



BURKE COUNTY ZONING ORDINANCE

Editor's note - Printed herein is the Zoning Ordinance for Burke County, as adopted by the Board of Commissioners on November 21, 1996 and effective on January 1, 1997.

Cross references - Buildings and building regulations, Ch. 10; planning, Ch. 54.

State Law reference - County's power to zone, G.S. 153A-340.

AMENDMENTS

October 1998 **Article IXX – Initial Adoption of Morganton-Lenoir Airport Overlay**

December 1998 **Article XII – Addition of Lake Rhodhiss and Lake Hickory**

May 1999 **Article XI (Sec. 1107) amended**

July 1999 **Article IX (Sec. 908), Article XVII (Sec.1704) added**

Article VI (Sec. 602), Article VIII (Sec. 801) repealed

Article III (Sec. 302), Article IV (Sec. 402, 402.27, 402.83, 402.84), Article VI (Sec. 601, 602, 606.06, 606.07), Article VII (Sec. 706), Article IX (Sec. 901.01, 901.02, 902.02, 903.01, 903.02, 904.02, 905.02, 906.01, 906.02, 907.02), Article X (Sec. 1001.01, 1001.02, 1002.02, 1003.01), Article XI (Sec. 1101.05, 1104.18, 1106.01, 1106.04, 1107.02, 1107.09), Article XXII, Article XII (Sec. 1205), Article XV (Sec. 1502, 1505.02, 1507.02), Article XVI (Sec. 1602, 1602.01, 1602.03), Article XVII (Sec. 1702, 1702.01, 1702.02, 1702.03, 1702.04, 1702.05, 1702.06) amended

November 1999	Article XI (Sec. 1104.17) amended
May 2000	Article IV, Section 402 Article IX, Section 906.01, 907.01, 908.01, 901.02, 902.02, 903.02, 904.02, 905.02 Article XII, Section 1202
September 2000	Article IV, Section 402 amended Article IX, Section 904.02, 905.02, 906.02 amended Article IX, Section 909, 909.01, 909.02 added
July 2001	Article IV, Section 402 amended Article IX, Section 906.02 amended Article IX, Section 907.02 amended
September 2001	Article IX, Section 901.01(q), 902.01(b), 903.01 and 908.01 amended Article XI, Section 1103.02 (1) and (2) added
February 2002	Article IV, Section 402 amended Article VI, Section 601 amended Article IX, Section 910 and 911 added Article X, Section 1001 and 1003 amended Article XI, Section 1103 and 1108 amended Article XII, Section 1203, 1205, 1208, 1209 and 1215 amended Article XII, Section 1216 and 1217 added
July 2003	Article IV, Section 402 amended Article IX and Sections 901, 902, 903, and 908 amended. Article IX, Sections 901.01, 901.02, 902.01, 902.02, 903.01, 903.02, 904.01, 904.02, 905.01, 905.02, 906.01, 906.02, 907.01, 907.02, 908.01, 908.02, 909.01, 909.02, 910.01, 910.02, 911.01, and 911.02 deleted Article IX, Sections 912 – 919 reserved Article IX, Section 920 added Article XI, Sections 1103.02, 1105.11, 1106.04, 1109, 1110, 1111, and 1112 added Article XII, Section 1208.02(6) amended
September 2003	Article IV, Section 402 amended Article IX, Section 920 amended
March 2004	Article IV, Section 402 amended. Article VI, Section 601.01 amended and Section 601.02 added Article VIII, Section 802 amended Article IX, Sections 910, 911, and 920 amended

Article IX-A added
Article X, Sections 1001.01, 1002.01, 1003.01 amended
Article XI, Sections 1102 and 1105.11 amended
Article XII, Sections 1208.01(1), 1208.01(3), 1208.01(6),
1208.02(1), 1208.02(2), 1208.02(3), 1208.02(4),
1208.02(6a&b), 1208.02(8), 1208.02(9), 1208.04(1),
1208.04(2), 1208.05(1), 1208.06(2), 1208.06(4), 1208.06(5),
1208.06(8), 1206.08(9B), 1211(E), 1215, 1216(4), 1217
amended. Sections 1208.01(5) and 1208.05(2) omitted.
Sections 1208.03(5), 1208.06(10), 1208.08(9C), 1209(2k),
1218 added.
Article XIII, Section 1303(7) amended
Article XIV, Sections 1402(1), 1402.02, 1402.03(1),
1402.04(3,5) amended
Article XVI, Section 1601.01 amended
Article XVII, Sections 1703.01 and 1704.03(1) amended

September 2004 Article XV, Section 1506.01 amended

October 2004 Article IV, Section 402 amended
Article XI, Section 1107.10 added
Article XIII, Sections 1301, 1302 amended
Article XIII, Sections 1302.01, 1304 omitted
Article XIII, Section 1303 amended
Article XIII, Sections 1304, 1304.1, 1304.2, 1305, 1305.1,
1305.2, 1305.3, 1305.4, 1305.5, 1305.6, 1306, 1306.1, 1306.2
added
Article XX added

November 2004 Article XI, Section 607.01, effective February 2006
Article XI, Section 1106.04, effective February 2006

February 2005 Article X, Section 1001 amended
Article XI, Section 1104 amended

May 2005 Article IV, Section 402 amended
Article IX, Sections 910, 920 and 911 amended
Article XI, Section 1101 and 1107 amended
Article XII, Section 1203, 1208, 1209, 1215, 1217 & 1218
amended
Article XIII, Section 1303 amended
Article XXI added

January 2006 Legislative & Ordinance update
Article III, Section 301
Article IV, Section 402
Article IX-A, Section 9A02
Article XI, Section 1112

	<p>Article XVI, Section 1601, 1602 Article XVII, Section 1702</p>
October 2006	<p>Article XI, Section 1105 omitted Article IV, Section 402 amended Article IX, Section 920 amended Article XI, Section 1113 and 1114 added Article XVII, Section 1702.1 amended</p>
April 2007	<p>Article VI, Section 601.2 amended Article IX, Section 904 and 906 amended Article IX, Section 907 amended Article IX-A, Section 9A02 amended</p>
June 2007	<p>Article XVIII, Section 1806 added</p>
August 2007	<p>Article IV, Section 402 amended Article IX, Section 920 amended Article XI, Section 1107.03 amended Article XI, Section 1107.07 amended Article XII, Section 1208.01 amended Article XII, Section 1208.02 amended Article XII, Section 1208.03 amended Article XII, Section 1208.05 amended Article XII, Section 1215 amended</p>
November 2007	<p>Article IV, Section 402 amended, Article IX, Section 920 amended, Article XI, Section 1106.01, amended, Sections 1116, 1116.01, 1116.02, 1116.03 added, Article XX, Section 2013.2.3 amended</p>
March 2008	<p>Article IX, Section 920 Amended</p>
September 2008	<p>Article IV, Section 402 Amended, Article IX, Section 920 Amended, Article XI, Section 1117 Added</p>
October 2008	<p>Article XII, Section 1208.02 Amended, Section 1211 Amended, Article XIII, Section 1306.2(3) Amended</p>
August 2009	<p>Article IV, Section 402 Amended Article IX, Section 920 Amended Article XI, Section 1118 Added</p>
September 2009	<p>Article XI, Sections 1104.02, 1104.15, 1104.16 Amended</p>

August 2010	Article XII, Section 1216 Amended
December 2010	Article IV, Section 402 Amended (Church) (Temporary Homeless Shelters) Article IX, Section 920 Amended (Temporary Homeless Shelters) Article XI, Section 1105 Added (Temporary Homeless Shelters)
March 2011	Article IV, Section 402 Amended (Racetracks)
April 2011	Article XI, Section 1118 Amended
May 2011	Article IV, Section 402 Amended (Treatment and Recovery Facilities) Article IX, Section 920 Amended (Rest Homes, Treatment and Recovery Facilities)
September 2011	Section 607.02 Amended, Section 607.03 Added (Replacement of Non-conforming Manufactured Homes)
January 2013	Article IV, Section 402, Amended (Definition of Structure). Added, (Definition of Structural Alteration).
April 2013	Resended 1994 Water Supply Watershed Management & Protection Ordinance Amended Zoning Ordinance to include Article XXII, Water Supply Watershed Protection Overlay District Article IV, Section 402, Added (15 Definitions) Adopted Official Water Supply Watershed Protection Map
May 2013	Article XI, Section 1113.5 Amended (Area and Site Requirements) Article XI, Section 1113.12 Amended (Requirements for Waste Disposal)
July 2013	Article XI, Section 1113.5 Amended (Area and Site Requirements)
September 2013	Article XII, Section 1216 Amended (Pier Provisions on Lake James)
March 2014	Article XI, Section 1119 Added (Kennels, Commercial) Article IV, Section 402, Added (15 Definitions)
August 2014	Article XVI, Section 1601.01 (2) Amended (Creating Other Use/Districts and/or Changes Between Other Use Districts)

	Article XVI, Section 1601.02 Amended (Text Amendments)
August 2015	Article XI, Section 1103.02 Amended (Accessory Structures) Article XI, Section 1103.03 Amended (Accessory Dwelling Unit) Article XI, Section 1103.04 Added (Temporary Structures) Section 402, Deleted (1 Definition) Added (1 Definition)
November 2015	Article XI, Section 1114.5 Amended (Area & Site Requirements) Article XII, Section 1208.01(6) Amended (Replacement Trees) Article XII, Section 1208.02 Amended (Activities Permitted Within Fifty Feet of Reference Line)
February 2017	Article XI, Section 1113.5(e) Amended (Area and Site Requirements) Article XII, Section 1216 Amended (Pier, Mooring, and Gazebo Provisions) Article IX, Section 920 Amended (Table of Permitted Uses by District)
March 2017	Article IX, Section 920 Amend (Table of Permitted Uses by District)
January 2018	Article IV, Section 402, Added (10 Definitions) Article IV, Section 402, Amended Remove and Replace (1 Definition) Article IX, Section 920 Amended (Table of Permitted Uses by District) Article XI, (Added New Section 1120, Winery, Brewery, and Distillery)
March 2018	Article XXII, Section 2200, Amended (Added Watershed Overlay Districts) Article XXII, Section 2202.03, Amended (Added Critical and Protected Watershed Areas) Article XXII, Section 2202.04, Amended (Added Protected Watershed Area)
November 2018	Article IV, Section 402, Amend (1 Definition) Article XII, Section 1210, Amended (Marina & Mooring Provisions) Article IX, Section 920 Amended (Table of Permitted Uses by District)

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**BURKE COUNTY, NORTH CAROLINA
ZONING ORDINANCE**

ARTICLE I AUTHORITY AND ENACTMENT

Section 101 Authority to Regulate Land Use

This ordinance is adopted pursuant to the authority granted by Chapter 153A, Article 18, Part 3 of the North Carolina General Statutes. The regulations incorporated herein and the use districts shown on the zoning map, when applicable, have been made in accordance with the Comprehensive Land Use Plan of Burke County, NC.

Section 102 Enactment

NOW THEREFORE, the Board of Commissioners of the County of Burke, North Carolina, do ordain as follows:

ARTICLE II SHORT TITLE

This ordinance shall be known as "The Zoning Ordinance of Burke County, North Carolina".

ARTICLE III PURPOSE OF ORDINANCE

Section 301 General Legal Purpose

The general purpose of this ordinance shall be to promote the health, safety, morals, or the general welfare of the public. To accomplish this purpose, this ordinance is designed to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. This ordinance may provide density credits of severable development rights for dedicated rights-of-way pursuant to G.S 136-66.10 or G.S. 136.66.11.

Section 302 Statement of Intent

This ordinance is designed to assist the citizens, the Board of Commissioners, the Board of Adjustment and administrative officials of Burke County in guiding land development within the county. This ordinance has been formed with a spirit of concern for the individual rights of land owners, but at the same time acknowledges that orderly development of natural growth is essential for the preservation and protection of the safety, health, and general welfare of the citizens of Burke County. It is not the intent of this ordinance to restrict or regulate

“bona fide farm purposes” as described in North Carolina General Statute 153A-340.

Section 302.01 Comprehensive Land Use Plan Compatibility

The purpose of the Comprehensive Land Use Plan of Burke County, NC is to guide growth and development within the county in a manner that will best reflect the ideas of Burke County citizens. The comprehensive land use plan is general in nature and describes the County’s long-range recommendations for development within the part of the county under the jurisdiction of this ordinance. The zoning ordinance shall be administered with the intent of maintaining compatibility with the comprehensive land use plan in order to further the County’s goals and objectives found in the plan.

Section 302.02 Statement of Goals and Objectives

The Board of Commissioners adopted a set of goals and objectives in the County’s Comprehensive Land Use Plan to provide general policies for the future development of the County. The adopted goals and objectives shall be used as a guide in administering this ordinance.

Section 302.03 Relationship to Growth Areas Map

Decisions herein shall be compatible with the Growth Areas Map within the Comprehensive Land Use Plan of Burke County, NC.

Section 303 Non-Exclusionary Intent

It is not the intent of this ordinance to exclude any economic, racial, religious, political, or ethnic group from enjoyment of residence, land ownership, or tenancy within Burke County; nor is it the intent of this ordinance to use public powers in any way to promote the separation within Burke County of economic, racial, religious, or ethnic groups, except as may be the incidental result of meeting the purposes outlined in Sections 301 and 302 herein.

ARTICLE IV DEFINITIONS OF TERMS USED IN THIS ORDINANCE

Section 401 General

Except as otherwise provided herein, all words shall have the customary dictionary meaning. The present tense includes the future tense. The singular number includes the plural and the plural includes the singular. The masculine gender includes the feminine and neuter genders. The word "person" includes a firm, corporation, association, organization, trust, or partnership. The word lot includes plot or parcel. The word "building" includes "structure". The words "shall" and "will" are always mandatory. The word "used" or "occupied" as applied to any land or building shall be construed to include the words intended, arranged, or designed to be used or occupied.

Section 402 Specific Definitions

When used in this ordinance the following words and phrases shall have the meaning given in this section:

ABC Store

A retail store owned and operated under the authority and control of the local Alcoholic Beverage Control Board.

Access Management

The systematic control of the location, spacing, design and operation of driveway, median openings, interchanges and street connections to a roadway, as well as roadway design applications that affect access, such as median treatments and auxiliary lanes and the appropriate separation of traffic signals.

Access Point

Any driveway, street, turnout, or other means of providing ingress and egress for vehicles to or from the public roadway system.

Accessory Building, Use or Structure

A building, use or structure on the same lot with and of a nature customarily incidental and subordinate to the principal use or structure. Examples of accessory uses are private garages, storage sheds, playhouses, swimming pools, satellite dishes antenna, telephones and fuel pumps.

Accessory Dwelling Unit

A small independent residential structure providing kitchen, bathing, and sleeping space for the same property as the existing primary residential dwelling unit. The term shall include garage apartment and guest house.

Adult Care Facility

A non-residential facility, built to comply with the International Building Code that provides supervision or care for three (3) or more adults, at any one time, unrelated to the operator for a period of less than 24 hours per day and which

receives payment, fee, or grant for any of the persons receiving care.

Adult Entertainment Establishment

A nightclub, bar, restaurant, bookstore, retail store, theater, or similar establishment that regularly features live or taped performances that are characterized by depictions of sexual activity and specified anatomical areas. For the purposes of this definition, specified anatomical areas shall include human genitals, buttocks and female breasts. In no instance shall such an establishment be permitted within one-quarter mile of any church or school.

Affected Property Owner

The owner of any property upon which the proposed development will have a positive or negative impact.

Agribusiness

An agricultural activity that manufactures and distributes farm equipment and supplies, or processes, stores and distributes farm commodities. More specifically, the activity includes stockyards, livestock markets, dairies, forestry, and similar exempt agricultural support services and uses.

Agritourism

Agritourism means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.

Agritourism Structure

A building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that

- (i) is owned by a person who holds a qualifying farmer sales tax exemption certificate from the Department of Revenue pursuant to G.S.105-164.13E(a) or
- (ii) is enrolled in the present-use value program pursuant to G.S.105-277.3.

Failure to maintain the requirements of this subsection for a period of three years after the date the building or structure was originally classified as a bona fide purpose pursuant to this subdivision shall subject the building or structure to applicable zoning and development regulation ordinances adopted by a county pursuant to subsection (a) of G.S. 153A-340 in effect on the date the property no longer meets the requirements of this subsection.

Airport

Any area of land or water designed and set aside for the landing and take-off of aircraft. This shall include all necessary facilities for the housing and maintenance

of aircraft. The term airport, in Article XIX, means Morganton-Lenoir Airport.

Airport Elevation

1270 feet above mean sea level at Morganton-Lenoir Airport.

Air Quality

The specific measurement in the ambient air of a particular air pollutant at any given time.

Alcoholic Beverage Control Board

Alcoholic beverage sales are controlled by the alcoholic beverage control (ABC) board of the county.

Amenities

A man-made or natural feature which enhances or makes more attractive a particular site for development.

Approach Surface

A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Article IXX of this ordinance. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.

Approach, Transitional, Horizontal, and Conical Zones

These terms are set forth in Article IXX of this ordinance.

Arterial Minor

A highway linking cities and large towns, providing an integrated network for intrastate and inter-county service, supplementing the principal arterial system so that all geographic areas are within a reasonable distance of an arterial highway, and intended as routes that have minimum interference through movement.

Arterial Principal

A highway providing an integrated network of roads that connect principal metropolitan areas and serve long distance travel demands such as statewide and interstate travel.

Automobile Parts Recycling

An establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling used automobile parts; for the maintenance or operation of an automobile part recycling; the term shall include salvage yards, automobile graveyards, and used auto parts dealers.

Automobile Service Station

Any area of land, including structures thereon, used for the retail sale of gasoline or oil, automobile accessories, and incidental services including facilities for lubricating, hand washing and cleaning, or otherwise servicing automobiles, but

excluding painting or major repair.

Bar

Premises used primarily for the sale or dispensing of alcoholic beverages by the drink for on-site consumption and where food may be available for consumption as an accessory use *upon obtaining the appropriate permit under G.S. 18B-1001 as amended.*

Barge Loading Area

A specific shoreline site, not to exceed one acre in size, used for loading and unloading equipment and materials to and from barges engaged in shoreline stabilization activities and pier construction and installation.

Base Map

A document on which property lines are depicted to the most accurate scale available.

Best Management Practices (BMP)

A structural or nonstructural management-based practice used singularly or in combination to reduce non-point source inputs to receiving waters in order to achieve water quality protection goals.

Board of Commissioners

The Burke County Board of Commissioners; the governing body.

Boarding House

A building where, for compensation, lodging and/or meals are provided for not more than ten (10) persons. A rooming house, bed and breakfast, guest house, or tourist house shall be deemed boarding house.

Board of Adjustment

The Burke County Board of Adjustment as established by the Board of Commissioners. It is considered a quasi-judicial board composed of residents of Burke County. This board is empowered to hear appeals from decisions of the Planning Administrator or his designee, grant conditional use permits, and grant variances from the provisions of the Burke County zoning Ordinance as prescribed in G.S. 153A-345.

Boat Storage and Maintenance Facility

Commercial establishment devoted primarily for the storage, upkeep, and repair of privately owned watercraft.

Bona fide farm

The term Bona fide farm is defined herein to be synonymous with the term "bona-fide-farm purposes" as set out in the second paragraph of North Carolina General Statute 153A-340(b) as amended. The term bona fide farm is not to be construed to include any use beyond that associated with a bona fide farm and/or bona fide purposes as set out in North Carolina General Statute 153A-340(b) as amended.

For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being use for bona fide farm purposes:

- a. A farm sales tax exemption certificate issued by the Department of Revenue.
- b. A copy of the property listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
- c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- d. A forest management plan.

Buffer (Watershed)

An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

Buffering or Screening

Any device or natural growth, or a combination thereof which shall serve as a barrier to vision or noise between adjoining properties wherever required by this ordinance. Whenever used for screening or buffering purposes natural growth shall be taken to mean evergreen trees, bushes, and shrubbery.

Building.

Any structure designed or intended for support, enclosure, shelter, or protection of persons, animals, chattels, or property.

Building Height

The vertical distance measured from the average elevation of the finished lot grade at the front building line to the highest point of the roof beams adjacent to the front of the wall in the case of a flat roof, to the average height of the gables in the case of a pitched roof, and to the deck line in the case of a mansard roof.

Building Inspector

The building official named by the County Manager to administer and enforce the provisions of the building code, or his designated representative or agent.

Building Permit

A permit which is issued by the building inspector before a building or structure is started, improved, enlarged, or altered as proof that such action is in compliance with county building code.

Building, Principal

A building in which is conducted the principal use of the lot on which said building is situated.

Built-Upon Area

For the purposes of complying with the standards and requirements of the Watershed Protection Overlay Districts, calculation of the built-upon area within the proposed development shall include, but not be limited to, all existing public and private streets, proposed public streets, sidewalks, driveways, rooftops, parking lots, patios, and all other impervious and partially impervious surfaces, including CABC and gravel within the development. The water area of swimming pools and wooden slatted decks shall not be included in the calculation of the built-upon area.

Child Care Facility

A non-residential facility, built to comply with the International Building Code and licensed by the state, where at any one time, there are three or more pre-school age children or nine or more school-age children that receive child care. Shall also mean "daycare center".

Church

A place of worship where religious services are regularly conducted by a recognized religious organization granted tax exempt status under Section 501 (c) (3) of the Internal Revenue Code.

Cluster Development

The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing storm water runoff impacts. This term includes non-residential development as well as single-family residential and multi-family developments.

Collector Major

A highway providing service to any major traffic generator not served by the arterial system, providing links to the higher classified highway routes, and serving as an important intra-county travel corridor.

Collector Minor

A highway collecting traffic from local roads, bringing all developed areas within a reasonable distance of a collector road providing service to small communities, and linking important local traffic generators with the rural area.

Commercial Use

The activity of a business enterprise, occupation, or employment that is carried on for the primary objective of making and sustaining profit.

Common Open Space

The open space land held in common ownership by property or unit owners in a development, normally provided for in the declaration of restrictive covenants and normally in common use.

Communication Facilities

Communication Facilities – Includes a communications tower and communication site and personal wireless facility means a structure, facility, or location designed, or intended to be used as, or used to support, antennas or other transmitting or receiving devices. This includes without limit, communications towers of all types and kinds, including, but not limited to, free standing towers, guyed towers, mono poles, and similar structures that employ camouflage technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other similar structures that can be used to mitigate the visual impact of an antenna or the functional equivalent of such, including all related facilities such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and receiving radio, television, cellular, paging, 911, personal telecommunications services, microwave services and services not licensed by the FCC but not expressly exempt from the siting, building and permitting authority of the County. Exempted are facilities or towers less than fifty (50) feet in height that are owned by a single non-commercial entity and used by the same single non-commercial entity.

Communication Tower (alternative structure) – Communication facilities that use alternative structures to conceal the presence of antennas or towers and are architecturally compatible with the area. Such structures include but are not limited to, clock towers, water towers, bell steeples, light poles, sculptures, and similar alternative design mounting structures.

Community Center

A building used for recreational, social, and cultural activities that is usually owned and operated by a public agency.

Compatible

Capable of existing together in harmony.

Composting Facility

A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

Comprehensive Plan

The Comprehensive Plan, land-use plan, small area plans, neighborhood plans, transportation plan, capital improvement plan, official map, and any other plans regarding land use and development that have been officially adopted by the Board of Commissioners.

Conditional Use

A use that may be allowed in a use district when either the Board of Commissioners or the Board of Adjustment, after review of the application and hearing therein, finds as a fact the proposed use or uses are consistent with the comprehensive plan and the policies of the County for the applicable use district.

Condominium

A dwelling unit, a single-unit providing complete, independent living facilities for

one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation. While the unit is individually owned, the common areas are owned, controlled and maintained through an organization consisting of all the individual owners.

Conical Surface

A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

Contiguous Development

Areas where adjacent properties are developed.

County

Burke County, North Carolina.

Cremated Remains

All human or animal remains recovered after the completion of the cremation process, including pulverization, which leaves only bone fragments reduced to unidentifiable dimensions.

Cremation

The technical process, using intense heat and flame, that reduces human and/or animal remains to bone fragments. Cremation includes the processing and may include the pulverization of the bone fragments.

Crematory or Crematorium

The building, buildings or portion of a building on a single site that houses the cremation equipment, the holding and processing facilities, the business office and other parts of the crematory business. See N.C.G.S. 90-210.121 for additional information and definition.

Critical Area (Watershed)

The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first).

Department of Health

Burke County Department of Health.

Developer

A person, including a governmental agency or redevelopment authority, who intends to undertake any development and who has any legal or equitable interest in the property to be developed.

Development

A tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose, or is to contain five or more residential dwelling units. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials. The term "development" shall not be construed to include any property which will be principally devoted to agricultural production.

Development Permit

A building permit, zoning permit, subdivision approval, conditional use permit, parallel conditional rezoning approval, variance, or any other official action of local government having the effect of permitting the development of property.

Discharging Landfill

A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.

Distillery

A legal establishment for the manufacture, blending, fermentation, processing and packaging of distilled alcohol spirits (including but not limited to; rum, vodka and whiskey). Such facility does not provide onsite retail sales and must comply with all ABC commission laws and permits.

Dwelling

Any building or portion thereof which is designed for or used for residential purposes. Also see dwelling unit, § 402.38.

Dwelling, Single-Family

A building designed for or occupied exclusively by one (1) family in a single dwelling unit.

Dwelling, Two-Family

A building designed for or occupied exclusively by two (2) families living independently of each other in two dwelling units.

Dwelling, Multi-Family

A building or portion thereof used for or designed as residence for (3) three or more families living independently of each other and doing their own cooking therein including townhouses for sale and apartments.

Dwelling Unit

One (1) or more rooms in a residential building or in a mixed building which are arranged, designed, used or intended for use by one (1) family, and which included lawful cooking space and lawful sanitary facilities reserved for the occupants thereof.

Drinking Establishment

An establishment where alcoholic beverages are served and consumed on the premises upon obtaining the appropriate permit under G.S. 18B-1001. If the facility also sells food and the sale of food products represents more than 50 percent of the facility's total sales, the facility is considered an eating establishment/restaurant.

Easement

A right given to another person or entity to trespass upon land that person or entity does not own. Easements are used for roads, utilities, and providing access to landlocked property. Easements run with the land. A property owner cannot cut off access to or build on top of an easement.

Emission, Minimal (Class B Source)

Any stationary source whose uncontrolled emissions are less than 100 tons of any pollutant per year.

Emission, Moderate (Class A2 Source)

Any stationary source whose uncontrolled emissions while operating at the design capacity are equal to or exceed 100 tons of any regulated pollutant per year but whose actual emissions are less than 100 tons per year.

Emissions, Severe (Class A1 Source)

Any stationary source whose actual emissions or potential emission while operating at the designed capacity are equal to or exceed 100 tons of any pollutant per year.

Existing Development

Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this ordinance based on at least one of the following criteria:

- (1)** Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
- (2)** Having an outstanding valid building permit as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1), or
- (3)** Having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1).

