations on Lot Size and Built-Up Area					
Sub-District	Minimum Lot Size (Square Feet)¹	Percent Built Upon Limits		Special Intensity Allocation	Natural Drainage and Filtering Bonus
	Single-Family Residential Limits	Multifamily Residential Development	Nonresidential Development		
WP-WS-I	NA	NA	NA	NA	NA
WP-WS-II-CA	80,000	6	6	NA	NA
WP-WS-II-BW	40,000	12	12	Yes	NA
WP-WS-III-CA	40,000	12	12	NA	NA
WP-WS-III-BW	20,000	24	24	Yes	NA
WP-WS-IV-CA	20,000	24	24	NA	NA
WP-WS-IV-PA (Drainage & Filtering Bonus)	20,000 (14,250)	24 (36)	24 (36)	Yes	Yes

¹ Calculated excluding *road right-of-way*, except in an approved *cluster development*

(9) WP-WS-IV-CA Upper French Broad River Critical Area Watershed Overlay Sub-District.

- a. Purpose. Only new development activities that are required by this Chapter to submit a soil erosion and sedimentation control plan are required to meet the provisions of this Chapter related to *water supply watershed* when located in a WS-IV watershed. In order to address a moderate to high land use intensity pattern, single family residential *uses* are allowed at a maximum of two (2) *dwelling units* per acre. All other residential and *nonresidential development* shall be allowed at a maximum of 24 percent *built-upon area*. New residuals application sites and *landfills* are specifically prohibited.
- b. Permitted Uses. The following uses are permitted in the WP-WS-II-CA Mills River watershed overlay sub-district:
 1. Agriculture. *Agriculture*, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and all rules and regulations of the Soil and Water Conservation Commission.
 2. Silviculture. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality.
 3. Residential Development.
 4. Nonresidential Development. Nonresidential development, excluding landfills and sites for land application of residuals or petroleum-contaminated soils.
- c. Density and Built-Upon Limits.
 1. Single-Family Residential Development. Single-family residential development shall not exceed two (2) dwelling units per acre on a project-by-project basis. No residential lot shall be less than one-half (½) acre (or 20,000

square feet excluding road right-of-way), except within an approved cluster development.

2. Multifamily Residential Development. All multifamily residential development shall not exceed 24 percent built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.
3. Nonresidential Development. All nonresidential development shall not exceed 24 percent built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

LDC Text Amendment 3:

Issue: Singlewide manufactured/mobile homes are not constructed with a 4:12 roof pitch as is required in the LDC.

Recommended Solution: Change the 4:12 roof pitch requirement for singlewide manufactured/mobile homes in §200A-63, SR 1.5 (Pg. 64), to a 3:12 roof pitch as requested by the manufactured home industry which stated 3:12 as the typical roof pitch for singlewide manufactured homes.

SR 1.5 Dwelling, Manufactured/Mobile Home (multi-section/singlewide)

- (3)c. Have a roof pitch with a minimum vertical rise of ~~four (4)~~ three (3) feet for each twelve (12) feet of horizontal run. The roof shall be finished with a type of shingle that is commonly used in standard residential construction;

LDC Text Amendment 4:

Issue: Singlewide manufactured homes located in the County prior to the adoption of the LDC may not be moved to another location in the County if the home did not meet the appearance criteria found in §200A-63, SR 1.5, (3). This means that any home without lap siding or the specified roofing materials, etc. would not be able to be moved to another location within the County.

Recommended Solution: Allow existing single-wide homes to move to certain locations within the county. Add the following language to §200A-63, SR 1.5 Dwelling, Manufactured/Mobile Home (multi-section/singlewide), (3).

