

REQUEST FOR COMMITTEE ACTION

HENDERSON COUNTY TECHNICAL REVIEW COMMITTEE

Meeting Date: June 3, 2008

Subject: Rezoning #R-2008-08 and Text Amendment #TX-2008-02

Staff Contact: Matthew Cable, Planner

Attachments: 1. Proposed Text Amendments to Chapter 200A, LDC

SUMMARY OF REQUEST:

The Technical Review Committee, at its meeting on May 6, 2008, reviewed Rezoning Request #R-2008-08 and Text Amendment Request #TX-2008-02 and provided a favorable recommendation to the Board of Commissioners to recommend approval of both the map and text amendment requests. Following the meeting, the North Carolina Flood Management Branch provided Planning Staff with revisions to the proposed text, to ensure compliance with the State model ordinance. These modifications were technical in nature (See Attachment 1, Proposed Text Amendments to Chapter 200A, LDC). Technical Review Committee action to recommend that the Board of Commissioners approve Text Amendment #TX-2008-02 would be appropriate.

TECHNICAL REVIEW COMMITTEE ACTION REQUESTED:

Suggested Motion:

I move that the Committee recommend approval of Text Amendment #TX-2008-02, to adopt to amend flood damage prevention regulations of the Land Development Code necessary to reflect regulation changes associated with Rezoning Request #R-2008-08 (the new FIRMs) and changes made to the State Model Flood Damage Prevention Ordinance.

And,

I further move that these recommendations of approval are consistent with the recommendations of the Henderson County 2020 Comprehensive Plan.

**LAND DEVELOPMENT CODE OF
HENDERSON COUNTY, NORTH CAROLINA
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ARTICLE VIII

NATURAL RESOURCES

This Article reflects and incorporates the Flood Damage Prevention, Water Supply Watershed Protection, Perennial and Intermittent Surface Water Buffers, Protected Mountain Ridges, and Soil Erosion and Sedimentation Control Ordinances previously adopted by the County. The purpose of this Article is to consolidate these existing ordinances into one article of the Land Development Code.

Subpart A. Flood Damage Prevention

§200A-200. Statutory Authorization, Findings of Fact, Purpose and Objectives

The following sections are incorporated herein by reference and considered to be a part of the regulations of this Article VIII, Subpart A: §200A-275 (Henderson County Flood Damage Prevention Board), §200A-279 (Henderson County Floodplain Administrator), §200A-318 (Floodplain Development Permit), §200A-325 (Special Fill Permit), §200A-338 (Variances (Flood Damage Prevention)), §200A-346 (Violations of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention)), §200A-347 (Appeals), and §200A-359 (Definitions).

§200A-200.1 Statutory Authorization.

The Legislature of the State of North Carolina has in Part 6 of Article 21 of Chapter 143; Parts 3 and 4 of Article 18 of Chapter 153A; and Article 6 of Chapter 153A of the North Carolina General Statutes (NCGS), delegated ~~the responsibility to~~ local governmental units ~~the responsibility~~ to adopt regulations designed to promote the public health, safety, and general welfare ~~of its citizenry~~.

§200A-200.2 Findings.

- A. The flood ~~hazard~~ prone areas with the jurisdiction of Henderson County are subject to periodic inundation which ~~may~~ 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.
- B. 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.

§200A-200.3 Objectives.

The objectives of this Subpart A are to:

- A. Protect human life, ~~safety~~ and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business ~~losses and interruptions~~;
- E. ~~Minimize~~ interruptions and disruptions of family life caused by flooding;

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- F. Minimize damage to public facilities and utilities (i.e. ~~such as~~ water and gas mains; electric, telephone and sewer lines; ~~and roads, and~~ bridges located in *floodplains*;
- G. Help maintain a stable tax base by providing for the sound use and development of *flood prone areas* ~~in such a manner as to minimize flood blight areas~~;
- H. Permit and encourage the retention of open land *uses* which will be so located and designed as to constitute a harmonious and appropriate part of the physical development of the community and which will not impede the flow of flood waters;
- I. Prevent victimization by ensuring that potential land, home and business buyers are notified that property is located in an identified flood hazard area; and
- J. Prevent increased flood levels caused by unwise *floodplain* development.

§200A-200.4 Purpose.

It is the purpose of this Subpart A 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:

- A. Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in increases in erosion, flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- D. Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- E. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

§200A-201. Definitions (see Article XIV (Definitions)) General Provisions

~~Unless specifically defined (in Article XIV (Definitions)), words or phrases used in this subpart shall be interpreted so as to give them the meaning they have in common usage and to give this subpart its most reasonable application. The specific definitions of Article XIV (Definitions) apply, unless the context clearly indicates otherwise.~~

General Provisions

§200A-201.1 Lands to Which this Article VIII, Subpart A Applies.

The provisions of this Subpart A shall apply to all *Special Flood Hazard Areas* within (1) the unincorporated areas of Henderson County lying outside the extraterritorial jurisdiction of any municipality, and (2) the incorporated areas and extraterritorial jurisdiction of any municipality specifically requesting its enforcement by Henderson County upon the agreement of the Henderson County Board of Commissioners, ~~both~~ in accordance with the *Flood Hazard Boundary Map (FHBM)* ~~or Flood Insurance Study (FIS)~~ and its accompanying ~~flood maps such as the Flood Insurance Rate Map(s) (FIRM) and/or the Flood Boundary Floodway Map(s) (FBFM)~~, for Henderson County dated ~~October 2, 2008~~ ~~March 1, 1982, and subsequent amendments thereto.~~ (In making such a request, the municipality must comply with the

requirements of NCGS §160A-360). Unless otherwise provided herein, in no instance shall this subpart apply to any area which is not duly established and identified as a *Special Flood Hazard Area*, either by the methods listed in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas), or as shown on ~~with the *Flood Hazard Boundary Map (FHBM)* or *Flood Insurance Study (FIS)* and its accompanying *flood maps such as the Flood Insurance Rate Map(s) (FIRM)* and/or the *Flood Boundary Floodway Map(s) (FBFM)*~~, for Henderson County dated ~~March 1, 1982~~ October 2, 2008. Said map and all explanatory matter thereon accompanies and is hereby made a part of this Chapter. The Chapter and map shall be on file in the office of Henderson County ~~Code Enforcement Services~~ *Floodplain Administrator*.

§200A-201.2 Basis for Establishing the Special Flood Hazard Areas.

A. The *Special Flood Hazard Areas* are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and by the Federal Emergency Management Agency (FEMA) in its ~~*Flood Hazard Boundary Map (FHBM)* or *Flood Insurance Study (FIS)* and its accompanying *flood maps such as the Flood Insurance Rate Map(s) (FIRM)* and/or the *Flood Boundary Floodway Map(s) (FBFM)*~~, for Henderson County dated ~~March 1, 1982~~ October 2, 2008, which are adopted by reference and declared to be part of this Chapter. The initial Flood Insurance Rate Map(s) are as follows for the jurisdiction areas at the initial date: ~~with accompanying supporting data, and any revision thereto, including Letters of Map Amendment or Revision, are adopted by reference and declared to be a part of this subpart. The current *FIRMs* for Henderson County as published by FEMA in March 1, 1982 are: Community Panels 370125-0001-0015, 0020, 0050, 0075, 0080, 0085, 0090, 0095, 0105, 0125, 0135 and 0150. The *Special Flood Hazard Areas* also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the *FIRM*. This includes, but is not limited to:~~

- Henderson County Unincorporated Area, dated March 1, 1982
- Village of Flat Rock, dated March 1, 1982
- Town of Fletcher, dated March 1, 1982
- City of Hendersonville, dated January 20, 1982
- Town of Laurel Park, dated October 2, 2008
- Town of Mills River, dated March 1, 1982

- ~~(1) Detailed flood data generated as a requirement of Sections 203.2(K) and 203.2(L) of this subpart;~~
- ~~(2) Preliminary *FIRMs* where more stringent than the effective *FIRM*; or~~
- ~~(3) Post-disaster Flood Recovery Maps~~

NOTE: If detailed topographic mapping or surveying shows that a building site adjacent to a *Special Flood Hazard Area* is below the *Base Flood Elevation*, it must be regulated as being within the *Special Flood Hazard Area*, even if not shown within the boundaries of the *Special Flood Hazard Area* shown in the *FIRM* or any accompanying maps. For regulatory purposes, flood elevations are the ruling guideline.

B. Delineation of *Floodway*: For the purposes of delineating the *floodway* and evaluating the possibility of flood damages, the *Floodplain Administrator* may:

- (1) Request technical assistance from the competent federal agencies, including the US Army Corps of Engineers, the Soil Conservation Service, and the US Geological Survey, or successor agencies, and
- (2) Utilize reports and data supplied by federal and State agencies in delineating *floodways* and evaluating the possibilities of flood damages.

§200A-201.3 Establishment of Floodplain Development Permit.

A *Floodplain* Development Permit shall be required in conformance with the provisions of this Subpart A and §200A-318 (Floodplain Development Permit) prior to the commencement of any development activities within *Special Flood Hazard Areas* as determined in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas) [Section 202.2](#).

§200A-201.4 Compliance.

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

§200A-201.5 Abrogation and Greater Restrictions.

- A. ~~This s~~Subpart A is not intended to repeal, abrogate, or impair any existing *easements*, covenants, or deed restrictions. However, where this Subpart A and another regulation conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- B. The following may impose additional regulations for land *uses* and *structures* located in any portion of a *floodplain* and are hereby adopted and incorporated into this Subpart A by reference as though they were copied herein fully. However, where this Subpart A and another regulation conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
 - (1) The International Building Codes, as adopted by the North Carolina Building Code Council and enforced by State and local code enforcement officials, and including all volumes.
 - (2) The Southern Building Code Congress International “SBCCI Standard for Floodplain Management” SSTD 4-89,
 - (3) The US Army Corps of Engineers “Flood Proofing Regulations” – EPI 1651-2-314, December 15, 1995.
 - (4) Federal Emergency Management Agency “Managing Floodplain Development in Approximate Zone A Areas,” April, 1995.

§200A-201.6 Other Approval Required.

- A. The granting of a permit under the provisions of this Subpart A and §200A-318 (Floodplain Development Permit) or §200A-323 (Special Fill Permit) shall in no way affect any other type of approval required by any other statute or ordinance of the State or any political subdivision of the State, or of the United States, but shall be construed as an added requirement.
- B. No permit for the construction of any *structure* to be located within a *floodplain* shall be granted unless the *applicant* has first obtained the permit required by this Subpart A.

§200A-201.7 Interpretation.

Gray highlighted text indicates technical text changes including cross referencing.
Yellow highlighted text indicates substantive text changes to ensure consistency with the new FIRMs and the State Model Flood Damage Prevention Ordinance.

In the interpretation and application of this Subpart A, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under State statutes.

§200A-201.8 Warning and Disclaimer of Liability.

The degree of flood protection required by this Subpart A is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Actual flood heights may be increased by man-made or natural causes. This Subpart A 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. This Subpart A shall not create liability on the part of Henderson County or by any officer or employee thereof for any flood damages that result from reliance on this Subpart A or any administrative decision lawfully made hereunder.

~~§200A-201.9 Penalties for Violation:~~

~~Any person violating any provision of this subpart shall be subject to the penalties set forth in Chapter 1, General Provisions, Article II of the Henderson County Code.~~

§200A-202. Administration.

The provisions of Subpart A, related to administration can be found in the following sections:

- A. Designation, Duties and Responsibilities of Floodplain Administrator. (See §200A-279 (Henderson County Floodplain Administrator)).
- B. Floodplain Development Permit Application Requirements and Fees. (See §200A-318 (Floodplain Development Permit)).
- C. Special Fill Permit Procedures and Fees. (See §200A-323 (Special Fill Permit)).
- D. Variance Procedures. (See §200A-338 (Variances (Flood Damage Prevention))).
- E. Appeal Procedures. (See §200A-347 (Appeals)).
- F. Corrective Procedures and Penalties for Violation. (See §200A-346 (Violations of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention))).