Façade

The exterior portion of a building extending from grade to the top of the parapet wall, or eaves and the entire width of the building.

Family

One or more persons occupying a single dwelling unit, provided that unless all members are related by blood, marriage, adoption or guardianship, no such family

shall contain over six (6) persons, but further provided that domestic servants employed and housed on the premises shall not be counted as a family or families.

Family Care Home

An adult care home, built to International Building Code Standards, with support and supervisory personnel that provides room and board, personal care and habitation services in a family environment for not more than six resident handicapped persons. "Handicapped person" is defined in the NC General Statutes 168-21 (2). A family care home shall be considered a residential use and shall be allowed in all residential zoning districts but shall not be located within one-half mile of an existing family care home. Shall also mean "group home".

Family Child Care Home

A child care arrangement located in a residence, licensed by the state, where at any one time, more than two children, but less than nine children, who do not reside in the home, receive child care. The residence must be constructed to standards of the International Building Code and comply with all other state and local regulations regarding such use.

Family Recreation Area

The improvement of property by the owner, either as a primary or accessory use, for recreation vehicles, tents, picnic facilities, and similar recreation structures associated with the temporary gathering of family and friends for the non-commercial use of the property.

Farm Brewery

The use of land for producing agricultural products, including barley, other grains, hops, or fruit used by the brewery in the manufacture of malt beverages. Farm Breweries meet the bona-fide farm exemption of G.S. 153A-340(b2). Farm Breweries must be approved by the Burke County Board of Commissioners via a resolution and public hearing and upon obtaining the appropriate permit under G.S. 18B-1001. These facilities may incorporate tasting rooms, tours and/or other forms of agritourism. A facility which only provides tasting or retail sale of malt beverages is not considered a farm brewery.

Farm Winery

The use of land for producing agricultural products including grapes and other fruit used by the winery in the manufacture of unfortified wine owned by the winery and approved by the Alcohol Beverage Control Commission for sale in North Carolina upon obtaining the appropriate permit under G.S. 18B-1001. Farm Wineries meet the bona-fide farm exemption of G.S. 153A-340(b2). These facilities may incorporate tasting rooms, tours, and/or other forms of agritourism. A facility which only provides tasting or retail sale of wine is not considered a farm winery.

Financial Institutions

A building or structure used in the provision of financial and banking services to consumers or clients and usually providing on-site or drive-in services. Shall also

mean banks, credit unions, lending establishments, and automatic teller machines, but not to include pawn shops.

Floor Area

The sum of the gross areas of the several floors of a building or buildings measured from the exterior faces of exterior walls or from the center lines of walls separating two (2) buildings. In particular, floor area includes:

- (a) Basement space, except such space in a basement which has at least one-third (1/3) of its height below grade level, and which is located in a residential building with not more than two (2) stories entirely above grade level.
- (b) Elevator shafts or stairwells at each floor;
- (c) Floor space in penthouse;
- (d) Attic space (whether or not a floor has been laid) providing structural headroom is eight (8) feet or more;
- (e) Floor space in interior balconies or mezzanines;
- (f) Floor space in open or roofed terraces, exterior balconies, breezeways, or porches, if more than fifty (50) percent of the perimeter of such terrace, balcony, breezeway, or porch is enclosed;
- (g) Any other floor space used for dwelling purposes, no matter where located within a building, when not specifically excluded;
- (h) Floor space in accessory buildings except for floor space used for accessory off-street parking. Floor area of building shall not include:
 - (a) Cellar space, except that cellar space used for retailing shall be included for the purpose of calculating requirements for accessory off-street parking spaces and accessory off-street loading berths;
 - (b) Elevator or stair bulkheads, accessory water tanks, or cooling towers;
 - (c) Uncovered steps;
 - (d) Attic space, whether or not a floor actually has been laid, providing structural headroom of less than (8) feet;
 - (e) Floor space in open or roofed terraces, exterior balconies, breezeways, or porches, provided that not more than fifty (50) percent of the perimeter of such terrace, balcony, breezeway, or porch is enclosed;
 - (f) Unenclosed floor space used for permitted or required accessory off-street parking spaces;

(g) Floor space used for accessory off-street loading berths;

(h) Floor space used for mechanical equipment.

Go-Cart

A small low motor vehicle of 10 horsepower or less, with four wheels and open framework used for recreation or amusement. Also, known as go-karts.

Go-Cart Track

A track used to race go-carts.

Golf Course

Land developed for the recreational purpose of golf, excluding miniature golf courses and including country clubs and private and public courses, driving ranges, and pro and snack shops.

Grade

An average level of the finished surface of the ground adjacent to the exterior walls of the building or structure.

Grandfathered

A lot, parcel, or structure existing at the time of adoption of this ordinance as a legal purpose is exempt from the provisions of this ordinance provided. Any change of the use of the property after this ordinance is in place shall comply with the provisions herein.

Group Projects

A group of two (2) or more principal structures built on a single lot, tract or parcel of land not subdivided into customary blocks or lots and which will not be subdivided, and designed for occupancy by separate businesses or industrial enterprises. Examples would be commercial group projects (shopping centers and shopping complexes) and industrial group projects (industrial parks).

Hazardous Waste

Solid or liquid waste which, because of concentration, quantity, physical, chemical or infectious characteristics:

- (a) May cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or
- (b) May pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed; and
- (c) Is identified by the United States Environmental Protection Agency as hazardous.

Health Club

Commercial establishments such as gymnasiums (except public), private clubs (athletic, health or recreational), reducing salons and weight control establishments.

Height

For purposes of determining height limits in all zones set forth in this ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

Home Occupations

A home occupation is defined as an accessory use of a dwelling unit for gainful employment of the person living in the dwelling unit. The home occupation must be clearly an incidental and secondary use of a dwelling unit that does not alter the exterior of the property or negatively affect the residential character of the neighborhood.

Horizontal Surface

A horizontal plane 150 feet above the established airport elevation, the perimeter of in plan coincides with the perimeter of the horizontal zone.

Humus Layer

Decayed leaf litter and other organic materials in or on the soil.

Industrial/Commercial Park Development

A form of development characterized by a unified site designed for a variety of commercial and industrial uses, open space, buffers, and a mix of building types in which flexibility is given to project planning by allowing for the specific land uses to be determined as the market need arises.

Industrial Use

Activity including resource extraction, manufacturing, warehousing, storage, distribution, shipping, and other related uses.

Industrial Use, Light

An industrial use that by nature and design will have minimal impact to the surrounding land uses by not creating any substantial noise, smoke, vibration, odor, or traffic and by complying with other provisions set forth in this ordinance.

Institutional Use

A non-profit or quasi-public use, such as a church, library, or private school, hospital, or government owned or operated building, structure or land used for a public purpose.

Kennel

Any physical holding site that boards, houses, keeps or cares for ten (10) or more domesticated animals over four (4) months of age at any one (1) time at one location, whether by an individual or other entity. Kennels shall also include an establishment wherein any person or other entity engages in the business or

practice of selling more than one (1) litter of domesticated animals at any one (1) time.

For the purpose of this definition:

Domesticated animals shall be defined as dogs and cats. Litter shall be defined as the offspring resulting from the breeding of two (2) domesticated animals. Location shall be defined as a parcel of property that bears its own County Property Identification Number.

In correlation with NCGS 19A-39., the following shall not constitute the operation of a kennel as defined above and in no way, shall this provision regulate the following:

1. The ownership of domesticated animals for one's own hunting or tracking purposes.

Land Clearing and Inert Debris Landfill

A facility for the land disposal of land clearing waste, concrete, brick, concrete block, uncontaminated soil, gravel and rock, untreated and unpainted wood, and decomposable vegetative yard trash such as brush and stumps.

Landfill

A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the N.C. General Statutes. For the purpose of this ordinance this term does not include composting facilities.

Landowner

Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representatives of such owner.

Larger than Utility Runway

A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.

Leaf Litter

Normal fallen leaves from trees.

Lot

A measured portion or parcel of land separated from other portions or parcels by description in a site plan or a recorded plat, or by metes and bounds, intended to be a unit for the purpose, whether immediate or future, of transfer of ownership or of development or separate use. The term applies to units of land whether in a subdivision or a development.

Lot, Corner (Corner Lot)

A lot which occupies the interior angle at the intersection of two (2) street lines

which make an angle of more than forty-five degrees (45) and less than one hundred and thirty-five degrees (135) with each other. The street line forming the least frontage shall be deemed the front of the lot except where the two (2) street lines are equal, in which case the owner shall be required to specify which is the front when necessary.

Lot Coverage.

The percentage of a lot which may be covered with buildings or structures, excluding walks, drives, and other similar uses and recreational facilities which are accessory to a permitted use. Note: The Watershed Ordinance overrides this definition.

Lot Line (Property Line)

The boundary of a lot.

Lot of Record

A lot that is part of a subdivision, a plat of which has been recorded in the office of the Register of Deeds of Burke County, or a lot described by metes and bounds, the description of which has been so recorded.

Lot Width.

The distance between side lot lines measured at the building setback line, or as otherwise herein stated.

Major Variance (Watershed)

A variance from the minimum statewide watershed protection rules that results in any one or more of the following

- (1)** any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system;
- (2)** the relaxation, by a factor greater than ten (10%) percent, of any management requirement under the low density option;
- (3)** the relaxation by a factor greater than five (5%) percent of any buffer, density or built-upon area requirement under the high density option.

Manufactured Home

A dwelling unit, constructed after July 1, 1976 that meets or exceeds the construction standards of the U.S. Department of Housing and Urban Development on the date of its manufacture. A manufactured home is at least eight feet wide and forty feet in length, may be composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis and be placed on temporary or permanent foundation. Unless located in a manufactured home park, manufactured homes are to be placed on the lot to be in harmony with nearby site built structures. Where there are no nearby structures for comparison, it shall be sited with the front running parallel to the street. Manufactured homes are for dwelling purposes only and are not to be used as accessory buildings or office space except as temporary offices on construction sites or sales offices on manufactured home sales lots. This term shall also include the term "Mobile

Home.” Manufactured homes in Burke County are classified in the following categories:

Class A: A double-wide or multi-sectioned manufactured housing unit that meets the U. S. Housing and Urban Development Department manufactured home construction standards and adhere to the following appearance criteria:

- a. The main portion of the building shall have a length not exceeding four times its width. The minimum width shall be sixteen (16) feet.*
- b. The pitch of the main roof of the building shall have a minimum rise of three (3) feet for each twelve (12) feet of horizontal run. The roof shall be finished with a type of shingle that is commonly used in residential construction. The eave projection shall be no less than six (6) inches, which may include a gutter.*
- c. The exterior siding shall consist predominantly of vinyl or aluminum lap siding (whose reflectivity does not exceed that of flat white paint), wood or hardboard, comparable in composition, appearance and durability to the exterior siding commonly used in residential construction.*
- d. All Class A manufactured homes shall be placed on brick, concrete block, or other masonry foundation. The foundation shall be continuous and unpierced except for ventilation as required by the state of North Carolina Regulations for Manufactured / Mobile Homes.*
- e. Class A manufactured home shall have either a deck or a porch with steps. This structure shall be located in the front of the home. The minimum square footage shall measure at least thirty-six (36) square feet. If the homeowner chooses to construct the deck or porch larger than 36 square feet, it must meet Volume VII of the North Carolina Residential Building Code and the North Carolina Regulations for Manufactured / Mobile Homes.*
- f. The towing apparatus and tongue shall be removed upon final placement of the unit and underskirted or screened with shrubbery. Such shrubbery shall be of a height and density to assure a total visual barrier of the towing apparatus and maintained to continue its effectiveness.*

Class B: A single-wide manufactured housing unit that meets the U.S. Department of Housing and Urban Development manufactured home construction standards and also meets the following appearance criteria:

- a. Roof pitch is at least a three (3) foot rise for every twelve (12) feet of horizontal run. The roof shall be finished with a type of shingle that is commonly used in residential construction.*
- b. The exterior siding shall consist predominantly of vinyl or aluminum lap siding (whose reflectivity does not exceed that of flat white paint), wood or hardboard, comparable in composition, appearance and durability to the exterior siding commonly used in standard residential construction.*
- c. Class B manufactured homes must be underpinned. This underpinning may consist of vinyl or masonite materials manufactured for that purpose OR the home may be [placed on a permanent foundation of masonry materials such as brick, block, or stone.*
- d. A deck or a porch of at least thirty-six (36) square feet in size must be*

located on the front of the home.

- e. *Towing apparatus and tongue to be removed or screened with landscaping.*

Class C: Double-wide manufactured housing unit existing in Burke County prior to July 15, 1999 that meets the U.S. Department of Housing and Urban Development manufactured home construction standards, but does not meet the county's appearance criteria. Such manufactured homes may only be relocated to mobile home parks or on lots of record in the Rural Mixed Use District in existence prior to July 15, 1999. At that time, the home must be underpinned with either masonry materials or other products manufactured expressly for the purpose of underpinning and installed in accordance with the manufacturer's specifications.

Class D: Single-wide manufactured housing unit existing in Burke County prior to July 15, 1999 that meets the U.S. Department of Housing and Urban Development manufactured home construction standards, but does not meet the county's appearance criteria. Such manufactured homes may only be relocated to mobile home parks or lots of record in the Rural Mixed Use District in existence prior to July 15, 1999. At that time, the home must be underpinned with either masonry materials or other products manufactured expressly for the purpose of underpinning and installed in accordance with the manufacturer's specification.

Class E: Any manufactured housing unit that does not meet the county appearance criteria or the U.S. Department of Housing and Urban Development manufactured home construction standards. Class E manufactured will not be permitted in the county after July 15, 1999. Homes existing in the county's jurisdiction prior to July 15, 1999 will be allowed to remain at their current location as nonconformities, but may not be relocated anywhere in the county's jurisdiction.

Manufactured or Mobile Home Park

Any place or tract or land maintained under single ownership, offered or used for the parking of three (3) or more manufactured homes used or intended to be used for living or sleeping quarters.

Marina

A parcel that provides access points for the use of the project lands and waters of Lake James, Lake Hickory, Lake Rhodhiss and the Catawba River between Lakes James and the mouth of Lake Rhodhiss for facilities where water craft can be launched, retrieved, or moored, and where facilities for food services and convenience retailing, including petroleum dispensing, wet and dry storage of water craft, and other activities customarily associated with marinas.

This definition does not include private residential boat slips and ramps. All requirements of this ordinance must also be met.

Mechanical Clearing

Any clearing of trees, shrubs, understories, stumps, or humus layers by wheeled or tracked vehicles or equipment such as a bulldozer or backhoe. Mechanical clearing does not include clearing by hand held power equipment such as

chainsaws.

Mini Warehouse

A structure containing separate storage spaces of varying sizes leased or rented on an individual basis. No outdoor storage shall be allowed in conjunction with the facility.

Mixed-use Development

Buildings erected for two or more different uses, such as residential, office, retail, government, or entertainment, which have side yards measuring not less than ten (10) feet in width and are functionally designed to share vehicular and pedestrian access and parking areas.

Modular Home

A dwelling unit constructed in accordance with the standards set forth in the North Carolina State Building Code, as amended, and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a continuous permanent foundation surrounding the entire home. A modular home shall consist of two or more sections transported to the site on a truck and erected or joined together on the site.

Motel

A building in which lodging or board and lodging are provided for transient guests and offered to the motoring public for compensation. This term shall also include the terms "hotel" and "inn".

Natural Woodland Buffer

An area of protected vegetation that includes all trees, shrubs, ground cover, forest humus, leaf litter, and soil within a measurable distance of a topographic reference line or water body as set forth in this ordinance.

Nonconforming Lot

An otherwise legally platted lot that does not conform to the minimum area requirement of this ordinance either at the effective date of this ordinance or as a result of subsequent amendments thereto.

Nonconforming Structure

An otherwise legal building or structure that does not conform with the lot area, yard, height, lot coverage, or other area regulations of this ordinance, or is designed or intended for a use that does not conform to the use regulations of this ordinance, either at the effective date of this ordinance or as a result of subsequent amendments thereto.

Nonconforming Use

A building or land which does not conform to the use regulations of this ordinance for the use district in which is located, either at the effective date of this ordinance, or as an amendment thereto.

Non-Precision Instrument Runway

A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight in non-precision instrument approach procedure has been approved or planned.

Non-Residential Use

A building or structure not used for residential purposes.

Non-Rural Use

The use of land, buildings or structures other than a rural use.

North American Industry Classification System (NAICS)

A multi-digit code utilized by the federal Office of Management and Budget to classify establishments by type of activity in which they are engaged.

Nursing Home

A health facility where persons are housed and furnished with meals and continuing nursing care for compensation.

Obstruction

Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Article IXX of this ordinance thereby posing a potential hazard to air navigation.

Office / Professional Space

A building or portion of a building used by business, professional, religious, charitable and fraternal offices or agencies wherein services are performed involving predominantly administrative, professional, or clerical operations.

Open Space

Any land area which is not used for or occupied by a building, driveway, commercial or industrial area, off-street parking, loading space, or refuse storage space.

Open Storage

Unroofed storage area, whether fenced or not.

Parking Lot

Any designated area designed for temporary accommodation of motor vehicles of the motoring public in normal operating condition whether for a fee or as a service.

Person

An individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having a joint common interest, State agency, or any legal entity.

Planned Unit Development (PUD)

A form of development characterized by a unified site design for a number of housing units, clustering of buildings and providing common open space, density

increases, and a mix of building types. It permits the planning of a project and a calculation of densities over the entire development rather than on an individual lot-by-lot basis.

Planning Administrator

The Burke County official charged with the responsibility of enforcing this ordinance.

Plat

A map or plan of a parcel of land which is to be, or has been subdivided.

Presiding Officer

A person appointed by the Board of Adjustment, the Planning Board and/or Board of Commissioners, whichever is appropriate, to preside at public meetings or hearings in order to carry out the provisions of this ordinance.

Precision Instrument Runway

A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on a FAA approved airport layout plan or other FAA planning document.

Primary Structure

A structure or building on a parcel of land which contain the primary use of the parcel. Typically the largest building on the parcel.

Primary Surface

A surface longitudinally centered on a runway. The primary surface extends 200 feet beyond each end of the runway. The width of the primary surface is set forth in Article IXX of this ordinance. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway center line.

Protected Area (Watersheds)

The area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within 10 miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

Public Facilities

Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

Public Service Facilities

The use of land, buildings, or structures by a public utility or governmental agency, including water treatment plants, sewage treatment plants, telephone exchanges, resource recovery facilities, and other similar public service structures, but not

including solely the storage and maintenance of equipment and materials.

Public Use Facilities

The use of land, buildings, or structures by a governmental agency to provide protective, administrative, and social services directly to the general public, including police and fire stations, municipal buildings, and similar public facilities providing the above services. This term shall not include solely the storage and maintenance of equipment and materials nor public cultural facilities.

Public Utility Facilities

Electric transmission and distribution lines, gas and water pumping stations, transformer stations, but not including land used for storage of materials and maintenance of equipment.

Racetrack

A commercial course where animals or machines are entered in competition against one another or against time. Also includes commercial tracks for practice and training. Indicators of commercial use may include, but are not limited to, collection of membership dues, gate fees, track user fees or race entry fees in exchange for use of the property. Not including Go-cart tracks.

Recreational Facility (commercial – indoor)

A commercial recreation use that is conducted primarily within a building including arcades, spas, health clubs, gymnasiums, bowling alleys, billiard halls, and similar uses. This does not include those terms that are classified by a more exclusive definition.

Recreational Facility (commercial – outdoor)

Commercial recreational uses conducted almost wholly outdoors, including driving ranges (not associated with a golf course), miniature golf, water and amusement parks, batting cages, skateboard parks, and similar uses. This does not include those terms that are classified by a more exclusive definition.

Recreational Vehicle

A vehicular, portable structure designed as a temporary dwelling for travel, recreational and vacation uses. The term recreational vehicle does not include mobile or manufactured homes.

Recreational Vehicle Park

Facilities for recreational vehicles, pick-up coaches, motor homes, camping trailers, other vehicular accommodations and tents suitable for temporary habitation and used for travel, vacation and recreation purposes.

Reference Line

An example is the Duke Power Lake James Project Boundary, elevation 1200 feet above mean sea level and Lake Rhodhiss Project Boundary, elevation 1000 feet above mean sea level.

Religious Institution

Churches and their customary related uses including cemeteries provided that graves are set back at least ten (10) feet from any property line. Structures may include private schools, adult care facilities, and child care facilities when located in zoning districts that allow such uses and the use is properly licensed.

Rental Store

Commercial establishment operated under a fixed-time lease arrangement within a building not owned by the commercial establishment.

Residential Use

A building or part of a building containing one or more dwelling units or rooming units, including single-family or two-family houses, multiple family dwellings, mobile or manufactured homes, boarding or rooming houses, dormitories, fraternity or sorority houses or apartment hotels; but not including monasteries, convents, transient accommodations, such as hotels, motel, tourist homes, or recreation vehicle parks, or that part of mixed building used for any non-residential use, except accessory or residential uses.

Rest Home

A home for aged or ill persons in which three (3) or more persons not of the same immediate family are provided with food, 24-hour shelter, and care for compensation; but not including hospitals, clinics, or similar institutions devoted primarily to diagnosis or treatment. These institutional structures shall be built to comply with the International Building Code and all other state and local regulations regarding such use. This definition shall also include facilities known as assisted living facilities, skilled nursing facilities, and intermediate care facilities.

Restrictions

An instrument or means that provides the act of limiting, restrains, or restricts the use of real property.

Retail / Commercial Space

The use of land, buildings, or structures the sale, rental, or incidental repair of commonly used goods and merchandise for personal or household use but excludes those terms classified more exclusively by definition.

Right-of-Way

Access over or across particularly described property for a specific purpose or purposes.

Right-of-Way Line

The dividing line between a lot, tract, or parcel of land and a contiguous street, railroad, or public utility right-of-way.

Right-of-Way, State Owned

The right-of-way owned outright by the North Carolina Department of Transportation on which public transportation are constructed and maintained.

Runway

A defined area on an airport prepared for landing and take-off of aircraft along its length.

Rural Use

An activity defined as either an agricultural use or an agribusiness.

Sanitary Landfill

An engineered land burial facility for the disposal of solid waste which is so located, designed, constructed and operated to contain and isolate the solid waste so that it does not pose a substantial present or potential hazard to human health or the environment.

Scrap

Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste; or junked iron, steel and other old or scrap ferrous or nonferrous material.

Scrapyard

An establishment or place of business which is maintained, operated, or used for storing, keeping, buying selling scrap.

Second-Growth Pine

A young sapling, less than two inches in diameter, that originated from seed as an understory species.

Setback Line

A line parallel to a street or lot line and extending the full width or length of the lot for a specified distance at all points from the property line, and thus defining an area on which no building or structures, or portions thereof, may be constructed.

Shooting Range (Outdoor)

A facility open to the public or to members of a membership organization where firearms are discharged at targets, whether or not a fee is paid to the owner or proprietor of the facility.

Does not include target practice areas on private property, licensed gun dealers or gunsmiths (while operating in the course of their business), hunter safety course training activities (by a certified trainer), turkey shoots, government facilities, or "sighting-in" of firearms.

Shopping Center

A group of commercial establishments, planned and developed as a unit, with common off-street parking provided on the property, located on a parcel of land ten or more acres in size.

Shopping Complex

Two or more commercial uses or establishments, planned and developed as a

unit, with common off-street parking provided on the property, located on less than a ten-acre parcel of land.

Shoreline

The point at which the water body meets the land, including any adjacent unvegetated exposed soil bank or bluff.

Shoreline Stabilization

The placement of hardened structures (such as rip rap, bulkheads, sea walls, etc.) along the shoreline for the purpose of controlling shoreline erosion caused by wave action in order to permanently protect the landowners property. Wood shall not be considered to provide permanent protection.

Sign

Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names or marks, or combinations thereof, by which anything is made known, such as the designation of an individual, a firm, an association, a profession, a public business, a commodity, or product, which are visible from any public way and used as an outdoor display.

Sign Area

A square, rectangle, triangle, circle, or other geometric configuration, encompassing the entire advertising area, excluding architectural trim and structural support.

Sign, Commercial

A sign informing or advertising products or activities for sale or profit.

Sign, Directional

A sign indicating only the name and direction to a business, farm, activity or a warning.

Sign, Off-Site

A sign, either free standing or attached to a building, for the purpose of conveying information, knowledge, or ideas to the public about a subject not specified to the premises upon which it is located.

Sign, On-Site

A sign relating to its subject matter to the premises on which it is located, or to products, accommodations, services, or activities, on the premises. On-site signs do not include signs erected by the outdoor advertising industry in the conduct of the outdoor advertising business.

Sign, Outdoor Advertising

A structural poster panel or painted sign, either free standing or attached to a

building, for the purpose of conveying information, knowledge, or ideas to the public about a subject related or unrelated to the premises upon which it is located.

Sign, Temporary

Any sign, banner, pennant, valance, or advertising display constructed of cloth, canvas, light, fabric, cardboard, wallboard, or other materials with or without frames intended to be displayed for a period of not more than sixty (60) days.

Site Plan

A graphic representation of a proposed development of a parcel of land describing with reasonable certainty the type and intensity of use thereon.

Special Events Grounds

A permanently established facility or use of property in a rural setting that operates on a continuous basis to accommodate the temporary assembly of people for special functions and events such as, but not limited to, reunions, weddings, concerts, and other temporary festivals and events. The sites take advantage of special rural characteristics such as natural features, historic structures, and landscapes, special views, open vistas, or a secluded pastoral locale.

The use may be permitted as a temporary use in any district in which the use is permissible as a use by right upon submission of Special Events Grounds permit application and site plan.

Stable, Private

An accessory structure and/or land use that is designed, arranged, used, or intended to be used for the keeping of equines for the private use of the occupants of the principal dwelling and their guests, but in no event for hire.

Stable, Public

A structure or land use where equines are kept for sale or hire to the public. Acceptable uses also include breeding and training of equines, boarding of equines not owned by the occupant of the premises, polo and showgrounds (excluding racetracks), and horseback riding lessons.

Street (Road)

A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Street Vendors

Any cart, table, equipment or apparatus of a temporary design, which is not a structure, used for the retail display and sale of merchandise. This term shall not include farmers markets or wayside produce stands.

Street Wall

Exterior walls of a building that are adjacent to or front on a public street, park, or plaza.

Structure

Structure means anything constructed or erected, the use of which requires rigid location on the ground, or attachment to something having permanent location on the ground, including but not limited to mobile homes, buildings, signs, towers, accessory buildings, gazebos, docks, metal carports and swimming pools. However, a fence, utility pole, flag pole, light post, mail box, screening wall or retaining wall shall not be considered a structure for the purpose of setbacks.

Structural Alteration

Any change in either the supporting members of a building, such as bearing walls, columns, beams, and girders, or in the dimensions or configurations of the roof or exterior walls.

Superior Court

The Superior Court of Burke County, North Carolina.

