

Henderson County Planning Department

213 1st Avenue East Hendersonville, North Carolina 28792
Phone (828) 697-4819 Fax (828) 697-4533

MEMORANDUM

DATE: December 19, 2007
TO: Technical Review Committee
Review Agencies (see distribution list)
TRC MEETING DATE: January 2, 2008
REGARDING: Adger Oak Major Subdivision Application #2007-M18
NAME OF APPLICANT: Gary W. Firmender, Applicant/Owner
DEPARTMENT: Planning
STAFF CONTACT: Matthew Cable, Planner
ATTACHMENTS: Request for Committee Action with Attachments

Please find attached plans for the following development proposal to be reviewed by the Henderson County Technical Review Committee on January 2, 2008.

Combined Master and Development Plan for Adger Oak Major Subdivision (2007-M18)

Mr. Jon Laughter, with Laughter, Austin and Associates, P.A., agent, on behalf of Gary W. Firmender, owner, submitted the Combined Master and Development Plan for this project. Adger Oak is a development proposed to contain 29 single family lots (see Combined Master and Development Plan). The project site is located on approximately 43.82 acres of land (PIN: **0610-71-9536**) located off Charles Trail.

The project is not located in a water supply watershed district nor is it located within the floodplain (see Combined Master and Development Plan). According to County records, the project site does contain slopes in excess of 60 percent but does not contain a protected mountain ridge. The project is located in the Residential Three (R3) zoning district. Private individual wells and private individual septic are proposed.

Please review the attached Request for Board Action and Staff Report and return any comments to the Henderson County Planning Department by **December 31, 2007** either by printing out the comment sheet provided and sending it back to the Planning Department at the address on the sheet or send your comments via email to mcable@hendersoncountync.org. When the Henderson County Technical Review Committee reviews the proposed plans your comments will be considered.

Distribution List

Henderson County Technical Review Committee
Terry Layne, Henderson County EMS Director
Curtis Griffin, Henderson County Property Addressing Coordinator
Dr. Stephen Page, Superintendent, Henderson County Public Schools
Commander Eddie Watkins, Henderson County Sheriff's Dept.
Chief Greg Garland, Fletcher Fire & Rescue Department, Inc.
Lee Smith, Director, Hendersonville Water and Sewer Department
Josh Lanning, Assistant District Engineer, NCDOT

REQUEST FOR COMMITTEE ACTION

HENDERSON COUNTY TECHNICAL REVIEW COMMITTEE

MEETING DATE: Wednesday, January 2, 2007

ATTACHMENTS:

1. Staff Report
2. Vicinity Map
3. Photos of Project Site
4. Subdivision Application with Attachments
5. Combined Master and Development Plan

SUBJECT: Combined Master and Development Plan for Adger Oak

SUMMARY OF REQUEST:

Mr. Jon Laughter with Laughter, Austin & Associates, P.A., agent, on behalf of Gary W. Firmender, owner, submitted a Combined Master and Development Plan and major subdivision application for a project known as Adger Oak. The project site is located on 43.82 acres of land (PIN 0610-71-9536) located off of Charles Trail. The applicant is proposing a total of 29 lots that will be used for single-family residential purposes. The project is not located in a water supply watershed district nor is it located within the floodplain (see Combined Master and Development Plan). According to County records, the project site does contain slopes in excess of 60 percent but does not contain a protected mountain ridge. The project is located in the Residential Three (R3) zoning district. Private roads are proposed to serve the project site. Private individual wells and individual septic are proposed to serve the project site.

TECHNICAL REVIEW COMMITTEE ACTION REQUESTED:

Staff has found that the proposed Combined Master and Development Plan appears to meet the technical standards of the subdivision regulations of Chapter 200A, Henderson County Land Development Code (LDC) except for the comments listed in the Staff Report (See Attachment 1). While the Technical Review Committee (TRC) is the approving authority for major subdivisions of 34 or fewer lots, the application was reviewed by the Planning Board under former Chapter 170 (Subdivision Ordinance) and denied (May 17, 2007). Due to the Planning Board's prior review of the original plan, Staff recommends that the Technical Review Committee refer the application with its recommendations to the Planning Board for subdivision approval.

Suggested Motion:

I move that the Technical Review Committee refer the application to the Planning Board for its review and approval;

And

I further recommend that the Combined Master and Development Plan be approved subject to the conditions of the Staff Report (Attachment 1) and any conditions or other comments that result from discussion at the Technical Review Committee meeting.

Alternative Motion:

I move that the Technical Review Committee find and conclude that the Combined Master and Development Plan appears to comply with the subdivision provisions of Chapter 200A, Henderson County Land Development Code;

And

I further move that the Master Plan be approved subject to the conditions that result from the comments listed in the Staff Report (Attachment 1) and any conditions or other comments that result from discussion at the Technical Review Committee meeting.

Henderson County Planning Department Staff Report

Combined Master and Development Plan Review for Adger Oak Major Subdivision (File #2007-M18)

Mr. Gary W. Firmender, Applicant

Mr. Jon Laughter with Laughter, Austin and Associates P.A., Agent

Project Overview:

Mr. Jon Laughter with Laughter, Austin & Associates, P.A., agent, on behalf of Gary W. Firmender, owner, submitted a Combined Master and Development Plan for a project known as Adger Oak. The project site is located on 43.82 acres of land (PIN 0610-71-9536) located off of Charles Trail. The applicant is proposing a total of 29 lots that will be used for single-family residential purposes. The project is not located in a water supply watershed district nor is it located within the floodplain (see Combined Master and Development Plan). According to County records, the project site does contain slopes in excess of 60 percent but does not contain a protected mountain ridge. The project is located in the Residential Three (R3) zoning district. Private roads are proposed to serve the project site. Private individual wells and individual septic are proposed to serve the project site.