~~203.1 Designation of Floodplain Administrator:~~

~~203.2 Floodplain Development Permit Application Requirements:~~

~~C. Certification Requirements:~~

~~203.3 Duties and Responsibilities of the Floodplain Administrator:~~

~~203.4 Fees:~~

~~203.5 Corrective Procedures:~~

~~203.6 Variance and Appeal Procedures:~~

~~203.7 Special Fill Permit Procedures:~~

- Comment [MSOffice1]:** Moved, with Modifications to §200A-279 (Henderson County Floodplain Administrator)
- Comment [MSOffice2]:** Moved, with Modifications to §200A-318 (Floodplain Development Permit).
- Comment [MSOffice3]:** Moved, with Modifications to §200A-279 (Henderson County Floodplain Administrator)
- Comment [MSOffice4]:** Moved, with Modifications to §200A-318 (Floodplain Development Permits) and §200A-323 (Special Fill Permits)
- Comment [MSOffice5]:** Moved, with Modifications to §200A-346 (Violations of Article VIII, Subpart A)
- Comment [MSOffice6]:** Moved, with Modifications to §200A-336 (Variances (FDP))
- Comment [MSOffice7]:** Moved with Modifications to §200A-323 (Special Fill Permit).

§200A-203. Flood Hazard Reduction

§200A-203.1 General Standards.

In all *Special Flood Hazard Areas* the following provisions are required.

~~B.A. No encroachment,...~~ In the *floodway fringe* area as indicated on the ~~FBFM~~*FIRM*, no fill whatsoever shall be allowed except on parcels of land, the boundaries of which are of record in the Henderson County Registry as of the original date of adoption of these regulations (July 5, 2005) , and then only upon no more than 20 percent % of the total of the ~~floodway~~*fringe* area contained in each such parcel, except that additional fill may be permitted in the ~~floodway~~*fringe* pursuant to a *special fill permit* (See §200A-323 (Special Fill Permit) ~~granted pursuant to Section 203.7 of this subpart.~~

Comment [MSOffice8]: Moved with Modifications to §200A-203.6 (Foodways or Non-Encroachment Areas).

B. All new *construction* and substantially improvements ~~d structures~~ shall be:

- (1) Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the *structure*.
- (2) Constructed with materials and utility equipment resistant to flood damage.
- (3) ~~All new construction or substantial improvements shall be c~~ Constructed by methods and practices that minimize flood damages.

C. All new utility equipment, substations, lines and other materials used in the provision of services to the public such as telephone, electricity, natural gas, and cable television shall be located outside a *floodplain*, unless no viable alternative exists.

D. 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, electrical/gas meter panels/boxes, utility/cable boxes, appliances (i.e. washers, dryers, refrigerator, etc.), hot water heaters, electric outlets/switches.

E. All new and replacement *water supply systems* shall be located outside the *Special Flood Hazard Area*, unless no other viable alternative exists. Where they must be placed in the *SFHA* the systems shall be ~~,and~~ designed to minimize or eliminate infiltration of flood waters into the system, and also to meet all other applicable State and local requirements.

F. All new and replacement sanitary sewage and on-site waste disposal systems shall be located outside the *Special Flood Hazard Area*, unless no other viable alternative exists. Where they must be placed in the *SFHA* the systems shall be ~~,and~~ designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and also to meet all other applicable State and local requirements.

G. On-site waste disposal systems constructed near or adjoining *Special Flood Hazard Areas* shall be located and constructed to avoid impairment to them or contamination from them during flooding.

H. No new private wells shall be located within the *Special Flood Hazard Area* unless no viable alternative exists and that such wells meet all other applicable state and local requirements. Private wells constructed near or adjoining *Special Flood Hazard Areas*

shall be located and constructed to minimize or eliminate infiltration of flood water into the system.

- I. Any alteration, repair, reconstruction, or improvements to a *structure* which is in compliance with the provisions of this Subpart A, shall meet the requirements of *new construction* as contained in this Subpart A.
- J. Any fill material on which a *structure* is located shall:
 - (1) ~~Shall be~~ extended to grade ten (10) feet beyond the limits of the *structure* foundation; ~~and~~
 - (2) ~~Shall be~~ graded to drain; ~~and~~
 - (3) ~~Shall be~~ protected against *erosion*; ~~and~~
 - (4) ~~Shall have~~ a side *slope* no steeper than two (2) feet horizontal to one (1) foot vertical; ~~and~~
 - (5) ~~Shall not~~ contain any contaminated, toxic or hazardous materials; and
 - (6) ~~Shall be~~ approved before placement.
- M. *Nonconforming structures* or other development may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this Subpart A. Provided, however, nothing in this subpart shall prevent the repair, reconstruction, or replacement of a ~~building or structure~~ existing on the original effective date of these regulations (July 30, 2005) and located totally or partially within the *floodway, non-encroachment area, or stream setback*, provided that the bulk of the ~~building or structure~~ below the ~~Regulatory Flood Protection Elevation~~ in the *floodway, non-encroachment area, or stream setback* is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this Subpart A, and nothing in this Subpart A shall prevent the permitted maintenance, repair, reconstruction or replacement of *agriculture-related water diversion structures* where the permit for the same is granted by other than Henderson County. No permit shall be required from Henderson County to reconstruct agricultural development which pre-exists the original effective date of these regulations (July 30, 2005).
- N. The following are permitted *uses* for the *floodway fringe*: all *uses* otherwise permitted by the applicable land *use* regulations, so long as such *uses* are in compliance with the terms of this Subpart A.
- O. New *solid waste disposal facilities and sites, hazardous waste management facilities, solid waste sites, salvage yards, and chemical storage facilities* shall not be permitted in *Special Flood Hazard Areas*, except by *variance* as specified in ~~this Subpart A and §200A-336 (Variances (Flood Damage Prevention))~~. A *structure* or tank for chemical or fuel storage incidental to an allowed *use*, including but not limited to *agriculture*, 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 according to §200A-318 (Floodplain Development Permit) C(2) (Certification Requirements) ~~Section 203.2(C) of this subpart~~.

Gray highlighted text indicates technical text changes including cross referencing.

Yellow highlighted text indicates substantive text changes to ensure consistency with the new FIRMs and the State Model Flood Damage Prevention Ordinance.

P. All *subdivision* and other development proposals shall:

- (1) Be consistent with the need to minimize flood damage;
- (2) Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- (3) ~~All development proposals shall have~~ Have adequate drainage provided to reduce exposure to flood hazards; and
- (4) 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.

Q. 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*.

R. When a *structure* is located in multiple flood hazard zones or in a flood hazard risk zone with multiple *Base Flood Elevations (BFEs)*, the provisions for the more restrictive flood hazard risk zone and the highest *Base Flood Elevation (BFE)* shall apply.

§200A-203.2 Specific Standards.

In all *Special Flood Hazard Areas* where *BFE* data has been provided, as set forth in this Subpart A, the following provisions in addition to those required in §200A-203.1 (General Standards) ~~Section 204.1~~ are required:

- A. Residential Construction. *New construction* ~~and~~ *substantial improvement* of any residential *structure* (including *manufactured/mobile homes*) shall have the *reference level*, including *basement*, elevated no lower than the *Regulatory Flood Protection Elevation*.
- B. Nonresidential Construction. *New construction* ~~or~~ *and* *substantial improvement* of any nonresidential *structure* shall have the *reference level*, including *basement*, elevated no lower than the *Regulatory Flood Protection Elevation*. *Structures* located in A, AE and AO Zones ~~floodway fringe~~ 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 required 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 effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with §200A-203.7 (Standards for Areas of Shallow Flooding (Zone AO)). A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the *Floodplain Administrator* as set forth in §200A-318 (Floodplain Development Permit) C (2) (Certification Requirements), along with operational plan and the maintenance and inspection plan ~~Section 203.2(C)~~.
- C. Manufactured/Mobile Homes. No *manufactured/mobile homes* shall be permitted except replacement *manufactured/mobile homes* in an existing *manufactured home park*, existing *manufactured home subdivision*, or replacement *manufactured/mobile homes* on an individual parcel, provided the following conditions are met:

- (1) *Manufactured/mobile homes* shall be elevated so that the *reference level* of the *manufactured/mobile home* is no lower than the *Regulatory Flood Protection Elevation*.
- (2) *Manufactured/mobile homes* shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement in accordance with the State of North Carolina Regulations for *Manufactured/Mobile Homes -1995 Edition, and any revision thereto* adopted by the Commissioner of Insurance pursuant to *NCGS §143-143.15* ~~or a certified engineered foundation~~. 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 system~~ *other foundation elements of at least equivalent strength*. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.
- (3) All ~~foundation~~ enclosures or skirting shall be in accordance with *§200A-203.2 (Specific Standards) D (Elevated Structures)* ~~this subpart~~.
- (4) An evacuation plan must be developed for evacuation of all residents of all substantially improved or substantially damaged *manufactured/mobile home parks* or *subdivisions* located within *flood prone areas*. This plan shall be filed with and approved by the *Floodplain Administrator* and the local Emergency Management coordinator.

D. *Elevated Structures*. Enclosed areas, of *new construction* or substantially improved *structures*, which are below the *Regulatory Flood Protection Elevation* shall:

- (1) ~~Shall not~~ Not be designed to be used for human habitation, but shall only be used for parking of *vehicles*, ~~building structure~~ 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 partitioned or finished into separate rooms, except to enclose storage areas;
- (2) ~~Shall be~~ Be constructed entirely of flood resistant materials ~~at least to below~~ the *Regulatory Flood Protection Elevation*;
- (3) ~~Shall~~ Include, in Zones A, AO and AE, flood openings ~~measures~~ to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must ~~either~~ be certified by a professional engineer or architect ~~or meet or exceed~~ *on the elevation certification form and meet* the following minimum design criteria;
 - a. Provide a minimum of two (2) openings on different sides of each enclosed area subject to flooding;
 - b. The total net area of all openings must be at least one (1) square inch for each square foot of each enclosed area subject to flooding;

- c. If a ~~building~~ structure has more than one (1) enclosed area, each area must have flood openings ~~on exterior walls~~ to allow floodwater to automatically ~~directly~~ enter and exit;
- d. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade; and,
- e. Flood openings may be equipped with screens, louvers, or other opening coverings or devices provided they permit the automatic flow of floodwaters in both directions.

Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood skirting, regardless of structural status, is considered an enclosure and requires openings as outlined above.

E. Additions/Improvements.

- (1) Additions and/or improvements to *pre-FIRM structures* where 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 *nonconforming* 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 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* where 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.
- (4) Where a fire wall or independent perimeter load-bearing wall is provided between the *addition* and the existing ~~building~~ structure, the addition(s) shall be considered a separate ~~building~~ structure and only the *addition* must comply with the standards for *new construction*.

F. Recreational Vehicles. *Recreational vehicles (RVs)* shall either:

- (1) 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

- (2) Meet all the requirements for *new construction*. (See also §200A-63 (Supplemental Requirements to the Table of Permitted and Special Uses) SR 4.18 (Recreational Vehicle Park).

G. Temporary Nonresidential Structures. Prior to the issuance of a Floodplain Development Permit for a *temporary structure*, *applicants* must submit to the *Floodplain Administrator* 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 *Floodplain Administrator* for review and written approval ~~the following requirements must be met:~~

~~(1) Applicants must submit to the Floodplain Administrator 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 Floodplain Administrator for review and written approval:~~

- (1) A specified time period for which the *temporary use* will be permitted, time specified may not exceed three (3) months, renewable up to one (1) year;
- (2) The name, address, and phone number of the individual responsible for the removal of the *temporary structure*;
- (3) The timeframe 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);
- (4) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the *structure* ~~a trucking company to~~ insuring the availability of removal equipment when needed; and
- (5) Designation, accompanied by documentation, of a location outside the *Special Flood Hazard Area* to which the *temporary structure* will be moved.