Temporary Homeless Shelter

A non-permanent area of protective sleep refuge for no more than twenty persons within a qualified church facility and managed by the church congregation in compliance with the NC Building Code.

Theater

A specialized building for showing motion pictures or stage performances consisting of audience seating, one or more screens and auditoriums, restroom facilities, and a lobby that may include a refreshment stand.

Theater, Drive-in

An open lot, or part thereof, with facilities devoted primarily to the showing of motion pictures to patrons seated in automobiles.

Thoroughfare (Major)

Interstate, other freeway, expressway, or parkway roads, and major streets that provide for the expeditious movement of high volumes of traffic within and through urban areas.

Thoroughfare (Minor)

Roads that perform the function of collecting traffic from local access streets and carrying it to the major thoroughfare system. Minor thoroughfares may be used to supplement the major thoroughfare system by facilitating minor through traffic movements and may also serve abutting property.

Tourist Home

See "Boarding House".

Townhouse

A residential unit in a series of three (3) or more single-family attached dwellings separated from one another by common vertical walls with no openings.

Townhouse Lot

A lot upon which a townhouse is or is to be erected.

Traffic Impact Study (TIS)

An analysis of the effect of traffic generated by a development on the capacity, operations, safety, and other specified concerns on the public street and highway system.

Transitional Surface

These surfaces extend outward at 90 degree angles to the runway center line and the runway center line extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces.

Treatment and Recovery Facility

Establishments engaged in providing residential care and treatment for patients with mental health and substance abuse illnesses. These establishments provide room, board, supervision, and counseling services. Although medical services may be available at these establishments, they are incidental to the counseling, mental rehabilitation, and support services offered. These establishments generally provide a wide range of social services in addition to counseling. Such facilities may include an outpatient component. The facility shall be licensed by the NC Department of Health and Human Services.

Turf Grass

Normal yard grasses, including sod and fescue.

Understories

Small trees and shrubs (e.g. mountain laurel, dogwood)

Use

The principal purpose for which a parcel or the principal building thereon is designed, arranged, or intended and/or which it is or may be used, occupied, or maintained.

Use-by-Right

A use of the land, because of its nature and impact, that is automatically allowed within a use district.

Variance

A reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk, or location of a building or structure when the strict application of the provisions of this ordinance would result in an unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other properties, and provided such

variance is not contrary to the intended spirit and purpose of this ordinance.

Variance, Minor

A variance whose deviation from the numerical requirement is twenty (20) percent or less and therefore can be granted by the Planning Administrator.

Vested Rights

The written and granted right to undertake and complete the development and use of real property which, when completed, will be in conflict with the provisions of this ordinance at its effective date, or any amendments thereto.

Visual Runway

A runway intended solely for the operation of aircraft using visual approach procedures.

Warehouse

A facility designed for the primary uses of storage and/or distribution of manufactured products (excluding bulk storage of hazardous materials) and may have frequent heavy truck activity, open storage of material, dust, noise, and odors, but is not involved in the manufacturing process.

Warehouse, hazardous materials

Identical to the standard definition of warehouse except allows storage of materials and chemicals that, by reason of their toxic, caustic, corrosive, abrasive, or otherwise injurious properties, may be detrimental or deleterious to the health of any person handling or otherwise coming into contact with such material or substance.

Water Dependent Structure

Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots, and commercial boat storage areas are not water dependent structures.

Watershed

The entire land area contributing surface drainage to a specific point (e.g. the water supply intake).

Wayside Stand

A building or structure located within fifty (50) feet of a street or road for the purpose of selling agricultural or horticultural or related products.

Winery/Brewery

The non-farm use of land for activities involved with the processing/packaging of wine and beer upon obtaining the appropriate permit under G.S. 18B-1001. Non-farm wineries and breweries do not meet the bona-fide farm exemption of G.S. 153A-340(b2).

Yard

An open space on the same lot with a principal building, unoccupied and unobstructed from the ground upward, except where encroachments and accessory buildings are expressly permitted.

Yard, Front

An open space on the same lot with a principal building, extending the full width of the lot and situated between the street or highway right-of-way line and the front line of the building, projected to the side lines of the lot. Normally, the front yard shall be considered as parallel to the street upon which the lot has its least dimension.

Yard, Rear

An open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot. On all lots the rear yard shall be at the opposite end of the front yard.

Yard, Side

An open, unoccupied space on the same lot with a principal building, situated between the side line of the building and the adjacent side line of the lot and extending from the rear line of the front yard to the front line of the rear yard. On all corner lots, the side yard shall be considered as parallel to the street upon which the lot has its greatest dimension.

Zoning/Zones

Zoning is used to separate incompatible uses of land, preserve the character of communities, protect natural resources, or promote economic development. Zoning creates a number of different districts or zones which sets specific rules on how the land in that district can be used.

Zoos

Any area, building, or structure which contains wild animals on exhibition for the viewing public.

ARTICLE V APPLICATION OF REGULATIONS

Section 501 Territorial Application

The provisions of this ordinance shall apply to all lands as designated by Burke County except for the municipalities of Connelly Springs, Drexel, Glen Alpine, Hickory, Hildebran, Long View, Morganton, Rhodhiss, Rutherford College, Valdese and their respective extraterritorial planning areas, where applicable.

All territory which may hereafter be included within the planning jurisdiction of any municipality shall be continued in the County's existing planning jurisdiction until otherwise classified by the governing board of the affected municipal government.

Section 502 Uniform Application of Regulations

The regulations established herein shall be minimum regulations and be uniformly applied except as hereafter provided.

Section 503 Uses

No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, constructed, moved or structurally altered except in conformity with the regulations herein specified.

Section 504 Buildings

No building shall hereafter be erected, constructed, or altered so as to exceed the height limit, to accommodate or house a greater number of families, or to occupy a greater percentage of the lot area than is required or specified in the regulations herein.

Section 505 Reduction of Lots and Yards Prohibited

No new lot or yard shall hereafter be created, nor shall any lot or yard existing at the time of enactment of this ordinance be moved so that area requirements; front, side, or rear yard requirements; or other requirements of this ordinance are not maintained, except when a portion of a lot is acquired for public use.

No part of a yard nor other open space required for any building for the purpose of complying with the provisions of this ordinance shall be included as part of a yard or other open space similarly required for another building.

Section 506 Additional Dwellings on a Single Lot

Additional single family dwellings may be permitted on the same lot or parcel of land as that of the main dwelling, upon application to and approval by the Planning Administrator, provided that:

Section 506.01 Lot Area

Each additional dwelling conforms to the minimum lot area, maximum lot coverage and yard requirements set forth herein and by the Watershed Protection Ordinance.

Section 506.02 Lot Division

The arrangement of such additional dwellings are in such a manner that if the lot or parcel of land is ever divided no non-standard lots or non-conforming buildings are created.

Section 506.03 Street Access

Each additional dwelling has access to a public street by means of a passageway open to the sky at least fifteen (15) feet in width.

Section 506.04 Mobile Home Park

Three or more mobile/manufactured homes on the same parcel constitute a manufactured home park and must be permitted as a mobile/manufactured home park.

Section 507 Compliance with Other Laws and Regulations

Provisions herein may reference other applicable laws and regulations that must be adhered to in addition to the requirements herein. Compliance with any other law or regulations applying to the applicant or his agent for any project subject to this ordinance, whether referenced herein or not, shall be the responsibility of the applicant or his agent.

Section 508 Uses Not Delineated in this Ordinance

If in any use district established hereunder, a use is not specifically delineated in this ordinance as a use-by-right or a conditional use, a property owner, or his appointed agent, may submit an application for a use permit provided by Section 1503 herein. If the use as applied for is approved, this ordinance shall be automatically amended to include the use as a conditional use in the district so located, provided the requirements in Section 1601 herein are met.

ARTICLE VI ESTABLISHMENT OF DISTRICTS

Section 601 Use District Names

For the purpose of this ordinance the use districts of Burke County are hereby divided into the following districts:

R-1	Residential Low Density District
R-2	Residential Medium Density District
R-3	Residential District
R-MU	Rural Mixed-Use District
O-I	Office and Institutional District
G-B	General Business District
N-B	Neighborhood Business District
IND	Industrial District
L-I	Light Industrial District
C-DL	Low Density Conservation District
C-DE	Estate Lots Conservation District
PRMU	Planned Residential Mixed-Use District

Section 601.02 Parallel Conditional Zoning Districts

A parallel conditional zoning district is a conditional zoning district in which the potential permitted use or uses are, except as limited by the conditions imposed on the district, of the same character or type as the use or uses permitted in the general district having a parallel designation or name.

A parallel conditional zoning district is available in the following general zoning districts: Low Density Conservation District, the Estate Lot Conservation District, General Business, Industrial, Office Institutional, or the Planned Residential Mixed Use District and shall be designated respectively as C-DL(CD), C-DE(CD), G-B(CD), IND(CD), O-I(CD) and PRMU(CD).

Section 602 Conversion to a Zoned District

Repealed.

Section 603 Zoning Map Requirements

The "Official Zoning Map of Burke County, North Carolina", with all notations, references, amendments and dates thereto, and other information shown, thereon, shall constitute a part of this ordinance and be herein after referred to as the zoning map. The zoning map shall be made public record and shall be kept permanently in the office of the Planning Administrator, where it shall be available for inspection by the public.

Section 604 Map Amendment

If, in accordance with the provisions of Article XVI herein, changes are made in the district boundaries or other information portrayed on the official map, such changes shall be entered on the official zoning map within thirty (30) days after the amendment has been approved by the Board of Commissioners, together with a numerical entry referring to the application for the amendment which shall be kept as a public record by the Planning Administrator. Said numerical entry shall state the reference number of the application in the records of the Planning Administrator, and the date of the approval of the amendment by the Board of Commissioners. Amendments to this ordinance which involve matters portrayed on the official zoning map shall become effective immediately upon being approved by the Board of Commissioners. The official zoning map which shall be located in the office of the Planning Administrator shall be the final authority in determining the current legal status of land and water areas, buildings, and other structures in the County. No changes of any nature shall be made on the official zoning map except in accordance with the procedures set forth herein.

Section 605 Replacement of the Official Zoning Map

In the event that the official zoning map becomes damaged, destroyed, lost or difficult to interpret because of the nature of number of changes and additions, or can be improved with a more accurate base map, the Board of Commissioners may, by resolution, adopt a new official zoning map which shall supersede the prior official zoning map. The new official zoning map may correct drafting errors or omissions in the prior official zoning map, but no such correction shall have the effect of amending the original official zoning map or any significant parts thereof without a public hearing. The prior official zoning map or any significant parts thereof remaining shall be preserved, together with all available records pertaining to its adoption or amendment.

Section 606 Rules for Determining Boundaries

Unless district boundary lines are fixed by dimensions, and where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the official zoning map, the following rules shall apply.

Section 606.01 Approximate Boundaries

Unless otherwise indicated, district boundaries indicated as approximately following property lines, land lot lines of streams, streets, highways, alleys or railroads, or the shorelines of reservoirs, or other bodies of water, or civil boundaries, shall be construed to follow such lines.

Section 606.02 Parallel Boundaries

District boundaries indicated as approximately parallel to the center lines of streams, streets, highways, or railroads, or rights-of-way of the same, or the

shorelines of reservoirs, or other bodies of water, or said lines extended, shall be construed as being parallel thereto and at such distance there from as indicated on the official zoning map. If no distance is given, such dimensions shall be determined by the use of the scale shown on the official zoning map.

Section 606.03 Split Lots

Where a district boundary line as appearing on the official zoning map divides a lot which is in single ownership at the time of this enactment, the use classification of the larger portion may, on application, be extended to the remainder by the Planning Board in accordance with Section 1601 or Section 1602 herein.

Section 606.04 Abandoned Roads

Where a public road, street, or alley is officially vacated or abandoned, the regulations applicable to the property to which it is reverted shall apply to such vacated or abandoned road, street, or alley.

Section 606.05 Waterways

Where a district boundary is indicated to follow a river, creek, or branch or another body of water, said boundary shall be construed to follow the center line at low water or at the limit of the jurisdiction, and in the event of natural change in the shoreline, such boundary shall be construed as moving with the actual shoreline with its reestablished center of channel.

Section 606.06 Measurements

If no distance, curvature description, or other means is given to determine a boundary line accurately and the foregoing provisions do not apply, the same shall be determined by the use of the scale shown on the official zoning map. In case of subsequent dispute, the matter shall be referred to the Board of Adjustment which shall determine the boundary in accordance with Section 1602 herein.

Section 606.07 Appeal

In case the exact location of a boundary cannot be determined by the foregoing method, the Board of Adjustment shall, upon application, determine the location of the boundary in accordance with Section 1602 herein.

Section 607 Non-Conforming Uses

As provided in Article XIV herein, nothing in this ordinance shall be construed to impair any vested right. It is, therefore, the intent of this ordinance to permit these non-conforming uses to continue, but not to encourage their survival or permit their uses as grounds for adding other uses prohibited elsewhere within the same zoning.

Non-conforming uses may be found in all use districts, therefore, any use of land existing at the time when any zoning is created under the provisions of this ordinance and any amendments thereto, and not in conformity with the regulations and provisions prescribed herein, may be continued subject to the following provisions:

Section 607.01 Non-Conforming Uses of Land

Where a lawful use of land exists at the time when any zoning is created or amendment of the ordinance that would not be allowed by the regulations imposed herein, such use may be continued as long as it remains otherwise lawful, subject to the following provisions:

1. A non-conforming use may be enlarged or increased or extended to occupy a greater area not exceeding fifty percent (50%) of the area that was occupied at the time it was determined to be non-conforming.
2. In the event that such use ceases for any reason for a period of more than twelve (12) months any subsequent use shall conform to all requirements of this ordinance for the zoning in which the land is located.
3. All legally-operating non-conforming scrapyards and automobile parts recycling businesses located in Burke County's zoning jurisdiction shall be screened as specified in Section 1106.04 (4) of this ordinance. Such screening shall be in place no later than February 3, 2006.

Section 607.02 Non-Conforming Uses of Structures

Where a lawful use of an individual structure, or of structures on premises in combination, exists where any zoning is created or amendment to this ordinance that would not be permitted in the zoning in which it is located under the requirements of this ordinance, such use may be continued as long as it remains otherwise lawful, subject to the following provisions:

1. Non-conforming structures or uses of land should not exceed the land dimensions or property setbacks.
2. Where a structure which is used in combination with its premises for a use not in conformity with the regulations herein is destroyed by natural causes or fire, the use of the land shall be allowed to continue after reconstruction of the structure, provided such reconstruction of the structure adheres to the yard and other appropriate requirements of the zoning in which said structure is located as approved by the Planning Administrator in accordance with Section 505 herein, and provided the ownership of said structure remains the same as before such destruction. *Examples of natural causes include, but are not limited to, wind or flooding. Time related deterioration, or damage caused by animal or insect infestation does not constitute accidental damage or destruction by natural causes.*

3. When a non-conforming use of a structure and premises in combination is discontinued or abandoned for twelve (12) consecutive months, except when government action impedes access to the premises, or when a non-conforming use is superseded by use-by-right, the structure and premises shall not thereafter be used except in conformity with regulations of the zoning in which it is located.

Section 607.03 Replacement of Non-Conforming Manufactured Homes

1. A non-conforming singlewide manufactured home on an individual lot can be replaced with a Class A or Class B manufactured home, a modular home, or a stick-built home.
2. A non-conforming doublewide manufactured home on an individual lot can be replaced with a Class A manufactured home,

ARTICLE VII GENERAL PROVISIONS FOR COMPLIANCE

Section 701 Terms of Compliance

This ordinance contains a minimal number of exempt uses and very few prohibited uses. Exempt uses are considered generally compatible in nature and are not required to obtain a compliance permit, provided the provisions herein are met. All other development, including all changes of developed uses, not specifically prohibited, is required to obtain a compliance permit issued pursuant to Article XV herein and in accordance with other appropriate Articles of this ordinance.

Section 702 Prohibited Uses

The following developments shall be prohibited in all jurisdictions of the County:

1. Sanitary landfills except those established by the County to meet the County's solid waste disposal needs, including any sanitary landfill developed jointly by the County and another jurisdiction.
2. Location of hazardous/nuclear waste disposal or waste storage sites.
3. Initiation of any development which would destroy any listing on the Survey of Historic Sites in North Carolina or the National Register of Historic Places; and
4. Installation of signs, whether for temporary or permanent use, which blink or flash, except informational public service signs.

Section 703 Exempt Uses

The following uses are exempt from obtaining a compliance permit:

1. Agricultural uses (i.e. "Bona fide farm purposes" as defined in North Carolina General Statutes 153A-340).
2. Yard sales and garage sales by the resident owner, and bazaars, flea markets and sales conducted by non-profit organizations, provided such sales are limited to not more than six (6) days in any three (3) month period of time.
3. Wayside stands.
4. Any uses initiated by any Federal, State, and/or local governmental units.

Section 704 Uses-by-Right

A Use-by-right, because of its nature and impact, is automatically allowed within a designated zoning district as stated herein.

A compliance permit shall be required, and the application shall be processed in accordance with Section 1505.01 herein.

Section 705 Conditional Uses

The following development activities or uses shall be allowed within the County and issued a compliance permit, subject to special provisions provided for in this ordinance and the application process described in Article XV herein, other state and local laws, and applicable deed restrictions and covenants:

1. Any use delineated specifically as a conditional use within a zoning area provided such use has been processed in accordance with Article XV herein.

Section 706 Non-Conforming Lots

Where a platted lot or deeded lot of record at the time of enactment of this ordinance does not contain land of sufficient area to permit conformity with dimensional requirements of this ordinance, a single non-conforming lot of record at the time of enactment or of amendment to this ordinance which is not of continuous frontage with other lots in the same ownership may be used as a building site, provided that yard dimension, and requirements other than those applying to the area or width of the lot shall conform to the regulations herein. Variances of yard requirements may be obtained only through appeal to the Board of Adjustment, as outlined in Sections 1602 and 1702 herein. However a variance of less than twenty percent (20%) of a numerical number may be issued by the Planning Administrator.

ARTICLE VIII ZONED/UNZONED AREAS

Within the planning and zoning jurisdictions of Burke County there may be zoned areas and unzoned area. These areas are indicated on the official zoning map.

Section 801 Unzoned Areas

Repealed.

Section 802 Setbacks

Building setback distances for all structures in both zoned and unzoned areas of the County shall apply to all structures. Setbacks shall be measured at the shortest distance between the structure and the boundary. If a road open to the public does not have an official right-of-way the distance to the road shall be measured from the centerline of the ditch line. In the event that no ditch line exists the distance to the road will be measured from a point five feet from the edge of the pavement or the edge of the gravel.

Front Yard 30 Feet from Right-of-Way/Property Line
(Except when adjacent to a road designated as a minor arterial, major collector, or urban major thoroughfare on the approved Burke County Thoroughfare Plan, in which case the required setback shall be 45 feet).

Corner Lot Side Yard 10 Feet from Right-of-Way/Property Line

Side Yard 10 Feet from Right-of-Way/Property Line

Rear Yard 10 Feet from Right-of-Way/Property Line

Structures located in developments built within a parallel conditional use zoning district may have lesser setback requirements provided that there is a degree of uniformity in the location of similar structures on lots in the immediate vicinity and that the overall design enhances the character of the original development concept. Such setbacks must be specifically incorporated into the application, preliminary plats, and final plats by denoting specific building envelopes. In no case shall any building envelope be located within buffer areas or within 10 feet of any public or private right-of-way. Additionally, no building envelope may be situated within 50 feet of any trail or other recreational easement dedicated for public use.

Section 803 Watershed Act

The provisions of the State of North Carolina mandated Watershed Act as adopted by Burke County apply to all the jurisdiction of the County whether zoned or unzoned.

Section 804 Other Regulations

All applicable federal, state, and local laws apply in both zoned and unzoned areas including floodplain regulations, ridge laws, soil erosion control measures, etc. When any law or regulation conflicts with any other, the strictest shall apply.

ARTICLE IX USE REQUIREMENTS BY DISTRICT

Within the use districts indicated on the zoning map, no building or land shall be used, and no building shall be erected or altered which is intended or designed to be used in whole or in part for any use other than those shown in Section 920 or otherwise listed in this Article as uses-by-right, accessory uses, and conditional uses for the zoning districts described in this Article.

Section 901 R-3 Residential – Agricultural District (formerly R-A)

The R-3 Residential District is a less restrictive medium density residential district that allows a broader range of residential uses including single and multi-section mobile homes and a greater variety of compatible non-residential uses in areas that may be less suburban in nature. Public water should be available to most areas within this district.

Section 902 R-1 Residential District

The R-1 Residential District is composed of high to medium density single-family site built and modular homes in areas that have now, or are likely to have in the future both water and sewer availability. The R-1 district may also be located in areas without these services, but at reduced density levels. The characteristics of the district, and the uses allowed there, are primarily residential in nature. The regulations of this district are intended to discourage any use that, because of its character, would substantially interfere with the development of single-family residences which would be detrimental to the quiet residential nature of the areas included in this district.

Section 903 R-2 Residential District

The R-2 Residential District is very similar to the R-1 district, however this district also allows multi-section mobile homes and multi-family housing options. These areas should also be served by public water systems and, in most cases, by private on-site septic systems. Allowable uses in this district are also sensitive to the residential character of the area and non-residential uses are limited.

Section 904 O-I Office and Institutional District

The O-I Office and Institutional District is designed to provide a wide range of professional and economic office space, as well as space for public and quasi-public uses. The regulations are intended to provide for adequate traffic access and parking facilities in addition to prohibiting any use which, because of its

character, would interfere with the office/institutional nature of this district. The Office Institutional District is eligible for voluntary parallel conditional rezoning process set forth in Article IX-A.

Section 905 N-B Neighborhood Business District

The N-B Neighborhood Business District is intended for the use of those businesses and other uses which are properly located near rural service centers.

Section 906 G-B General Business District

The G-B General Business District is established to provide suitable locations for those commercial activities which serve the general public, including those which function rather independently of each other. The General Business District is eligible for voluntary parallel conditional rezoning process set forth in Article IX-A.

Section 907 IND Industrial District

The IND Industrial District is established as a district in which the principal use of land is for industrial and warehousing uses which normally seek large tracts of land where the operations involved do not detract from the development potential of nearby undeveloped properties. The Industrial District is eligible for voluntary parallel conditional rezoning process set forth in Article IX-A.

Section 908 R-MU Rural Mixed-Use District

The R-MU district occurs in more rural areas of the county where the availability of public services such as water and sewer may not be available in the foreseeable future. Such a district allows low-density residential and non-residential development to occur in greater variety, and with fewer restrictions, than in more urbanized portions of the county. Lower density development will result in fewer conflicts between adjacent landowners and can contribute to maintaining the rural appearance of the area.

Section 909 L-I Light Industrial District

The Light Industrial District (L-I) is established for uses that would not have significant negative environmental or land use impact on surrounding residential or business districts. Permitted uses will not create any substantial noise, smoke, vibration, odor, or traffic that may endanger the health and safety of the surrounding area. This district will have a minimal impact on the surrounding properties and area with the follow restrictions:

1. All uses must be conducted within an enclosed structure with no open storage of raw, in process, or waste material. Finished products must be stored in an enclosed building.

2. The property will be screened in accordance to Section 1106 of the Zoning Ordinance.
3. Signs are allowed in accordance to Section 1101 of the Zoning Ordinance.
4. Service drives for off-street loading and unloading must be provided in a manner that the process does not interfere with the movement of any vehicles either on the drive or on the public right-of-way. NCDOT must approve of commercial driveway cuts occurring on a state maintained road.
5. Between the hours of 9:00 p.m. and 7:00 a.m. deliveries and pick-ups are restricted and shall not occur.
6. No outdoor lighting shall be allowed between 11:00 p.m. and sunrise, except lighting used for walkways, roads, parking lots, and security. In these cases fully shielded lights must be used. Lighting should not shine up into the sky or onto neighboring properties.

Section 910 Planned Residential Mixed-Use District

The Planned Residential Mixed-Use (PRMU) District is created to allow developments composed of a mix of housing types and non-residential uses to occur in harmony with surrounding land uses. Developers of such mixed-use projects having more than 50 lots must request a rezoning to a Planned Residential Mixed-Use District (PRMU) and are strongly encouraged to request a rezoning to a Planned Residential Mixed-Use Parallel Conditional District (PRMU-CD) in order to increase flexibility and streamline the review process. The resulting developments shall be well-planned and aesthetically pleasing neighborhoods that promote innovative arrangements of buildings and open space uses throughout the project site. At no time may the amount of non-residential development exceed more than 25% of the project area. Applicants may propose an allowable commercial use on smaller parcels in the district that are independent of residential developments as part of a Residential Mixed Use Parallel Conditional District (PRMU-CD) rezoning application, provided they are complimentary uses that will enhance the overall livability and functionality of the neighborhood at large. A minimum of 25% of the total project area must remain as permanent open space which may be dedicated for public or private recreational use. If dedicated for private use, the property must be maintained by the property owners association or other county approved entity. If the property is dedicated for public use, it will be maintained by the County or other county approved entity.

Section 911 Conservation Districts

The Conservation (C-D) Districts allow a limited amount of low density residential development and associated uses in order to provide adequate protection for environmental areas and wildlife habitat, protect viable working farms, maintain the integrity or rural viewsheds, and limit the amount of potential property damage

associated with existing natural hazards. Subdivisions in either Conservation District are required to set aside a minimum of 25% of the total project area as permanent open space and no more than 50% of this open space may be dedicated for public or private recreational use. If dedicated for private recreational use, the property must be maintained by the property owners association or other county approved entity. If the property is dedicated for public use, then it shall be maintained by the County or other county approved entity. No more than 50% of this open space may be dedicated for public or private recreational use. The balance of the open space must be protected in its natural state to preserve the environmental integrity of the overall project area as much as possible. Structures sited on parcels within conservation districts must be located within a designated building envelope which may not include flood areas, buffer strips, slopes in excess of 25%, or wetlands. Major proposed developments of this type having over 50 lots are strongly encouraged to rezone to a Conservation Parallel Conditional District.

Section 911.01 Low Density Conservation District

The Low Density Conservation District (C-DL) is primarily designed to prevent large numbers of housing units from impacting rural landscapes. Developers shall locate structures on appropriate portions of the landscape utilizing a maximum density calculation of one unit per 3.5 acres of total project area. Clustering of units is encouraged where feasible.

Section 911.02 Estate Lot Conservation District

The Estate Lot Conservation District (C-DE) is primarily designed to apply to landscapes that are adjacent to significant tracts of public conservation area or unique geologic or hydrologic features such as steep ridges or major rivers. Due to the unique and fragile nature of these areas, the overall density may not exceed one unit for every five acres of total project area. Clustering of units is encouraged where feasible.