SR. 1.5 Dwelling, Manufactured/Mobile Home (multi-section/singlewide)

- (3) Any singlewide *manufactured home* which: (1) was manufactured after 1976 (*HUD* approved), (2) has been located in Henderson County prior to the initial adoption of this Chapter (September 19, 2007) and (3) do not meet the appearance criteria provided in this SR 1.5 (Dwelling, Manufactured/Mobile Home) may be moved provided said *manufactured home* is:
 - a. Installed to meet the criteria of Section (5) (subsections e, f, and g only), and

- b. Moved to either of the following locations:
 1. A space in an existing (as of September 19, 2007) *manufactured home park*;
 2. A *lot* in a zoning district which permits the placement of *manufactured homes*.

LDC Text Amendment 5:

Issue: Outdoor storage greater than 5,000 square feet as an accessory use is not allowed to be placed in a front yard or in any yard abutting a road. The required screening standards appear to address aesthetic concerns for side or rear yard areas if they abut a road.

Recommended Solution: Change the requirements in §200A-63, SR 2.9 (Outdoor Storage greater than 5,000 square feet) to allow storage areas to abut a street, but keep the restriction regarding placement in the front yard.

SR 2.9 Outdoor Storage greater than 5,000 square feet

- (2) Locational Requirements. Storage areas shall:
 - a. Not be placed in a front yard; ~~and~~
 - b. ~~Not be placed in any yard abutting a road.~~
- (3) Screening. Screen Class Three (3) or Four (4) shall be provided consistent with the requirements of Section 2000A-150 (Screen Classifications).

LDC Text Amendment 6:

Issue: The road classification restriction in the supplemental requirements determines if a permitted or special use in a zoning district would be allowed on a property that abutted a specific road type or classification. The supplemental requirements provide design requirements which should be adequate to provide protection to adjacent property owners. Road classification standards may be unnecessarily restrictive given the other requirements provided for by the supplemental requirements section of the LDC. Many of the road class standards apply to industrial uses. With industrial zoning, an adequate road system is implied in the decision to zone land industrial.

Recommended Solution: Remove the road classification restriction for all uses in the supplemental requirements. Below is a list of the current uses requiring a specific road classification designation.

- SR 4.1 Amusement Park
- SR 4.12 Motor Sports Facilities, Major
- SR 4.13 Motor Sports Facilities, Minor
- SR 4.14 Motor Sports Facilities, Recreational
- SR 4.18 Recreational Vehicle Park
- SR 5.8 Correctional Facilities
- SR 5.9 Fire and Rescue Station
- SR 5.10 Funeral Home or Crematorium
- SR 5.11 Government Offices
- SR 5.12 Homeless Shelter
- SR 5.15 Place of Assembly, Large
- SR 5.16 Place of Assembly, Small
- SR 5.17 Police Station
- SR 5.19 School (Public/Private/Charter)
- SR 6.8 Motel/Hotel
- SR 6.10 School (Technical, Trade and Business)
- SR 6.12 Tire Recapping
- SR 7.15 Retail Sales & Services Greater than 50,000 sqft & less than or equal to 100,000 sqft

- SR 7.16 Retail Sales and Services Greater than 100,000 sqft & less than or equal to 150,000 sqft
- SR 7.17 Retail Sales and Services Greater than 150,000 sqft
- SR 7.18 Shopping Mall
- SR 7.19 Truck Stop
- SR 9.2 Airport (Public)
- SR 9.4 Hazardous Waste Disposal Facilities
- SR 9.5 Land Clearing Debris and Inert Debris Storage or Disposal
- SR 9.6 Rail Transportation Facilities and Support Activities
- SR 9.7 Self Storage Warehousing, mini-Warehouses (for Commercial District)
- SR 9.9 Solid Waste Combustors and Incinerators
- SR 9.11 Truck Terminals
- SR 9.12 Utility Substations
- SR 9.13 Warehousing and Storage (Excluding Warehousing of Hazardous Substances)
- SR 9.14 Waste Collection and Transfer Facility (Hazardous)
- SR 9.15 Waste Collection and Transfer Facility (Non-hazardous)
- SR 10.1 Asphalt Plant
- SR 10.2 Battery Manufacturing Facility
- SR 10.3 Chip Mill
- SR 10.4 Concrete Batch Plant
- SR 10.5 Junkyard
- SR 10.6 Landfill (Public/Private)
- SR 10.7 Machining and Assembly Operations
- SR 10.8 Manufacturing and Production Operations
- SR 10.9 Materials Recovery Facilities (Recycling)
- SR 10.10 Mining and Extraction Operations
- SR 10.11 Packaging and Labeling Services
- SR 10.12 Pesticide, Fertilizer and Other Agricultural Chemical Manufacturing
- SR 10.13 Product Processing and Storage Facilities
- SR 10.14 Recycling Center, Drop-Off Facilities
- SR 10.15 Research and Development Operations (Hazardous or biological materials)
- SR 10.16 Research and Development Operations (Non-hazardous)
- SR 10.17 Sawmill
- SR 10.18 Slaughterhouse
- SR 10.19 Truck Wash