~~(7) The above information shall be submitted in writing to the Floodplain Administrator for review and written approval.~~

H. Accessory Structures. When *accessory structures* (sheds, detached garages, etc.) are to be placed within a *Special Flood Hazard Area*, the following criteria shall be met:

- (1) *Accessory structures* shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
- (2) *Accessory structures* shall not be temperature controlled;
- (3) *Accessory structures* shall be designed to have low flood damage potential;
- (4) *Accessory structures* shall be constructed and placed on the ~~building~~ *structure* site so as to offer the minimum resistance to the flow of floodwaters;
- (5) *Accessory structures* shall be firmly anchored in accordance with §200A-203.1 (General Standards) B(1) ~~Section 204.1(C)~~;

- (6) All service facilities such as electrical and heating equipment shall be installed in accordance with 200A-203.1 (General Standards) B(2) ~~Section 204.1(D)~~;
- (7) Flood openings to facilitate automatic equalization of ~~relieve~~ hydrostatic pressure during a flood forces shall be provided below *Regulatory Flood Protection Elevation* in conformance with §200A-203.2 (Specific Standards) D (Elevated Structures) (3) ~~Section 204.2(C)(3)~~;
- (8) An *accessory structure* with a *footprint* less than 150 square feet does not require an elevation or *floodproofing* certificate (a Floodplain Development Permit is still required). Elevation or *floodproofing* certifications are required for all other *accessory structures* in accordance with §200A-318 (Floodplain Development Permit) C (2) (Certification Requirements) ~~Section 203.2(C)~~.

§200A-203.3 Subdivisions, Manufactured Home Parks, Manufactured Home Subdivisions, And Other Residential Development.

No new *manufactured home parks* or *manufactured home subdivisions* shall be allowed within a *Special Flood Hazard Area* (except that where real estate located within a *Special Flood Hazard Area* which is a part of such *manufactured home park* or *subdivision* and upon which no development has occurred can be considered as “*open space*” within such *park* or *subdivision*). In addition, *manufactured home parks* and *manufactured home subdivisions* existing on the date of original enactment (July 30, 2005) of this Subpart A may not be expanded. All other *subdivisions* or other *residential development* located wholly or in part within a *Special Flood Hazard Area* shall:

- A. Be consistent with the need to minimize flood damage;
- B. Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- C. Have adequate drainage provided to reduce exposure to flood hazards; and,
- D. Have *Base Flood Elevation (BFE)* data provided if development is greater than the lesser of five (5) acres or 50 *lots/manufactured/mobile home* sites. Such *Base Flood Elevation (BFE)* data shall be adopted by reference in accord with §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas) ~~Section 202.2~~ in implementing this Subpart A.

§200A-203.4 Standards for Floodplains Without Established Base Flood Elevations.

Within the *Special Flood Hazard Areas* designated as *Approximate Zone A* and established in ~~Section 202.2~~ §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas), where no *BFE* data has been provided by *FEMA*, the following provisions, in addition to §200A-203.1 (General Standards), ~~Section 204.1~~, shall apply:

- A. No *encroachments*, including fill, new construction, *substantial improvements* or new development shall be permitted within a distance of 20 feet from each side of the stream measured from the top of the bank or five (5) 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.

B. The *BFE* used in determining the *Regulatory Flood Protection Elevation* shall be determined based on one (1) of the following criteria set in priority order:

- (1) When ~~if~~ *BFE* data is available from other sources, such as Federal, State or other, all *new construction* and *substantial improvements* within such areas shall also comply with all applicable provisions of this subpart and shall be elevated or floodproofed in accordance with standards in this §200A-203.1 (General Standards) and §200A-203.2 (Specific Standards) ~~subpart~~.
- (2) When *floodway* or *non-encroachment area* data are 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 §200A-203.2 (Specific Standards) and §200A-203.6 (Floodways and Non-Encroachment Areas).
- (3) When a *subdivision, manufactured home park* or other development proposal is greater than five (5) acres or has more than 50 *lots/manufactured home sites/spaces*, *BFE* data shall be provided. Such *BFE* data shall be adopted by reference in accordance with §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas).
- (4) When *BFE* data is not available from a Federal, State, or other source as outlined above, the *reference level* shall be elevated or floodproofed to or above the ~~highest adjacent grade as required in the~~ *Regulatory Flood Protection Elevation* as defined in Article XIV (Definitions).

§200A-203.5 Standards for Riverine Floodplains With Base Flood Elevations ~~Data~~ but Without Established Floodways or Non-encroachment Areas.

Along rivers and streams where *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 reports*, the following requirements shall apply to all development within such areas:

- A. Standards outlined in §200A-203 (Flood Hazard Reduction); 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 (1) foot at any point within the community.

§200A-203.6 Floodways or Non-encroachment Areas.

Areas designated as *floodways* or *non-encroachment areas* are located within the *Special Flood Hazard Areas* established in §200A-201.2 (Basis for Establishing the *Special Flood Hazard Areas*). The *floodways* 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 the standards outlined in §200A-203.1 (General Standards) and §200A-203.2 (Specific Standards), shall apply to all development within such areas.

A. No encroachments, including fill, new construction or substantial improvements shall be permitted unless:

- (1) The structure is a functionally dependent structure facility, excluding enclosed structures, new water and sewer lines provided no viable alternative exists, recreational uses (excluding enclosed structures) and streambank restoration projects, provided the requirements of §200A-203.2 (Specific Standards) and §200A-203.6 (Floodways or Non-Encroachment Areas) A (2) are met; or
- (2) The parcel owner first having obtained and submitted to the Floodplain Administrator an acceptable certification by a registered professional engineer proving that the anticipated encroachment(s) shall not result in any increase in the elevation of the regulatory flood during an occurrence of the base flood. The Floodplain Administrator shall require documentation of the certification which shall include either:
 - a. A completed “engineering no-rise” certification form as published by FEMA, or acceptable alternative form approved by FEMA together with:
 1. Technical documentation in the form of detailed site and construction plans, showing that all requirements of this Subpart A are met;
 2. Technical documentation in the form of hydraulic analysis of the existing and proposed conditions. This documentation shall be either: complete runs of existing and proposed conditions using the HEC II/HEC-RAS step backwater analysis computer program as prepared by the US Army Corps of Engineers for the analysis of flow plan hydraulics; or
 3. An alternative method currently approved by FEMA for use in the revision process for FEMA flood maps. In this case, the engineer shall provide a letter from FEMA indicating that the method used is acceptable; or
 - b. A Conditional Letter of Map Revision (CLOMR) which has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.

B. If 203.6 (Floodways of Non-encroachment Areas) A is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this Subpart A.

C. No manufactured/mobile homes shall be permitted, except replacement manufactured/mobile homes in an existing manufactured home park or subdivision, provided the following provisions are met:

- (1) The anchoring and the elevation standards of §200A-203.2 (Specific Standards) C (Manufactured/Mobile Homes); and
- (2) The no encroachment standard of §200A-203.6 (Floodways of Non-encroachment Areas).

§200A-203.7 Standards for Areas of Shallow Flooding (Zone AO).

Located within the *Special Flood Hazard Areas* established in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas) designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to §200A-203.1 (General Standards) and §200A-203.2 (Specific Standards), all *new construction* and *substantial improvements* shall meet the following requirements:

- A. The *reference level* shall be elevated at least as high as the depth number specified on the *FIRM*, in feet, plus a *freeboard* of two (2) feet, above the *highest adjacent grade*; or at least four (4) feet above the *highest adjacent grade* if no depth number is specified.
- B. Nonresidential *structures* may, in lieu of elevation, be floodproofed to the same level as required by §200A-203.7 (Standards for Areas of Shallow Flooding (Zone AO)) (1) so that the *structure*, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with §200A-318 (Floodplain Development Permit) C (2) (Certification Requirements) and §200A-203.2 (Specific Standards) B (Nonresidential Construction).
- C. Adequate drainage paths shall be provided around *structures* on slopes, to guide flood waters around and away from the *structures*.

§200A-204. Legal Status

§200A-204.1 Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Regulations.

This Subpart A in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted July 5, 2005 as amended, 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 ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of Henderson County enacted on July 5, 2005, as amended, which are not reenacted herein are repealed.

The dates of the initial flood damage prevention ordinance for each municipal jurisdiction within Henderson County are as follows:

Town of Fletcher, dated January 13, 2003
City of Hendersonville, dated January 7, 1982
Town of Laurel Park, dated December 20, 2005

§200A-204.2 Effect on Outstanding Floodplain Development Permits.

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 *Floodplain Administrator* or his or her authorized agents before the time of passage of this Subpart A; provided, however, that when construction is not begun under such

Gray highlighted text indicates technical text changes including cross referencing.
 Yellow highlighted text indicates substantive text changes to ensure consistency with the new FIRMs and the State Model Flood Damage Prevention Ordinance.

outstanding permit within a period of six (6) months subsequent to passage of this subpart or any revision thereto, construction or *use* shall be in conformity with the provisions of this Subpart A.

§200A-204.3 Effect on Outstanding Building Permits.

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 Building Permit has been granted by the Building Codes Administrator or his authorized agents before the time of passage of this Subpart A (July 5, 2005); provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to passage of this subpart or any revision thereto, construction or *use* shall be in conformity with the provisions of this Subpart A.

§200A-204.4 Effective Date:

Subpart A originally became effective 30 July 2005 as amended through [REDACTED] ([amendment approval date](#)).

§200A-205. Reserved

Subpart B. Water Supply Watershed Protection

§200A-206. Statutory Authorization

This subpart is adopted pursuant to the authority vested by the North Carolina General Statutes, particularly Chapter 153A, Article 6, Section 121 and Chapter 143, Article 21 (Watershed and Air Resources).

§200A-207. Effect on Other Laws and Agreements

This subpart shall not be construed to repeal or modify applicable local, state and federal laws, except that to the extent that the provisions of this subpart conflict with any applicable local, state or federal laws, the most stringent of all applicable laws shall govern. It is not intended that these regulations interfere with any *easement*, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the *use* of a *structure* or land, then the provisions of these regulations shall control.

§200A-208. Purpose

The provisions established in this subpart are designed to manage the *uses* of land and *structures* encompassed by *watersheds* within the County in order to maintain the high quality of surface water in these *watersheds* by enforcing standards which shall limit the impact from existing or potential sources of contamination through the regulation of *lot sizes* and development intensity.

§200A-209. Lands to Which This Subpart Applies

The provisions of this subpart shall apply within (1) the unincorporated areas of Henderson County lying outside the extraterritorial jurisdiction of any municipality and (2) the incorporated areas of any city or town specifically requesting its enforcement by Henderson County upon the consent of the Commissioners, which have been designated as a public *water supply watershed* by the North Carolina Environmental Management Commission and delineated on the map titled "Henderson County Water Supply Watershed Protection Map," herein referred to as the "*Watershed Map*," as amended. (In making such a request, the city or town must comply with the requirements of NCGS §153A-122.) The *Watershed Map* and all explanatory matter contained

ARTICLE X

DECISION-MAKING, ADMINISTRATIVE AND ADVISORY BODIES

§200A-271. Henderson County Board of Commissioners

- A. Powers and Duties Pursuant to This Chapter. Without limiting any authority granted to the Henderson County Board of Commissioners by law or by regulations, The Board of Commissioners shall have the following powers and duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:
- (1) Land Use Plans. To adopt a *Comprehensive Plan* and other land use plans for the County and to amend such plans as appropriate.
 - (2) Administrative Amendments. To initiate *administrative amendments* to the *Comprehensive Plan* by submittal to the *Planning Director*; and to adopt *administrative amendments* proposed by any individual or agency as appropriate.
 - (3) Substantive Amendments. To initiate *substantive amendments* to the *Comprehensive Plan*; and to adopt *substantive amendments* proposed by any individual or agency as appropriate and following review by the Planning Board.
 - (4) Text Amendments. To initiate *text amendments* to this Chapter by adopted motion and submittal to the *Planning Director*; and to adopt any *text amendment* proposed by any individual or agency as appropriate.
 - (5) Map Amendments. To initiate *map amendments* to the Official Zoning Map by adoption of a motion; and to adopt any *map amendment* proposed by any individual or agency as appropriate.
 - (6) Plan Review. To approve, approve conditionally or deny any plan for a *subdivision* for which it is the reviewing agency and any plan referred to it by another reviewing agency.
 - (7) Water Supply Watershed Text and Map Amendments. To initiate *text amendments* related to the *water supply watershed* regulations of this Chapter; to initiate *map amendments* related to the *water supply watershed* on the Official Zoning Map; and to adopt any text or *map amendment* related to the *water supply watershed* as appropriate.
 - (8) Fees. To establish fees for permits and approvals related to the administration of this Chapter.
 - (9) Special Use Permits. To grant *special use* permits deferred by the Zoning Board of Adjustment as authorized by this Chapter.
 - (10) Special Fill Permits. To grant *special fill permits* as authorized by this Chapter.
 - (11) Special Intensity Allocation. To grant special intensity allocations as authorized by this Chapter.
 - (12) Additional Powers and Duties. Such additional powers and duties as may be set forth for the Board of Commissioners elsewhere in this Chapter and in other laws and regulations.