Sections 912-919 Reserved

Section 920 Table of Permitted and Permissible Uses by District

Section 920: Schedule of Permitted and Permissible Uses by District

**X= Use-By-Right, A= Accessory Use
C= Conditional Use**

Use	R-1	R-2	R-3	PRMU	C-DL	C-DE	R-MU	O-I	OI-CD	N-B	G-B	GB-CD	L-I	IND	IND-CD	PRMU (CD)	C-DL (CD)	C-DE (CD)	Section
ABC Store				C			X			C	X	X				X			
Accessory dwelling unit	A	A	A	A	A	A	A									A	A	A	1103.03
Adult care center				X			X	A	A	X	X	X				X			
Adult Entertainment Establishment											C	X		X	X				
Agricultural use (bona fide)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Airport / airstrip							C							X	X				1900
Animal Hospitals							C			C	C	C							1119
Armories							X	X	X		X	X							
Art galleries				X			X	X	X	X	X	X				X			
Asphalt And concrete plants							C							X	X				
Auditoriums							X	X	X	X	X	X							
Auto repair garages and body shops							C				X	X		X	X				
Auto, truck, boat, recreation vehicle, and motorcycle sales							X				X	X							
Automobile parts recycling							X				X	X		X	X				1106.04
Banks, loan offices, and financial institutions				X			X	X	X	X	X	X				X			
Bar / Nightclub				C			C			C	X	X				X			
Barber shops and beauty shops				X			X			X	X	X				X			
Barge loading area	X	X	X	X	C	C	X				X	X		X	X	X	X	X	1112
Boarding houses and tourist homes				X	C	C	X			C						X	X	X	
Boat Storage & maintenance facility				X	C	C	X				X	X	X	X	X	X	X	X	
Bottling plants							C						X	X	X				
Brewery				C			X			C	X	X	X	X	X	X			
Bldg. materials storage and sales yard							X				X	X		X	X				
Cabinet / upholstery / woodworking shops (10 employees or less)							X				X	X	X	X	X				
Cabinet / upholstery / woodworking shops (more than 10 employees)							X						X	X	X				
Car washes							X			X	X	X							
Child care facility				X			X	A	A	X	X	X							
Churches and cemeteries	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Colleges, universities, and technical College							X	X	X										
Communication towers			C				C	C	C	C	C	X	C	C	X	X			1107
Communication tower (alternate Structure)	C	X	X	X	C	C	X	X	X	X	X	X	X	X	X	X	X	X	1107.07
Community centers	C	C	X	X	C	C	X	X	X	X	X					X	X	X	

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Use	R-1	R-2	R-3	PRMU	C-DL	C-DE	R-MU	O-I	OI-CD	N-B	G-B	GB-CD	L-I	IND	IND-CD	PRMU (CD)	C-DL (CD)	C-DE (CD)	Section
Contractor's office and storage yards							C				X	X		X	X				
Convenience stores (gas sales included)				X			X	C	C	X	X	X				X			
Correctional facilities and jails							X	X	X		X	X	X	X	X				
Country clubs	C	C	X	X	C	C	X	X	X	X	X	X				X	X	X	
Crematory							C	A			A		X	X					
Distillery				C			X			C	X	X	X	X	X	X			
Drinking Establishment				C			C			C	X	X				X			
Drug stores / pharmacies				X			X	A	A	X	X	X							
Dry cleaning and laundry pick-ups				X			X			X	X	X							
Dwelling units, Single family	X	X	X	X	X	X	X									X	X	X	
Dwelling units, Duplex		X	X	X	X	X	X									X	X	X	
Dwelling units: Multiple-family		C	X	C			C									X	X	X	1108 & 1106.04
Elementary and secondary schools	C	C	X	X	C	C	X	X	X	X	X	X	C	C	X	X	X	X	
Exterminators											C	X	X	X	X				
Family care home	X	X	X	X	X	X	X									X	X	X	
Family child care home	C	X	X	C	C	C	X									X	X	X	
Family Recreation Area	C	C	X	C	X	X	X								X	X	X	X	1113
Farm Brewery	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	
Farm Winery	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	E	
Farmers markets / produce stands			X				X			X	X	X	X	X					
Fishing lakes			X				X												
Flea markets							X				X	X			X				
Flour and feed mills							C							X	X				
Fruit or vegetable packing shed							X							X					
Funeral Home							X	X	X	X	X	X							
Garbage disposal services							C							X	X				
Go-cart track							C				C	X		C					1111.02
Grocery stores / supermarkets				C			X			X	X	X							
Golf courses	C	C	X	X	C	C	X	X	X	X	X	X					X	X	
Greenhouse (commercial)							X				X	X							
Hatcheries							X				X	X							
Hobby cattle or poultry operations							X												
Home occupations	A	A	A	A	A	A	A										A	A	
Hospitals							X	X	X		X	X							
Industrial supplies and equipment (sales and service)							C						X	X	X				

Section 920: Schedule of Permitted and Permissible Uses by District

**X= Use-By-Right, A= Accessory Use
C= Conditional Use**

Use	R-1	R-2	R-3	PRMU	C-DL	C-DE	R-MU	O-I	OI-CD	N-B	G-B	GB-CD	L-I	IND	IND-CD	PRMU (CD)	C-DL (CD)	C-DE (CD)	Section
Public use facilities	C	C	X	C	C	C	X	X	X	X	X	X	X	X	X	X	X	X	
Public utility facilities	C	C	X	C	C	C	X	C	C	X	X	X	X	X	X	X	X	X	1109
Public works facilities (storage and service yards)							C							X	X				
Racetrack							C							C	X				1111.01
Radio and TV repair shops							X	X	X	X	X	X							
Recreation centers				X			X	X	X	X	X	X				X			
Recreation vehicle parks / commercial campgrounds			C	C	C	C	C			C	X	X				X	X	X	1113
Recreational facility (commercial – (indoor))				X	C	C	X	X	X	X	X	X				X	X	X	
Recreational facility (commercial – (outdoor))				C			X	X	X	X	X	X				X			
Restaurant with drive-thru							X			C	X	X							
Restaurants excluding drive-thru				X	C	C	X			X	X	X				X	X	X	
Rest Home			X	C			X	X	X	X	X	X				X			
Retail sales (3,000 square feet and less)				X	C	C	X	C	C	X	X	X	A	A	A	X	X	X	
Retail sales, shopping centers (3,000–10,000 square feet)				C			X	C	C	X	X	X	A	A	A	X			1106.04
Retail sales, shopping centers (10,000 - 100,000 square feet)				C			X			C	X	X				X			1106.04
Retail sales, shopping centers (greater than 100,000 square feet)							C				C	X							1106.04
Scrapyards							C				C	X		X	X				1106.04
Service stations				C			X	C	C	C	X	X				X			
Shoe repair shops				X			X			X	X	X	X			X			
Shooting Range (Outdoor)							C												1116
Small engine sales and repair shops							X				X	X	X						
Special Events Grounds				C	C	C	C				C	X	C	C	X	X	X	X	1117
Street vendors							X			C	X	X							
Stable (private)	X	X	X	X	X	X	X				X	X				X	X	X	
Stable (public)				X	C	C	X				X	X				X	X	X	

ARTICLE IX-A PARALLEL CONDITIONAL ZONING DISTRICTS AND REZONING PROCESS

Section 9A01 Purpose

A parallel conditional zoning district is a zoning district in which the development and use of the property is subject to the ordinance standards for the corresponding general use district such as density and screening requirements, and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property. The uses that may be considered for a parallel conditional district are restricted to those uses permitted in the corresponding general use district (whether uses permitted by right or conditional uses), and uses may be established only in accordance with specific standards and conditions relating to each specific development project.

The parallel conditional zoning district rezoning process allows particular uses to be established, but only in accordance with a specific development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and/or on the entire community that cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property and be consistent with the objectives of these regulations, the adopted land use plan, and other plans for the physical development of the County as adopted by the Board of Commissioners. The review process established herein provides for the accommodation of such uses by reclassification of property into a "parallel conditional" zoning district.

The parallel conditional zoning district approval process is established to reclassify property from the general use district to a parallel conditional zoning district. Such districts are described herein. The rezoning process shall be initiated by the owner(s) of all the property to be included in such district, or such owners authorized agents, and shall be accompanied by an official application, the established fee, and any documentation required as per this Article.

In the event that an application for the reclassification of property to a parallel conditional zoning district seeks the approval of a conditional use allowed in the underlying general use district and the application is approved by the Board of Commissioners, it will not be necessary for the applicant or the property owner to obtain a compliance permit pursuant to Section 1502.02 of the Ordinance to make such use of the property, the approval of the application, preliminary, and final plans being sufficient to permit the conditional use.

Section 9A02 Parallel Conditional Zoning Districts

Conservation Parallel Conditional Zoning Districts

The Parallel Conditional Use District is an optional zoning classification for either the Low Density Conservation District (C-DL) or Estate Lot Conservation District (C-DE) for major developments or non-residential development in sensitive natural areas. The district allows a greater flexibility to mix use-by-right and conditional uses in the Conservation District (as noted in Section 920) without requiring Conditional Use Permits. The district also provides more flexibility than either general use conservation district by allowing variations in lot sizes and building setbacks. Requests for this zoning district are initiated by the property owner as per Article IX-A of this ordinance.

Planned Residential Mixed Use Parallel Conditional District

The Planned Residential Mixed Use Parallel Conditional District (PRMU-CD) is an optional zoning district for major developments of housing units that are in projects mixing residential and non-residential uses. The district provides substantial flexibility to incorporate uses allowed by right and conditional uses (as noted in Section 920) allowed in the Planned Residential Mixed Use District without requiring Conditional Use Permits. The district also provides more flexibility than the general use Planned Residential Mixed Use District by allowing variations in lot sizes and building setbacks. Requests for this zoning district are initiated by the property owner as per Article IX-A of this ordinance.

General Business Parallel Conditional District

The General Business Parallel Conditional District (GB-CD) is an optional zoning district for major developments of commercial and mixed-use structures. The district provides substantial flexibility to incorporate uses allowed by right and conditional uses (as notes in Section 920) allowed in the General Business District without requiring Conditional Use Permits.

Industrial Parallel Conditional District

The Industrial Parallel Conditional District (IND-CD) is an optional zoning district for major developments of industrial structures and group development of such uses. The district provides substantial flexibility to incorporate uses allowed by right and conditional uses (as noted in Section 920) allowed in the Industrial District without requiring Conditional Use Permits.

Office Institutional Parallel Conditional District

The Office Institutional Parallel Conditional District (OI-CD) is an optional zoning district for major developments of office, institutional, and mixed-use structures.

The district provides substantial flexibility to incorporate uses allowed by right and conditional uses (as noted in Section 920) allowed in the Office Institutional District without requiring Conditional Use Permits.

Section 9A03 Reclassification Required

In order for a property owner to secure privileges for developing property under the parallel conditional zoning process, the property must first be rezoned by the Board of Commissioners to a parallel conditional zoning district. Any use permitted under this process must also conform to the development regulations for the corresponding general zoning district. Thus, if a property were rezoned to a C-DE (CD) District and a particular use were authorized thereby, that use must (i) be a use allowed (either on a use-by right or conditional basis) in the C-DE district and (ii) meet all density, screening, and related requirements of the C-DE District. Rezoning of property to a parallel conditional zoning district is a voluntary procedure on the part of the property owner and is intended for firm development proposals. It is not intended or suited for securing early zoning for tentative proposals which may not be undertaken for some time.

Section 9A04 Application Materials

No parallel conditional zoning district shall be established until the owner(s) of the property(ies) in question (or his/her authorized agent) proposing the district has submitted an application for the rezoning of the property and the Board of County Commissioners has approved such application in accordance with the procedures stated herein.

Section 9A04.01 Plans and Other Information to Accompany Application

Every application for the rezoning of property to a parallel conditional zoning district shall be submitted in duplicate and accompanied by all additional information contained in the following regulations. Additionally, sufficient copies of scale drawn plans and any supporting text to provide all members of the Planning Board and Board of Commissioners as well as County staff must be submitted. The following information must be provided if applicable:

- A. A boundary survey and vicinity map showing the property's total acreage, zoning classification(s), general location in relation to major streets, railroads, and/or waterways, the date, and north arrow. A boundary survey is not required to be submitted in connection with an application to rezone a parcel or parcels of land that individually or in combination contain in excess of 1,000 acres. However, a boundary survey must be submitted with the preliminary development plans, a total number of specific dwelling units for a development will not be determined until a boundary is provided that sets forth the exact acreage of the project.

In such cases, the allowed number of units per acre may be determined in connection with the rezoning and prior to the submittal of a boundary survey.

- B. All existing easements, reservations, and rights-of-way.
- C. Proposed number and general location of all building sites, their approximate area, and their approximate dimensions.
- D. Proposed use of all land and structures, including the number and/or density of residential units, if any, proposed and the total square footage of any non-residential development.
- E. A description of all screening, buffering, and landscaping required by these regulations and/or proposed by the applicant, as well as any proposed treatment of any existing natural features.
- F. All existing and proposed points of access to public streets.
- G. Delineation of areas within the regulatory floodplain as recognized by the Federal Emergency Management Agency. Base flood elevation data shall be provided before any plats are approved as per Article 5, Section D(4) of the Burke County Flood Damage Prevention Ordinance.
- H. The owner's names and addresses, property identification numbers and existing land use(s) of all adjoining properties. This information is available from the Burke County Tax Mapping Department.
- I. Proposed phasing, if any, and approximate completion time for each phase of the project.
- J. Traffic, parking, and circulation plans, showing the proposed location and arrangement of parking spaces and ingress and egress to adjacent streets.
- K. Location and maintenance arrangements for all open space, recreation, and/or common areas within the development.
- L. A list of all known sites of historic or cultural significance within or adjacent to the project area.

The Planning Administrator and the Board of County Commissioners shall each have the authority to waive any application requirement where the type of use or scale of the development proposal makes providing any of the foregoing items unnecessary or impractical.

Section 9A04.02 Additional Materials

In the course of evaluating the proposed use, the Planning Administrator, the Planning Board or Board of County Commissioners may request additional information from the applicant. A request for such additional information shall stay any further consideration of the application by the Planning Board or Board of County Commissioners. This information may include (but not be limited to) the following:

- A. Storm water management and drainage plan; and
- B. Existing and proposed topography at five-foot contour intervals or less;
- C. The existing and proposed locations of all water and sewer lines and fire hydrants intended to serve the proposed development;
- D. Proposed number, type, and location of signs;
- E. A traffic impact study of the proposed development prepared by a qualified transportation or traffic engineer or planner. The traffic impact study shall include the following information:
 - 1. Existing traffic conditions within the study area boundary, as determined by the North Carolina Department of Transportation;
 - 2. Traffic volumes generated by the existing and proposed development on the project area, including the morning peak, afternoon or evening peak, and average annual traffic levels;
 - 3. The distribution of existing and proposed trips through the street network;
 - 4. Analysis of capacities of intersections located within the study area boundary;
 - 5. Recommendations for improvements designed to mitigate traffic impacts of the proposed development and to enhance pedestrian access to the development from the public right-of-way;
 - 6. Other pertinent information including but not limited to accidents, noise, and impacts on air quality and other natural resources; and
- F. Description and copies of proposed deed restrictions to be placed on the property;
- G. Exterior features of proposed development including height and design standards; and
- H. Any other information needed to demonstrate compliance with these regulations.

The Planning Administrator shall determine the number of copies of each application and other required documentation to be submitted by an applicant so that copies may be circulated to all appropriate agencies for review and comment.

Section 9A04.03 Fees

No application shall be considered unless it contains or is accompanied by all items listed in Section 9A04.01 (and as may be required in Section 9A04.02) and a fee, in accordance with a fee schedule approved by the Board of County Commissioners for the submittal of a parallel conditional zoning district application.

Section 9A05 Submittal to the Planning Administrator

All complete applications shall be submitted to the Planning Administrator at least twenty-one (21) days prior to the Planning Board's public hearing/meeting at which it is to be reviewed. Except as otherwise permitted, in no case shall the meeting at which the Planning Board initially reviews the application occur greater than sixty (60) days after the completed application has been submitted by the applicant to the Planning Administrator.

Section 9A06 Required Community Meeting

Before a public hearing may be held on an application for a parallel conditional zoning district, the applicant must provide the Planning Administrator with a written report of at least one community meeting held by the applicant. Notice of such a meeting shall be reasonable and shall be given to the property owners, affected and/or interested parties, and organizations entitled to notice as determined by the public notice policies of the County. The report shall include among other things, a listing of those persons and organizations contacted about the meeting and the manner and date of contact, time, date, and location of the meeting, a roster of the persons in attendance at the meeting, a summary of issues discussed at the meeting, and a description of any changes to the rezoning application made by the applicant as a result of the meeting. In the event the applicant has not held at least one meeting pursuant to this subsection, the petitioner shall file a report documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held. The adequacy of a meeting held or a report filed pursuant to this section shall be considered by the Board of County Commissioners, but shall not be subject to judicial review.

Section 9A07 Planning Board Review

The Planning Board shall have a minimum of sixty (60) days from the date which it initially met to review the application to submit its recommendation to the Board

of Commissioners. If a recommendation is not made during the sixty (60) day period, (except as provided in Section 9A04.02), the application shall be forwarded to the Board of Commissioners without a recommendation from the Planning Board.

Section 9A08 Board of Commissioners Action

Once a recommendation has been received from the Planning Board, or the sixty (60) day Planning Board review period has expired, the Board of Commissioners shall schedule a public hearing concerning the application. Notice of said public hearing shall be as prescribed in the North Carolina General Statute 153A-323.

Section 9A09 Board of Commissioners Decision

1. At the conclusion of the public hearing, the Board of County Commissioners may deny or approve the application to rezone the property to a parallel conditional zoning district, thereby authorizing the development of the property in accordance with the approved parallel conditional zoning district and all applicable preliminary and final plat approvals required by the Burke County Subdivision Ordinance.
2. Rezoning to a Parallel Conditional Zoning District is a legislative process subject to judicial review using the same procedures and standard of review as apply to general use district zoning decisions. As such, in considering any application to reclassify property to a parallel conditional zoning district, the Board of Commissioners may consider the following:
 - a. Whether the proposed reclassification is consistent with the purposes, goals, objectives, and policies, of the adopted land use plan, and other plans for the physical development of the County as adopted by the Board of Commissioners;
 - b. Whether the proposed reclassification is compatible with the overall character of existing development in the immediate vicinity of the subject property;
 - c. The adequacy of public facilities and services intended to serve the subject property, including but not limited to roadways, parks and recreational facilities, police and fire protection, schools, storm water drainage systems, water supplies and waste water treatment systems and garbage services; and
 - d. Whether the proposed reclassification will adversely affect a known archeological, environmental, historical, or cultural resource.

Section 9A10 Fair and Reasonable Conditions

In approving an application for a parallel conditional zoning district, the Board of Commissioners may attach fair and reasonable conditions. Any such conditions shall relate to the relationship of the proposed use to the surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and landscaped areas, the timing of development, street and right-of-way improvements, water and sewer improvements, storm water drainage, the provision of open space, provisions to maintain the ecological or historical resources that may be impacted by the proposed use, and other matters that the Board of Commissioners may find appropriate or the applicant may propose. Such conditions to approval of the application may include dedication of rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development. The applicant shall have reasonable opportunity to consider and respond to any such conditions prior to final action by the Board of Commissioners.

Section 9A11 Effect of Approval

If an application for a parallel conditional zoning district is approved, the district that is established and all conditions which may have attached to the approval are binding on the property as an amendment to these regulations and to the official Zoning Map. All subsequent development and use of the property shall be in accordance with the standards for the approved parallel conditional zoning district and all conditions attached to the approval.

Section 9A11.01 Recordation of Notice of Conditions

If an application is approved subject to conditions, the Planning Administrator shall record with the Register of Deeds a notice that development of the subject property is subject to conditions and that such conditions are on file at the Planning Administrator's office.

Section 9A11.02 Property Zoning Map Identification

Following the approval of the application for a parallel conditional zoning district, the subject property shall be identified on the Official Zoning Map by the appropriate district designation. A parallel conditional zoning district shall be identified by the same designation as the underlying general zoning district followed by the letters CD (for example, "PRMU-CD").

Section 9A11.03 Vested Rights

An approved parallel conditional zoning district shall have, at a minimum, a two (2) year vested right as allowed under Article XIV of this ordinance and N.C.G.S.

Section 153A-344.1, except as such vested right may be altered as allowed by N.C.G.S. 153A-344.1(e), provided however, that an applicant may request a vesting period in excess of two (2) years as provided in Section 1402.03 of this Ordinance. A vested right shall remain effective beyond the end of the period of time established pursuant to Section 1402.03 of this ordinance for any buildings or uses for which a valid building permit has been issued during the vested right period, so long as such building permit is valid.

Section 9A12 Alterations to Approval

Section 9A12.01 Manner of Treatment

Except as provided for in Section 9A12.02, changes to the approved application or to the conditions attached to the approval shall be treated the same as amendments to these regulations or to the official Zoning Map and shall be processed in accordance with the procedures in this Article.

Section 9A12.02 Minor Changes

Minor changes in the detail of the approved plan which (i) will not alter the basic relationship of the proposed development to adjacent property; and (ii) will not alter the uses permitted or increase the density or intensity of development; and (iii) will not decrease the off-street parking ratio or reduce the yards provided at the periphery of the site may be made with the written approval of the Planning Administrator. The Planning Administrator shall always have the discretion to decline to exercise this delegated authority either because there is uncertainty about approval of the change pursuant to this standard or because a rezoning application for a public hearing and Board of Commissioners consideration is deemed appropriate under the circumstances. If the Planning Administrator declines to exercise his authority; then the applicant can file an application for a public hearing and Board of Commissioners decision.

Section 9A13 Review of Approval of a Parallel Conditional Zoning District

It is intended that the property shall be reclassified to a parallel conditional zoning district only in light of firm plans to develop the property. Therefore, subject to any vested right in favor of the property owner and no sooner than two (2) years after the date of approval of the application, the Planning Board may examine the progress made toward developing the property in accordance with the approved application and any conditions attached to the approval. If the Planning Board determines that progress has not been made toward developing the property in accordance with the approved application and conditions, the Planning Board shall forward to the Board of Commissioners a report, which may recommend that the property be rezoned. The Board of Commissioners may then hold a duly noticed public hearing and vote to rezone the property to a general zoning district.

ARTICLE X OTHER REQUIREMENTS BY USE DISTRICTS

Section 1001 Minimum Lot Area

Section 1001.01 Residential Uses

Within zoning areas permitting single family residential uses, minimum lot areas shall adhere to the requirements in Table 1001-1 Minimum Residential Lot Sizes.

Table 1001-1: Minimum Residential Lot Sizes			
Zoning District	NO Public Water or Sewer	EITHER Public Water or Sewer	BOTH Public Water and Sewer
RMU Rural Mixed Use (Low Density)	50,000 sq. ft. (1.15 Acres)	40,000 sq. ft. (0.92 Acre)	30,000 sq. ft. (0.69 Acre)
R-3 Residential (Medium Density)	40,000 sq. ft. (0.92 Acre)	30,000 sq. ft. (0.69 Acre)	25,000 sq. ft. (0.58 Acre)
R-2 Residential (Medium-High Density)	30,000 sq. ft. (0.69 Acre)	25,000 sq. ft. (0.58 Acre)	21,780 sq. ft. (0.50 Acre)
R-1 Residential (Medium-High Density)	30,000 sq. ft. (0.69 Acre)	25,000 sq. ft. (0.58 Acre)	21,780 sq. ft. (0.50 Acre)

<u>District</u>	<u>Average Density Per Unit (sq. ft.)</u>
C-DE Estate Lot Conservation District	217,800 (5.0 acres)
C-DL Low Density Conservation District	152,460 (3.5 acres)
PRMU Planned Residential Mixed-Use	21,780 (1/2 acre)

<u>District</u>	<u>Minimum Lot Size in Lake Overlay</u>
R-1, R-2, R-3	0.5 acre if served by public water AND sewer
	1.5 acres if served by public water OR sewer
	2.0 acres if served by NEITHER public water or sewer

Section 1001.02 Commercial, Industrial and Other Uses

Within districts permitting commercial, industrial and other uses, there are no minimum lot area and lot width requirements except as provided herein in special circumstances and/or as may be required by the Board of Commissioners, the Planning Board, and/or Board of Adjustment shall be as determined by the Burke County Watershed Protection Ordinance.

Section 1001.03 Health Department Approval

In special circumstances larger lot areas may be required by the Burke County Health Department if necessary to meet state sewage disposal requirements.

Section 1002 Maximum Lot Coverage

Section 1002.01 Residential Uses

The maximum lot coverage for single family residential uses shall adhere to the Watershed Protection Ordinance. Impervious coverage for lots recorded after January 1, 2004 that are located in the Lake Overlay District on Lake James shall be located within specific building envelopes as recorded on subdivision plats. The total impervious coverage shall not exceed, in the aggregate, a maximum of 10% of the total project area in both Conservation Districts.

Section 1002.02 Commercial, Industrial, and Other Uses

There is no maximum lot coverage for multi-family, commercial, industrial and other non single family uses, except as provided herein in special circumstances and/or as may be required by the Board of Commissioners, Planning Board and/or Board of Adjustment as determined by the Burke County Watershed Protection Ordinance.

Section 1003 Maximum Height Restrictions

No building shall hereafter be erected, constructed or altered so as to exceed the height limit specified in the regulations herein for the district in which it is located.

Section 1003.01 Maximum Height Restrictions

Except as provided herein, the maximum height restriction for residential uses within the zoning district shall be as follows:

<u>District</u>	<u>Maximum Height at Grade Level</u>
R-1	35'
R-2	35'
R-3	35'
R-MU	35'
PRMU	35'
C-DL	35'
C-DE	35'

ARTICLE XI SPECIAL PROVISIONS

Section 1101 Advertising Signs and Structures

Section 1101.01 Intent

The purpose of the following sign requirements is to promote and protect the public health, welfare, and safety by regulating existing and proposed signs. It is intended to protect property values, create a more attractive economic and business climate, and enhance and protect the scenic and natural beauty of designated areas. It is further intended to reduce sign or advertising distractions and obstructions that may be caused by signs overhanging or projecting over public rights-of-way, provide more open space, curb the deterioration of the natural environment and enhance community development. This section regulating signs is not applicable in unzoned areas.

Section 1101.02 General Requirements.

1. All signs, whether permanent or temporary, shall comply with the applicable requirements of the County Building Code; Sections 135-126 through 136-140.9 of the General Statutes of North Carolina, as amended; Article XXI, Section 2113 of this ordinance; and any regulations promulgated by the North Carolina Department of Transportation pursuant thereto. In the event of conflicting laws or regulations, the most restrictive or that imposing higher standards shall govern.
2. For the purpose of computing sign area, only one side of a “V-Type” or double-faced sign shall be considered.
3. Front yard setback requirements shall not apply to any sign except off-site outdoor advertising signs as provided in Section 1101.04 herein. However, no sign shall be located so as to block the view of oncoming traffic.
4. All signs shall be subject to the same side yard and height limitations imposed upon other buildings or structures, except as otherwise provided herein.
5. Illumination of signs shall be only by indirect illumination.
6. No sign or sign structure shall be erected which is prohibited under Sections 136-126 through 136-140.9 of the General Statutes of North Carolina, as amended.
7. In computing the sign area for shopping centers and complexes,

each individual business or industrial operation shall be considered a separate calculation. Shopping center identification signs are not included in the computation.