Master Plan Comments:

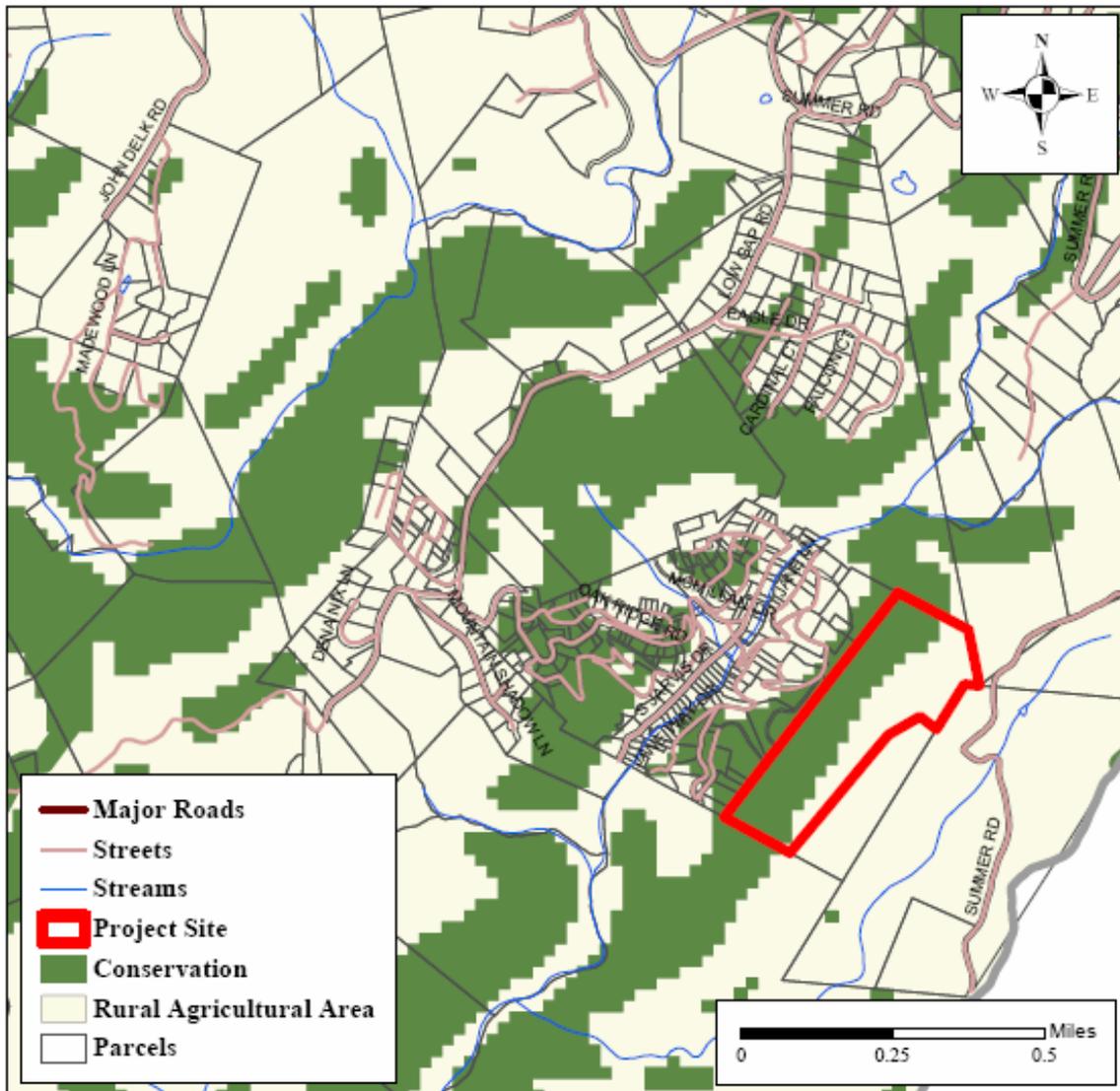
According to Chapter 200A, Henderson County Land Development Code (LDC) §200A-309, the purpose of a Master Plan is to provide general information about the proposed development to allow for an assessment of its impact on the orderly growth and development of the County, environmental quality, land values, natural features identified on the site analysis sketch and the County's roads and governmental services. During the review of the Master Plan, the Planning Board should take into consideration: applicable recommendations of the *Henderson County 2020 Comprehensive Plan*, the potential use of the land to be subdivided, and the impact of the subdivision and proposed use whether residential, commercial or industrial.

When reviewing the Master Plan it is important to consider that, due to severe topographic conditions, inadequate road access, distance from services, unique natural areas, soils that do not easily support soil drainage systems and or the proximity to existing and incompatible land uses/zoning, all land may not be suitable to be subdivided for the purpose of dense development (LDC §200A-75).

Staff has reviewed the submitted Combined Master and Development Plan for Adger Oak, taking into consideration the recommendations of the *Henderson County 2020 Comprehensive Plan* and reviewing the plan for conformance with Henderson County Land Development Code. Staff offers the following comments:

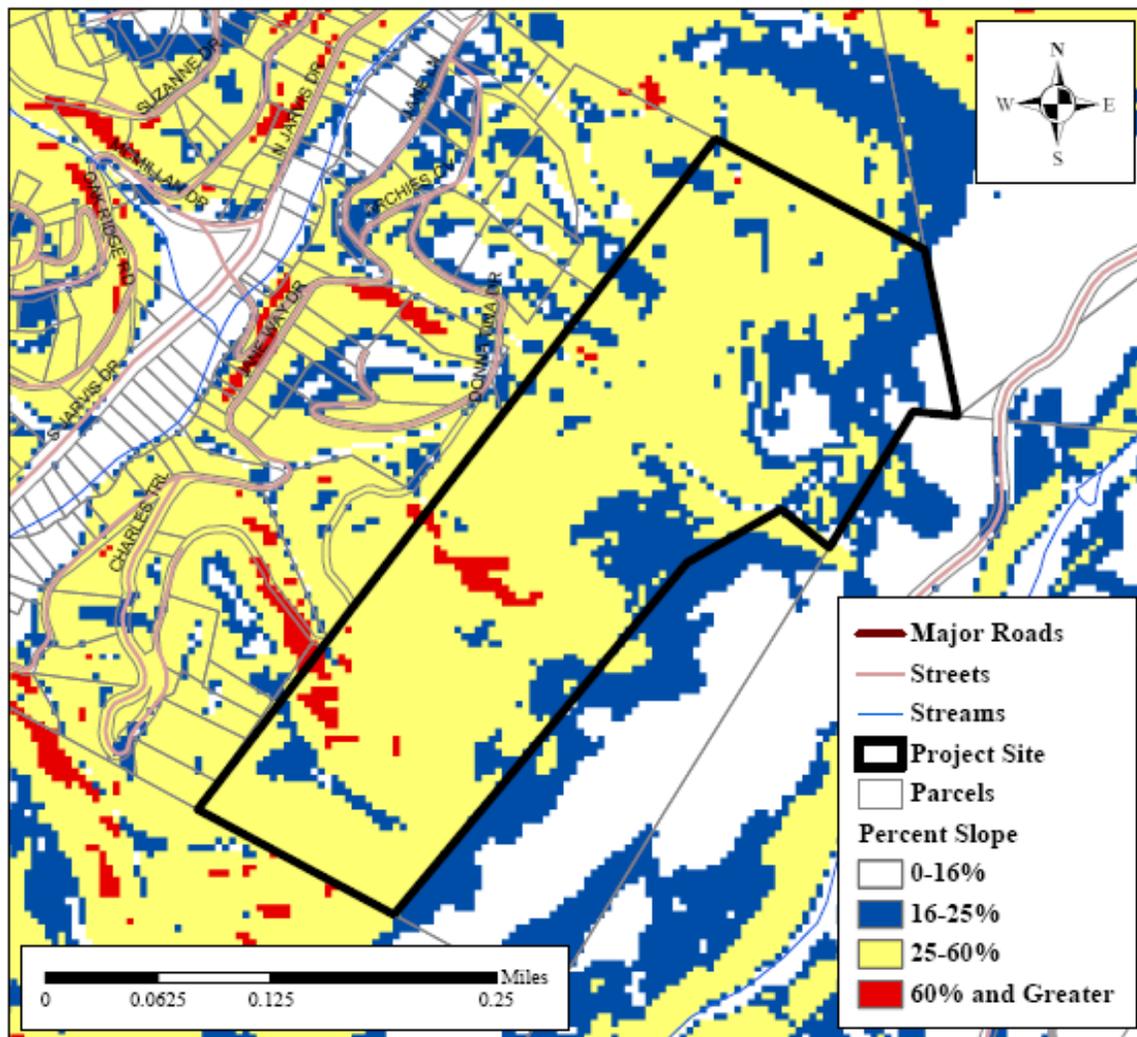
1. ***Henderson County 2020 Comprehensive Plan (CCP)***. The Future Land Use Map of the CCP shows the project site as being located within each of the following areas: Conservation Area and Rural/ Agricultural Area (RAA) (See Map A: CCP Future Land Use Map).