§200A-275. Henderson County Flood Damage Prevention Board

- A. Powers and Duties Pursuant to This Chapter. Without limiting any authority granted to the Flood Damage Prevention Board by law or by regulations, the Flood Damage Prevention Board shall have the following powers and duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:
- (1) Administrative Review. To hear and decide *appeals* from any decision or determination made by the *Floodplain Administrator* in the enforcement of any sections of this Chapter which relate to flood damage prevention.
 - (2) Special Fill Permits. To grant *special fill permits* as authorized by this Chapter.
 - (3) Text Amendments. To initiate *text amendments* to this Chapter by adopted motion and submittal to the *Planning Director*.
 - (4) Map Amendments. To initiate *map amendments* to the Official Zoning Map by adopted motion.
 - (5) Variances. To grant, in specific cases, *variances* from the terms of any sections of this Chapter which relate to flood damage prevention.
 - (6) Additional Powers and Duties. Such additional powers and duties as may be set forth for the Flood Damage Prevention Board elsewhere in this Chapter and in other laws and regulations.
- B. Membership. The Zoning Board of Adjustment shall serve as the Flood Damage Prevention Board.
- C. Rules. The Flood Damage Prevention Board shall carry out all powers and duties stated in the rules of procedure adopted by the Board of Commissioners for the Flood Damage Prevention Board. Any changes other than to the meeting time and place to such rules of procedure must be approved by the Board of Commissioners.
- D. Meetings. All meetings or hearings of the Flood Damage Prevention Board shall be open to the public.
- E. Decisions. The concurring vote of four-fifths (4/5) of the members of the Flood Damage Prevention Board shall be necessary to reverse any order, requirement or decision of the *Floodplain Administrator*. The same four-fifths (4/5) vote shall be necessary to decide in favor of the *applicant* on any matter upon which the Flood Damage Prevention Board is required to pass under any sections of this Chapter which relate to flood damage prevention or to affect any variation of any sections of this Chapter which relate to flood damage prevention. On all *appeals*, applications and other matters brought before the Flood Damage Prevention Board, said board shall inform in writing all parties involved of its decisions and the reasons therefore.
- F. Records. The Flood Damage Prevention Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact. Final disposition of *appeals* shall be by order indicating the reasons of the Flood Damage Prevention Board therefore, all of which shall be public record.

§200A-279. Henderson County Floodplain Administrator

A. Powers and Duties Pursuant to This Chapter. The *Floodplain Administrator* shall have the following duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:

- (1) **Administer.** To administer and implement the provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).
- (2) **Interpretation.** To interpret the terms and provisions of this Article VIII (Natural Resources) Subpart A (Flood Damage Prevention). ~~Chapter related to flood damage prevention.~~
- (3) **Enforcement.** To enforce the provisions of this Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) ~~Chapter related to flood damage prevention~~ including properly investigating complaints from *persons* who allege that *violations* of this Chapter have occurred and initiating appropriate action as necessary to prevent, enjoin, abate or remove any *violations* found. The *Floodplain Administrator*, or his/her duly authorized representative, may enter any *building, structure* or premises, as provided by law, to perform any duty imposed upon him/her by this Chapter.
- (4) **Staff Support.** To provide staff support to the Flood Damage Prevention Board.
- (5) **Maintenance of Maps, LOMAs and Records.**
 - a. Maintain a current map repository to include, but not limited to, the FIS Report, *FIRM* and/or other official flood maps/studies adopted ~~under this subpart~~ in accordance with Article VIII (Natural Resources) Subpart A (Flood Damage Prevention), including any revisions thereto including Letters of Map Amendment (LOMA), issued by State and/or *FEMA*. Notify State and *FEMA* of mapping needs.
 - b. Maintain, in the Floodplain Development Permit file, a copy of all Letters of Map Amendment (LOMAs) issued from *FEMA*.
 - c. Maintain, permanently, all records that pertain to the administration of ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (6) **Coordinate Revisions to FIS Reports and FIRMs.** Coordinate revisions to FIS reports and *FIRMs*, including Letters of Map Revision on Fill (LOMR-F) and Letters of Map Revision (LOMR).
- (7) **Alteration/Relocation of Watercourses.**
 - a. Notify adjacent communities and the North Carolina 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 *FEMA*.

- b. Assure that maintenance is provided within the altered or relocated portion of said *watercourse* so that the flood-carrying capacity is ~~not diminished~~ maintained.
- (8) **Interpret Boundaries.** Interpret, as needed, 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). The *person* contesting the location of the boundary shall be given a reasonable opportunity to *appeal* the interpretation as provided ~~in this subpart~~ by §200A-347 (Appeals).
- (9) **Inspections of the Special Flood Hazard Area.** Make periodic inspections throughout the *Special Flood Hazard Areas* within the jurisdiction of Henderson County. In exercising this power, the *Floodplain Administrator* (or his/her designee) has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of Henderson County at any reasonable hour for the purposes of inspection or other enforcement action.
- (10) **Prevent Encroachments.** Prevent *encroachments* within *floodways* and *non-encroachment areas* unless the certification and flood hazard reduction provisions of ~~Section 204.1A~~ §200A-203.6 (Floodways or Non-Encroachment Areas) are met.
- (11) **Consider Effects of Proposed Artificial Obstructions.** Consider the effects of a proposed artificial *obstruction* in a *floodplain* in creating danger to life and property, prior to the issuance of any permit, by: (1) ~~By~~ water which may be backed up or diverted by such obstruction; (2) ~~By~~ the danger that the obstruction will be swept downstream to the injury of others; and (3) ~~By~~ the injury or damage to the site of the obstruction itself. For this purpose, the *Floodplain Administrator* may take into account anticipated development in the foreseeable future which may be adversely affected by the *obstruction*, as well as *existing development*.
- (12) **Review Applications and Issue Permits.** Review all floodplain development applications and issue permits (floodplain development and special fill permits) for all proposed development within ~~flood-prone areas~~ *Special Flood Hazard Areas* to assure that the requirements of ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) have been satisfied.
- (13) **Advise of Other Permits.** ~~Any~~ Advise permittee that additional Federal or State permits (i.e., *Wetlands*, *Endangered Species*, *Riparian Buffers*, Mining, etc.) may be required, and if specific Federal or State permits are known, require that copies of such permits be provided and maintained on file with the Floodplain Development Permit (see §200A-318 (Floodplain Development Permit)).
- (14) **Advise of LOMA Option.** Advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA, when the *lowest floor* and the *lowest adjacent grade* of a *structure* or the lowest ground elevation of a *parcel* in the *Special Flood Hazard Area* are above the *Base Flood Elevation (BFE)*.

- (15) Obtain Actual Elevations. In accordance with the provisions of ~~this subpart~~ §200A-318 (Floodplain Development Permit) C (2) (Certification Requirements), obtain actual elevation (in relation to *mean sea level*):
 - a. Of the *reference level* (including *basement*) and all attendant utilities of all new or substantially improved *structures*;
 - b. To which all new and substantially improved *structures* and all utilities have been floodproofed; and
 - c. Of all new public utilities (also in accordance with the provisions §200A-203.2 (Specific Standards) B (Nonresidential Construction)).
- (16) Obtain Certifications. Obtain certifications from a registered professional engineer or architect in accordance with ~~this subpart~~ the provisions of §200A-318 (Floodplain Development Permit) C (2) (Certification Requirements) and §200A-203.2 (Specific Standards) B (Nonresidential Construction), when *floodproofing* is utilized for a particular *structure*.
- (17) Obtain, Review and Utilize BFE Data. Obtain, review, and reasonably utilize any *Base Flood Elevation (BFE)* data, along with *floodway* data and/or *non-encroachment area* data available from a Federal, State, or other source, including data developed pursuant to ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention), when *BFE* data ~~has~~ have not been provided in accordance with ~~Section 202.2~~ §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas), in order to administer the provisions of ~~this Subpart A~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).
- (18) Obtain, Review and Utilize Floodway/Non-Encroachment Area Data. Obtain, review and reasonably utilize any *floodway* data, or *non-encroachment area* data available from a Federal, State, or other source, when *Base Flood Elevation (BFE)* data ~~is~~ are provided but no *floodway* nor *non-encroachment area* data ~~has~~ have been provided, in accordance with ~~Section 202.2~~ §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas) in order to administer the provisions of ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).
- (19) Inspection of Work In-Progress. Make on-site inspections of work in progress, or of any location for which a permit under this Subpart A has been either been applied or granted. As the work pursuant to a Floodplain Development Permit progresses, the *Floodplain Administrator* shall make as many inspections of the work as necessary to ensure that the work is being done according to provisions of Subpart A and the terms of the permit. In exercising this power, the *Floodplain Administrator* (or his/her designee) has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of Henderson County at any reasonable hour for the purposes of inspection or other enforcement action.
- (20) ~~Issue stop work orders as required.~~ Stop-Work Orders. Whenever a *building structure* or part thereof is being constructed, reconstructed, altered, or repaired in violation of ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention), the *Floodplain Administrator* 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.

- (21) Revoke Floodplain Development Permits ~~as required.~~ The *Floodplain Administrator* 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, ~~or~~ 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.
- (22) Certificates of Compliance. Issue certificates of compliance for permitted projects once as-built certifications have been received and approved and once final inspections have been completed.
- (23) Variances. Review flood damage prevention variance requests and make recommendations to the Flood Damage Prevention Board for final action thereon and to report any flood damage prevention variances to *FEMA* and the State of North Carolina upon request.
- (24) Corrective Procedures. Follow through with corrective procedures of [Section 203.5](#) §200A-346 (Violations of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention)).
- (25) Require Statements, Certificates, and Certifications. Require written statements, certificates and certifications or the filing of reports under oath, with respect to pertinent questions relating to complaints or alleged *violations* of ~~this Subpart A~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).
- ~~(26) Floodplain Development Permits. To grant floodplain development permits as authorized by this Chapter.~~
- ~~(27) Special Fill Permits. To issue special fill permits as granted by the Board of Commissioners.~~
- ~~(28) Variances. To review floodplain development variance requests and make recommendations to the Flood Damage Prevention Board for final action thereon.~~
- ~~(29) Record of Floodplain Permits. To keep a record of all floodplain development permits (and related required local, state and federal permits) on file and available for public inspection during regular office hours of the Floodplain Administrator.~~
- (26) Records of Appeals. To maintain records of all *appeal* actions ~~and report any variances to FEMA and the State of North Carolina upon request.~~
- ~~(31) Maintenance of Maps. To maintain a current map repository to include, but not limited to, the FIS Report, FIRM and/or other official flood maps/studies adopted~~

~~under this Chapter, including any revisions thereto including LOMA, issued by state and/or FEMA and notify state and FEMA of mapping needs.~~

~~(32)Maintenance of Letters of Map Amendment. To maintain, in the floodplain development permit file, a copy of all Letters of Map Amendment (LOMAs) issued from FEMA.~~

~~(33)Boundary Interpretation. To interpret, as needed, the exact location of boundaries of the Special Flood Hazard Areas.~~

~~(34)Obtain, Review and Reasonably Utilize Data. To obtain, review and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data and/or non-encroachment area data available from a federal, state or other source, including data developed pursuant to this Chapter (when BFE data has not been provided) in accordance with this Chapter. Obtain, review and reasonably utilize any floodway data and/or non-encroachment area data available from a federal, state or other source (when BFE data is provided but no floodway nor non-encroachment area data has been provided) in accordance with this Chapter in order to administer the provisions of this Chapter.~~

~~(35)Notification of Alteration/Relocation of Watercourse. To notify adjacent communities and the North Carolina 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 FEMA.~~

~~(36)Maintenance of Altered/Relocated Watercourse. To assure that maintenance is provided within the altered or relocated portion of watercourses so that the flood-carrying capacity is not diminished.~~

~~(37)Stop Work Order. To issue stop-work orders as required.~~

(27) Additional Powers and Duties. Perform such additional powers and duties as may be set forth for the *Floodplain Administrator* elsewhere in this Chapter and in other laws and regulations.