Section 1101.03 Signs Exempt from a Zoning Permit.

The following signs are allowed anywhere within the County and shall be exempt from zoning permits:

1. Real estate signs advertising sale, rental, or lease of the land or building upon which signs are located, provided that:
 - a. In residential subdivision, no sign shall be in excess of nine (9) square feet and no more than two (2) such signs shall be located on any single lot.
 - b. On commercial property, no sign shall be in excess of thirty-two (32) square feet and no more than three (3) signs shall be located on any single lot.
 - c. On industrial property, no sign shall be in excess of ninety-six (96) square feet and no more than three (3) such signs shall be located any single lot).
2. Professional nameplates not exceeding two (2) square feet in area shall be non-illuminating and attached to the building.
3. One (1) on-site or bulleting board indicating the name of the church, institution or civic association not exceeding forty-eight (48) square feet in area on premises of public or semi-private facilities;
4. Signs located on the premises relating to active construction projects not exceeding sixty-four (64) square feet and being removed when construction stops.
5. Memorial signs or tablets including names of buildings and date of erection when cut into masonry, bronze or other materials;
6. Traffic or other public signs and notices posted or erected by or at the direction of a governmental agency, provided such signs and notices meet all applicable state and federal laws and regulations;
7. Customary signs in conjunction with residential usage including mail box lettering, names of residents, house members, names of farms and estates, and other similar usage;

8. One identification sign at the main entrance or entrances to a residential subdivision or planned unit development project provided that such sign shall not exceed one hundred (100) square feet, shall not be illuminated, shall be so designed as to be in the public interest and shall make no reference to the sale or lease of the lots or houses located within said identified subdivision. Two signs may be allowed if the signs do not exceed one hundred (100) square feet aggregate total area.
9. Directional sign for institutional uses provided that such sign shall not exceed six (6) square feet, shall be within one (1) mile of said institutional use and shall meet all applicable state laws and regulations;
10. One (1) on-site relating to a home occupation provided that such sign shall not exceed fifteen (15) square feet.
11. Temporary signs, including political, provided such sign shall be removed promptly after sixty (60) days and shall not exceed forty-eight (48) square feet;
12. On-site erected or maintained, or caused to be erected or maintained, on any farm by the owner or lessee of such farm and relating solely to farm, produce, merchandise, services or entertainment sold, produced, manufactured or furnished on such farm, provided such signs do not exceed an aggregate total of five hundred (500) square feet of sign area.
13. One (1) sign for each residential subdivision or planned unit development project relating to the sale of property within said subdivision or project, provided that such sign shall not exceed thirty-two (32) square feet per sign area, shall not be illuminated, shall be maintained at the developer's expense, and shall be removed by the developer with ninety (90) percent of the lots in said subdivision or planned unit development are sold. A second sign shall be permitted where there is another main entrance to said subdivision or planned unit development;
14. Signs erected upon property warning the public against hunting, fishing or trespassing thereon;
15. Signs erected by emergency services authorities to emergency services operations;
16. Signs denoting only the name of the civic service clubs or churches, including location and directions for reaching same, and

time of meeting of such organizations, providing such signs do not exceed six (6) square feet of sign area for each organization, or a sign structure containing more than one (1) sign for each such organization, or six (6) square feet or less and does not exceed one hundred (100) square feet of sign area;

17. One (1) identification sign for a shopping center provided the sign area does not exceed five hundred (500) square feet and the sign structure does not exceed height limitations as delineated in Section 1003 herein;
18. In multi-family developments, one (1) on-site sign for identifying the multi-family development, provided that such sign shall not exceed thirty-two (32) square feet in area, shall indicate nothing other than the name and/or address of the premises and the name of the management and may be illuminated only by indirect illumination;
19. On-site commercial and industrial advertising signs securely attached to the place of business or industrial operation, and on-site commercial and industrial outdoor advertising sign structure(s), neither exceeding an aggregate total of two hundred (200) square feet of sign per business or industrial operation.

Section 1101.04 Off-Site Outdoor Advertising Signs.

Off-site outdoor advertising signs of a commercial nature are only allowed on non-residential property within the business and industrial use districts, and are governed by the applicable rules herein, except that the front yard setback shall be twenty-five (25) feet for signs that exceed twenty-four (24) square feet in size. Signs less than twenty-four (24) square feet shall not be located within the right-of-way.

Section 1101.05 Signs Requiring a Zoning Permit.

The following signs shall require a zoning permit in accordance with the following provisions and Section 1505 herein;

1. As a use-by-right, the Planning Administrator shall issue a compliance permit in accordance with Section 1505.01 herein for the following signs:
 - a. On agricultural, commercial and industrial properties advertising signs and structures exceeding the maximum requirements in Section 1101.03 (19) herein, provided said sign does not exceed four hundred (400) square feet in sign area; and

- b. All off-site outdoor advertising signs, allowed in Section 1101.04 herein, provided said sign does not exceed five hundred (500) square feet in sign area.
2. As a conditional use, a compliance permit may be issued in accordance with Article XV herein for the following signs as approved by the Board of Adjustment:
 - a. All signs not exempt from a compliance permit as delineated in Section 1103.03 herein and not allowed as a use-by-right as delineated in Section 1101.05 (1) herein; and
 - b. All signs exceeding the maximum requirements as delineated in Sections 1101.03 and 1101.05 (1) herein.

Section 1101.06 Maintenance and Removal of Signs.

1. All signs and sign structures shall be kept in good repair and in proper state and preservation. All unsafe signs must be brought into compliance with the NC State Building code.
2. Signs which are no longer functional, or are abandoned, shall be repaired, removed, or relocated, at the owner's expense, in compliance with the provisions of this ordinance within sixty (60) days following dysfunction and written notification from the Planning Administrator.
3. Any legally established non-conforming sign or sign structure shall be permitted to continue without alteration in size or location, provided that the requirements of Section 706 herein are adhered to.

Section 1102 Planned Unit Development

The planned unit development concept offers developers the possibility of more efficient and flexible methods for developing property, and provides residents of the project with larger open spaces for recreation and other activities properly related to residential uses. Development in zoning districts where it is allowed may be approved by rezoning the property to a parallel conditional zoning district approved by the Burke County Board of Commissioners as long as development is in compliance with the Watershed Protection Ordinance and any other applicable local, state, and federal regulations.

Section 1103 Accessory and Temporary Structures

Section 1103.01 Intent

Special requirements are designed for accessory and temporary structures to insure ample access for emergency vehicles, maintain the effectiveness of rear and side yard requirements and insure secondary structures remain secondary in functions to the main building in the zoned areas of the County.

Section 1103.02 Accessory Structures.

The location of accessory structures must meet the following restrictions:

1. Where an accessory structure is attached to the main building, a substantial part of one wall of the accessory structure shall be an integral part of the main building or such accessory structure shall be attached to the main building in a substantial manner by a roof, and therefore such attached accessory building shall comply in all respects with the requirements applicable to the main building.
2. No portion of an accessory structure on a residential lot less than one acre in size may be located in front of the building envelope of the primary residential structure. Accessory structures may be located in side or rear yards, no closer than ten (10) feet to the property line, however, as the size of the accessory structure increases the required setback increases too. The following table gives the required setbacks:

Size in Sq. Feet:	Required Setback:
1,200 or Less	Ten (10) Feet
1,201 to 2,000	Twenty (20) Feet

In no event shall the front yard setback for an accessory structure be less than the required setback for a residential structure.

3. The total maximum combined square footage of all accessory structure(s) on any lot in the R-1, R-2, PRMU, C-D, R-3 and R-MU zoning district that is less than one acre in size shall be 1,200 square feet. On lots greater than one acre in size, the maximum square footage allowed shall be 1,500 square feet. Additional square footage must be approved by the Board of Adjustment as a conditional use and additional setbacks and screening requirements may apply.

4. No accessory structure shall be rented or occupied for financial gain nor used for human habitation.
5. Accessory structures will not be permitted on vacant lots without a primary structure unless the lot is two (2) acres or larger. The maximum combined square footage allowed for all accessory structures in this case is 1,500 square feet. All other applicable regulations will apply. In such cases the accessory structure shall have a minimum setback of eighty (80) feet from the front right-of-way or edge of pavement where no right-of-way exists. Screening shall be required between the structure and adjacent properties where existing vegetation or distance is insufficient to provide adequate screening. Screening shall consist of a 10 foot opaque evergreen hedge row. Accessory structures on vacant residential lots may be used for storage purposes only. Only electric service may be provided to the accessory storage structure. Water and septic shall not be permitted.

Section 1103.03 Accessory Dwelling Unit

A detached accessory dwelling unit may be permitted as an accessory use on lots with an existing primary dwelling. Accessory dwellings are not required to meet the same lot size requirements as other second dwelling units.

Section 1103.03.1 Standards for Accessory Dwellings Units

- (a) The accessory dwelling unit and the primary dwelling must be owned by the same person.
- (b) No more than one accessory dwelling unit shall be permitted on a single deeded lot in conjunction with the primary dwelling unit.
- (c) Accessory dwellings may be connected to the same electrical, water, and waste water disposal system as the primary dwelling if practical.
- (d) Accessory dwelling units utilizing a private septic system must comply with all requirements of the County division of environmental health, for on-site sewage and well regulations.
- (e) Accessory dwellings are limited to 650 square feet of gross floor area.
- (f) Accessory dwellings must be constructed to current NC State Residential Building Code standards and must receive a Certificate of Occupancy prior to being habited.
- (g) Accessory dwelling units must be located to the side or rear of the primary dwelling and meet all applicable setbacks.

- (h) Accessory dwellings are to be constructed of like materials and must resemble the primary structure in appearance to the greatest extent possible.
- (i) Unless the accessory dwelling unit is accessed from a different road or street than the primary dwelling, the accessory dwelling unit must share a driveway with the primary dwelling.
- (j) No off-street parking is permitted for accessory dwellings.

Section 1103.04 Temporary Structures

Temporary structures may be permitted in any zoning when used in conjunction with construction work or when permitted for a temporary event.

Section 1104 Manufactured Homes and Manufactured Home Parks

Section 1104.01 Watershed Protection Ordinance.

All manufactured homes as well as regular homes must comply with the Burke County Watershed Protection Ordinance whether located in a zoned or unzoned area of the County. Manufactured home parks are urged to consider group development or planned unit development.

Section 1104.02 Permit for Manufactured Home Parks Required.

It shall be unlawful for any person to construct, maintain or use any lot or other parcel of land within the zoning jurisdiction of Burke County for a manufactured home park until application has been made and a plan has been approved by the Board of Adjustment: No-onsite improvements may be made until after a permit has been granted by the Board of Adjustment. A manufactured home park permit may be revoked by the Board of Adjustment upon finding that a violation of the requirements of this ordinance exists; provided, that the owner, lessee, or other responsible person is notified in writing of such violation and five (5) days has elapsed from the date the written notice was received by the owner/developer. It shall be unlawful for any person, firm, or corporation to continue such manufactured home park or manufactured home lot after a permit has been revoked. Penalties as in Sections 1803.03 and 1803.04 herein shall also apply.

Section 1104.03 Payment of Fees.

Developers proposing manufactured home parks shall pay a non-refundable fee of \$50.00.

Section 1104.04 Manufactured Home Spaces.

All manufactured homes within the park shall be located in designated manufactured home spaces. There must be at least three (3) improved manufactured home spaces available at first occupancy to qualify as a manufactured home park. All manufactured home parks must comply with the Burke County Watershed Ordinance and meet the densities set forth in Table 1001-1: Minimum Residential Lot Sizes.

Section 1104.05 Setback Requirements.

Setbacks within manufactured home parks shall be twenty (20) feet from front yard, ten (10) feet side yard, ten (10) feet corner side yard and ten (10) feet rear yard.

Section 1104.06 Manufactured Home Placement.

Each manufactured home shall be set up and installed on a manufactured home space within the manufactured home park in accordance with all applicable State of North Carolina regulations for the installation of manufactured homes adopted and published by the North Carolina Department of Insurance. Each manufactured home space shall contain at least 5,000 square feet of ground area and be clearly defined by means of either concrete or iron pipe markers placed at all corners or by establishing concrete patios. Each manufactured home space shall be graded so as to prevent any water from ponding or accumulating on the premises. All drainage of the park must be confined or piped in such a way that it will not endanger any water supply. Each manufactured home space shall have a site number, of two and one-half (2 ½) inches high permanent lettering attached or painted on the electrical service.

Section 1104.07 Responsibility.

The owner of the land on which a manufactured home park is located is responsible to insure that each manufactured home setup meets all local, state, and federal regulations. Once the owner authorizes an individual, firm or corporation to set up a manufactured home, said individual, firm or corporation shall be deemed to be the expressed or implied agent of the owner of for the purpose of complying with the requirements herein.

Section 1104.08 Off-Street Parking Requirements.

Two (2) off-street parking spaces of stone gravel base on a well-compacted sub-base, shall be provided and maintained for each manufactured home space. Maintenance of such parking areas shall be provided by the owner or operator of the park. Required parking spaces may be included within the minimum required lot area for each manufactured home space. Alternatively, community off-street

parking areas may be provided within the manufactured home park.

Section 1104.09 Public Street Access.

No manufactured home space within a manufactured home park shall directly access a public road. Access to all manufactured homes and accessory structures within the manufactured home park shall be made using internal streets. A driveway permit must be obtained from the North Carolina Department of Transportation.

Section 1104.10 Internal Street Standards.

Internal streets shall be constructed a minimum of twenty (20) feet wide and be constructed to provide an all weather surface, either paved or unpaved, and be maintained to provide all weather access. Permanent dead-end streets shall have a cul-de-sac constructed forty (40) feet in diameter. It will be the responsibility of the developer to have a practicing engineer licensed in the State of North Carolina to certify that these minimum road standards have been met. Traffic control signs and street name signs shall be installed where necessary. Street lighting shall be required throughout the park.

Section 1104.11 Underpinning.

All manufactured homes in the park shall have continuous underpinning of wood, masonry, or some other similar exterior grade material which is non-combustible in nature, unpierced except for required ventilation. If the tongue, axles, transporting lights, and removable towing apparatus are not removed, it shall be screened from view from any adjoining public street right-of-way. Such screening shall be in the form of natural plantings or opaque walls or fences.

Section 1104.12 Screening.

All proposed manufactured home parks shall provide a screen or buffer between the park and any developed property adjacent to the park that has visual access to the park. Compliance with this section shall constitute either planting a double row of evergreens staggered a maximum of six feet apart, and being a minimum of three feet in height, or erection of a fence, screen, and the like, a minimum of six feet in height so as to block visual access. Screens or planting shall not be required for areas where adjacent development occurs after final approval and the operating permit has been issued by the park operator.

Section 1104.13 Steps.

All manufactured home spaces in proposed parks shall have a solid, well-constructed set of steps for use by tenants. Loosely stacked brick, block, and the like, shall not meet the requirements of this section. It shall be the responsibility

of the owner of the manufactured home to furnish the steps.

Section 1104.14 Ground Maintenance.

The grounds of a manufactured home park shall be kept free of trash, litter and debris. Grounds, buildings and storage areas shall be properly maintained to prevent the infestation of rodents, vermin and insects. It shall be the responsibility of the manufactured home park owner to maintain the manufactured home park in accordance with these standards at all times.

Section 1104.15 Plan Requirements.

A plat at a scale no greater than one hundred (100) feet to one (1) inch should be completed by a registered surveyor and submitted to the Planning Administrator and shall include the following information:

- 1) The proposed name of the park
- 2) The name of the owner/owners of the parcel
- 3) The name of the designer/surveyor of the park
- 4) The tax identification number of the parcel/parcels
- 5) The deed book and page of the parcel/parcels
- 6) Boundaries of the tract shown with bearings and distances
- 7) Streets, driveways, open areas, parking spaces, service buildings, water courses, easements, flood plains, setbacks, the right-of-way of the interior driveway, manufactured home spaces and all existing structures
- 8) Vicinity map showing the location of the park and the surrounding land usage
- 9) Date, graphic scale and approximate north arrow
- 10) Location of public water and sewer if available
- 11) Acreage in total tract, acreage in park for other land usage and site calculations for each manufactured home space
- 12) Minimum number of manufactured home space

Prior to taking action on a manufactured home park plan, the Board of Adjustment may request reports from the District Highway Engineer, the County

Health Director, North Carolina Department of Environment, Health and Natural Resources, the Building Inspector, the County Soil Conservation Services and other officers or agencies directly affected by the proposed development.

The Board of Adjustment shall make a decision on the plan approval within forty-five (45) days of receipt of the submittal of the plat. If the Board of Adjustment disapproves the final manufactured home park plan, the reasons for such action shall be noted in the minutes of the Board of Adjustment and reference shall be made to the specific section of the ordinance which the plan does not comply. The Board, where it deems necessary may require additional work to be completed when it affects the safety, health and welfare of those families who will be residing in the approved park.

Action of the Board of Adjustment shall be noted on seven (7) prints of the final plan and forwarded to the following:

Owner/Developer
Planning Department
Environmental Health Department
Building Inspections Department
North Carolina Department of Transportation – Morganton
Tax Office
North Carolina Department of Environment, Health, and Natural
Resources

Section 1104.16 Issuance of a Compliance Permit.

After the park plan has been approved by the Board of Adjustment, the Planning Administrator shall issue a Compliance Permit. If the construction of the park has not begun within twelve (12) months from the date of issuance, the Compliance Permit will be come null and void. However, the Planning Administrator may grant an extension of the Compliance Permit if the developer shows cause.

Section 1104.17 Effects on Existing Manufactured Home Parks.

Manufactured home parks that are operating as existing approved parks as of the effective date of this ordinance may continue to operate under the terms of their operating permit and remain unaffected by this ordinance. However, any expansion of such parks must conform to the regulations herein and if such parks should have its operating permit revoked or should cease operation for a period of twelve months then the park shall not reopen until it complies with the regulation contained herein, as well as all other applicable state and local laws.

Section 1104.18 Other Applicable Statutes and Requirements.

Class A, B, C, & D manufactured homes may be located in properly permitted manufactured home parks. The granting of a permit under the provisions of this section shall in no way affect any other type of approval required by any other statute or ordinance of the local, state, or federal government, but shall be construed as an added requirement.

Section 1105 Temporary Homeless Shelter

(1) In all permitted zoning districts subject to the following requirements:

- a) Use. No temporary homeless shelter shall be established except as an accessory use to a qualified church by the North Carolina Building Code.
- b) Size. Temporary homes shelters shall not accommodate more than 20 persons.
- c) Building. All temporary homeless shelters shall be conducted in the principle structure and/or accessory structure.
- d) Other Requirements. A Temporary homeless shelter must comply and remain in compliance with all applicable public health and environmental laws and rules and must contain the equipment and meet all of the standards established by the State of North Carolina, as amended or superseded, and any additional rules and regulations issued by the North Carolina Department of Insurance.

Section 1106 Buffer/Screening Requirements

Unless otherwise required herein, the following requirements for buffer strips and screening of property shall be adhered to in the zoned areas of the County.

Section 1106.01 Buffer Strip Area Dimensions.

A buffer strip shall consist of a solid continuous planted strip at least fifteen (15) feet in width composed of a dense vegetative planting incorporating trees and/or shrubs. The planting must be equally effective in winter and summer to achieve a solid continuous visual screen of at least seven (7) feet in height within five (5) years of initial planting. Buffers located on property designated for industrial uses shall be twenty-five (25) feet in width. Once the buffer strip is erected, it shall be properly maintained to perform the function for which it is intended. Where natural features such as topography or natural vegetation are preserved and prevent the project from being casually visible from adjoining properties, the Planning Administrator may waive requirements for screening.

Section 1106.02 Fences and Retaining Walls.

Where fences and/or retaining walls are required, or may be allowed in lieu of a

buffer strip, such structures shall be at least seven (7) feet in height at the original elevation of the property line, except as provided for in Section 1106.05 herein or unless otherwise stated herein. For retaining walls, the height requirement shall apply only to the height above the top of the soil retained by such wall. Fencing and retaining walls shall be maintained in a safe condition and shall be kept in good repair. Wooden fences shall be painted, stained, or specially treated for protection from the weather.

Section 1106.03 Zoning Requirements.

Buffer strips, fences, or retaining walls are required in non-residential zoning, whenever the non-residential use in said district abuts an established residential subdivision or residential zoning.

Section 1106.04 Special Buffer/Screening Requirements.

1. Group or Multi- Family Projects. Fencing or vegetative screening shall be provided to a height of six (6) feet and of such a density that no part of the project shall be visible to a casual observer on any side of the project abutting any yard of a residential structure. Where natural features such as topography or natural vegetation are preserved and prevent the project from being casually visible from adjoining residential properties, the Board of Adjustment may waive requirements for screening.
2. Shopping center or shopping complex. A shopping center or shopping complex shall be permanently screened from adjoining residential zoning by a wall, fence evergreen hedge and/or other suitable enclosure of a minimum height of seven (7) feet at the original elevation of the property line.
3. Extraction of Natural Resources. Vegetation shall be retained and/or fully developed to screen extraction processes from nearby residential areas and adjoining roadways. Quarry areas being excavated shall be entirely closed within a fence located at least ten (10) feet back from the edge of any excavation. Borrow pits are exempt but must comply with State of North Carolina mining regulations if applicable.
4. Automobile Parts Recycling and Scrap yards. All such operations shall be completely enclosed by an opaque fence or wall as per Section 1106.2, or a buffer that is at least ten (10) feet in width composed of dense shrubs planted a maximum of ten (10) feet apart, except driveway areas. The opaque fence or wall required shall be set back ten (10) feet from all property lines, and no storage of any kind associated within the operation of the

automobile graveyards and junkyards shall be permitted between the fence or wall and the property line. The intent of this requirement is to screen from view the Automobile Parts Recycling businesses and scrap yards from adjoining properties to the most reasonable extent possible, knowing that certain topographic conditions will limit effective screening. These requirements apply for all new scrap yards and automobile parts recycling facilities. These rules also apply after February 3, 2006 to all legally operating non-conforming scrap yards and automobile parts recycling facilities.

5. Service Stations in the Neighborhood Business (N-B) Zoning District. When allowed, service stations located in the Neighborhood Business (N-B) Zoning District shall comply with the restriction herein. A buffer shall be constructed and maintained as defined within Section 1106 of this ordinance.

Section 1106.05 Fences in Residential Use Districts.

In any residential use district, fences or retaining walls may be erected adjacent to a side or rear lot line provided such wall or fence does not exceed eight (8) feet in height. For retaining walls, the height limitations specified herein shall apply only to the height above the top of the soil retained by such wall.

Section 1106.06 Administrative Requirements

Each application for a compliance permit or certificate of occupancy shall include information as to the location and type of buffer strip, fence or retaining wall to be erected with those uses requiring such structures.

Section 1107. Communication Towers

Section 1107.01 Intent

The purpose of the following communication tower requirements is to promote and to protect the public health, welfare, and safety by regulating existing and proposed communication towers. The requirements are intended to protect property values, create a more attractive economic and business climate, and enhance and protect the scenic and natural beauty of designated areas.

Section 1107.02 General Requirements

When allowed, such towers and associated equipment shall be subject to the following additional requirements:

1. Towers shall not interfere with normal radio and television reception

in the vicinity. Commercial messages shall not be displayed on any tower. Violations shall be considered zoning violations and shall be corrected under the enforcement provisions.

2. Lighting shall not exceed the Federal Aviation Administration (FAA) minimum if lighting is required by the FAA. The lights shall be oriented so as not to project directly onto surrounding residential property, consistent with FAA requirements. Prior to issuance of a building permit, the applicant shall be required to submit documentation from the FAA that the lighting is the minimum lighting required by the FAA.
3. Towers shall be constructed and maintained in conformance with all applicable building code requirements.
4. In order to protect the public from unnecessary exposure to electromagnetic radiation, the tower owner shall provide documentation indicating that the power output levels do not exceed federally approved levels.
5. In allowed districts, towers of 75 feet or more require that a Conditional Use Permit be granted by the Board of Adjustment. The Board of Adjustment may consider variances up to 10 % of the setback requirements for such towers as a part of the Conditional Use Permit approval.
6. To encourage shared use of towers, no new tower shall be located within one (1) mile of an existing tower. The Board of Adjustment may allow a tower to be placed within one (1) mile of an existing tower upon being presented written documentation that (1) appropriate space on the tower is not available, (2) the new sponsor has made good faith efforts to negotiate an agreement with the owner of the current tower, or (3) equipment currently on the tower is not compatible with the proposed equipment. If the petitioner cannot locate on an existing tower and a new tower has to be constructed, the height of the tower cannot exceed two hundred feet (200'). The new tower cannot be located closer than one mile from an existing tower.
7. All new towers shall be constructed to be able to accommodate at least two or more users so that future co-location will be available. In addition, reasonable accommodation for public service uses is also suggested.

Section 1107.03 Dimensions

When permitted, towers shall conform to the following dimensional requirements:

1. On top of structures: Towers (with the exception of concealed towers) may not be located on top of residential structures in any residential district. Towers that are located on top of non-residential structures in nonresidential districts (which are not tower accessory structures) shall not be more than 75 feet above the top of the structure. The structure shall meet the normal setbacks of the zone.
2. Setbacks: Towers located on the ground or top of a tower accessory structure:
 - a. If the tower is more than 75 feet high and adjacent to, inside, or separated by a public right of way from property that is residentially zoned or used, the setback shall be one foot (1') for every foot in height, or the setback of the zoning district, whichever is greater. If the tower is more than 75 feet in height and adjacent to, inside, or separated by a public right of way from nonresidential property, the setbacks shall be one foot (1') for every two feet in height or the setback in the zoning district, whichever is greater, and in no case less than fifty feet (50').
 - b. To encourage shared use of towers, applications for towers which will operate with more than one user immediately upon completion may reduce setbacks from adjacent nonresidential property. The setback from adjacent nonresidential property may be reduced by 25% when two users commit to occupy the tower immediately upon its completion, or reduced by 50% when three or more users commit to occupy the tower immediately upon its completion. However, the required setback distance may not be reduced to less than fifty feet (50'). The reductions do not apply if the tower adjoins a residential zone on any side.
 - c. No setbacks shall be required if the tower is to be located on an existing structure.

Section 1107.04 Residential District:

Towers (with the exception of concealed towers) where allowed in residential districts shall conform to the following setbacks:

1. Where allowed, towers 75 feet or more in height may be permitted subject to the issuance of a Conditional Use Permit. A tower shall have a setback from all property lines that is in compliance with this

section.

2. To prevent a clear view of the base of the tower, the setback shall contain an established forested area with a depth of at least 100 feet. When the 100 foot forested area requirement cannot be met, a natural buffer shall be provided as required in Section 1107.05. The Board of Adjustment, when deciding the Conditional Use Permit, may reduce the setback adjacent to nonresidential property upon consideration of circumstances which reduce the offsite effects of the tower such as topography, berms, the proximity of other existing or potential uses, and existing vegetation and improvements made to the site to obscure or reduce the visibility of the tower. The Board of Adjustment shall not reduce the required setback from adjacent property which has residential use.
3. No outdoor storage yards shall be allowed on tower sites.