Map A: CCP Future Land Use Map



- (a) **Conservation Area.** The conservation area designation is applied to the eastern portion of the project site, largely due to slopes (See Map A: CCP Future Land Use Map and Map B: Slopes Map). Slopes within the project site appear to be in excess of 25 percent, with portions having slopes in excess of 60 percent. The CCP states that conservation lands “are intended to remain largely in their natural state, with only limited development,” and further that “such areas should be targeted for protection through regulations and incentives” (2020 CCP, Pg. 134). Should the TRC wish to approve the Master Plan, Planning Staff recommends the Applicant reconfigure lots and alter the design of the development so that lots where slopes in excess of 60 percent comprise a large portion of the total lot area be reconfigured. According to the Master Plan, lots which contain a large portion of their area in slopes in excess of 60 percent include the following: Lot 2 and Lot 29.

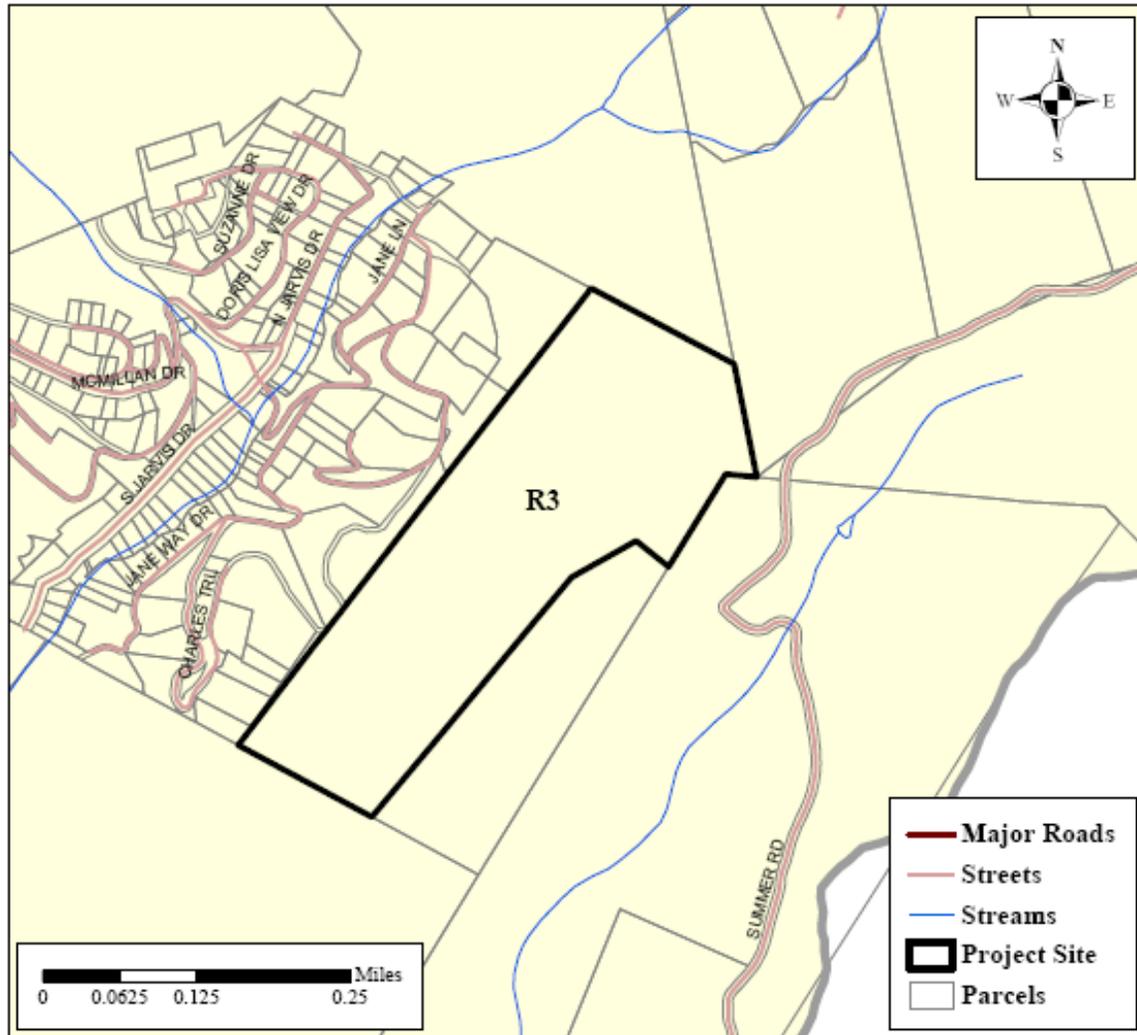
As noted in LDC §200A-75, the project site may not be suited to be subdivided for the purpose of dense development due to severe topographic conditions.