§200A-280. Henderson County Manufactured Home Park Administrator

A. Powers and Duties Pursuant to This Chapter. The *Manufactured Home Park Administrator* shall have the following duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:

- (1) Interpretation. To interpret the terms and provisions of this Chapter related to *manufactured home parks*.
- (2) Enforcement. To enforce the provisions of this Chapter including properly investigating complaints from *persons* who allege that *violations* of this Chapter have occurred and initiating appropriate action as necessary to prevent, enjoin, abate or remove any *violations* found. The *Manufactured Home Park Administrator*, or his/her duly authorized representative, may enter any *building, structure* or premises, as provided by law, to perform any duty imposed upon him/her by this Chapter.

ARTICLE XI REVIEW PROCESSES AND PROCEDURES

Subpart A. Site Plan Review and Approval

§200A-295. General

Site Plans shall contain all applicable information as required herein and shall adhere to the applicable review and approval process as outlined in this subpart. To lessen the time required to obtain all necessary approvals, the *Site Plan* approval processes may run concurrently with a *building* plan review, an application for a land-disturbing permit, or other applications for approvals required for the particular development. When a watershed development plan approval is required, that approval shall be a prerequisite to *Site Plan* approval. *Site Plans* are required where the individual consideration of design, configuration and/or operation of a *use* at a proposed site is/are necessary to ensure site appropriateness, compatibility with surrounding *uses* and the protection of the public health, safety and welfare.

§200A-296. Communication Facility Site Plan Review.

- A. Approval Authority. *Communication Facilities Administrator*.
- B. Staff Review. The *Communication Facilities Administrator* shall review the proposal and determine its completeness, finding that the regulations of this Chapter that set forth specific development standards (see SR 9.3 (Communication Facilities) and (§200A-316 (Category One (1) or Two (2) Communication Facility Permits) and §200A-317 (Category Three (3) Communication Facility Permits)) have been met.
- C. Permit Validity. The *Communication Facilities Administrator* or Zoning Board of Adjustment (ZBA) (as determined by facility category) shall grant the applicable *Communication Facility Permit*, in accordance with the process outlined in this section, only after review and approval of the *site plan*.

§200A-297. Manufactured Home Park (MHP) Site Plan Review

- A. Approval Authority. Technical Review Committee (TRC).
- B. Staff Review. All members of the TRC shall sign off on the proposal for approval. The TRC shall not approve a *site plan* unless it makes written findings that the regulations of this Chapter that set forth specific development standards have been met. The TRC shall take action within 30 days of reviewing the *site plan*.
 - (1) Approval. The proposal meets all requirements of this Chapter, and other statutes, ordinances and regulations of the County as submitted and is approved. If the *site plan* is approved by the TRC the *applicant* may proceed with other requirements necessary to obtain a building permit.
 - (2) Conditional Approval. The proposal exhibits only minor deficiencies with regard to this Chapter and other statutes, ordinances and regulations of the County and, after corrections have been made, can be approved. If the *site plan* is granted conditional approval by the TRC the *applicant* shall revise and resubmit the *site plan* to the *MHP Administrator*. The *MHP Administrator* shall review the revised

§200A-318. Floodplain Development Permits

A. Purpose. A Floodplain Development Permit shall be required for any new development in a *Special Flood Hazard Area (SFHA)*, except for *watercourse* alteration and streambank restoration where the same is permitted by the United States Corps of Engineers and, if applicable, the State of North Carolina (for *watercourse* alteration and streambank restoration where a proper and appropriate permit from the United States Corps of Engineers and, if applicable, the State of North Carolina, has been granted, no further permit from Henderson County is required).

B. Permit Issuance. The *Floodplain Administrator* shall issue Floodplain Development Permits.

C. Application.

(1) Application. Application for a Floodplain Development Permit shall be made to the *Floodplain Administrator* on forms furnished by him or her prior to any development activities proposed to be located within *Special Flood Hazard Areas an SFHA*. The following items/information shall be presented to the *Floodplain Administrator* to apply for a Floodplain Development Permit:

- a. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed *floodplain* development:
 1. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed *structures*, ~~the location of~~ utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
 2. The boundary of the *Special Flood Hazard Area* as delineated on the *FIRM* or other flood map as determined in ~~Section 202.2~~ §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas), or a statement that the entire *lot* is within the *Special Flood Hazard Area*;
 3. *Flood zone(s)* designation of the proposed development area as determined on the *FIRM* or other flood map as determined in ~~Section 202.2~~ §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas); or a statement that the entire *lot* is within the *Special Flood Hazard Area*;
 4. The boundary of the *floodway fringe* area, if any, as set out in the *FIRM*;
 5. The boundary of the *floodway(s)* or *non-encroachment area(s)* as determined in ~~Section 202.2~~ §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas);
 6. The *Base Flood Elevation (BFE)*, where provided, as set forth in ~~Sections 202.2, 203.3(K), 203.3(L), 204.4 and/or 204.5~~ §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas); §200A-279 (Henderson County Floodplain Administrator) A

- (Powers and Duties Pursuant to this Chapter) (14), (17), and (18); §200A-203.4 (Standards for Floodplains without Established Base Flood Elevations); and/or §200A-203.5 (Standards for Riverine Floodplains with BFE Data but Without Established Floodways);
7. The old and new location of any *watercourse* that will be altered or relocated as a result of the proposed development; and
 8. Certification of the plot plan by, or under the direct supervision of, a ~~professional~~ registered land surveyor or ~~registered~~ professional engineer ~~and certified by the same~~.
- b. Proposed elevation, and method thereof, of all development within a *Special Flood Hazard Area* including but not limited to:
1. Elevation in relation to *mean sea level* of the proposed reference level (including *basement*) of all *structures*;
 2. Elevation in relation to *mean sea level* to which any nonresidential *structure* in Zone AE, A or AO will be floodproofed; and
 3. Elevation in relation to *mean sea level* to which any proposed utility systems will be elevated or floodproofed;
- c. 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, ~~and b~~ Back-up plans from a registered professional engineer or architect certifying that the nonresidential floodproofed development will meet the floodproofing criteria in ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) are also required.
- d. A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) are met. These details include but are not limited to:
1. 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
 2. Details of sufficient openings to facilitate ~~the unimpeded movements of floodwaters should solid foundation perimeter walls be used in floodplains, in accordance with this subpart;~~ automatic equalization of hydrostatic flood forces on walls in accordance with §200A-203.2 (Specific Standards) D (Elevated Structures) (3) when solid foundation perimeter walls are used in Zones A, AO, and AE.
- e. Usage details of any enclosed space below the ~~regulatory flood protection elevation~~ lowest floor.

- f. 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.
- g. Copies of all other Local, State and Federal permits required prior to Floodplain Development Permit issuance (*Wetlands*, *Endangered Species*, *Erosion and Sedimentation Buffers*, *Riparian Buffers*, Mining, etc.).
- h. Documentation for placement of *recreational vehicles and/or temporary structures* to ensure ~~Section 204.2(F) of this Subpart A~~ the provisions of §200A-203.2 (Specific Standards) F (Recreational Vehicles) are met.
- i. Where the *base flood elevation* data is not provided, the application for a development permit must show construction of the lowest *floor* at least two (2) feet above the *highest adjacent grade*.
- j. A description of proposed *watercourse* alteration or relocation when applicable, including an engineering report on the effects of the proposed project on flood-carrying capacity of the *watercourse* and the effects to properties located both upstream and d downstream; and a map (if not shown on plot plan) showing the location of the proposed *watercourse* alteration or relocation.

(2) Certification Requirements.

- a. 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*. Elevation certification shall be prepared by, or under the direct supervision of, a professional land surveyor or professional engineer and certified by same. 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 (7) 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*. Elevation certification shall be prepared by or under the direct supervision of, a professional land surveyor or professional engineer and certified by same. ~~When floodproofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.~~ Any work done within the seven (7) 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 *Floodplain Development 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 ~~or floodproofed elevation of the reference level~~ and all attendant utilities. Said elevation certification shall be prepared by, or under the direct supervision of, a registered land surveyor or professional engineer and certified by same. 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 *Floodplain Development 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 said corrections required shall be cause to withhold the issuance of a *Floodplain Development Certificate of Compliance/Occupancy*.
- b. **Floodproofing Certificates.** 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~~ **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 floodproofed design elevation of the *reference level* and all attendant utilities, in relation to *mean sea level*. Said *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 submitted. Deficiencies detected by such review shall be corrected by the ~~permit holder~~ **applicant** prior to ~~the beginning of construction~~ **Floodplain Development 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 *Floodplain Development Certificate of Compliance/Occupancy*.
- c. **Engineered Foundation Certificates.** If a *manufactured/mobile home* is placed within ~~a floodway, non-encroachment area, or Floodway fringe~~ **Zone A, AO, or AE** and the elevation of the chassis is above 36 inches in

height, an engineered foundation certification is required per [Section 204.2\(B\)](#) §200A-203.2 (Specific Standards) B (Manufactured/Mobile Homes).

- d. Certification Exemptions. The following *structures*, if located within a ~~floodway, non-encroachment area, or Floodway fringe~~ Zone A, AO, or AE are exempt from the elevation/*floodproofing* certification requirements specified in item ~~C(1)~~ and ~~C(2)~~ above:

1. *Recreational Vehicles* meeting the requirements of §200A-203.2 (Specific Standards) F (Recreational Vehicles)
2. *Temporary structures* meeting requirements of [Section 204.2\(F\)](#) §200A-203.2 (Specific Standards) G (Temporary Nonresidential Structures); and
3. *Accessory structures* less than 150 square feet meeting requirements of [Section 204.2\(G\)](#) §200A-203.2 (Specific Standards) H (Accessory Structures).

(3) Fees. Any review fee established by the Commissioners shall be submitted with the application. The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for permits, plan review, inspections, and other matters pertaining to ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention). No application for a permit or certificate shall be processed unless or until such fees, as established, and all estimated expenses have been paid in full, nor shall any action be taken on *appeals* before the Henderson County Flood Damage Prevention Board unless and until any fees and estimated expenses have been paid in full.

D. **Permit Issuance.** 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 issuance.
- (2) The *Special Flood Hazard Area* determination for the proposed development in accordance with ~~per~~ available data specified in [Section 202.2](#) §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas).
- (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 materials or other development shall encroach into the *floodway, non-encroachment area, or the floodway fringe* area of any *watercourse*, if applicable, except as permitted in [Section 204.1](#) §200A-203.1 (General Standards), or pursuant to a *Special Fill Permit* issued pursuant to [Section 203.6 hereof](#) §200A-323 (Special Fill Permit).
- (7) The flood opening requirements, if in Zones A, AO, or AE.

(8) A statement of limitations of below *BFE* enclosure *uses* (if applicable), including but not limited to parking, ~~building structure~~ access and limited storage only.

E. **Permit Validity.** A Floodplain Development Permit shall be construed as permission to proceed with work and not as authority to violate, cancel, alter, or set aside any of the provisions of ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) or any regulations included by reference. Issuance of a permit shall not prevent the *Floodplain Administrator* from thereafter requiring correction of errors in plans or construction, or *violations* of ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).

(1) **Permit Revocation.** The *Floodplain Administrator* 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.

§200A-319. Manufactured Home Park (MHP) Construction Permits.