LDC Text Amendment 7:

Issue: Staff has received a request to add Motor Vehicle Sales or Leasing as an allowed use in the Community Commercial District.

Recommended Solution: Add the Motor Vehicle Sales or Leasing as a special use in the CC district in Subpart E. Table of Permitted and Special Uses, §200A-62.

USE TYPE	GENERAL USE DISTRICT											
	P=Permitted; S=Special Use Permit											
	R1	R2	R2MH	R3	R4	OI	MU	LC	CC	RC	I	SR
7. RETAIL TRADE												
Motor Vehicle Sales or Leasing									S	P		7.10

LDC Text Amendment 8:

Issue: The Zoning Administrator has requested changes to the recreational and temporary use sections in the Permitted and Special Uses Table.

Recommended Solution: Make the following adjustments to Subpart E. Table of Permitted and Special Uses, §200A-62 as per the request of the Zoning Administrator.

USE TYPE	GENERAL USE DISTRICT											
	P=Permitted; S=Special Use Permit											

	R1	R2	R2MH	R3	R4	OI	MU	LC	CC	RC	I	SR
4. RECREATIONAL USES												
<i>Governmental Recreational Facilities</i>	SP	SP	SP	SP	SP	SP	P	P	P	P		4.8
<i>Sporting and Recreational Facilities</i>	S	S	S	S	S	S	S	S	P	P	S	4.23
<i>Swim and Tennis Club</i>	P	P	P	P	P	P	P	P	P			4.24
11. TEMPORARY USES												
<i>Model Home Sales Office, Temporary</i>	P	P	P	P	P	P	P	P	P	P		11.3

ARTICLE III. SUBDIVISION REGULATIONS

LDC Text Amendment 9:

Issue: All commercial subdivisions are treated as major subdivisions and approved by the Planning Board regardless of the number of lots proposed. There appears to be no justification for requiring Planning Board review on small commercial or industrial subdivisions. Few commercial or industrial subdivisions are controversial compared to residential subdivisions.

Recommended Solution: Commercial subdivisions shall meet all requirements of a major subdivision, but will be reviewed by the approving authority depending on the number of lots created as are major residential subdivisions. See below for proposed text changes.

Modifications to Commercial Subdivision Review Language.

Make the following changes to §200A-306

§200A-306 Review for Major Residential Subdivisions and Conservation Subdivisions of Eleven (11) to Thirty-Four (34) Lots and any Commercial, Office Institutional, Industrial or Mixed-Use Subdivisions of Thirty-Four (34) or Fewer Lots

B1. Pre-application Conference. Each *applicant* shall meet with the *Subdivision Administrator* in a pre-application conference at least 15 days prior to the submission of any *subdivision reviewed in accordance with this section* ~~major subdivision application of 11 to 34 lots.~~

B1c. Identify (for the entire *tract*) the following features: streams, creeks, ponds, reservoirs, *floodplains, wetlands, steep slopes* (those greater than ~~25~~ 60 percent), *unique natural areas*, rock outcroppings, farmland, pastureland and wooded/forested areas.