Map B: Slopes Map

- (b) **Rural Agricultural Area.** The Rural Agricultural Area (RAA) designation of the Growth Management Strategy is applied to the project site. The RAA is intended to remain predominantly rural with a density of five (5) or more acres per dwelling unit (average lot sizes of five (5) or more acres per unit). According to the plan, the project would have an average density of approximately 0.66 units per acre (average lot size of 1.51 acres). The proposed densities are higher and the lot sizes are reduced from those recommended by the CCP. The CCP states that regulations should encourage “densities that are consistent with steep slopes, poor septic capacities, and sensitive topography.” The Applicant is proposing individual septic for the lots in the development.
2. **Chapter 200A, Henderson County Land Development Code (LDC).** According to Chapter 200A, Henderson County Land Development Code (LDC) and its Official Zoning Map adopted September 19, 2007 (as amended), the proposed project site is located within the Residential Three (R3) Zoning District (See Map C: Official Zoning Map). The R3 district allows for single-family residential development with a standard residential density of 0.66 units per acre (average lot size of 1.5 acres) where the slope is less than 60 percent. The project site contains slopes in excess of 60 percent, but they do not account for ten (10)

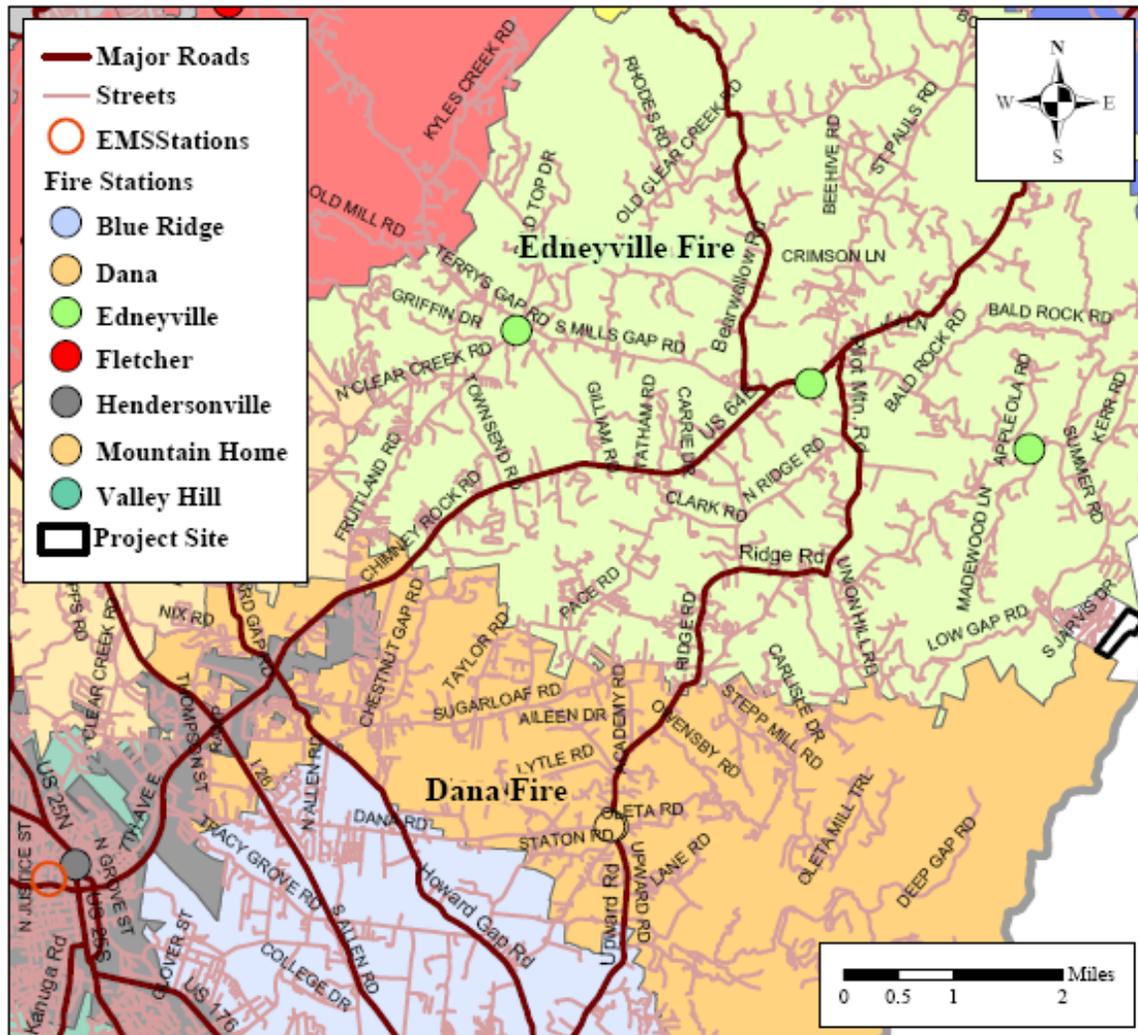
percent or more of the tract, therefore the density reduction does not apply. A total of 43.82 acres are in this category, meaning a total of 29.21 units would be permitted. The Applicant's proposal of 29 units would fall within the density permitted by Chapter 200A (See Table 1).

Map C: Official Zoning Map



3. **Fire and Rescue Services.** The project site is not located in a fire and rescue district (See Map D: Fire District Map). Inadequate road access (See Development Plan Comments, Comment 5) and distance from services (including fire and rescue services) mean that all land may not be suitable to be subdivided for the purpose of dense development (LDC §200A-75).
4. **Emergency Services Impact Report (ESIR).** An ESIR is not required for the proposed development as it is a residential subdivision of fewer than 50 lots/units (29 lots are proposed) (LDC §200A-105).

Map D: Fire District Map



Development Plan Comments:

1. **Soil Erosion and Sedimentation Control Plan.** The Applicant shall submit written notice from the appropriate local agencies verifying that an Erosion and Sedimentation Control Plan has been received or a written notice from a professional land surveyor, engineer, landscape architect, architect, or professional planner certifying that no plan is required. (LDC §200A-81 A).
2. **Fire Protection Requirements.** According to LDC §200A-81 B(3), for any *subdivision* without a fire suppression rated water system, that either has or has access to an adequate permanent surface water supply (100,000 gallon storage in a 50 year drought), the *Applicant* shall be required to install a dry fire hydrant system, the type and location of which is to be determined by the County Fire Marshal. It does not appear that the applicant has any surface water supply on the project site. An Emergency Services Impact Report (ESIR) is not required for the proposed development; however, Staff has calculated road miles to the nearest Fire Station (3.92 miles) and EMS Station (15.64 miles).