- A. **Purpose.** *Manufactured Home Park (MHP) Construction Permits* are required for any construction, alteration or expansion of an *MHP*.
- B. **Permit Issuance.** The *MHP Administrator* shall issue the permit. No permit shall be issued until the *MHP Site Plan* has been reviewed and approved by the Technical Review Committee (*TRC*).
- C. **Application.**
- (1) **Pre-application Conference.** Each *applicant* for a permit shall meet with the *MHP Administrator* in a pre-application conference prior to, or at the time of, the submittal of a request for approval of the *MHP*. The purposes of this conference are to provide information to the *applicant* regarding the review process and assist in the preparation of the application.
 - (2) **Application.** Each application for a permit shall be submitted along with the appropriate fee(s) and *site plan*, to the *MHP Administrator*. Applications may be modified by the *MHP Administrator* as necessary, who may require the *applicant* to supply additional information pertaining to the *MHP*.
 - (3) **Review Schedule.** Applications shall be submitted on or before the date required by the Planning Department for review of the *MHP Site Plan* at the meeting of the *TRC*.
 - (4) **Fees.** Any review fee established by the Commissioners shall be submitted with the application.
- D. **Staff Review.** Provided the *MHP Site Plan* is approved by the *TRC*, the *MHP Administrator* shall approve the application, noting any site improvements that must be made prior to the issuance of an *MHP Completion of Improvements (COI) Permit* (see §200A-320 (MHP COI Permits)). Site improvements required prior to the issuance of a

COI may include: *buffers, internal roads, vertical clearance on roads, driveways, parking, erosion and sedimentation controls, stormwater drainage, culverts, sewage disposal systems, water supply systems, fire protection, solid waste disposal areas, electrical hookup and/or MHP identification signs.*

- E. Formal Review. None required.
- F. Permit Validity. Upon the issuance of a permit, the *applicant* shall have two (2) years to complete construction of site improvements as stated in such permit for the *MHP* or *phase* thereof, except as otherwise noted below. The *MHP Administrator* may grant a single extension of this time period of up to six (6) months upon submittal by the *applicant* of sufficient justification for this extension.

§200A-320. Manufactured Home Park (MHP) Completion of Improvements (COI) Permits.

- A. Purpose. Completion of Improvements (COI) Permits are required for the leasing of spaces and/or the ability to obtain set-up and building permits for *manufactured/mobile homes* and other *structures* within a *Manufactured Home Park (MHP)*.
- B. Permit Issuance. The *MHP Administrator* shall issue the permit. No permit shall be issued until the *MHP Site Plan* (see §200A-297 (Manufactured Home Park Site Plan Review)) has been reviewed and approved by the Technical Review Committee (*TRC*) through the issuance of an *MHP* construction permit by the *MHP Administrator* (see §200A-319 (MHP Construction Permits)).
- C. Application
 - (1) Pre-Application Conference. None required.
 - (2) Application. Each application for a permit shall be submitted, along with the appropriate fee(s) and *site plan*, to the *Manufactured Home Park Administrator*. Applications shall additionally include one (1) as-built drawing (at a scale of one (1) inch equals 100 feet) of the completed *MHP* or *phase* thereof. Applications may be modified by the *MHP Administrator* as necessary, who may require the *applicant* to supply additional information pertaining to the *MHP*. If the application is found to be incomplete, the *MHP Administrator* shall notify the *applicant* of any deficiencies.
 - (3) Review Schedule. Applications shall only be accepted when site improvements for the *MHP* or *phase* thereof are complete and the *applicant* has provided evidence that property addresses have been assigned to each *manufactured/mobile home* and any other *structures*.
 - (4) Fees. Any review fee established by the Commissioners shall be submitted with the application.
- D. Staff Review. The *MHP Administrator* shall process and review all applications for the permit after submitted. The *MHP Administrator* shall: (1) make an inspection of the *MHP* to ensure compliance with this Chapter; (2) verify that required site improvements as listed on the *MHP* construction permit (see §200A-319 (MHP Construction Permits)) have been made; and, if the inspection shows the *MHP* adheres to those standards

§200A-322. Soil Erosion and Sedimentation Control Permits (See §200A-224 (Erosion and Sedimentation Control Plans))

§200A-323. Special Fill Permits

A. Purpose. *Special Fill Permits* in the *flood fringe* may be granted by the Flood Damage Prevention Board in particular cases meeting specific community need and subject to appropriate conditions and safeguards.

- (1) Proposed *encroachment* would not result in any increase in the flood levels during the occurrence of the *base flood*; and,
- (2) *Special Fill Permit*, if granted will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed; and,
- (3) Proposed *encroachment* will not violate any other Federal, State or Henderson County laws, rules, ordinances, or regulations; and,
- (4) *Special Fill Permit*, if granted, will comply with the *Comprehensive Plan*, and that, if granted, it will advance a public or community purpose, and that such purpose is sufficiently substantial to justify issuance of the *Special Fill Permit*.

Any grant of a *Special Fill Permit* by the Flood Damage Prevention Board may include conditions, which must be satisfied by the *applicant*. These conditions must be based on evidence presented at the hearing, and must be related to increasing the flood-control capabilities of the parcel for which the fill permit is sought.

B. Permit Issuance. The Flood Damage Prevention Board shall have the power to grant permits for special fill in the *flood fringe*. In order to grant a *Special Fill Permit*, the Flood Damage Prevention Board must conclude that the:

C. Application.

- (1) **Application.** The application for the permit shall be on a form provided by the [Henderson County Code Enforcement Services Department-Floodplain Administrator](#), and shall be submitted prior to any fill activity requiring a *Special Fill Permit*. The application shall include the following:
 - a. Certification, on a form as published by *FEMA*, or acceptable alternative form approved by *FEMA*, of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, that the proposed *encroachment* would not result in any increase in the flood levels during the occurrence of the *base flood*; or
 - b. Technical documentation in the form of hydraulic analysis of the existing and proposed conditions. This documentation shall be either: complete runs of existing and proposed conditions using the HEC II/HEC-RAS step backwater analysis computer program as prepared by the US Army Corp. of Engineers for the analysis of flow plan hydraulics; or
 - c. An alternative method currently approved by *FEMA* for use in the revision process for *FEMA* flood maps. In this case, the engineer shall provide a letter from *FEMA* indicating that the method used is acceptable; and,

- d. Any other technical documentation in the form of detailed site and construction plans, showing that all requirements of ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) are met.
 - e. The application shall also include certification of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, demonstrating that the *Special Fill Permit*, if granted, will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed.
 - f. The application shall include information demonstrating compliance with the *Comprehensive Plan*, and demonstrating the substantial public or community purpose(s) which the *Special Fill Permit*, if granted, will advance. Examples of substantial public or community purpose(s) advanced by the *Special Fill Permit*, if granted, which must be demonstrated include:
 - 1. Advancing a governmental purpose, which includes promoting and preserving *use of land for agriculture*.
 - 2. Meeting public infrastructure needs.
 - 3. Projects which fall under the Board of Commissioners' Economic Incentives Guidelines.
 - 4. Redevelopment projects which have the effect of substantially increasing the flood-control capabilities of the parcel.
 - g. A complete listing of the names and mailing addresses of all owners of real property adjacent to the parcel upon which the *Special Fill Permit* is proposed.
- (2) Fees. Any review fee established by the Commissioners shall be submitted with the application. The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for permits, plan review, inspections, and other matters pertaining to ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention). No application for a permit or certificate shall be processed unless or until such fees, as established, and all estimated expenses have been paid in full, nor shall any action be taken on *appeals* before the Henderson County Flood Damage Prevention Board unless and until any fees and estimated expenses have been paid in full.
- D. Staff Review. ~~Applications shall be made to the Floodplain Administrator, and shall be accompanied by any fee therefore as set by the Board of Commissioners and all estimated costs to the County as determined by the Zoning Department staff. Zoning Department staff~~ The Floodplain Administrator shall review the application for compliance with ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) and transmit the application to Federal, State and local agencies for review and comment. ~~Zoning Department staff~~ The Floodplain Administrator shall place the application on the agenda of the first regular Planning Board meeting after at least 30 days from the receipt of a complete application.

- E. **Formal Review.** Neither the review by the Planning Board nor the hearing before the Flood Damage Prevention Board shall be quasi-judicial in nature.

(1) Henderson County Planning Board Review and Recommendation.

- a. Public notification of the Planning Board meeting shall comply with the provisions of §200A-339 (Quasi-Judicial Process Standards). The *Floodplain Administrator* shall be responsible for all necessary public notifications.
- b. The Planning Board shall hear a summary and review of the application by ~~Zoning Department staff~~ the *Floodplain Administrator*, evidence as presented by the *applicant*, and such other evidence as the Planning Board may find useful.
- c. The Planning Board shall, within 60 days of the date the application is first considered by the Planning Board, issue its recommendation to the ~~Board of Commissioners~~ Flood Damage Prevention Board as to the grant or denial of the application.

(2) Flood Damage Prevention Board Public Hearing.

- a. Public notification of the Planning Board meeting shall comply with the provisions of §200A-339 (Quasi-Judicial Process Standards). The *Floodplain Administrator* shall be responsible for all necessary public notifications.
- b. The Flood Damage Prevention Board shall consider a summary of the proposed project from the ~~Zoning Department staff~~ *Floodplain Administrator*, evidence in support of the project and concerning the issues upon which proof must be submitted under ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) from the *applicant*, evidence from adjacent property owners, and such other evidence as the Flood Damage Prevention Board finds useful.
- c. At the conclusion of the public hearing, the Flood Damage Prevention Board shall issue its decision within the time limits established in Rule 47 of the Board of Commissioners' Rules of Procedure.

- F. **Permit Validity.** A *Special Fill Permit* shall be construed as permission to proceed with work and not as authority to violate, cancel, alter, or set aside any of the provisions of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention) or any regulations included by reference. Issuance of a permit shall not prevent the *Floodplain Administrator* from thereafter requiring correction of errors in plans or construction, or *violations* of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).

§200A-324. Special Intensity Allocation (SIA)

- A. **Purpose.** Special Intensity Allocation (*SIA*) is permitted on up to ten (10) percent of the total acreage within the balance of a WP-WS-II-BW Colt Creek and Mills River, WP-WS-III-BW Lower Mills River or a WP-WS-IV-PA Upper French Broad River watershed overlay sub-district. Acreage approved as a special intensity allocation may be developed with up to 70 percent *built-upon area*.

§200A-336. Variances (Flood Damage Prevention)

A. Purposes. Flood Damage Prevention Variances are intended to provide limited relief from the requirements of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).

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B. Application.

(1) Application. Each application for a Flood Damage Prevention Variance shall be submitted along with a written report addressing each of the factors identified by §200A-336 (Variances (Flood Damage Prevention)) E(1) (Granting Variances).

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(2) Fees. The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for Flood Damage Prevention Variances and other matters pertaining to Article VIII (Natural Resources) Subpart A (Flood Damage Prevention). No application for a Flood Damage Prevention Variance, shall be processed unless or until such fees, as established, and all estimated expenses have been paid in full.

C. Eligibility for Flood Damage Prevention Variance. Flood Damage Prevention 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 an historic *structure* and the Flood Damage Prevention 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 XIV, provided provisions of §200A-336 (Variances (Flood Damage Prevention)) 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

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(3) Any other type of development, provided it meets the requirements *stated in this section* of §200A-336 (Variances (Flood Damage Prevention)) and Article VIII (Natural Resources) Subpart A (Flood Damage Prevention); or

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(4) *Solid waste disposal facilities, 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:

a. The *use* serves a critical need in the community;

b. No feasible location exists for the *use* outside the *Special Flood Hazard Area*;

c. The *reference level* of any *structure* is elevated or floodproofed to at least the *regulatory flood protection elevation*;

d. The *use* complies with all other applicable Federal, State and local laws;

- e. Henderson County has notified the Secretary of the North Carolina department of Crime Control and Public Safety of its intention to grant a *variance* at least 30 calendar days prior to granting the *variance*.

(5) But not for *special fill permits*, pursuant to [Section 203.7](#), §200A-323 (Special Fill Permit Procedures) herein.