D. Formal Review. The *Subdivision Administrator* shall prepare a recommendation on the application and supply a copy of the recommendation to the *applicant* before review by the *TRC*. All members of the *TRC* shall sign off on the application for approval. Any approval or denial of the request must be in writing and be permanently filed in the office of the *TRC* as a public record. The *TRC* shall take action within 30 days of reviewing the application. The *Subdivision Administrator* shall notify the *applicant* (in writing) of the decision by the *TRC* and any conditions imposed on the development within ten (10) business days of the decision. The *TRC* may refer any *subdivision reviewed in accordance with this section* ~~major subdivision~~

~~(residential) or conservation subdivision of 11 to 34 lots for review by the Planning Board in accordance with this Chapter.~~

~~E. Public Notification. Public notification of the Planning Board meeting shall comply with the provisions outlined in §200A-337 B(5) (Posted Notice), for posted notices. Planning Staff shall be responsible for all necessary public notifications.~~

~~F. Permit Validity. Development plan approval is valid for two (2) years and shall be annotated on the plan. The TRC may, for just cause, grant up to two (2) one-year extensions for development plan approval. If, at the completion of the first one-year extension period, less than 50 percent of improvements are complete, the applicant must reapply under the current applicable requirements. If more than 50 percent of improvements are complete after the one-year extension period, the applicant may apply for a single additional one-year extension and thereafter must reapply under current applicable requirements.~~

Make the following changes to §200A-307

§200A-307. Review for Major Residential Subdivisions and Conservation Subdivisions of Thirty-Five (35) to Two Hundred Ninety-Nine (299) Lots ~~and any Commercial, Office Institutional, Industrial or Mixed-Use Subdivisions of Less Than Three Hundred (300) Lots~~

B1c. Identify (for the entire *tract*) the following features: streams, creeks, ponds, reservoirs, *floodplains, wetlands, steep slopes* (those greater than ~~25~~ 60 percent), *unique natural areas*, rock outcroppings, farmland, pastureland and wooded/forested areas.

D. Formal Review. The *Subdivision Administrator* shall prepare a recommendation on the application and supply a copy of this recommendation and the recommendation of the *TRC* to the *applicant* before review by the Planning Board. The Planning Board shall take action within ~~60~~ 90 days from the date of its first consideration of the application.

Make the following changes to §200A-308

§200A-308. Review for Major Residential Subdivisions, ~~and Conservation Subdivisions and Commercial, Office Institutional, Industrial or Mixed-Use Subdivisions of Three Hundred (300) or More Lots~~

C1c. Identify (for the entire *tract*) the following features: streams, creeks, ponds, reservoirs, *floodplains, wetlands, steep slopes* (those greater than ~~25~~ 60 percent), *unique natural areas*, rock outcroppings, farmland, pastureland and wooded/forested areas.

LDC Text Amendment 9A:

Issue: All major subdivisions proposing 300 or more lots are approved by the Board of Commissioners, and the LDC currently requires that the Commissioners review and approve all subsequent development plans for projects that the Commissioners initially approve.

Recommended Solution: Add the following language to §200A-308 to give the Commissioners the option to defer the review and approval for any subsequent development plans to Planning Board or the Subdivision Administrator.

Make the following changes to §200A-308 to clarify the approval process

H. Amendment Validity. The amendment is effective immediately following the decision of the Commissioners. The Commissioners shall issue a written statement on all *map amendment* decisions (both adoptions and rejections) addressing reasonableness, consistency with the *Comprehensive Plan*, and public interests furthered. **Subsequent development plans shall be reviewed and approved by the Board of Commissioners. However, the Board of Commissioners may delegate this approval authority, on a project by project basis, to the Planning Board or Subdivision Administrator provided all conditions of approval are met and the development plan is consistent with the approved master plan. Development plans shall meet all requirements of the Chapter. Final plats shall be reviewed following the processes and procedures outlined in §200A-76 and §200A-311.**

LDC Text Amendment 10:

Issue: Except for the County acting on an improvement guarantee and constructing the necessary improvements, there are no alternative actions and associated administrative fees if the developer fails to complete the work within two years after the initial improvement guarantee was approved.