3. **Private Road Standards.** The Applicant has provided a cross section for the proposed on site roads (including Adger Oak Lane). This cross section indicates that these are to be subdivision collector roads. All subdivision roads must be designed and constructed to the minimum standards of LDC §200A-81 C (Table 3.1).
4. **Road Grade.** The Applicant has proposed private paved roads for the subdivision. The maximum road grade for collector roads constructed of pavement is 16 percent. The applicant is proposing a road that appears to approach grades of 16 percent. A professional engineer or professional land surveyor must certify on the Final Plat that no portion of the on-site roads has a grade that 16 percent or submit a final as-built graded center line profile showing grade and alignment of the road (LDC §200A-81 C (Table 3.1) and §200A-81 C(4)).
5. **Road Frontage and Existing Off-Site Access.** Any tract of land to be subdivided must have frontage on an existing public (state-maintained) road or a private right-of-way to the public road (LDC §200A-81 K). The project site has frontage on a right-of-way to a public (state-maintained) road. The Applicant has provided, as part of the application materials, a legal opinion from Attorney Walter C. Carpenter that the applicant has right-of-way to a public (state-maintained) road (Low Gap Road (SR 1716)) but the widths of these rights-of-way cannot be determined (See Attachment 4, Subdivision Application Materials). The project is limited to a maximum of one (1) lot per acre (the applicant is proposing a minimum lot size of one (1) acre).

Charles Trail, Jane Way Drive, Jane Lane and McMillan Drive (Hereinafter “access roads”) provide the access point from the subject property to Low Gap Road (SR 1716). These access roads are narrow (often one (1) lane) and lack shoulders, ditches and turnarounds (See Attachment 3, Photos of Project Site). Planning Staff recommends the following be conditions of approval (as related to access roads) prior to beginning any land disturbing activity on the project site:

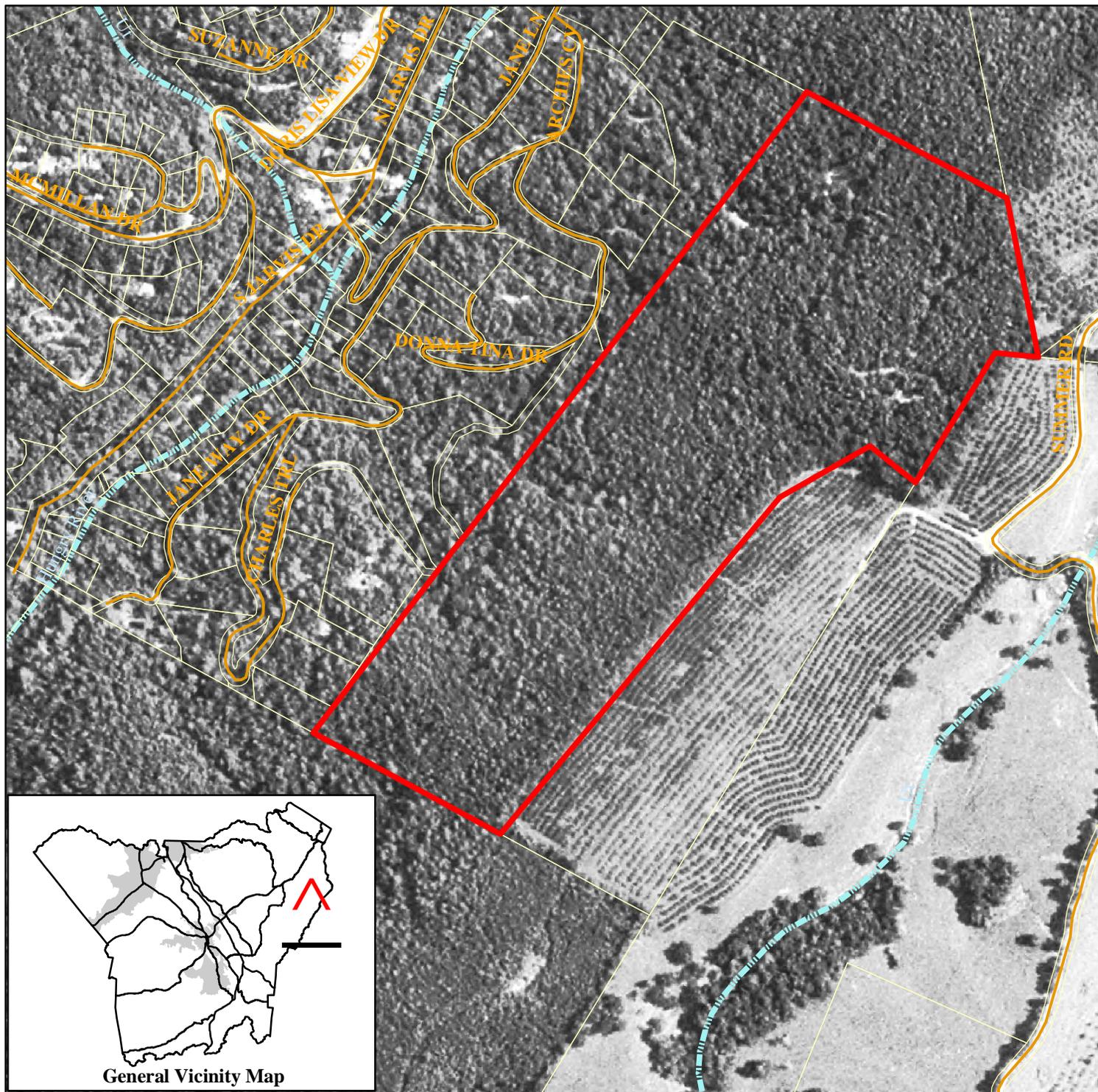
- a. The Applicant upgrade these access roads to meet the minimum standards of Chapter 200A (Article III, Table 2.1, Private Subdivision Collector Road) excluding the requirements for additional right-of-way;
- b. The Applicant provide bridge plans which meet the requirements of LDC §200A-81(D) for the off-site bridge (See Attachment 3, Photos of Project Site) located on Charles Trail; and
- c. The Applicant provide the appropriate cross section for the access roads on a revised Master and Development Plan to be submitted prior to beginning any land disturbing activity.

Additionally, as a condition of approval, the applicant should provide right-of-way for any existing portion of Charles Trail which is located on the subject property. This should be provided on the revised Master and Development Plan. Planning Staff visited the site and it appears that an existing portion of Charles Trail may be on the project site. The Master Plan seems to indicate that Charles Trail enters the subject property and exits the property but does not continue inside of the property.

6. **Road Intersections.** The Applicant has proposed extending an existing road, Charles Trail, into the subject property as the entrance to the development. If, as noted in Comment 5, Charles Trail continues through the subject property and beyond to the east, the proposed

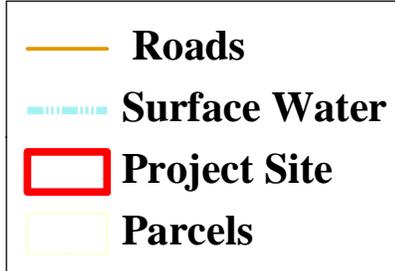
entrance to the development will need to be redesigned to reflect a new road. Intersections with angles of 75 to 90 degrees are preferred (LDC §200A-81 C(6)). Planning Staff recommends, as a condition of approval, that the Applicant provide the appropriate cross section for the access roads on a revised Master and Development Plan to be submitted prior to beginning any land disturbing activity on the project site. Road intersection angles, which meet the requirements of the LDC, must be shown on the final plat.