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D. Public Hearing. Prior to considering the Flood Damage Prevention Variance application, the Flood Damage Prevention Board shall hold a public hearing on the application in accordance with §200A-339 (Quasi-Judicial Process Standards).

E. Granting Flood Damage Prevention Variances.

(1) In determining whether to grant or deny Flood Damage Prevention Variances, the Flood Damage Prevention Board shall consider all technical evaluations, all relevant factors, all standards specified in [other section of this subpart](#), Article VIII (Natural Resources) Subpart A (Flood Damage Prevention), and:

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- a. The danger that materials may be swept onto other lands to the injury of others;
- b. The danger to life and property due to flooding or *erosion* damage;
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d. The importance of the services provided by the proposed facility to the community, including the retention of land for *agriculture*;
- e. The necessity to the facility of a waterfront location as defined under Article XIV (Definitions) as a *functionally dependent facility*, where applicable;
- f. The availability of alternative locations, not subject to flooding or *erosion* damage, for the proposed *use*;
- g. The compatibility of the proposed *use* with existing and anticipated development;
- h. The relationship of the proposed *use* to the *Comprehensive Plan* and *floodplain management* program for that area;
- i. The safety of access to the property in times of flood for ordinary and emergency *vehicles*;
- j. 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
- k. 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 *roads* and bridges.

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(2) Upon consideration of the factors listed above and the purposes of [this subpart](#), Article VIII (Natural Resources) Subpart A (Flood Damage Prevention), the

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Flood Damage Prevention Board may attach such conditions to the granting of Flood Damage Prevention Variances as it deems necessary to further the purposes and objectives of ~~this subpart~~ Article VIII (Natural Resources) Subpart A (Flood Damage Prevention).

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(3) ~~Other considerations to be considered by the~~ There are additional considerations of the Flood Damage Prevention Board in determining whether to grant or deny a Flood Damage Prevention Variance. Flood Damage Prevention Variances shall:

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- a. Not be issued when the Flood Damage Prevention Variance will make the *structure* in violation of other Federal, State, or local laws, regulations, or ordinances.
- b. Not be issued within any designated *floodway* or *non-encroachment area* if any increase in flood levels during the *base flood* discharge would result.
- c. Only be issued upon a determination that the Flood Damage Prevention Variance is the minimum necessary, considering the flood hazard, to afford relief.
- d. Only be issued prior to Floodplain Development Permit (see §200A-318 (Floodplain Development Permit)) approval.
- e. Only be issued upon:
 - 1. A showing of good and sufficient cause;
 - 2. A determination that failure to grant the Flood Damage Prevention Variance would result in exceptional hardship; and
 - 3. A determination that the granting of a Flood Damage Prevention 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.

F. **Written Notice.** 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 a written statement that the cost of *flood insurance* will be commensurate with the increased risk resulting from the reduced *reference level* elevation. Such notification shall be maintained with a record of all *variance* actions.

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§200A-337. Variances (Watershed)

A. Purpose. *Watershed Variances* are intended to provide limited relief from the requirements of Article VIII Subpart B. *Water Supply Watershed* Protection in those cases where the strict application of the provisions of this Chapter would result in unnecessary hardship. Any *use* which requires a *Watershed Variance* shall not be permitted without the approval of the Watershed Review Board in accordance with the requirements and procedures set forth in this section.

B. Application.

ARTICLE XII ENFORCEMENT, VIOLATIONS, AND APPEALS

§200A-344. Duties Regarding Enforcement

The *Zoning Administrator, Communication Facilities Administrator, Floodplain Administrator, Manufactured Home Park Administrator, Watershed Administrator, Planning Director, and Subdivision Administrator* are hereby authorized to enforce the provisions of this Chapter. These approving officials may enter any *building, structure* or premises as provided by law, to perform any duty imposed upon them by this Chapter.

§200A-345. Violations

Notices concerning *violations* of the provisions of this Chapter shall be provided to the *person(s)* alleged to be in *violation* in accordance with Chapter I, *General Provisions*, Article II, *Penalties and Enforcement* of the Henderson County Code.

- A. Notification. Upon making a determination that a *person* is in *violation* of this Chapter, the County shall issue a compliance order to the *person* in *violation* of this Chapter which shall notify the violator of the *violation* in writing. Such compliance order (notification of *violation*) shall:
 - (1) Identify the circumstances giving rise to the *violation*, including the times, dates and places of the *violation*;
 - (2) Identify the action(s) necessary to comply with this Chapter;
 - (3) State that the violator shall comply within a reasonable time, not to exceed 15 days, or be subjected to a civil penalty (except where circumstances exist such that the violator cannot come into compliance within 15 days, and at which time the County may grant an extension of time commensurate with the magnitude of the *violation*);
 - (4) State that failure to comply with the terms of the compliance order will subject the violator to a civil penalty; and
 - (5) State the amount of applicable civil penalty.
- B. Failure to Comply. Failure to comply with the terms of a compliance order within the time stated in the order shall subject the violator to a civil penalty of 50 dollars. Each day that the *violation* continues shall be considered a separate offense and the violator may be subject to an additional civil penalty for each such separate offense.
- C. Penalties and Remedies. Penalties and remedies for *persons* found to be in *violation* of this Chapter shall be as set forth in Chapter I, *General Provisions*, Article II, *Penalties and Enforcement* of the Henderson County Code. Such penalties and remedies shall include:
 - (1) Civil Action. When necessary to collect any civil penalty or accrued civil penalties, a civil action may be instituted against an individual for the collection of all accrued penalties.

- (2) Equitable Remedies. This Chapter may be enforced by equitable remedies, and any unlawful condition existing in *violation* of this Chapter may be enforced by injunction and order of abatement in accordance with *NCGS* §153A-123.
- (3) Injunction. Where necessary to effect compliance with this Chapter, the County may institute an action in a court of competent jurisdiction seeking an injunction against the further *violation* of this Chapter. Such action may be joined with a civil action instituted to collect accrued civil penalties in accordance with the provisions above.
- (4) Order of Abatement. Where necessary to abate a condition existing upon land in *violation* of this Chapter or a *use* made of land in *violation* of this Chapter, the County may institute an action in a court of competent jurisdiction seeking an order of abatement of the *use* or condition of land in *violation* of this Chapter. Such action may be joined to an action for an injunction and/or an action to recover civil penalties accrued against an individual for the *use* or condition of land in *violation* of this Chapter.
- (5) Stop-Work Order. If any *building* or *structure* is erected, constructed, repaired, converted, or maintained or any *building*, *structure* or land is used in violation of the Henderson County Code, the *Zoning Administrator* or any other appropriate authority may institute a stop-work order if further action by the violator would cause irreparable harm or damage. Once a stop-work order has been issued, no work may be done on the *structure* or property until authorized by Henderson County Code Enforcement Services or a court of appropriate jurisdiction.
- (6) Other Equitable Remedies. This Chapter may be enforced by any other equitable remedy which a court of competent jurisdiction deems just and proper.

§200A-346. Violations of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention)

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A. **Violations to be Corrected.** When the *Floodplain Administrator* finds *violations* of applicable State and local laws, it shall be his or her duty to notify the owner of occupant of the *building structure* of the *violation*. The owner or occupant shall immediately remedy each of the *violations* of law *pertaining to their property* cited in such notification.

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B. **Actions in the Event of Failure to Take Corrective Action.** If the owner of a *building structure* or property shall fail to take prompt corrective action, the *Floodplain Administrator* shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating that:

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(1) The *building structure* or property is in *violation* of the *floodplain management regulations* *Flood Damage Prevention of this Chapter* of Article VIII (Natural Resources) Subpart A (Flood Damage Prevention);

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(2) An informal hearing will be held before the *Floodplain Administrator* at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in *person* or by counsel and to present arguments and evidence pertaining to the matter; and,

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(3) Following the hearing, the *Floodplain Administrator* may issue such order to alter, vacate, or demolish the ~~building structure~~; or to remove fill as ~~appears appropriate~~ applicable.

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C. **Order to Take Corrective Action.** If, upon a hearing held pursuant to the notice prescribed above, the *Floodplain Administrator* shall find that the ~~building structure~~ or development is in violation of ~~the Flood Damage Prevention subpart of this Chapter~~ Subpart A, he or she shall ~~make~~ issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the *Floodplain Administrator* finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

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D. **Appeal.** Any owner who has received an order to take corrective action may *appeal* the order to the Henderson County Flood Damage Prevention Board by giving notice of *appeal* in writing to the *Floodplain Administrator* and the clerk within ten (10) days following issuance of the final order. In the absence of an *appeal*, the order of the *Floodplain Administrator* shall be final. The Henderson County Flood Damage Prevention Board shall hear an *appeal* within a reasonable time and may affirm, modify and affirm, or revoke the order.

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E. **Failure to Comply with Order.** If the owner of a ~~building structure~~ or property fails to comply with an order to take corrective action from which no *appeal* has been made, or fails to comply with an order of the ~~Board of Commissioners~~ Flood Damage Prevention Board following an *appeal*, the owner ~~he~~ shall be guilty of a misdemeanor and shall be punished at the discretion a court of competent jurisdiction.

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§200A-347. Appeals

Questions arising in connection with the enforcement of this Chapter shall be presented first to the approving official or agency and shall be presented to the appellate agency only on *appeal* from the approving official or agency (See Table 12.1). *Appeals* must be filed 30 days from the date of the decision with the approving official or agency. Where the appellate agency is the Zoning Board of Adjustment (*ZBA*), the *ZBA* shall hold a public hearing on the *appeal* in accordance with §200A-338 (Quasi-Judicial Process Standards).

ARTICLE XIV DEFINITIONS

§200A-359. Definitions

The following definitions shall apply to this Chapter.

Addition. An extension or increase in the *floor area* or height of an existing ~~building or structure~~.

Administrator, Floodplain. The individual (*Zoning Administrator* or his/her designee) appointed and authorized to administer and enforce the *floodplain management regulations* under the terms and conditions of this Chapter.

Appeal. A request for a review of: (1) the *Zoning Administrator's* interpretation of any provision of this Chapter; (2) any official written determination by the *Zoning Administrator*; (3) the *Subdivision Administrator's* interpretation of any *subdivision* regulations/provisions of this Chapter; (4) any official written determination by the *Subdivision Administrator*; (5) the *Soil Erosion and Sedimentation Control Administrator's* interpretation of any soil erosion and sedimentation regulations/provisions of this Chapter; (6) any official written determination by the *Soil Erosion and Sedimentation Control Administrator*; (7) the *Floodplain Administrator's* interpretation of any flood damage prevention regulations/provisions of this Chapter; or (78) any decision made by a planning agency or governing body. An appeal must be made within 30 days of an official written determination by the *Zoning/Subdivision/Soil Erosion and Sedimentation Control Administrator* or an official decision made by a planning agency or governing body.

~~Appeal (Flood). A request for a review of the Floodplain Administrator's interpretation of any provisions of this Chapter.~~

~~Bankfull. The water level, or stage, at which a stream, river or lake is at the top of its banks and any further rise would result in water moving into the floodplain.~~

Base Flood Elevation (BFE). A determination of the *water surface elevations* of the *base flood* as published in the *Flood Insurance Study* ~~of the water surface elevations of the base flood~~. When the BFE has not been provided in a *Special Flood Hazard Area*, it may be obtained from engineering studies available from a Federal, State or other source using *FEMA* approved engineering methodologies. This elevation, when combined with *freeboard*, established the *Regulatory Flood Protection Elevation*.

Basement (Flood Damage Prevention). Any area of the ~~building structure~~ having its *floor* sub-grade (below ground level) on all sides.

~~Building (Flood Damage Prevention). Any structure having a roof supported by columns and by walls and intended for shelter, housing or enclosure of persons, animals, or chattels.~~

Chemical Storage Facility. A ~~building structure~~, portion of a ~~building structure~~ or exterior area adjacent to a ~~building structure~~ used for the storage of any chemical or chemically reactive products.