Recommended Solution: Add the following language to Section 200A-88, Amount and Terms of Guarantee; Time Limits.

§200A-88. Amount and Terms of Guarantee; Time Limits

All guarantees shall be accompanied by a written agreement (performance agreement) specifying the terms and the amount of the guarantee. Following receipt of an *improvement guarantees* application, the *Subdivision Administrator* shall review all application materials taking into consideration the amount and terms of the guarantees for improvements, including time of initiation and completion of the work. The *Planning Director* shall have the authority to approve all improvement guarantee applications. The *Planning Director* may also, upon proof of difficulty, grant an extension of completion dates set forth in its approval for a maximum of one (1) additional year, but the time between initiation and the completion of the required improvements shall not exceed two (2) years. **If the improvements are not completed within the two (2) years the applicant shall be in breach with the requirements of this section and the improvement guarantee and any and all monies and accrued interest shall be forfeited by the applicant. If the Planning Director has found that the applicant has made a good faith effort in completing the required improvements within the two (2) years, the County may allow the applicant to execute a second improvement guarantee. Said agreement must be in the form of cash on deposit equal to 125 percent of the cost of the remaining improvements. The County shall assess an administrative fee equal to ten percent of the new improvement guarantee monies.** 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. All guarantees for improvements shall comply with applicable statutory requirements and shall be satisfactory to the County Attorney or Staff Attorney as to form, sufficiency and manner of execution. Guarantees employing lending institutions shall require that those banking corporations be licensed to do business in North Carolina.

ARTICLE IV. ADEQUATE PUBLIC FACILITIES REGULATIONS – No change.

ARTICLE V. LANDSCAPE DESIGN STANDARDS – No change.

ARTICLE VI. OFF-STREET PARKING AND LOADING STANDARDS – No change.

ARTICLE VII. SIGN REGULATIONS

LDC Text Amendment 11:

Issue: At its meeting on Monday, February 4, 2008, the Board of Commissioners directed Staff to add language in the Land Development Code (LDC) that Staff may remove signs placed in the road right-of-way (ROW). The LDC prohibits the placement of signs in the ROW, but does not specifically include a provision for the removal of signs placed in these locations.

Recommended Solution: Add language to §200A-176 (Sign Placement) that County Staff may remove signs that have been placed in the ROW (See proposed language).

§200A-176 Sign Placement.

Signs shall be placed a minimum of 15 feet from edge of pavement or from back of curb (as applicable), and shall be located out of the road right-of-way. Signs are not permitted in a sight visibility triangle. **Signs that are placed in the road right-of-way may be removed and disposed of, without notice, by authorized County personnel.**

ARTICLE VIII. NATURAL RESOURCES – No change.

ARTICLE IX. NONCONFORMITIES

LDC Text Amendment 12:

Issue: There is no provision in the LDC that would allow for a reduction of the front yard setback in established neighborhoods other than through a variance request.

Recommended Solution: Add language to §200A-268 (Exceptions and Modifications) that would allow for new buildings in established neighborhoods to meet the same front yard setbacks as adjacent buildings provided that those adjacent buildings were within 100 of either side of the proposed new building and approved by the Zoning Administrator (See proposed language).

§200A-268 Exemptions and Modifications from Regulations

- A. **Reduction of Front Yard Setbacks.** The required *front yard setbacks* applied to any *lot* shall be reduced by the *Zoning Administrator*, at the request of the *applicant*, to the average *front yard setback* of lots which are: (1) located wholly or in part within 100

feet of the *lot*, (2) within the same block and zoning district as the *lot*, and (3) fronting on the same side of the *road* as the *lot*.

ARTICLE X. DECISION MAKING, ADMINISTRATIVE & ADVISORY BODIES – No change.

ARTICLE XI. REVIEW PORCESSES AND PROCEDURES - No change.

ARTICLE XII. ENFORCEMENT, VIOLATIONS, AND APPEALS – No change.

ARTICLE XIII. LEGAL STATUS – No change.

ARTICLE XIV. DEFINITIONS – No change.