Section 1107.05 Buffers

1. The base of the tower, any guy wires, and any associated structures, walls, or fences shall be surrounded by a landscaped buffer. The site developer may have the option of:
 - a. providing a buffer around the tower base and associated items individually OR
 - b. providing a buffer around the perimeter of the entire site.
2. A 10 foot buffer shall be provided between the tower and the property boundaries in all zones other than residential. In all residential zones, the buffer shall be a minimum of 25 feet in width.
3. The planting shall consist of deciduous or evergreen trees and evergreen shrubs. Trees shall be planted along the full length of the buffer strip in a triangular pattern with a maximum spacing of 25 feet on centers. The minimum height at planting for trees shall be six feet, and they shall have an expected minimum maturity height of 35 feet under normal growing conditions. There shall also be one row of dense shrubs, spaced not more than eight feet on centers. Shrubs shall be a minimum of two feet high at planting and shall have a minimum expected maturity height of eight feet under normal growing conditions. It is the intent of this section to encourage the use of existing vegetation in whole or in part to substantially meet this requirement.

Section 1107.06 Site Plan Requirements

The following information must be supplied with the site plan or building permit

application for towers that are 75 feet in height or more prior to any approval:

1. Identification of the intended user(s) of the tower.
2. Documentation provided by registered engineer that the tower has sufficient structural integrity to accommodate more than one user.
3. Documentation by the applicant that no suitable existing facilities within the coverage area are available to the applicant.
4. A statement indicating the owner's intent to allow shared use of the tower and how many other users can be accommodated.

Section 1107.07 Alternative Structures/ Co-Location

It is the policy of Burke County that the visual impact of telecommunications towers and/or antenna should be minimized through the use, where feasible, of alternative tower structures. If alternative tower structures are not available or it is technically or economically not feasible to use an alternative tower structure, then the joint or multiple use of a single tower in less objectionable locations by different communication companies (co-location) should be and is encouraged so as to minimize the need to construct new towers and to minimize the overall number of towers throughout the County. This section is intended to implement that policy.

1. The following alternative tower structures and uses may be approved by the Zoning Administrator after conducting an administrative review:
 - a. Installing an antenna on an existing structure other than a tower (such as a building, sign, utility pole, water tower or other free-standing, nonresidential structure) that is more than fifty (50) feet *in height*, so long as such addition does not add more than twenty (20) feet to the height of the existing structure;
 - b. Installing an antenna on an existing structure other than a tower (such as a building, sign, utility pole, water tower, or other free-standing, nonresidential structure) in any commercial or industrial district that is less than fifty (50) feet in height so long as such addition does not add more than twenty (20) feet to the height of the existing structure;
 - c. Installing an antenna on an existing tower of any height, including a pre-existing tower and further including the placement of additional buildings or other support equipment used in connection with said antenna, so long as the addition of said antenna adds no more than twenty (20) feet to the height of said existing tower;
 - d. Locating any alternative tower structure in a zoning district other than industrial or commercial that, in the judgment of the Zoning Administrator, is in conformity with the policy set forth above.

- e. Replacing an existing tower that adds no more than twenty (20) feet to the overall height of the existing structure.
2. Any additional buildings or equipment shall be screened in accordance with Section 1107.05.
3. New communication tower sites shall provide for a minimum of one (1) co-location site. The site plan shall include locations for at least two (2) equipment buildings, even if the tower is proposed for a single user.

Section 1107.08 Removal of Towers

Towers that are not used for a period of six (6) months or more shall be removed by the owner within one hundred eighty (180) days after receiving notice from the County to remove the tower. To assure the removal of towers that do not meet requirements for use or maintenance, this section serves as notice that the County may remove said tower and may file a lien collectable as taxes against the property.

Section 1107.09 Additional Requirements for Conditional Use Permits for Telecommunication Towers and Equipment

1. When considering a Conditional Use Permit request, the Board of Adjustment shall not be required to make a determination of the electromagnetic field (EMF) effects of the tower on the health of the public.
2. All property owners within a 1,500 foot radius and/or adjoining the property where the tower is proposed shall be notified, in writing, of the public hearings at which the application will be considered.
3. Conditional Use Permits for all towers shall expire unless documentation, including but not limited to an FCC license, is submitted each January to the Board of Adjustment indicating that the tower is being utilized.
4. The tower shall meet all other applicable supplementary requirements.

Section 1107.10 communication Towers Located in the I-40 COD

When permitted, communications towers locating in the I-40 COD shall be concealed, monopole, or another alternative design that minimizes the visual impact to the corridor.

Section 1107.11 Communication Towers in the Scenic Overlay District

When permitted, the overall height of communications towers locating in the Scenic Overlay District shall not exceed the height of surrounding trees in order

to conceal the tower from views in and out of the site. Such towers are encouraged to utilize stealth appearance design alternatives when possible. In no case shall a tower utilizing "lattice" design, or a lighted tower be approved for construction within the Scenic Overlay District

Section 1108 Multi-Family, Townhouse and Condominium Developments

Section 1108.01 General Requirements

When allowed, multi-family, townhouse, and condominium developments shall be subject to the following requirements:

1. **Project Area**
 - a. Minimum lot or overall project area is 2 acres.
 - b. Minimum lot area per dwelling unit is 15,000 square feet for the first unit and 3,000 square feet for each additional unit.
 - c. Minimum front yard depth for each building is 35 feet.
 - d. Minimum rear yard depth for each building is 30 feet.
 - e. Minimum side yard depth for each building when adjacent to street is 30 feet.
 - f. Minimum side yard depth for each building when adjacent to a private drive or side lot line is 15 feet.
 - g. Minimum side yard depth for each building when adjacent to another building in the project area is 20 feet.
 - h. Minimum distance between buildings is 40 feet.
 - i. Maximum area covered by all buildings is 30%, unless utilization of the 10/70 option as allowed per the Burke County Watershed Protection Ordinance is permitted.
 - j. Minimum of 5% of the project area, excluding swimming pool and all related facilities, to be designated and developed as a recreation or play area.

2. **Preliminary and Final Designs to be Submitted**

A preliminary design layout must be submitted to the Board of Adjustment with seven copies for review before the submission of the final design. A final corrected design shall be approved by the Board of Adjustment before final approval is given and building permit is issued. Special conditions may be required for the project plan by the Board of Adjustment.

3. **Design Standards for Dedicated and Private Streets**

- a. Major and collector streets shall be in conformity with the Burke County Thoroughfare Plan.
- b. Local and minor access streets: 50 foot right of way
- c. Marginal access streets: 50 foot right of way

- d. Cul-de-sacs: 50 foot right of way w/ turnaround of 80 feet.
 - e. Private streets: 50 foot right of way
 - f. All public and private streets shall be paved to a minimum width of 20 feet and shall be dedicated as an easement for utility purposes. They shall be laid out so that their use by through traffic will be discouraged.
4. Dead End Streets
- a. Dead-end dedicated streets shall be no longer than 800 feet unless necessitated by topography and shall terminate with a paved turnaround having an outside road diameter of at least 80 feet.
 - b. Dead-end private streets shall be no longer than 800 feet and shall terminate with a paved turnaround having an outside diameter of at least 80 feet.
5. Intersections
- a. Streets shall intersect as nearly at right angles as topography and other limiting factors permit. No street shall intersect at less than 60 degrees.
 - b. All street intersections shall have at least 150 feet between intersections.
 - c. Pavement lines at street intersections shall be rounded with a radius of 25 feet. Where a street intersects a highway, the design standards of the North Carolina Department of Transportation shall apply.
6. Off Street Parking Requirements

There shall be two parking spaces for each dwelling unit.

Section 1109 Public Utility Facilities

Section 1109.01 General Requirements in Residential Zoning Districts

When allowed in residential zoning districts, public utility facilities shall be subject to the following requirements:

- 1. Facilities shall be essential to the service of the immediate area and no vehicles shall be stored outside on the premises.
- 2. No offices shall be permitted.

3. All buildings shall conform to the setback requirements in Section 802 and shall be designed and landscaped in a way as to blend in with the surrounding area.
4. All dangerous apparatus shall be enclosed by a chain link fence at least eight (8) feet in height.
5. Such facilities shall comply with the buffer / screening requirements of Section 1106.

Section 1110 Land Clearing and Inert Debris Land Fills

Section 1110.01 General Requirements

When allowed, land clearing and inert debris landfills shall be subject to the following requirements:

1. All land clearing and inert debris landfills shall be no more than two (2) acres in size.
2. Must be properly permitted through the N.C. Department of Environment and Natural Resources and/or other applicable state and federal agencies.
3. Shall pose no known public or environmental hazard.
4. Must be properly closed within one (1) year.
5. If permissible through application for a conditional use permit, then the land clearing and inert debris landfill must meet any other specific criteria deemed necessary by the Board of Adjustment to alleviate any incompatibility with surrounding land uses.

Section 1111 Racetracks and Go-Cart Tracks

Section 1111.01 General Requirements for Racetracks

When allowed, racetracks shall be subject to the following requirements:

1. Minimum lot size shall be 50 acres.
2. Hours of operation shall be between sunrise and 11:00 p.m.
3. All outdoor lighting shall be turned off between 11:00 p.m. and sunrise, except lighting used for walkways, roads, parking lots, and security. In these cases, fully shielded lights must be used. Lighting should not

shine into the sky or onto neighboring properties.

4. The lot will have access to an arterial street.
5. The property shall be screened in accordance with Section 1106 of the zoning ordinance.

Section 1111.02 General Requirements for Go-Cart Tracks

When allowed, go-cart tracks shall be subject to the following requirements:

1. The property shall be screened in accordance with Section 1106 of the zoning ordinance.
2. The track surface shall be maintained so as not to create dust.
3. A fence with a minimum height of five (5) feet shall be maintained around the track to keep spectators from entering the track.

Section 1112 Barge Loading Areas

Section 1112.01 General Requirements for Barge Loading Areas

Allowed only as a temporary use during on-site or nearby shoreline construction activity, barge loading areas shall be subject to the following requirements:

1. Maximum area of disturbance shall not exceed one (1) acre in size, or more than 125 linear feet of shoreline.
2. Shall be in compliance with Duke Power's shoreline management plan.
3. Shall be sited and designed to minimize any environmental and wildlife impact and all buffer areas disturbed during time of use shall be completely replanted and restored at the end of construction activities.
4. Shall not be used at any time for the mooring of watercraft not directly involved with shoreline stabilization activities.
5. Any erosion issues associated with the site are to be addressed immediately by the property owner.
6. Shall not be located within ½ shoreline mile of another barge loading area.
7. Shall have a buffer or privacy fence to visually screen material and equipment storage areas from adjacent residential properties as per

Section 1106 of the zoning ordinance.

Section 1112.02 Site Inspection and Permitting

1. Barge loading areas are subject to the Site Plan Review Process outlined in Article XIII of the Burke County Zoning Ordinance.
2. Upon approval of a site plan, the applicant shall be eligible to apply for a shoreline protection permit and a temporary zoning permit.
3. A temporary zoning permit for a barge loading area shall be valid for six (6) years unless otherwise specified in an approved parallel conditional rezoning application. Such operations may request a permit renewal based on demonstrated need for continued operation of the barge loading area in the permitted location.
4. Barge loading areas are required to receive annual inspections from the Zoning Administrator or his/her designee to determine consistency with applicable requirements and shoreline protections set forth in Section 1110 and Article XII of this Ordinance. It shall be incumbent upon the barge loading area operator to schedule said inspection with the Zoning Administrator.

Section 1113 Group Campgrounds and Recreation Vehicle Parks

Section 1113.1 Intent

The special provisions for recreation vehicle parks are designed to encourage the compatibility of these parks with surrounding land uses, maintain a safe and healthy atmosphere, minimize adverse environmental impacts, promote quality design for the traveling public, and stabilize demand on local public services in the County.

Section 1113.2 Permitted Uses

Recreation vehicle parks shall be used only by travel trailers, park models, pick-up coaches, motor homes, camping trailers, other vehicular accommodations and tents suitable for temporary habitation and use for travel, vacation and recreation purposes. In addition, cabins and bunkhouses constructed to International Building Code are permitted.

Section 1113.3 Permanent Habitation Not Permitted

In order to provide for the public safety and general welfare, the use of recreation vehicle parks and campgrounds for permanent habitation shall be deemed unlawful. Recreation vehicles and tents are not designed nor constructed for such purpose. Campground and recreation vehicle park operators shall provide proof of the temporary nature of users upon regular review by the Zoning Administrator or his/her designee.

The use or construction of a site built dwelling constructed to International Building Code standards may be used as a permanent dwelling for the campground operator.

Section 1113.4 Site Plan Approval Required

In addition to any other information required by Article XIII of this Ordinance, the site plan shall include the following information:

1. location and dimension of each recreation vehicle site or group camp site
2. designation of primitive camping areas and number of sites
3. location and use of all service and recreational facilities
4. all interior access ways
5. location of all proposed facilities for sanitation and solid waste
6. fire prevention measures

Section 1113.5 Area and Site Requirements

- a. Area of the park shall be no less than three (3) acres.
- b. Density shall be no more than twelve (12) sites per acre.
- c. Each recreation vehicle site shall be at least three thousand (3,000) square feet in area.
- d. Each site shall contain a stabilized recreational vehicular parking pad, consisting of packed gravel, asphalt paving, concrete or other suitable material. Size of pad shall not exceed 10 feet in width and 40-45 feet in length.
- e. A single wooden patio/deck is allowed on individual sites and shall be built to NC State Building Code and the ADA Accessibility Code. Size of deck shall be as follows: Decks up to 10 feet in width may have a maximum overall size of 450 square feet. Decks exceeding 10 feet in width shall have a maximum overall size of 400 square feet. The overall size shall include any ramps and/or steps. No deck shall exceed 15 feet in width. Deck height should be as close to the ground as feasibly possible. If a portion of a deck must be raised to accommodate an uneven grade, lattice must be utilized in all open areas below floor level which exceed 18 inches in height. Rails may only be allowed if the Building Code and/or Accessibility Code require them. All portions of a deck must meet the required interior yard setbacks of Section 1113.6(c).
- f. Carports are not an allowed use on individual RV sites and shall not be used as covers to RVs.

Section 1113.6 Minimum Setback and Yard Requirements

- a. Permanent facilities and structures shall be setback forty-five (45) feet from a public right-of-way or external property line.
- b. Recreation vehicle sites, campsites, and common outdoor recreation areas shall be setback one hundred (100) feet from any external property

- line.
- c. All other interior yard setback requirements shall be ten (10) feet.

Section 1113.7 Screening

- a. Recreation vehicle parks shall be enclosed by a fence, wall, landscape screening, earth mounds or by other designs from all contiguous residential areas in a manner that will complement the landscape and assure compatibility with adjacent environment.
- b. Large trash receptacles, pump-out facilities, dumping stations, and maintenance areas shall be screened from the public view.

Section 1113.8 Public Street Access

- a. No recreation vehicle space within a recreational vehicle park site shall directly access a public road.
- b. Access to all recreation vehicle and accessory structures within the park shall be made using internal streets.
- c. A driveway permit must be obtained from the North Carolina Department of Transportation.

Section 1113.9 Internal Streets

- a. Internal streets shall be constructed eighteen (18) feet wide and contain a minimum depth of six (6) inches of stone gravel base with proper ditching, drainage, and seeding of slopes.
- b. One-way street design is permitted but is not subject to the pavement width above. Such streets shall provide for the adequate access of emergency vehicles.
- c. Permanent dead-end streets shall have a cul-de-sac constructed forty (40) feet in diameter or provide a turn-around designed for emergency vehicles within one hundred (100) feet of the end of the street.
- d. The owner/operator shall have the roads designed by a practicing engineer licensed in the State of North Carolina.
- e. The owner/operator shall be responsible for the maintenance of the internal roads to an all-weather surface condition.

Section 1113.10 Parking

Adequate off-street parking and maneuvering space shall be provided on-site. The use of any public street, sidewalk or right-of-way or any other private grounds not a part of the recreational vehicle parking area for the parking or maneuvering of vehicles is prohibited.

Section 1113.11 Accessory Uses

Each park shall have at least one telephone available for public use. Management headquarters, manager's residence, recreational facilities, toilets, dumping stations, showers, coin-operated laundry facilities, stores and the uses and structures customarily incidental to operations of a recreation vehicle park are permitted as accessory uses to the park, subject to the following restrictions:

- a. Such establishments (excluding recreational facilities) and the parking areas primarily related to their operations shall not occupy more than ten (10) percent of the gross area of the park.
- b. The structures housing such facilities shall not be located closer than one hundred (100) feet to any public street and shall not be directly accessible from any public street but shall be accessible only from a street within the park.
- c. Such structures containing toilets, bathhouses and other plumbing fixtures shall adhere to all applicable International Building Code and Environmental Health requirements, as amended.
- d. Accessory recreational uses are permitted as allowed by the applicable zoning district(s).

Section 1113.12 Requirements Within the Conservation Zoning Districts

When allowed with an approved Conditional Use Permit or within a parallel conditional zoning district, recreation vehicle parks within either Conservation Zoning District shall be subject to the following requirements:

- a. No individual camper spaces shall have on-site septic systems.
- b. Each recreational vehicle must be equipped with a holding tank and each park must have an approved dumping station or pump out facilities on the premises.

Section 1113.13 Certificate of Occupancy Required

- a. Prior to first occupancy, expansion, or re-design of a group campground or recreation vehicle park, a certified statement of compliance shall be obtained from the Zoning Administrator.
- b. Prior to issuance of said statement, the Zoning Administrator or his/her designee shall inspect the site for compliance with the approved site plan.
- c. If the Zoning Administrator denies the issuance of said statement, the owner shall be provided in writing the reasons for said denial.

Section 1114 Family Recreation Areas

Section 1114.1 Intent

The special provisions for family recreation are designed to encourage the compatibility of these recreation and small group gathering uses with surrounding land uses, maintain a safe and healthy atmosphere, minimize adverse environmental impacts, and protect minimum housing standards in the County. It is the not the intent that these uses include commercial, non-profit, or residential uses of land or structures.

Section 1114.2 Permitted Uses

Family recreation areas shall be used only by travel trailers, park models, pick-up coaches, motor homes, camping trailers, other vehicular accommodations and tents suitable for temporary habitation and use for travel, vacation and recreation purposes. In addition, picnic shelters and similar accessory structures of a non-commercial, recreation nature are included in this use.

Section 1114.3 Permanent Habitation Not Permitted

In order to provide for the public safety and general welfare, the use of family recreation areas for permanent habitation shall be deemed unlawful. Recreation vehicles and tents are not designed nor constructed for such purpose. Prior to issuance of a zoning permit or upon notice of violation the property owner or violator shall provide proof of the temporary nature of users to the Zoning Administrator or his/her designee.

Section 1114.4 Site Plan Approval Required

- a. The family recreation area site plan shall be drawn to scale and show or note all required and applicable material. The plan is not subject to the Section 1306.1 requirement of preparation registered architect, engineer, landscape architect, or land surveyor licensed to practice in the State of North Carolina.
- b. The Zoning Administrator shall determine the completeness of the family recreation area site plan and determine if the plan provided contains the information required in a manner that compliance can be determined.
- c. In addition to any other information required by Article XIII of this Ordinance, except as noted herein, the site plan shall include the following information:
 1. location and dimension of each recreation vehicle site or group camp site
 2. designation of primitive camping areas and number of sites

3. location and use of all service and recreational facilities
4. all interior access ways
5. location of all proposed facilities for sanitation and solid waste
6. fire prevention measures
7. proof of permanent residence
8. written description of the proposed use

Section 1114.5 Area and Site Requirements

- a. A minimum of three (3) acres of land is required for each Family Recreation Area
- b. Density shall be no more than four (4) sites per Family Recreation Area.
- c. Each recreation vehicle site shall be at least three-thousand (3,000) square feet in area.
- d. Each site shall contain a stabilized vehicular parking pad of packed gravel, marl, paving, or other suitable material.
- e. Individual septic systems are not permitted in FEMA designated floodway or floodplain. For recreational vehicle sites in such areas, each recreational vehicle must be equipped with a holding tank and each Family Recreation Area must have an approved dumping station or pump-out facility on premises outside of the flood prone areas.

Section 1114.6 Minimum Setback and Yard Requirements

- a. Permanent facilities and structures shall be setback forty-five (45) feet from a public right-of-way or external property line.
- b. Recreation vehicle sites, campsites, and common outdoor recreation areas shall be setback fifty (50) feet from any external property line.
- c. All other interior yard setback requirements shall be ten (10) feet.

Section 1114.7 Screening

- a. Family recreation areas shall be enclosed by a fence, wall, landscape screening, earth mounds or by other designs from all contiguous residential areas in a manner that will complement the landscape and assure compatibility with adjacent environment.
- b. Large trash receptacles, pump-out facilities, dumping stations, and maintenance areas shall be screened from the public view.

Section 1114.8 Public Street Access

- a. No recreation vehicle space within a recreational vehicle park site shall directly access a public road.
- b. Access to all recreation vehicle and accessory structures within the family recreation area shall be made using internal streets and driveways.

Section 1114.9 Parking

Adequate off-street parking and maneuvering space shall be provided on-site. The use of any public street, sidewalk or right-of-way or any other private grounds not a part of the recreational vehicle parking area for the parking or maneuvering of vehicles is prohibited.

Section 1115 Crematory

Section 1115.01 General Requirements

When allowed, crematories and crematoriums shall be subject to the following requirements:

1. Shall comply with all applicable public health and environmental laws and rules, shall meet all established standards of operation, and shall obtain and maintain all applicable licenses and permits.
2. Prior to a zoning permit being issued, the applicant shall provide a certification by the North Carolina Division of Air Quality of the Department of Environment and Natural Resources that either all air quality regulations have been complied with or that no permits are required.
3. Shall be operated entirely within a structure built to international building codes.
4. Shall have a buffer or privacy fence to visually screen material and equipment storage areas from adjoining residentially zoned property as per Section 1106 of this ordinance.
5. No remains shall be deposited within ten (10) feet of any property line.
6. No noise, vibration, smoke, dust, odors, heat or glare should be noticeable at or beyond any property line.
7. When permitted as an accessory use, the primary use shall be a use commonly associated with the disposal of deceased humans and/or animals such as funeral homes, hospitals, animal hospitals, or animal shelters.

Section 1116 Shooting Range (Outdoor)

Section 1116.01 Intent

The purpose of this section is to protect human health, safety and general welfare by regulating the establishment and operation of outdoor shooting range

facilities. Such uses, due to their potential noise impacts and safety concerns, merit careful review to minimize adverse effects on adjoining properties.

Section 1116.02 General Requirements

When allowed, shooting ranges shall be subject to the following requirements:

1. The use of firearms shall be limited to the hours between sunrise and sunset or as determined by the Board of Adjustment through the conditional use process.
2. The use must not be located within 1,350 feet of any residence. However, the residence of the owner may be located within 1,350 feet of the shooting range.
3. A development plan shall identify the Safety Fan for each firing range. The Safety Fan shall include the area necessary to contain all projectiles, including direct fire and ricochet. The Safety Fan configuration shall be based upon qualified expert documentation regarding the trajectory of the bullet and the design effectiveness of berms or other safety barriers to contain projectiles to the Safety Fan.
4. The firing range, including the entire Safety Fan, shall be enclosed with a six foot (6') high non-climbable fence to prevent unauthorized entry into the area.
5. The firing range must meet all applicable State and Federal regulations.

Section 1116.03 Site Plan Requirements

In addition to any other information required by Article XIII of this Ordinance, the site plan shall include the following information:

1. Complete layout of each range, including shooting stations or firing lines, target areas, safety fans, backstops, berms and baffles;
2. Setback of 1,350 feet from any residence.

Section 1117 Special Events Grounds

Section 1117.01 General Requirements for Special Events Grounds

1. A site plan consistent with Article XIII shall be required and include the following additional information:
 - a. Compliance statement with and reflect the requirements of the Burke County Mass Gatherings Ordinance (Section 42 of the

- Burke County Code of Ordinances), if applicable.
- b. Other information deemed necessary by the Zoning Administrator or Health Director to determine compliance with Burke County Ordinances and to protect the public health, welfare, and safety of the public using the facility, the environment, and neighboring properties.
2. The special events grounds shall comply with specific requirements of proposed uses set forth in this ordinance. Where a conflict exists between such uses, the stricter requirement shall apply.
 3. The Board of Adjustment may require additional conditions of approval based on the criteria set forth in Section 1505.02.4 of this Ordinance in addition to the specific criteria set forth herein.

Section 1117.02 Specific Requirements for Special Events Grounds

1. A plan of Operation shall be submitted containing the following information as applicable:
 - a. The proposed use of the land, building, and/or structures.
 - b. Activities to occur both inside and outside all principle and accessory structures.
 - c. The frequency and duration of all activities, including the season, days, and hours of operation.
 - d. The total number of employees and number of employees in the largest shift.
 - e. The total number of customers.
 - f. The total number of vendors.
 - g. Signage (temporary, directional, and permanent)
 - h. The number, size, and type of all vehicles associated with the use.
 - i. Number of vehicle trips or Traffic Impact Analysis.
 - j. The expected starting and completion dates of construction.
 - k. The proposed phasing of the project.

Section 1118 Home Occupations

Section 1118.01 General Requirements

When allowed, conduct of a home occupation in a residential structure is subject to the following limitations:

1. An application for a home occupation shall include a sketch of the dwelling unit, showing square footage, which indicates the area to be used for the home occupation.
2. The use is conducted by the occupants of the dwelling unit and not more

than three outside employees.

3. The use is conducted entirely within the principal building and is clearly incidental and secondary to the residential use of the dwelling. The use of detached garages and/or accessory buildings for Home Occupations, while not prohibited, is discouraged, and justification for the use of detached garages or accessory buildings must be provided with the development permit application. During review of the application, particular attention will be directed at the use of detached garages and/or accessory buildings to insure that the proposed use does not adversely impact the residential intent of the zoning district. If a detached garage and/or accessory building is used, it must be completely enclosed.
4. The floor area used for the Home Occupation does not exceed 50% of the total floor area of the dwelling unit. In calculating the floor area of the dwelling unit, only the principal building will be included, detached garages and/or accessory buildings will not be included.
5. There is no exterior evidence of the presence of a home occupation except as hereinafter provided, nor does the presence of the home occupation change the exterior character of the dwelling.
6. There are no salesrooms or display windows. Any materials, supplies, storage, or equipment are entirely contained within the building housing the home occupation. There is no outside storage or use of materials and/or equipment, including, but not limited to, construction equipment, heavy equipment or construction materials.
7. Any identification sign does not exceed four square feet, and is unlighted. No off-premise or directional sign is allowed.
8. Adequate off-street parking is provided. In addition to personal vehicles, one vehicle with a gross weight rating (GVWR) of 10,000 pounds or less and labeled to identify the business, may be parked on site.
9. Receipt or delivery of materials or supplies to the site is limited to the United States mail, similar parcel delivery services, or private vehicle with a gross weight rating (GVWR) of 10,000 pounds or less.
10. Client visits and deliveries may be limited as a condition of approval based on site-specific considerations, and road classification as determined by the North Carolina Department of Transportation. In no case shall business activities occur between the hours of 9:00 p.m. and 7:00 a.m. which would disrupt the residential nature of the zoning district. Such activities may include, but not be limited to, client visits, deliveries and departure or arrival of vehicles of employees or of the business.