Development (Flood Damage Prevention). Any man-made change to improved or unimproved real estate, including but not limited to, ~~buildings or other structures~~, mining, dredging, filling, grading, paving, excavating operations, drilling operations, or storage of equipment or materials.

Gray highlighted text indicates technical text changes including cross referencing.
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Disposal (Flood Damage Prevention). The discharge, deposit, injection, dumping, spilling, leaking or placing of any *solid waste* into or on any land or water so that the *solid waste* or any constituent part of the *solid waste* may enter the environment or be emitted into the air or discharged into any waters, including groundwaters (NCGS §130A-290(a)(6)).

Elevated Building Structure. A non-basement *building structure* which has its *reference level* raised above ground level by foundation walls, *shear walls*, posts, piers, pilings or columns.

Encroachment (Flood). The advance or infringement of *uses*, fill, excavation, *permanent structures* or development into a *floodplain*, which may impede or alter the flow capacity of a *floodplain*.

Flood/Flooding. A general and temporary condition of partial or complete inundation of normally dry land *areas* from: the overflow of inland or tidal waters; *and/or* the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Boundary and Floodway Map (FBFM). An official map of a community, issued by the Federal Insurance and Mitigation Administration of *FEMA*, on which the 100-year flood boundary (also known herein as “*Special Flood Hazard Area*” and “*floodplain*”), *floodway fringe* and *floodways* are delineated. This official map is a supplement to, and shall be used in conjunction with, the *Flood Insurance Rate Map (FIRM)*.

Flood Hazard Boundary Map (FHBM). An official map of a community, issued by the Federal Insurance and Mitigation Administration of *FEMA*, where the boundaries of the *Special Flood Hazard Areas* have been defined as *Zone A*.

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Flood Fringe. The flood fringe as shown on the *Flood Boundary and Floodway Map (FBFM)*.

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Flood Insurance. The insurance coverage provided under the National Flood Insurance Program managed by the *Mitigation Division of FEMA*.

Flood Insurance Rate Map (FIRM). An official map of a community, issued by ~~the Federal Insurance and Mitigation Administration of~~ *FEMA*, on which both the *Special Flood Hazard Areas* and the risk premium zones applicable to the community are delineated.

Flood Insurance Study (FIS). An examination, evaluation and determination of flood hazard areas, corresponding *water surface elevations* (if appropriate), *flood insurance* risk zones and other flood data in a community issued by *FEMA*. The Flood Insurance Study report includes *Flood Insurance Rate Maps (FIRMs)* ~~and *Flood Boundary and Floodway Maps (FBFMs)* if published.~~

Flood Zone. A geographic area shown on a ~~*Flood Hazard Boundary Map (FHBM)* or *Flood Insurance Rate Map (FIRM)*~~ that reflects the severity or type of flooding in the area.

Floodplain. Any land area susceptible to being inundated by water from any source, ~~as designated on an official *FEMA* flood map or other official flood map.~~

Floodplain Management Regulations. This Chapter, building codes, health regulations, special purpose ordinances, and other applications of police power ~~which control development in flood prone areas.~~ This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

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Floodproofing. Any combination of structural and nonstructural *additions*, changes or adjustments to *structures*, which reduce or eliminate ~~risk of~~ flood damage to real estate, improved real property, water facilities, sanitation facilities, or *structures* and ~~with~~ their contents.

Floodway Fringe. The floodway fringe as shown on the *Flood Boundary and Floodway Map (FBFM)*.

Freeboard. The height added to the *Base Flood Elevation (BFE)* to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed, ~~watershed development as well as limitations of the engineering methodologies for the determination of flood elevations.~~ The *Base Flood Elevation (BFE)* ~~freeboard~~ plus the *BFE* ~~freeboard~~ establishes the *Regulatory Flood Protection Elevation*.

Functionally Dependent Facility (Flood). A facility which cannot be used for its intended purpose unless it is located in close proximity to water, ~~limited to~~ ~~such as~~ a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

Highest Adjacent Grade (HAG). The highest natural elevation of the ground surface prior to construction, ~~immediately~~ next to the proposed walls of the *structure*.

Historic Structure. A *structure* that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program” ~~places~~; or
- (4) Certified as contributing to the historical significance of a historic district designed by a community with a “Certified Local Government (CLG) Program”.
- (5) ~~Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by:~~
 - ~~a. An approved state program as determined by the Secretary of Interior, or~~
 - ~~b.a. The Secretary of Interior (directly) in states without approved programs.~~

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National historic Preservation Act of 1966 as amended since 1980.

Lowest Adjacent Grade. The elevation of the ground, sidewalk or patio slab immediately next to the *structure*, or deck support, after completion of the *structure*.

Lowest Floor. The lowest floor ~~(The subfloor, top of slab or grade)~~ of the lowest enclosed area (including *basement*). An unfinished or flood resistant enclosure, usable solely for parking of *vehicles*, building access or limited storage in an area other than a *basement* area is not

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considered a *building's* lowest floor provided that such an enclosure is not built so as to render the *structure* in violation of the applicable non-elevation design requirements of this Chapter.

Manufactured Home Park/Manufactured Home Subdivision, Existing. A *manufactured home park* or *manufactured home subdivision* for which the construction of facilities for servicing the *lots* on which the *manufactured homes* are to be affixed (including, at a minimum, the installation of utilities, the construction of *roads* and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community (July 5, 2005) ~~is pre-FIRM.~~

Market Value. The ~~*building-structure*~~ value, excluding the land value and that of any *accessory structures* or other improvements to the *lot* (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of ~~*building-structure*~~ (actual cash value) or adjusted assessed values.

New Construction. *Structures* for which the “*start of construction*” commenced on or after the effective date of the ~~initial floodplain management regulations (July 5, 2005)~~ ~~original version of this Chapter (or portions thereof)~~ and includes any subsequent improvements to such *structures*.

Nonconforming Building Structure or Development (Flood Damage Prevention). Any legally existing ~~*building-structure*~~ or development which fails to comply with the current flood damage prevention provisions of this Chapter.

Obstruction (Flood Damage Prevention). Includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, *building*, wire, fence, rock, gravel, refuse, fill, *structure*, vegetation or other material in, along, across or projecting into any *watercourse* which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, increase its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

Post-FIRM. Construction or other development for which the “*started* of construction” occurred on or after January 1, 1975 or on or after the effective date (March 1, 1982) of the initial *FIRM* for the area, whichever is later.

Pre-FIRM. Construction or other development for which the “*started* of construction” occurred before January 1, 1975 or before the effective date (March 1, 1982) of the initial *FIRM* for the area, whichever is later.

Principally Above Ground. At least 51 percent of the actual cash value of the *structure* is above ground.

Recreational Vehicle (RV) (Flood Damage Prevention). A vehicular-type unit primarily designed as a temporary and mobile living quarters for recreational, camping or travel use, which either has its own mode of power or is mounted on and drawn by another *vehicle*. Such units do not satisfy the dimensional requirements of a *manufactured home*. A vehicle which is: (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projection; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use.

Reference Level. The top of the *lowest floor* for structures within *Special Flood Hazard Areas* designed as Zone A1, A30, AE, A, A99 or AO. The portion of a *structure* or other development that must be compared to the *regulatory flood protection elevation* to determine regulatory compliance of such ~~building~~ *structure*. ~~Within Special Flood Hazard Areas the reference level is the top of the lowest floor.~~

Regulatory Flood Protection Elevation. The *Base Flood Elevation* plus the *Freeboard*. The elevation to which all *structures* and other development located within the *Special Flood Hazard Areas* must be elevated or *floodproofed*. ~~In Special Flood Hazard Areas~~ ~~Within areas~~ where *Base Flood Elevations (BFE's)* have been determined, this elevation shall be the *BFE* plus two (2) feet of *freeboard*, ~~not to exceed a total elevated height of six (6) feet.~~ In areas where no *BFE* has been established, all *structures* and other development must be elevated or *floodproofed* to two (2) feet above the *highest adjacent grade*, ~~not to exceed six (6) feet total elevated height or BFE~~ whichever is greater.

Road (Flood). ~~A dedicated public or private right-of-way for vehicular traffic.~~

Shear Wall. Walls used for structural support but not structurally joined or enclosed at the end (except by breakaway walls). Shear walls are parallel or nearly parallel to the flow of water.

Solid Waste Disposal Facility (Flood Damage Prevention). Facility involved in the disposal of *solid waste*, as defined in NCGS 130A-290(a)(35). Land, personnel and equipment used in the management of *solid waste*. *Solid waste* management facilities include the following: (1) transfer station; (2) *landfill*; or (3) materials recovery facility.

Solid Waste Disposal Site. Any place at which *solid wastes* are disposed of by incineration, sanitary *landfill*, or any other method ~~The same as "solid waste disposal site"~~ as defined as in (NCGS §130A-290(a)(36)).

Special Fill Permit. A permit granted pursuant to the procedures set out in of this Chapter to fill an area of the ~~floodway~~ *fringe* greater than the area of ~~floodway~~ *fringe* permitted by this Chapter in accordance with the requirements of this Chapter.

Special Flood Hazard Area (SFHA). The land in the *floodplain* subject to a one (1) percent or greater chance of being flooded in any given year, determined in §200A-201.2 (Basis for Establishing the Special Flood Hazard Areas) ~~Henderson County Flood Damage Prevention Ordinance.~~

Start of Construction. Includes *substantial improvement*, and means the date the building permit was issued, provided the actual *start of construction*, repair, reconstruction, rehabilitation, *addition*, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a *structure* (including a *manufactured/mobile home*) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the state of excavation; or the placement of a *manufactured/mobile home* on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of *roads* and/or walkways; nor does it include excavation for a *basement*, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of *accessory structures*, such as *garages* or sheds not occupied as *dwelling units* or not part of the main *structure*. For *substantial improvement*, the actual *start of construction* means the first alteration

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of any wall, ceiling, *floor* or other structural part of the ~~building~~*structure*, whether or not that alteration affects the external dimensions of the ~~building~~*structure*.

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Stop-Work Order. The ~~Zoning~~*Floodplain* Administrator may issue a stop-work order where *floodplain* development is occurring, in accordance with specific procedures and reasons outlined therefore.

Structure (Flood Damage Prevention). Anything constructed or erected, the *use* of which requires permanent location on the ground or which is attached to something having permanent location on the ground; however, anything constructed or erected solely to provide ingress and egress to the site, ornamental enhancement of the property (exclusive of *buildings*), site stabilization, on-site utilities/lighting or property fencing shall not be considered a *structure* for the purposes of the *floodplain management regulations* of this Chapter.

Structure, Appurtenant. (See *Structure, Accessory*).

Substantial Damage. Damage of any origin sustained by a *structure* during any one (1) year period whereby the cost of restoring the *structure* to its before-damaged condition would equal or exceed 50 percent of the *market value* of the *structure* before the damage occurred. Improvements, modifications and *additions* to existing *buildings* are counted cumulatively for a minimum of five (5) years. See definition of *Substantial Improvement*.

Substantial Improvement. Repair, reconstruction, rehabilitation, *addition* or other improvement of a *structure*, taking place during any one (1) year period, the cost of which equals or exceeds 50 percent of the fair *market value* of the *structure* before the *start of construction* of the improvement, or when an existing *building* is structurally altered such that the first floor area is increased by more than 20 percent. Improvements, modifications and *additions* to existing *buildings* are counted cumulatively for a minimum of five (5) years. This term includes *structures* which have incurred *substantial damage*, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any correction of existing *violations* of State or Henderson County health, sanitary or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of an *historic structure* provided that the alteration will not preclude the *structure's* continued designation as an *historic structure*.

Variance (Flood Damage Prevention). A grant of relief from the requirements of this Chapter related to flood damage prevention regulations.

Violation (Flood Damage Prevention). The failure of a *structure* or other development to be fully compliant with the County's *floodplain management* ~~damage prevention~~*regulations*. A *structure* or other development without an elevation certificate, other certifications or other evidence of compliance required in §200A-202 (Administration) and §200A-203 (Flood Hazard Reduction) ~~with the flood damage prevention requirements~~, is presumed to be in *violation* until such time as that documentation is provided.