7. **Road Name Approval.** Proposed road names for a private road shall be pre-approved by Henderson County in accordance with Chapter 142 of the Henderson County Code, Property Addressing. The applicant is proposing a road which is in alignment with another road and therefore is required to be named Charles Trail (according to the plan as submitted). If, however, the road is realigned (as noted in Development Plan Comments 5 and 6) another road name will need to be provided and approved by Property Addressing.
8. **Shoulder Stabilization.** All areas disturbed by the construction of a private road, including cut and fill slopes, shoulders and ditch banks, shall be seeded to stabilize the soil and prevent erosion. Seeding should be done as soon as feasible after road construction (LDC §200A-81 E).
9. **Drainage.** All road or drainage structures shall be constructed in accordance with state roads standards. Road drainage side ditches shall be constructed with sufficient depth and width to carry the expected volume of storm water runoff (LDC §200A-81 C(3)). The applicant has proposed drainage onto Lots 2, 3, 5, 6, 8, and 29. Drainage easements shall be reserved on-site by the applicant, or otherwise provided, conforming with the lines of any drainageway into which natural runoff has been diverted (LDC §200A-81 L).
10. **Notice of Farmland Preservation District.** The applicant has submitted an affidavit certifying the awareness of an existing Farmland Preservation District. The final plat shall contain a note stating that the property lies within one-half (½) mile of land in a Farmland Preservation District (LDC §200A-81 P).
11. **Street Tree Requirements.** Street trees shall be required for all major subdivisions (LDC §200A-81 R). Trees shall be required at a rate of one (1) large deciduous tree per 50 feet of property abutting an internal road (LDC §200A-145). Trees shall be placed within the right-of-way or within 20 feet of the edge of the right-of-way and may be placed in groups with a minimum spacing of no more than 65 feet (LDC §200A-146). The applicant meets these requirements by his indication that 110 trees will be planted at 50 foot intervals along the road right-of-way line on both sides of the proposed roads of the development (See Attachment 5, Combined Master and Development Plan).
12. **Subdivision Names.** The final plat shall contain certification that the public records of the County have been searched and the proposed subdivision name meets the standards set forth in this Chapter (LDC §200A-81 G).
13. **Miscellaneous Advisory Provisions.** The Applicant should become familiar with the miscellaneous advisory provisions contained in LDC §200A-81 S.
14. **Final Plat Requirements.** The Final Plat(s) must meet the requirements provided by the Planning Department whenever a subdivision of land occurs (LDC §200A-311 B(2)).



Adger Oak

DEVELOPER & OWNER: Gary W. Firmender
 AGENT: Jon Laughter
 SURVEYOR: Laughter, Austin & Associates, P.A.
 ZONING:
 WATERSHED: None
 WATER SYSTEM: Individual Wells
 SEWER SYSTEM: Individual Septic
 ROAD SYSTEM: Private





1. View of Project Site looking south from Charles Trail. Charles Trail continues east.



2. View of Charles Trail, north of the Project Site.



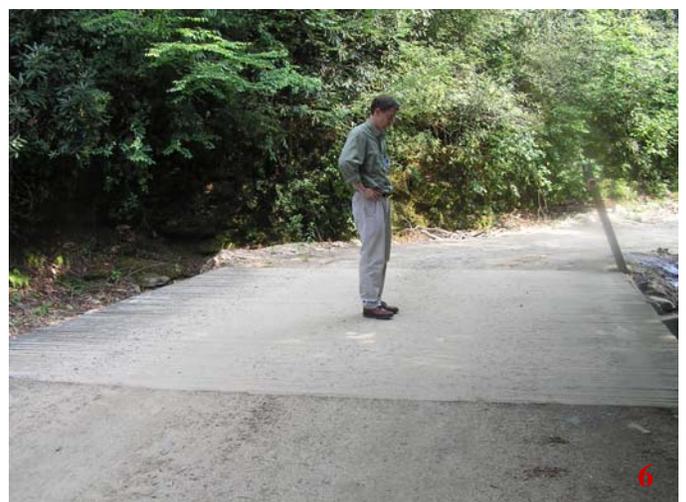
3. View of Jane Lane north of the Project Site, in the vicinity of Hungry River.



4. View existing bridge on Jane Lane over Hungry River, south of the Project Site.



5. View existing bridge on Jane Lane over Hungry River, south of the Project Site.



6. View of existing bridge on Jane Lane over Hungry River, south of the Project Site.

697-4533

Application No. _____

**HENDERSON COUNTY
SUBDIVISION APPLICATION FORM**
(Please fill out all applicable items)

SUBDIVISION INFORMATION

Subdivision Name: ADGER OAKS MAJOR SUBDIVISION
Subdivision Type (Circle One): Major Minor Non-Standard Special
Proposed Use of Property (Circle One): Residential Commercial Industrial
Conservation Subdivision: Yes No Gated entrance to property: Yes No
Existing Number of Lots: 1 Total Number of Proposed Lots: 29
Total Number Proposed Units: _____ Proposed Density (units per acre): 0.66
Road System: () Public Private () Combination Public and Private
Water System: Individual () Community () Municipal
Sewer System: Individual () Community () Municipal

PARCEL INFORMATION

PIN 610719536 Total Acreage: 43.8 Deed Book/Page: 1068/723 Township Edneyville
Location of property to be divided: _____

Zoning District: R-3 Fire District: Edneyville
Water Supply Watershed: Hungary River School District: Edneyville

Any portion of property within or containing the following:

Floodplain or floodway: Yes No Perennial streams: Yes No
Protected mountain ridges: Yes No Cemetery: Yes No
Within 1/2 mile of a Farmland Preservation District: Yes No
Adjacent to a Farmland Preservation District: Yes No

CONTACT INFORMATION

Property Owner:
Name: Gary W. Firmender Phone: 843 336-8180
Address: PO Box 308 City, State, Zip: ISLE OF Palms, SC 29451
Applicant:
Name: Gary Firmender Phone: 691-2985 685-2793 fax
Address: PO Box 308 City, State, Zip: Isle of Palms, SC 29451
Agent: Agent Form (Circle One): Yes No
Name: Jon Laughter Phone: 828 692-9089 693-8822 FAX
Address: 45h Avenue East City, State, Zip: Hendersonville, NC 28793
Plan Preparer:
Name: Laughter Austin and Associates, PA Phone: 828 692-9089
Address: 4th Avenue East City, State, Zip: Hendersonville, NC 28793

I certify that the information shown above is true and accurate and is in conformance with the Subdivision regulations of Henderson County.