11. No use shall create noise, glare, fumes, odors, or electrical interference detectable to the normal senses from property in the general vicinity.
12. A Home Occupation shall not include any of the following:
 - (a) Sales of autos, recreational vehicles or heavy equipment;
 - (b) Repair of autos, recreational vehicles or heavy equipment;
 - (c) Kennels;
 - (d) Other uses as determined in subsection 14 below to be inconsistent with the spirit and intent of this Ordinance.
13. A Home Occupation may include, but is not limited to:
 - (a) Computer programming;
 - (b) Catering, cooking and baking;
 - (c) Direct marketing enterprises;
 - (d) Dressmaking, sewing and tailoring;
 - (e) Hair salons;
 - (f) Home crafts, such as weaving, jewelry making, or potting;
 - (g) Management of companies and enterprises;
 - (h) Painting and sculpting;
 - (i) Professional services (excluding health care professionals and massage therapists);
 - (j) Real estate, rental or leasing;
 - (k) Specialty trade offices, where services are provided off site;
 - (l) Telephone answering service;
 - (m) Tutoring or instruction of no more than 4 students at a time.
14. When an applicant applies for a home occupation permit for a use not specifically listed above, the Planning Administrator will utilize the most current online edition of the NAICS document to define the applicant's proposed home occupation and determine if it is consistent with the spirit and intent of this Ordinance.
15. If the Planning Administrator determines that an application for a home occupation is inconsistent with the spirit and intent of this Ordinance, the applicant may appeal the administrator's decision to the Board of Adjustment.
16. The granting of a permit under the provisions of this section shall in no way affect any other type of approval required by any other statute or ordinance of the local, state, or federal government, but shall be construed as an added requirement.

Section 1119 Kennel

Section 1119.01 Intent

The purpose of the following Kennel requirements is to promote and protect the public health, safety, and welfare and to insure the humane care and treatment of animals.

Section 1119.02 General Requirements

When allowed per Section 920, all Kennels meeting the definition of “commercial” as stated in Section 402 of this ordinance shall be subject to the following requirements:

1. Kennels must be approved and permitted as outlined in this ordinance prior to being established.
2. Kennels are subject to the site plan requirements of Article XIII and Articles XX, and XXI (if applicable).
3. All buildings, and shelters housing animals must be fully enclosed and shall be located at least one-hundred (100) feet from property lines. Within the R-MU zoning districts Kennels with outdoor exercise runs shall be located at least 150 feet from property lines. All outdoor exercise runs shall be enclosed by a fence. Fencing shall consist of durable materials with a minimum height that shall deter all contained animals from escaping over, under, or through the fence.
4. In addition to the standards set forth in this section, all kennels must be compliant with Article III of the North Carolina General Statutes, the Burke County Animal Control Ordinance, and all applicable Burke county Zoning, Code Enforcement, and Environmental Health regulations.
5. Kennels are subject to inspection during normal county operating hours by officers or representatives of Burke County Animal Control, Zoning, Code Enforcement and Environmental Health or as determined by the Conditional Use Permit process.

Section 1120 Winery, Brewery, and Distillery

- a. Applies to non-farm wineries, breweries, and distilleries in PRMU zoning district only.
- b. Allowed by Conditional Use Permit only.
- c. The winery, brewery, or distillery shall meet all other applicable standards for Industrial uses.
- d. The winery, brewery, or distillery cannot be located in a major subdivision.

- e. The winery, brewery, or distillery building(s) is allowed as a principal structure.
- f. A Winery or Brewery may include one or more accessory uses such as a tasting room, tap room, restaurant, retail, demonstration area, education and training facility or other uses incidental to the winery/brewery and open and accessible to the public upon the appropriate permit under G.S. 18B-1001.
- g. Storage of materials used in the manufacturing, processing and for distribution shall be located entirely within the building.
- h. Shall be designed such that all newly constructed loading and unloading facilities are internal to the site, in service alleys or at the back of the building.
- i. The sides and rear yard setback requirement shall be increased to 25 feet.

ARTICLE XII: CATAWBA RIVER, LAKE JAMES, LAKE RHODHISS, & LAKE HICKORY OVERLAY DISTRICT

Section 1201 Authority and Enactment

Pursuant to the authority conferred by the North Carolina General Statutes, particularly Chapter 153A Part 3, the County Commissioners of Burke County, North Carolina hereby ordain and enact into law the following articles and sections.

Section 1202 Intent

The provisions of this article to protect water quality, aesthetics, fish and wildlife habitat, and recreational use of the Catawba River, Lake James, Lake Rhodhiss, and Lake Hickory by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining healthy tree canopy and understory, preserving fish, birds, and wildlife habitat, and respecting the overall natural condition of the shoreline. It is also the intent of this article to encourage development in compliance with this Ordinance.

Section 1203 Jurisdiction

The provisions of this article shall apply to all lands in Burke County's zoning jurisdiction within two hundred fifty (250) feet, (measured horizontally) to the reference line of Lake James, Lake Rhodhiss, and Lake Hickory. The reference line is the Duke Power Company Lake James project boundary of 1,200 feet, Lake Rhodhiss project boundary of 1,000 feet, and the Lake Hickory project boundary of 935 feet above sea level. These provisions shall also apply to all lands in the zoning jurisdiction of Burke County which lie in whole or in part within two hundred fifty (250) feet of the main stem and old channel of the Catawba River that flows between Lake James to the mouth of Lake Rhodhiss. These provisions shall also apply to all subdivisions created after February 5, 2002 that lie in whole or in part within 250 feet of the project boundary of Lake James.

The reference line on these parcels shall be considered to be the top edge of the river bank. All applicable floodplain regulations shall still apply to these areas as necessary

Section 1204 Penalties

The article may be enforced by any one, all, or a combination of the remedies authorized and prescribed by G.S. 153A-123 and 153A-324.

Section 1205 Remedies

- A. If the Planning Administrator finds that any of the provisions of this article are being violated, he shall notify in writing the person responsible for

such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of the building or structures, removal of illegal building or structures, or of additions, alterations, or structural changes thereto, discontinuance of any illegal work being done, replacement of vegetation or humus layers, or shall take any action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Planning Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment.

- B. Violation of any provision of this article shall subject the offender to a civil penalty in the amount of one-hundred dollars (\$100.00) to be recovered by the county in a civil action in the nature of a debt if the offender does not pay the penalty within a period of seventy-two (72) hours after being cited. In the case of Lake James, the amount of the civil penalty is increased to a maximum of five-thousand dollars (\$5,000.00). Citations shall be in writing and signed by the Planning Administrator, and shall be delivered or mailed by certified mail to the offender either at his residence or at his place of business or at the place where the violation occurred. Each day that the violation continues shall constitute a separate offense without multiple citations issued.
- C. Prior to the issuance of a citation, a warning shall be issued and the activity causing the problem shall cease immediately upon receipt of the warning. Work to correct the problem shall begin within ten (10) days unless the person involved can show just cause, which will provide an extension of time long enough to repair the damage.

Section 1206 Severability

Should any section or provision of this article be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this article as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

Section 1207 Conflict With Other Laws

Where the provisions of any other law, ordinance, or regulation impose higher standards than are required by the provisions of this article, the provisions of such law, ordinance, or regulation shall govern.

Section 1208 Natural Woodland Buffer

1208.01 General Provisions

Within the natural woodland buffer, the following provisions shall apply:

1. All trees, shrubs, and ground cover are considered protected vegetation, with the exception of second-growth pines that are replaced according to an approved revegetation plan submitted as a part of the development approval process.
2. Clearing, thinning, pruning, and planting within fifty (50) feet measured horizontally) of the reference line shall be accomplished with hand tools.
3. All existing forest humus, leaf litter and soil within fifty (50) feet measured horizontally) of the reference line shall remain undisturbed and intact except for the creation of footpaths and revegetation permitted by this section.
4. On Lake Rhodhiss and Lake Hickory, accessory structures such as storage sheds and gazebos, but excluding automobile garages, may be permitted within fifty (50) feet of the reference line provided that:
 - a. The footprint of the structure does not exceed 150 square feet.
 - b. The structure is usually customary and incidental to a legally authorized use.

No such structures are allowed in the buffer area on Lake James or the Catawba River.

5. Individual trees may be selectively pruned with hand tools to remove only lateral limbs from no more than fifty (50) percent of the tree's total height. In no case shall more than ten percent (10%) of the trees on the parcel be skirted up in this manner in order to screen the structure and maintain the natural appearance of the property from the lakeshore.
6. The replacement of vegetation shall comply with the following requirements:
 - a. Replacement of vegetation shall be consistent with a revegetation plan approved by the Zoning Administrator. Such plans shall identify (1) the type, size, and location of vegetation to be removed and (2) the type, size, and location of vegetation to be planted.
 - b. Replacement vegetation is protected vegetation and shall be maintained as such.
 - c. Placement of vegetation shall be done in a manner that promotes the health of the natural vegetative buffer and located in a manner that promotes the natural and scenic qualities of the water body.
 - d. Replacement of trees shall be subject to the following provisions:

- i. Trees shall be replaced with a quantity of trees totaling the diameter of the tree removed. Replacement trees are not to be less than three (3) inches in diameter.
 - ii. The Zoning Administrator may vary the requirement in 1208.01(6di) above if it is the interpretation of the Zoning Administrator that compliance with the requirement will adversely impact the health of the natural vegetative buffer (i.e. overcrowding) or if such replanting will create a hazardous situation for existing structures (i.e. dense planting within twenty-five feet of structures may increase forest fire hazards or the potential of future fall hazards that may damage life or property).
 - iii. The Zoning Administrator may require evidence of such a hardship as described above from a certified tree specialist or arborist. Such evidence shall be provided at the expense of the property owner or developer.
 - iv. Diameter shall be measured at a height of three feet from the base of the tree.
- e. Each shrub removed shall require the replanting of a replacement shrub that will be of equal size caliper at maturation.
 - f. The replacement of ground cover shall require the replacement of one square-foot of ground cover to be planted for each square-foot removed. The Zoning Administrator may accept an approximation of the ground cover area to be removed and replaced. The Zoning Administrator may conduct a site verification prior to accepting an approximation and prior to permitting the removal of the ground cover.

Section 1208.02 Activities Permitted Within Fifty Feet of the Reference Line

The following activities are permitted within fifty (50) feet of the reference line:

1. Dead, diseased, hazardous, poisonous, or unsafe trees, shrubs, or groundcover may be removed provided they are replaced as provided for in Section 1208.01(6). The replacement trees may be placed anywhere within fifty (50) feet of the reference line and shall remain undisturbed except for any allowed pruning under Section 1208.01(5).
2. Fallen trees may be removed in the buffer area provided they are replaced as per Section 1208.01(6). Trees that fall into the water shall remain undisturbed unless they pose a navigational hazard in the pier

zone. Such trees may be relocated to an area in the water adjacent to the pier zone, but they may not, under any circumstances, be removed entirely from the water.

3. Vines, shrubs, groundcovers, and small trees are protected vegetation and shall not be removed except as per Section 1208.02(1) and Section 1208.01(6). The only exception allowed is for areas of extremely dense second growth pine that is selectively removed and the area replanted according to an approved revegetation plan utilizing native species of hardwoods and selected softwoods.
4. No grubbing or grinding of stumps is allowed.
5. Groundcover other than permanent turf grasses may be planted.
6. Shoreline stabilization is permitted. Special guidelines for shoreline stabilization on Lake James are provided below:
 - a. Alternatives to bulkheads and seawalls are required except for the following exceptions. Plans for shoreline stabilization utilizing hard structures, except for rip rap stone containing no mortar, must be designed and justified as the only practical alternative by a licensed professional engineer before permits can be issued by the county.
 - b. Seawalls and bulkheads are allowable, as designed by a licensed professional engineer, on the portions of the shoreline where the bank height equals or exceeds four (4) feet in height, and when the slope equals or exceeds 2:1 for at least four (4) vertical feet. Rip rap used for shoreline stabilization may be composed of natural or quarried stone and should be similar in color to the natural rock outcroppings found in the area.
 - c. Shoreline stabilization that requires re-shaping or "rolling back" the slope of the bank in order to prevent excessive undercutting and erosion shall be allowed provided the work is designed and installed under the supervision of a licensed professional engineer. This form of stabilization shall only be approved in cases where the natural shoreline has been severely undercut by erosion creating extremely steep banked shorelines (\geq 10 feet above the reference line). If permitted, the required applicable setback must still be maintained to ensure that an adequate building site remains. For the purpose of establishing building sites on lots that abut the rolled back bank, the setback shall be measured from the top of the bank. The bank must then be replanted to replace all protected trees and other vegetation that was removed during the

construction activity. All variances from this requirement must be approved by the Burke County Board of Adjustment.

- d. To minimize disturbance to the protected buffer, all shoreline stabilization activities shall take place either from the water using a barge to transport and install equipment and materials or use alternative methods for shoreline stabilization for the repair of existing structures and new minor projects. Clearing is allowed to create one (1) fifteen (15) foot corridor for equipment access and to allow slopes to be laid back to create a safe and stable condition as specifically allowed elsewhere in this Article. The access corridor shall be created in a winding manner in order to reduce erosion and protect viewsheds. Protected trees removed to accommodate permitted projects shall be replaced as provided for in Section 1208.01(6). Any disturbance to the ground cover within the buffer shall also be restored. In order to assure suitable re-forestation of the buffer, the re-planting plan must be designed and installed under the supervision of a licensed landscape architect. Prior to issuance of a certificate of occupancy all work shall be inspected for compliance with the submitted re-planting plan if applicable.
 - e. Trees growing along the shoreline in a bank that has been undercut by wave action and are leaning past a vertical position may be removed to accommodate shoreline stabilization provided that they are replaced, as per Section 1208.01(6), within fifty (50) feet of the reference line.
7. Permanent grasses other than turf grasses, may be permitted in conjunction with shoreline stabilization projects where the slopes will not support a natural mulch groundcover.
 8. Structures that support water-dependent uses (i.e. docks, and piers, but not parking areas) are permitted within fifty (50) feet of the reference line if they comply with all applicable Duke Power, local, state, and federal regulations.

Section 1208.03 Activities Not Permitted Within Fifty (50) Feet of the Reference Line

The following provisions are not permitted within fifty (50) feet (measured horizontally) of the reference line:

1. Topping of trees.
2. Grubbing or grinding of stumps.

3. Chemicals shall not be used to kill stumps and other vegetation.
4. Mechanical clearing shall not be used unless it is used in conjunction with a shoreline stabilization project.
5. Removal of understory plants with the exceptions of plants removed in accordance with Section 1208.01(6) and in areas of dense second growth pine. Such pines may be removed when replaced with plantings done according to an approved revegetation plan.

Section 1208.04 Setback Provisions

All permanent structures shall adhere to the following setback provisions.

1. Primary structures shall setback at least sixty-five (65) feet from the reference line. On lots with a slope greater or equal to 2:1 (horizontal to vertical), the setback requirement is increased to seventy-five (75) feet from the reference line. Uncovered slatted decks attached to the primary structure are allowed to extend fifteen (15) feet from the primary structure. On lots created on Lake James after January 1, 2004 and lots that are undeveloped on the Catawba River after May 3, 2005, primary structures, and all portions of attached structures, shall be setback at least one hundred and twenty-five (125) feet from the reference line. No construction disturbance shall be allowed within one hundred (100) feet of the reference line except mulch or slatted deck access trails less than four (4) feet across to piers. The remaining twenty-five (25) feet abutting the building footprint may be used for construction activities provided it is replanted and stabilized with mulch and native plant species prior to a final occupancy permit being issued. No turf grass shall be permitted within 125 feet of the shoreline.
2. Roads and/or driveways shall be setback at least seventy-five (75) feet from the reference line, if feasible, and shall be designed to minimize disturbance to natural vegetation and topography, except for bridges and bridge approaches and access ways for emergency vehicles. On Lake James, and the Catawba River, no such roads or driveways shall be allowed within one hundred and twenty-five (125) feet of the reference line in developments approved after January 1, 2004 unless allowed as part of an approved parallel conditional zoning district under Article IXA.

Section 1208.05 Natural Woodland Buffers

1. Within the natural woodland buffer the following restrictions shall apply between fifty (50) and one hundred (100) feet (measured horizontally) from the reference line:

- a. Existing natural woodland buffers and all required replacement trees must be maintained.
- b. Dead, diseased, hazardous or unsafe trees, saplings, shrubs, or groundcover may be removed. Fallen trees may also be removed. However, the removal of lateral limbs from no more than the lower fifty (50) percent of the tree's total height will be permitted.
- c. Removal of trees with a diameter of six inches or greater is permitted to clear an opening for building construction, accessory structures, septic systems, roadways, pathways, and parking areas. The establishment of turf grass in this area is permitted. On Lake James, no such removal will be allowed on lots created after January 1, 2004. On the Catawba River, no such removal will be permitted after May 3, 2005.
- d. Any tree removed for construction purposes, or any other reason allowed in this Article, must be replaced in accordance with Section 1208.01(6). The replacement trees may be replaced anywhere within one hundred (100) feet of the reference line.

Section 1208.06 Protected Shoreline Limit

The following shall be adhered to within 250 feet of the reference line:

1. Planting efforts that are beneficial to wildlife are encouraged to be undertaken.
2. Trees that fall into the lake, and do not pose a navigational hazard or other safety concern, shall be left in place to benefit fish habitat. No trees that have fallen into the water of Lake James shall be removed, but those that have fallen within a designated pier zone may be moved to a location in the water adjacent to the pier zone.
3. Foot paths for individual lots shall be four feet or less in width and designed in a winding manner to prevent surface runoff and erosion. Foot paths serving common areas or multiple lots shall be six feet or less in width. Plant root systems adjacent to the foot path shall be protected by a layer of wood chips or other organic material.
4. Buildings shall be fitted to the natural topography to avoid extensive grading that would alter drainage patterns or create very steep slopes, minimize the potential for erosion, and maintain existing vegetation. Buildings on lots created after January 1, 2004 on Lake James and after May 3, 2005 on the Catawba River must be constructed entirely within defined building envelopes as described in Section 1217.

5. Total parcel coverage by impervious surfaces including building footprint, impervious roads, or other impervious cover shall not exceed twenty-four (24) percent of the parcel. Projects located within either Conservation District shall not exceed ten (10) percent impervious surface cover unless a higher percentage, not to exceed twenty four (24) percent, is considered as part of a parallel conditional rezoning process.
6. Activities conducted by state regulated public utilities (i.e. utility right-of-way construction and maintenance) are not subject to the provision of this plan. However, such activities, where practical, shall be conducted in a manner that is consistent with this article.
7. Activities conducted on forest land for the production or harvesting of timber and conducted in accordance with the "Forest Protection Guidelines Related to Water Quality" or the North Carolina Sedimentation Pollution Control Act of 1973 are not subject to the provisions of this plan.
8. The provisions of this plan shall not apply to activities which have unexpired permits issued by Burke County prior to the adoption of these requirements.
9. In all new developments around Lake James and the Catawba River:
 - a. New utility lines (except new three phase power lines) are to be installed underground.
 - b. Streetlights shall utilize fully-shielded fixtures to direct light down away from adjacent properties and water surfaces. No overhead streetlights shall be allowed in developments approved on Lake James after January 1, 2004, however small fully shielded walkway lights, not to exceed three feet in height, shall be allowed in order to provide public safety for pedestrian areas.
 - c. All plants and trees located outside of designated building envelopes on lots in either Conservation District are considered protected unless otherwise specified in this article, and shall not be removed or destroyed in any manner.
10. Natural undisturbed woodland buffers of fifty (50) feet in width shall be maintained on both sides of all perennial streams and creeks identified as solid blue lines on current United States Geological Survey maps in developments approved after January 1, 2004 that lie in whole or in part within two hundred and fifty (250) feet of the reference line of Lake James and in developments on the Catawba River approved after May 3, 2005 that lie in whole or in part within two hundred and fifty (250) feet of the Catawba River.

Section 1209 Storm water Management and Erosion Control

The following provisions shall apply to land disturbing activities within two hundred fifty (250) feet of the reference line on Lake Rhodhiss and Lake Hickory. They shall apply to land disturbing activity in new developments located in whole or in part within two hundred fifty (250) feet of the reference line on Lake James and the Catawba River.

1. A Storm water management and erosion control plan bearing the seal of a registered surveyor, engineer, architect, landscape architect, or approved by a representative of Burke County or Burke Soil and Water Conservation District shall be submitted for any construction, development and/or grading activities which disturb soil.
2. The following standards shall be applied in designing Stormwater management and erosion control measures:
 - a. All measures in the stormwater management and erosion control plan shall meet Best Management Practices set forth in the North Carolina Erosion and Sediment Control Planning and Design Manual.
 - b. Whenever practical, natural vegetation shall be retained, protected, or supplemented. The stripping of vegetation shall be done in a manner to minimize soil erosion.
 - c. Appropriate erosion and sediment control measures shall be installed prior to removal of vegetation.
 - d. Erosion and sediment control measures shall be placed immediately downstream of disturbed areas and shall not be placed within fifty (50) feet of the reference line, if feasible.
 - e. The area of disturbance and the duration of exposure shall be kept to a minimum. Disturbed areas remaining idle for more than thirty (30) days shall be stabilized.
 - f. Measures shall be taken to control sediment and retain it within the project area. Sediment in runoff water shall be trapped and retained within the project area using approved measures. Approved measures shall protect very poorly drained soils and surface waters within the project area as identified by the United States Department of Agriculture's Soil Survey of Burke County.

- g. Off-site surface water and runoff from undisturbed areas shall be carried non-erosively through the project area, or diverted away from the disturbed areas where feasible. On Lake James and the Catawba River, all storm water leaving individual home sites, community areas, and roadways must enter buffer areas as sheet flow. Under no circumstances will piped discharges of stormwater into buffer areas be allowed. Acceptable means of treating stormwater shall include, but not be limited to, the following: wet detention ponds, dry detention ponds, level spreaders, curb cuts, and vegetated conveyances such as swales, as well as other methods described in NC DENR's Stormwater Best Management Practices. Such controls, or combination of controls where required, shall be designed to remove a minimum of 85% of total suspended solids associated with treating run-off resulting in the first one-inch of precipitation.
- h. Priority shall be given to protecting natural drainage systems including perennial and intermittent streams, wetlands, swales, and drainage ditches for conveyance of runoff leaving the project area. The County may approve innovative and/or proprietary Best Management Practices (BMPs) provided the BMP or combination of BMPs meet minimum required design standards for treating runoff. Such plans must be certified by a professional engineer.
- i. All temporary erosion and sediment control measures shall be removed after final site stabilization. Trapped sediment and other disturbed soil areas resulting from the removal of temporary measures shall be permanently stabilized within thirty (30) days.
- j. Disturbance of one acre or more requires a permit from the Division of Land Quality under the North Carolina Sedimentation Control Act.
- k. No streets utilizing curb and gutter design shall be approved for use in either Conservation District on Lake James or the Catawba River.

Section 1210 Marina and Mooring Provisions

The purpose of this section is to regulate non-residential marinas and mooring areas on Lake James, Lake Hickory, Lake Rhodhiss, and the Catawba River between Lake James and the mouth of Lake Rhodhiss. North Carolina. G.S. 143-215 does not allow the discharge of any pollutant or untreated wastes into the waters of North Carolina.

1. All marinas and mooring areas permitting overnight use of water craft shall have pump-out stations, gray water disposal facilities, on shore trash disposal facilities and containment materials for oil and gas spills.
2. All water craft operating or moored on Lake James, Lake Hickory, or Lake Rhodhiss or the Catawba River that have sleeping, kitchen, and/or bathing facilities shall have a fixed or portable holding tank or other approved marine sanitation device for the collection of waste water.
3. Engineered construction plans shall be required for all new marinas and expansions of existing marinas. Plans shall meet the applicable sections of the NC Building Code as amended and ICC/A 117.1-2017 as amended.
4. All marinas shall be permitted by Duke Energy Lake Services

Design and Construction Standards for Commercial Marinas and Mooring areas

MOORINGS	MATERIALS	PRIOR APPROVAL REQUIRED
	Aluminum, Hot Dipped Galvanized, or Wooden Truss Structure	
	No Storage Closets permitted	
	Metal surfaces above water shall be painted using marine grade epoxy paint in earth tone colors	X
	Reflectors required on outside edge of mooring.	
	Utility pads – (optional) Max. every other slip	
RAMPS	Hinged wood or pre-fab metal frame.	
	Wood, aluminum, or composite materials	
	Metal surfaces shall be painted using marine grade epoxy paint in earth tone colors	
LIGHTING	Approved on case-by-case basis. Must be for safety purposes only. No overhead lighting.	X
LIFTS	(Optional) - Floating lift only with guide arms.	X
DECKING	Wood, concrete, composite material, or aluminum	
	Colors must resemble natural wood tones.	
GUIDE POLES	Wooden – (may use minimum 3” steel if conditions prevent use of wooden poles)	
FLOATATION	Must meet Duke Energy and Building Code	

ROOF FRAMING	Aluminum, galvanized steel, or wood. Metal must be painted using marine grade epoxy paint.	
	Minimum 3:12 roof pitch.	
ROOF SURFACE	Wood shake, aluminum, or synthetic products.	
	Metal or synthetic roofs must be pre-approved for compliance.	X
	Metal surfaces shall be painted using marine grade epoxy paint.	
	Roof colors shall be dark-toned brown, black, or grey.	
	Designed with a minimum wind rating of 80 mph.	

Section 1211 Shoreline Protection Permit

- A. No building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any clearing or grading commence, nor shall any building permit be issued until a Shoreline Protection Permit has been issued by the Planning Administrator or agent of the Planning Administrator. No Shoreline Protection Permit shall be issued except in conformity with the provisions of this ordinance.
- B. Shoreline Protection Permit applications shall be filed with the Planning Administrator, The application shall include a complete application form and a sedimentation and erosion control plan and/or revegetation plan as applicable.
- C. Prior to issuance of a Shoreline Protection Permit, the Planning Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance.
- D. A Shoreline Protection Permit shall expire if a Building Permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance, unless an extension is approved by the Planning Administrator.
- E. The cost of a Shoreline Protection Permit shall be set in the Schedule of Fees and is payable to the County of Burke at the time of the application for Shoreline Protection Permit is made.
- F. A Minor Shoreline Protection Permit shall consist of projects that require two (2) or fewer visits. The impact of disturbance and duration of such projects is short in nature.