Gary Firmender XX [Signature] 11-16-07
Print Applicant (Owner or Agent) Signature Applicant (Owner or Agent) Date

County Use Only
Fee: \$ _____ Paid: _____ Method: _____ Final Plat Approved On: _____

RECEIVED
DEC 03 2007

BY: _____

APPOINTMENT OF AGENT FORM (OPTIONAL)

APPOINTMENT OF AGENT FORM (OPTIONAL)

I Harry Zimmerman owner of property located on _____
(name) (street name)

recorded in 1068/723 and having a parcel identification number (PIN) of 0610719536
(deed book / page)

located in Henderson County, North Carolina, do hereby appoint Jon Laughter
(agent's name)

to represent me in an application for subdivision of land and authorize him/her to act as my agent in all matters, formal

and informal except as stated herein, and authorize him / her to receive all official correspondence. I however

understand that as the listed property owner, I must sign all affidavits and statements required by this Ordinance.

Harry Zimmerman
Property Owner

11-28-2007
date

RECEIVED
DEC 03 2007

BY:

AFFIDAVIT OF UNDERSTANDING OF FARMLAND PRESERVATION DISTRICT

I hereby certify that I acknowledge that the Henderson County Board of Commissioners on December 18, 1991, did adopt the HENDERSON COUNTY VOLUNTARY FARMLAND PRESERVATION PROGRAM ORDINANCE whose purpose is to establish and identify designated agricultural districts to encourage the economic and financial well being of farming areas, to increase protection from nuisance suits, undesirable non-farm development and other negative impacts on participating farms, and to increase the identity and pride in the agricultural community and its way of life.

I further certify that the property I intend to develop is within _____ feet of Farmland listed in the Farmland Preservation Program and is identified as the _____ district on maps provided by the Henderson County Office of the Natural Resources Conservation Service.

[Signature]
Name of Owner

11-28-07
Date

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, Charlene D. Philbrick, a Notary Public for said County and State, do hereby certify that:

Dary Zimmerman personally appeared before me this date and acknowledged the due execution of the foregoing instrument.

Witness by hand and official seal, this the 11 day of November, 2007.

Charlene D. Philbrick
Notary Public

My Commission Expires: May 3, 2009

RECEIVED
DEC 03 2007

BY:

Walter C. Carpenter
ATTORNEY AT LAW

TELEPHONE
(828) 692-1919

132 SOUTH MAIN STREET
HENDERSONVILLE, NORTH CAROLINA
28792

FAX
(828) 692-2643

November 6, 2007

RECEIVED
NOV 06 2007

Mr. Matt Cable, Planner
Henderson County Planning Dept.
213 First Avenue East
Hendersonville NC 28792

Re: Adger Oak Major Subdivision

Dear Matt:

Thank you for the time you spent with me yesterday discussing the above-referenced subdivision. I represent Mr. Firmender, the developer.

I did not do the title work when Mr. Firmender acquired the property, but I have reviewed the title opinion from B.B. Massagee, III, Mr. Firmender's title insurance policy, and Mr. Firmender's deed. The deed grants to Mr. Firmender a right of way over and across Jarvis Drive, Jane Lane, Charles Trail, and Archies Cove Road from McMillan Drive to the subject property for purposes of ingress, egress, regress and the installation and maintenance of utilities. The title insurance policy insures Mr. Firmender's right to use the roads previously named.

It is my legal opinion that if Mr. Firmender has the right to use Jarvis Drive, Jane Lane, Charles Trail, and Archies Cove Road, then Mr. Firmender automatically has the right to improve those roads. It is my opinion that, in North Carolina, if any person has the right to use an easement, they also have the right to improve it unless there is some limitation in the easement itself.

You also indicated that you wanted something showing or certifying to the width of the right of way over the various roads. It is my opinion that it is virtually impossible to give you that information because of the way that the various lots have been laid out previously. George McMillan and his wife purchased approximately 125 acres in 1969. Throughout the 1970s, Mr. and Mrs. McMillan would sell lots here and there, scattered throughout the 125 acre tract. Since there was no subdivision ordinance at that time, there is no master plan showing the lots and roads. Access was not a major concern in those days, and many of the lots were even conveyed without any kind of a right of way, much less specifications as to the width or size of the right of way. It is my opinion that a

Mr. Matt Cable
November 6, 2007
Page 2

Attachment 4

number of these tracts were not surveyed by registered surveyors, and many of them cannot be located with any degree of precision. The title insurance policy, which is enclosed, insures that Mr. Firmender has access to the subject property, but it does not insure any particular width, and it is my opinion that it is impossible for anyone to certify to you the width of the road.

If you need anything else, please let me know. As always, I remain

Very truly yours,



Walter C. Carpenter

WCC:rsb

Enclosure

RECEIVED
NOV 06 2007



INVESTORS TITLE INSURANCE COMPANY
 P.O. Drawer 2687
 Chapel Hill, North Carolina 27515-2687
OWNER'S POLICY OF TITLE INSURANCE

RECEIVED
 NOV 06 2007

SCHEDULE A

Policy Number 200101412H Policy Date 07/16/2001 Time 04:57 PM

Amount of Insurance \$118,800.00
 1. Name of Insured XXXXXXXXXXXXXXXX

2. The estate or interest in the land which is covered by this policy is:
FEE SIMPLE

3. Title to the estate or interest in the land is vested in the Insured.

4. The land herein described is encumbered by the following mortgage and assignments, if any:
 N/A

and the mortgages, if any, shown in Schedule B hereof.

5. The land referred to in this Policy is in the State of NC County of Henderson and described as follows:

TRACT ONE: BEGINNING AT IN IRON PIN PLANTED AT A STONE AT THE SOUTHERNMOST COMER OF LOT 78 OF GILLIAM WOODS SUBDIVISION AS DEPICTED ON THAT PLAT THEREOF RECORDED IN PLAT CABINET A, SLIDE 335-A OF THE HENDERSON COUNTY REGISTRY, AND RUNNING THENCE FROM SAID BEGINNING POINT, SOUTH 08 DEG. 31 MIN 32 SEC. EAST 511.15 FEET TO AN EXISTING IRON PIN PLANTED AT A STONE, SAID POINT BEING THE SOUTHERNMOST CORNER OF LOT 1 OF THE SUBDIVISION OF THE PROPERTY OF KELLY JACKSON AS SHOWN ON THAT PLAT RECORDED IN PLAT CABINET A, SLIDE 204, HENDERSON COUNTY REGISTRY; RUNNING THENCE, NORTH 78 DEG. 56 MIN. 11 SEC. WEST 147.71 FEET TO THE BEGINNING CORNER OF THE JOHN M. DALTON PROPERTY DESCRIBED IN DEED BOOK 444, PAGE 557; RUNNING THENCE, SOUTH 33 DEG. 42 MIN. 10 SEC. WEST 441.23 FEET TO AN IRON PIN; RUNNING THENCE, NORTH 48 DEG. 02 MIN. 19 SEC. WEST 172. 00 FEET TO AN IRON PIN, RUNNING THENCE, SOUTH 64

Issued through the Office of:
 Investors Title Insurance Company
 212 South Grove St., Suite G
 Hendersonville, NC 28792
 Tel. (828)693-1798 (800)697-4842
 Fax (828)696-9653 (800)546-5564

Authorized Countersignature

INVESTORS TITLE INSURANCE COMPANY

P.O. Drawer 2687
Chapel Hill, North Carolina 27515-2687

Policy No. 200101412H

DEG. 27 MIN. 41 SEC. WEST 322.00 FEET TO AN IRON PIN; RUNNING THENCE, SOUTH 41 DEG. 33 MIN. 53 SEC. WEST (PASSING AN IRON PIN AT 1,360.89 FEET) ,I TOTAL DISTANCE OF 1,374.49 FEET TO AN IRON PIN IN THE NORTHERN BOUNDARY OF THE HUNGRY RIVER LLC PROPERTY DESCRIBED IN DEED BOOK 1010, PAGE 152, HENDERSON COUNTY REGISTRY; AND RUNNING THENCE, NORTH 59 DEG. 06 MIN. 07 SEC. WEST 653.72 FEET TO AN IRON STAKE AT PLANTED STONE, RUNNING THENCE, NORTH 39 DEG. 58 MIN. 57 SEC. EAST 2,484.00 FEET TO A STONE PLANTED AT THE EDGE OF AN OLD ROAD BED; RUNNING THENCE, SOUTH 60 DEG. 39 MIN. 00 SEC. EAST (PASSING A STONE PLANTED AT A DEAD PINE AT 690.23 FEET) A TOTAL DISTANCE OF 698.94 FEET TO THE POINT AND PLACE OF BEGINNING. CONTAINING 43.82 ACRES, MORE OR LESS, AND BEING DEPICTED ON THAT SURVEY BY STEVEN LLOYD WAGGONER, PLS, ENTITLED "PLAT OF SURVEY FOR GARY W. FIRMENDER", DATED MAY 9, 2001, JOB NO. 01-052.

TRACT TWO: BEGINNING IT THE IRON STAKE AT THE PLANTED STONE LOCATED AT THE WESTEMMOST CORNER OF THE 43.82 ACRE TRACT COMPRISING TRACT ONE DESCRIBED ABOVE, AND RUNNING THENCE FROM SAID BEGINNING POINT, NORTH 36 DEG 36 MIN. 01 SEC. EAST 605.30 FEET TO A POINT IN THE CENTER OF THAT ROAD KNOWN AS CHARLES TRAIL; RUNNING THENCE WITH THE CENTERLINE OF CHARLES TRAIL, SOUTH 37 DEG. 25 MIN. 44 SEC. EAST 10.60 FEET; RUNNING THENCE, NORTH 89 DEG. 48 MIN. 38 SEC. EAST 33.19 FEET TO A POINT IN THE NORTHWESTERN BOUNDARY OF THE SAID 43.82 ACRE TRACT DESCRIBED ABOVE AS TRACT ONE; RUNNING THENCE IN S SOUTHWESTERLY DIRECTION WITH THE NORTHWESTERN BOUNDARY OF SAID 43.82 ACRE TRACT, SOUTH 39 DEG. 58 DEG. 57 SEC. WEST 623.35 FEET TO THE POINT AND PLACE OF BEGINNING. CONTAINING .25 ACRES, MORE OR LESS, AND BEING DEPICTED ON THAT SURVEY BY STEVEN LLOYD WAGGONER, PLS, ENTITLED "SURVEY FOR GARY W. FIRMENDER" DATED MAY 9, 2001, JOB NO. 01-052.

ALSO CONVEYED HEREWITH TO THE PARTY OF THE SECOND PART, HIS HEIRS AND ASSIGNS, IS N NON-EXCLUSIVE RIGHT-OF-WAY FROM THE TERMINUS OF THE PUBLIC ROAD KNOWN AS MCMILLAN DRIVE OVER AND ACROSS THE PRIVATE ROADS KNOWN AS JARVIS DRIVE, JANE LANE, CHARLES TRAIL AND ARCHIES COVE ROAD, LYING IN EDNEYVILLE TOWNSHIP, HENDERSON COUNTY, AS THE ROADS PRESENTLY EXTEND ACROSS THE 125 ACRE TRACT OF MCMILLIN PROPERTY DESCRIBED IN THAT

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Chapel Hill, North Carolina 27515-2687

Policy No. 200101412H

*THE NORTHWESTERN BOUNDARY OF THE 43.82 ACRE TRACT DESCRIBED ABOVE, FOR
INGRESS, EGRESS AND REGRESS, AND FOR THE INSTALLATION AND MAINTENANCE
OF UTILITIES.*

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INVESTORS TITLE INSURANCE COMPANY

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Chapel Hill, North Carolina 27515-2687

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SCHEDULE B
EXCEPTIONS FROM COVERAGE

This Policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

I. The lien of the security instrument reflected in Item 4, Schedule A, if any be shown.

II. The dower, curtesy, homestead, community property, or other statutory marital rights, if any, of the spouse of any individual insured.

III.

1. *Taxes for the year 2001, and subsequent years, not yet due and payable.*
2. *Water Rights as recorded in Book 493 at Page 343.*
3. *Rights of others for ingress and egress purposes in and to use of the Charles Trail, Archie's Cove Road; Jarvis Drive and Jane Lane, as recorded in Book 1068 at Pages 723, 726, 728, 731 and 733.*
4. *Land Development Ordinance for Henderson County as recorded in Book 715 at Page 193.*
5. *This policy does not insure any portion of that gap area described as Tract II and set out Schedule A.*
6. *Plat of survey by Steven Lloyd Waggoner, PLS, dated May 9, 2001, shows water tank used by others and spring located on insured premises.*
7. *Riparian rights incident to insured premises.*
8. *Encroachment upon insured premises by the old orchard clearing appurtenant to the property adjoining on the north east.*
9. *Rights of others for ingress and egress purposes in and to the use of the soil road, as shown on plat of survey by Steven Lloyd Waggoner, PLS, dated May 9, 2001.*

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10. Rights of others for ingress and egress purposes in and to the use of the abandoned roads, as indicated on surveyor's report by Steven Lloyd Waggoner, PLS, dated May 9, 2001.

11. Purchase Money Deed of Trust in favor of The McMillan Family Trust as recorded in Book 994 at Page 359, securing \$107,000.00.

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