- G. A Major Shoreline Protection Permit shall consist of projects that require more than two (2) visits. The impact of disturbance and duration of such projects is greater and the project requires ongoing or regular visits to ensure proper maintenance, compliance, and effect of revegetation and erosion control measures.
- H. The Zoning Administrator shall have the discretion to waive the fee requirement for Minor Shoreline Protection Permit projects that do not require immediate inspection. Such projects have little or no impact to protected vegetation (such as removing one poison ivy plant, mowing a non-conforming yard, or the removal of a dead or live tree that is eminent danger of falling and causing personal injury and/or property damage).

Section 1212 Building Permit Required

No permit required under the North Carolina State Building Code shall be issued for any activity for which a Shoreline Protection Permit is required until that permit has been issued

Section 1213 Certificate of Occupancy

- A. The Planning Administrator or his duly authorized agent shall issue a Certificate of Occupancy certifying that all requirements of this ordinance have been met prior to the occupancy or use of a building hereafter erected, altered, or moved.
- B. A Certificate of Occupancy, either for the whole or part of a building, shall be applied for coincident with the application for a Shoreline Protection Permit and shall be issued or denied within ten (10) days after the completion of the erection or structural alterations of the building.
- C. If the Certificate of Occupancy is denied, the Planning Administrator shall notify the applicant in writing stating the reasons for denial.
- D. No building or structure which has been erected, moved, or structurally altered may be occupied until the Planning Administrator or his duly authorized agent has approved and issued a Certificate of Occupancy.

Section 1214 Planning Administrator and Duties Thereof

It shall be the duty of the Planning Administrator to administer and enforce the provisions of this ordinance as follows:

- A. The Planning Administrator shall issue Shoreline Protection Permits and Certificate of Occupancy Permits as prescribed herein. A record of all

permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.

Section 1215 Existing Development

1. All property within the jurisdiction of this Article as set forth in Section 1203 is subject to the provisions of this ordinance unless specifically exempted herein.
2. All uses, construction, structures, and clearing prior to February 20, 2002 that do not comply with the requirements of this Ordinance are considered non-conforming and subject to Section 607 of this ordinance with the following exceptions:
 - a. Non-conforming clearing of protected vegetation within the natural woodland buffer, which occurred prior to February 20, 2002, may not be expanded except as specifically permitted within Article XII (i.e. the removal of hazardous trees). Such removal of vegetation is subject to the replanting requirements of Section 1208.01(6).
 - b. Non-conforming uses and structures may not be expanded within fifty (50) feet of the reference line in a manner inconsistent with setbacks and natural woodland buffer requirements.
 - c. The provisions of this article shall not make a lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the February 20, 2002 unbuildable. However, all new construction is urged and encouraged to protect the existing natural environment by complying with the requirements herein.

Section 1216 Pier, Mooring, and Gazebo Provisions

1. The following definitions apply to this section on residential piers:

Residential Pier

A walkway attached to land and extending over water to allow dry access to watercraft or to provide other recreational access to the lake. A pier may be fixed or floating. The maximum width of a pier is six feet (6'). Piers may be no higher than three feet (3') above full pond.

Residential Mooring

An object or structure secured in the water which is intended or used for securing one or more watercraft in the water or to be used for recreation. Moorings must be floating. If there is a circumstance which prohibits the mooring from being a floating structure, then the property owner may

submit a written request to the zoning administrator for the mooring to be a fixed structure. The written request must include justification from an engineer as to the need for the fixed structure and why a floating structure is not feasible. If there is no other option but to utilize a fixed structure then, the zoning administrator may permit the structure. If a fixed structure is used it may be no more than 3' above full pond. Mooring is synonymous with dock and boat slip.

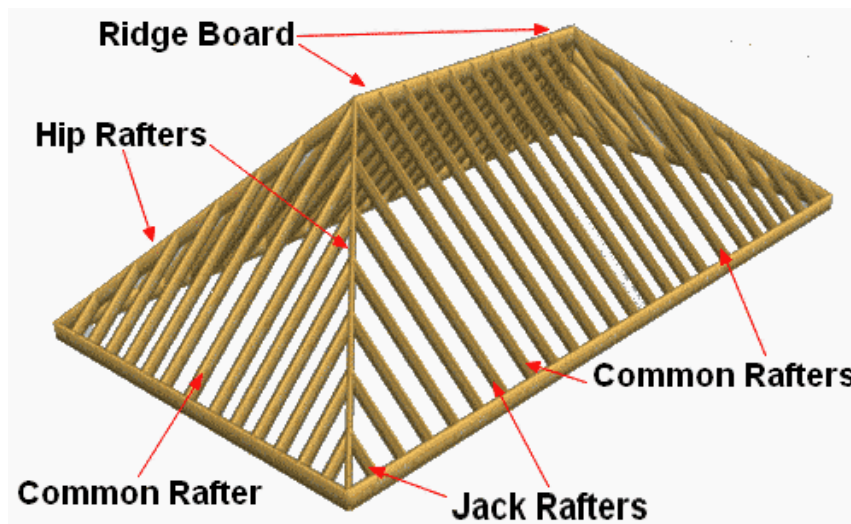
Gazebo

A roofed structure opened on all sides with places for sitting. On Lake James and the Catawba River gazebos are not allowed in the woodland buffer and are only allowed on piers.

Hipped Roof

A roof where all sides slope downwards from a center ridge. There are no gables or other vertical sides to the roof. (See figure 1 – below)

Figure 1. Example of Hip Roof structure



2. Lighting on the exteriors of piers, moorings and gazebos shall be fitted with opaque shades or shields to prevent the direct visibility of the lamp to persons on the lake or adjacent lands more than one hundred twenty (120) feet beyond the structure. Overhead “street light” and “flood light” fixtures are prohibited. Lighting is intended as a safety feature of the pier and not to illuminate the lake.
3. All lights must be turned off when the pier, mooring and/or gazebo is not in use.
4. Flashing or rotating lights attached to piers, moorings and gazebos are prohibited.

5. Toxic chemicals shall not be used to stain or clean piers, moorings or gazebos.
6. Permitted materials for piers, moorings and gazebos include disease and rot-resistant wood, wood treated with non-toxic chemicals and composite products. Aluminum “framing” may be considered, however, no exposed aluminum is permitted. The framing must be clad in wood or a composite material. Any composite material must receive pre-approval. Permitted material colors are wood-tones and dark-toned brown. Exposed aluminum is not permitted. Materials for flotation must be manufactured for marine use and adhere to the guidelines established by Duke Energy Lake Management. (See figure 2 below for example)

Figure 2. Example of covered mooring



7. In order to protect the natural viewshed piers, moorings and gazebos must comply with the following:
 - a. Residential pier zones shall be initially located so as to limit their impact on the environment and the natural viewshed.
 - b. The maximum allowed square footage for the combined water dependent structure is 1,000 sq. ft. plus no more than two PWC mooring devices as per the Duke Energy Shoreline Management Guidelines.
 - c. Gazebos may not be enclosed though rails and pickets around the bottom portion are permitted. Permitted materials for rails and pickets

are disease resistant and rot-resistant wood, wood treated with non-toxic chemicals and composite products. Permitted material colors are wood-tones and dark-toned brown. Rails and pickets may not be higher than 40". The maximum square footage for a gazebo is 250 square feet.

- d. Piers may not have sides but may have handrails. Permitted materials for handrails are disease and rot-resistant wood, wood treated with non-toxic chemicals and composite products. Permitted material colors are wood-tones and dark-toned brown. Moorings may not have sides or handrails.
- e. One 2' (h) x 4' (d) x 6' (w) or smaller enclosed storage bench is permitted on the edge of the mooring closest to shore. Permitted materials for storage benches are disease and rot-resistant wood, wood treated with non-toxic chemicals and composite products. Permitted material colors are wood-tones and dark-toned brown.
- f. Roofs
Roofs may be permitted on individual residential moorings that do not lie within a "Viewshed Corridor" or narrow cove. A Viewshed Corridor Overlay has been established within the open channels of Lake James to protect the natural scenic vistas seen from the lake.
 1. Either the mooring or the gazebo may have a roof. Piers may not have a roof.
 2. The roof for either the mooring or gazebo must be hipped with a minimum 4:12 pitch (4 inches of rise over 12 inches of run). The maximum pitch is 5.5:12 (5.5 inches of rise over 12 inches of run). (See figure 2 for example)
 3. The highest point of the roof for a gazebo on a pier may be no greater than 15 feet above the decking of the pier. If a mooring serves a gazebo or a single boat slip then the highest point of the roof may be no greater than 16 feet above the decking of the mooring. If the mooring serves a double boat slip, then the highest point of the roof may be no greater than 18 feet above the decking of the mooring.
 4. Permitted roof materials include dark-toned wood shakes; dark-toned brown, grey or black shingles with a minimum wind rating of 80 mph; and dark-toned brown, grey or black synthetic products that mimic natural materials. Metal is not a permitted roofing material.
 5. Second story uses are not permitted.
 6. No canopies of any kind are permitted on piers or moorings.
 7. One Cupola may be added to the roof as an option. The cupola shall not exceed 27 ft³.

- g. Moorings must be secured in the water by telescopic poles, cables, lines, chains or anchors or be attached to a pier. If there is a circumstance which prohibits the mooring from being secured by one of the previous means, then the property owner may submit a written request to the zoning administrator to secure the mooring with fixed pilings. The written request must include justification from an engineer as to the need for fixed pilings. If there is no other option but to utilize fixed pilings, the zoning administrator may permit the structure. Moorings with existing fixed pilings may continue to use existing pilings if/when the "mooring" is replaced. Replacement of fixed pilings must meet current standards.
 - h. Covers for watercraft should be neutral in color.
8. Existing non-conforming water dependent structures are subject to the following:
- a. If the existing structure becomes in such a state of disrepair that a total replacement is required then the new structure must comply with all current regulations of Article XII of this ordinance.
 - b. Routine maintenance of existing structures is encouraged. However, as individual components of the structure are replaced they must comply with all current regulations of Article XII of this ordinance. For example:
 - 1. When re-shingling 100% of an existing roof the new shingles must comply with current regulations regarding materials, color and wind rating.
 - 2. When an existing roof structure needs to be replaced, the new roof must comply with current regulations regarding roofs.
 - c. Maintenance/repair of roofs must be conducted in a manner which prevents materials from being disposed of in the water.

Section 1217 Determining Building Envelopes on Lake James and the Catawba River

In new developments approved after January 1, 2004 that lie in whole or in part within two hundred fifty (250) feet of the reference line of Lake James, and new developments after May 3, 2005 that lie in whole or in part within two hundred fifty (250) feet of the Catawba River, the following areas shall not be considered buildable area and shall not be located inside of designated building envelopes. Lands meeting the criteria listed below shall not be used for construction activity other than shoreline stabilization, pier construction, and access paths or walkways. Additionally, these areas should not be used for road right-of-ways unless no other feasible alternative exists and as part of an approved preliminary

plan. These areas can, however, be included in platted lots in addition to the required building envelopes, used for access to private or public piers and recreation facilities.

1. Slopes over 25%
2. Wetlands
3. Floodways as designated by the Federal Emergency Management Agency
4. Utility flood easements to the 1210' elevation line
5. Land under permanent easement for utility transmission lines.
6. Land within required buffer areas.

A minimum of twenty-five (25) percent of the total area shall be designated as permanent open space and protected by dedicating or reserving such open space through the subdivision or parallel conditional rezoning process or through a permanent conservation easement held by the Homeowners Association or other county-approved entity. In the Low Density Conservation District or Estate Lot Conservation District, no more than one-half of the required open space shall be used for active public or private recreation purposes including, but not limited to, ball fields, playgrounds, golf courses, in order to protect a reasonable proportion of the natural areas on the site. In the Planned Residential Mixed Use District, all of the open space may be used for public or private recreation.

Section 1218 Special Design Standards for Lake James and the Catawba River

On lots in new developments lying in whole or in part within two hundred fifty (250) feet of the reference line of Lake James and on lots in new developments approved after May 3, 2005 that lie in whole or in part within two hundred fifty (250) feet of the Catawba River, the following design standards shall apply to all residential and commercial structures in order to maintain the rustic aesthetic characteristics of the area.

1. Dominant exterior building colors should be chosen to blend in with the natural surroundings and should not stand out when seen through wooded areas. All shades of white, cream, or beige are prohibited from being used as the primary exterior color on any structure.
2. Exterior building materials shall primarily consist of natural elements such as stone, logs, wood shingle, wood lapped siding, vertical board and batten, or rough textured stucco. Roofing materials shall be chosen to blend in harmoniously with the natural tree canopy.
3. Exterior lighting on individual lots shall be muted, fully shielded, and directed to avoid illuminating entire structures, creating glare on the night sky, and attracting attention to particular areas for reasons other than

security. No exterior pole fixtures shall be permitted and no exterior lights may be affixed beyond the first floor of any residential structure.

4. Signage on commercial buildings must be made of natural materials, may not be internally illuminated, and must comply with all other relevant portions of Article XI.

ARTICLE XIII SITE PLAN REVIEW REQUIREMENTS

Section 1301 Intent

The site plan review process is intended to ensure that proper design standards are maintained in types of development which can have potentially harmful effects on their surroundings. These effects are subject to modifications or reduction through the physical design of such development. It is also necessary to ensure that the requirements of the underlying zoning district and any applicable overlay district(s) are maintained. Review of the site plans, therefore, is aimed at the greatest benefit to the community as a result of building and site design.

Section 1302 Site Plan Review Required

All uses referenced in Section 1303 of the Zoning Ordinance shall submit a site plan for review approval to the Burke County Community Development Department prior to the issuance of any zoning or improvement permits.

Section 1303 Uses Subject to Site Plan Review

The following types of development may be subject to the site plan review provisions under this ordinance:

1. All commercial and industrial facilities;
2. All institutional facilities such as schools, hospitals, and clubs;
3. All residential developments involving three (3) or more dwelling units in one building or on one lot;
4. Manufactured (mobile) home park;
5. Special exceptions when specified in this ordinance; including all developments subject to special overlay district requirements for site plan submittal. (Reference I-40 Corridor Overlay District Section 2008 and Scenic Overlay District Section 2108);
6. Townhouse development projects;
7. Planned unit development projects including parallel conditional zoning districts approved as per Article IXA of this Ordinance and Section 1102 herein;
8. Recreational vehicle parks, subject to special site plan requirements in Section 1105 herein; and
9. Other uses when specified by the Planning Board or Board of Commissioners.

Section 1304 Levels of Site Plan Review

Section 1304.1 Minor Site Plan Review

1. Any new construction, addition, renovation, and changes in use which

involve one of the following categories are subject to a minor site plan review process:

- a. Industrial developments involving five (5) or less acres of land;
- b. Commercial buildings, structures, or developments whose current or proposed gross floor area is less than 50,000 square feet;
- c. Any development that involves less than fifty (50) dwelling units consisting of duplexes, townhouses, or multi-family residential buildings;
- d. Planned unit developments that have less than five (5) separate building units and/or that meet any of the criteria limited in this section, and;
- e. Development meeting the criteria listed in this section and locating in a special overlay district.

Section 1304.2 Major Site Plan Review

1. Any new construction, addition, renovation, and changes in use which involve one of the following categories are subject to a major site plan review process:

- a. Industrial developments involving more than five (5) acres of land;
- b. Commercial buildings, structures, or developments whose current or proposed gross floor area is greater than 50,000 square feet;
- c. Institutional buildings, structures, or developments;
- d. Any manufactured housing park or recreational vehicle park;
- e. Any development that involves more than fifty (50) dwelling units consisting of duplexes, townhouses, or multi-family residential buildings;
- f. Planned unit developments that have more than five (5) separate building units and/or that meet any criteria listed in this section.
- g. Any development meeting the criteria listed in this section and locating in a special overlay district, and;
- h. Any other uses when specified by the Planning Board or Board of Commissioners.

Section 1305 Site Plan Review Process

Section 1305.01 Pre-Application Conference

A pre-application conference with the Planning Administrator or his/her designee is required for all major site plan reviews to determine the appropriate procedure to be followed as outlined in this Ordinance and discuss the proposed project. All applicants submitting a plat subject to site plan review are encouraged to schedule a pre-application conference with the Planning Administrator or his/her

designee. The pre-application conference may include a discussion of the provisions of this ordinance affecting the proposed project that must be adhered to and any other appropriate item affecting the proposal.

Section 1305.2 Minor Site Plan Review Process

1. Any applicant required to submit a minor site plan for review shall submit seven (7) paper copies of the site plan to the Planning Administrator. The Planning Administrator may require the applicant to provide additional copies of the site plan when deemed necessary.
2. If further review or consultation is necessary, the Planning Administrator shall notify members of the site plan review committee members identified in Section 1305.4 of the minor site plan application within three (3) business days of submittal of a complete site plan. Copies of the minor site plan shall be available for review by the site plan review committee until notification of decision is made to the applicant.
3. The Planning Administrator shall notify the applicant within two (2) weeks of submittal of the decision of the site plan review.
4. Appeals of decisions of the Planning Administrator shall be made in accordance with Section 1603.01 of this Ordinance.

Section 1305.3 Major Site Plan Review Process

1. Any applicant required to submit a major site plan for review shall submit seven (7) paper copies of the site plan to the Planning Administrator.
2. The Planning Administrator shall forward copies of the submitted site plan to the members of the site plan review committee identified in Section 1305.4 within three (3) business days of submittal of a complete site plan.
3. The site plan review committee shall review the provided site plan and provide written comments to the Planning Administrator within fifteen (15) business days of plan submittal.
4. Within five (5) business days of receiving written comments from the site plan review committee, the Planning Administrator shall notify the applicant in writing the decision of the site plan review.
5. Appeals of decisions of the Planning Administrator shall be made in accordance with Section 1603.01 of this Ordinance.

Section 1305.4 Site Plan Review Committee Members

The site plan review committee shall consist of county staff members from the building services, environmental health, engineering, public works, fire, planning, and GIS departments. Additional local, state, and/or federal agencies shall be consulted as deemed necessary by the Planning Administrator.

Section 1305.5 Submittal of Incomplete Site Plans

Submittal of site plans that do not contain the required information as set forth in this Ordinance or otherwise required are not subject to review deadlines and failure to provide a decision by said guidelines does not constitute approval or conveyance of a vested right for said development. The Planning Administrator or his/her designee shall notify the applicant before the decision deadline of the incomplete status of the application.

Section 1305.6 Permits

Upon written approval of a site plan, the applicant may submit application for zoning permits. The site plan approved is valid for one (1) year unless a vested right is requested and approved in accordance with Article IV herein. Failure to obtain permits within this time period shall result in termination of any vested right and site plans must be resubmitted.

Section 1306 Site Plan Requirements

1306.1 Preparation of the Site Plan

Site plans for developments requiring site plan review shall be prepared by a registered architect, engineer, landscape architect, or land surveyor licensed to practice in the State of North Carolina.

1306.2 Minimum Requirements of the Site Plan

At a minimum, all site plans shall contain the following material:

1. Development name, North arrow, scale denoted graphically and numerically, vicinity map, and the name(s), address(s), and telephone number(s) of the owner(s), date, and the site plan preparer;
2. Quantitative data such as property boundary lines with dimensions, acreage of tract(s), any proposed lot lines, total acreage;
3. Parcel Identification Number (PIN) and 911 address for the property;
4. Location of adjacent streets, driveway cuts, proposed streets, and utility easements and all associated rights-of-way;
5. Dimensions of footprint and setbacks of the existing and proposed structures with gross floor area indicated;
6. Location, number, and type of parking spaces;

7. Location and size of buffer and landscape areas;
8. Location of any FEMA designated floodplain and perennial waterways identified by U.S.G.S. topographic maps;
9. Location of adjacent properties and the zoning of adjacent properties;
10. The zoning district, overlay district (if applicable), and water supply watershed (if applicable), of the property.
11. Number of stories and overall height from grade of all structures existing and proposed;
12. Location of proposed stormwater facilities;
13. Phasing schedule (if applicable),
14. Location of fire hydrants,
15. Erosion control measures,
16. Water and/or sewer locations and;
17. Other information as required within the Watershed Protection Ordinance, Burke County Zoning Ordinance, and/or other requirements deemed necessary by the Planning Administrator.

ARTICLE XIV VESTED RIGHTS

As provided in G.S. 133A-344 and G.S. 153A-344.1, as amended, nothing in this ordinance shall be construed to impair any vested right except for the elimination of existing uses, lots or structures not in conformity with this ordinance as described herein.

Section 1401 Initial Adoption of Ordinance

Upon the effective date of this ordinance, or any amendment thereto, a vested right shall be determined in accordance with the following criteria:

1. The existence of a use, structure or parcel of land at the time of enactment of this ordinance, or any amendment thereto.
2. The existence of an officially approved building permit so long as said permit is valid, unexpired, or unrevoked at the time of enactment of this ordinance, or any amendment thereto.
3. The existence of an officially approved improvement permit so long as said permit is valid, unexpired, or unrevoked at the time of enactment of this ordinance, or any amendment thereto.

Section 1402 Site Plan Vested Right

The purpose of this section is to implement the provisions of G.S. 153A-344.1 pursuant to which a statutory vested right is established upon the approval of a site plan as defined herein.

Section 1402.01 Establishment of Vested Right

A vested right authorized under this section shall be deemed established upon the valid approval by the appropriate board of a site plan in accordance with the provisions herein.

1. A vested right may be granted only upon the approval of site plans identified in Section 1303 herein and describing with reasonable certainty the type and intensity of use for said parcel or parcels of property, and upon approval of an application reclassifying property to a parallel conditional zoning district in accordance with the procedures set out in Article IX-A herein. The approved plans and conditions for a parallel conditional zoning district constitute, for the purposes of N.C.G.S. 153A-344.1, a site specific development plan.

2. An approval of a site plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained.
3. A site plan shall be deemed approved upon the effective date of the appropriate board's action required herein and related thereto.

Section 1402.02 Approval Procedures

Except as otherwise noted in this section, and excepting applications for approval of a parallel conditional zoning district which shall be processed in accordance with Article IX-A herein, an application for a site plan approval shall be processed in accordance with articles herein and Section 1302 and 1304 herein.

1. In order for a vested right to be established upon approval of a site plan as provided under this section, the applicant must indicate on the application that a vested right is being sought.
2. Each map, plat, site plan or other document evidencing a site plan shall contain the following notation: "Approval of the site plan establishes a vested right under G.S. 153A-344.1. Unless terminated at an earlier date, the vested right shall be valid until (date)."
3. Following the approval of site plan, nothing in this Section shall exempt such site plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
4. Nothing in this Section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval of this ordinance.

Section 1402.03 Duration of a Vested Right

1. A right that has been vested as provided for in this Section shall remain vested for a period of two (2) to five (5) years. The approving authority in its sound discretion may establish a vesting period exceeding the two (2) year minimum where the applicant shows such extended period is warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles and market conditions. Modifications or amendments to an approved plan do not extend the period of vesting unless specifically so provided by the approving authority when it approves the modification or amendment.

2. Upon issuance of a building permit, the expiration provisions of G.S. 153A-358 and the revocation provisions of G.S. 153A-362 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.

Section 1402.04 Termination of a Vested Right

A right that has been vested as provided in this section shall terminate:

1. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
2. With the written consent of the affected landowner;
3. Upon findings of the Board of County Commissioners, after notice and a public hearing, that natural or man-made hazards are on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to public health, safety, and welfare if the project were to proceed as contemplated in the site plan;
4. Upon payment by the County to the affected landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal and other consultant's fees incurred after approval by the appropriate board, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such notice;
5. Upon findings by the Board of County Commissioners, after notice and a public hearing, that the landowner intentionally supplied inaccurate information or made material misrepresentations which made a difference in approval of the site plan by the appropriate board; or
6. Upon enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site plan, in which case the appropriate board that approved the site plan may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the site plan, after notice and a public hearing.

Section 1402.05 Limitations

Nothing in this section is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 153A-344.1.

Section 1402.06 Appealed

In the event that G.S. 153A-344.1 is repealed, this section of this ordinance shall be deemed repealed and the provisions hereof no longer effective.

Section 1403 Vested Right Attached to Property

A vested right is not a personal right but shall attach to and run with the applicable property. After approval of a site plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

Section 1404 Judicial Determination

Nothing in this article shall preclude determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this article, nothing in this article shall be construed to alter the existing common law.

ARTICLE XV ADMINISTRATIVE PROVISIONS

Section 1501 Appointment of the Planning Administrator

This ordinance shall be administered by the Planning Administrator in accordance with the provisions set forth herein. The Planning Administrator shall be appointed by and serve at the pleasure of the County Manager.

Section 1502 Authority of the Planning Administrator

The Planning Administrator is authorized and empowered on behalf of and in the name of the Board of Commissioners to administer and enforce the provisions set forth herein to include receiving applications, inspecting premises, issuing zoning and compliance permits, and reviewing and taking appropriate action on site plans, all of which in conformance with the provisions of this ordinance. The Planning Administrator shall have all necessary authority on behalf on the Board of Commissioners to administer and enforce this ordinance, including the ordering in writing of the remedying of any condition found in violation of this ordinance, and with the approval of the County Manager, the bringing of legal action, including injunction, abatement, or the appropriate action proceeding, to ensure compliance with this ordinance. The Planning Administrator has the authority to take final action on minor variances not to exceed twenty percent (20%) of the total setback requirement or lot size and report such variances to the Board of Adjustment. The Planning Administrator does not have the authority to take final action on applications on which final action is reserved to the Board of Commissioners, the Planning Board, or the Board of Adjustment.

Section 1503 Application Procedures

In order for an applicant to obtain permission to commence construction or alterations on a proposed development activity, he shall seek a zoning permit in accordance with this section, except those exempt uses listed herein. An applicant seeking a compliance permit in any use district shall be required to adhere to the application procedures prescribed herein.

Section 1504 The Pre-Application Conference

Prior to the submission of an application for a zoning permit, the developer may meet with the Planning Administrator for the purpose of discussing the proposed project and determining the appropriate procedure to be followed as outlined in this ordinance. The pre-application conference may include a discussion of the provisions within this ordinance affecting the proposed project that must be adhered to, and any other appropriate item affecting the proposal.

Section 1505 Submittal of Application

Section 1505.01 Application Procedures for Uses-By-Right

Applications for a zoning permit shall be submitted to the Planning Administrator according to the following provisions:

1. An application for a zoning permit for a use-by-right shall be accompanied by site plan documentation as required herein.
2. If the proposed documentation is in conformity with the provisions set forth herein, and other appropriate codes and regulations of the County then in effect, the Planning Administrator shall sign and return one (1) copy of the site plan to the applicant and shall issue a zoning permit. The Planning Administrator shall retain the application and one (1) copy of the site plan for his records.

Section 1505.02 Application Procedures for Conditional Uses

Applications for a compliance permit for a conditional use shall be submitted to the Planning Administrator, who shall refer the application to the Board of Adjustment, depending on the nature of the conditional use, for a public hearing. Applications for compliance permits for conditional use must be submitted in accordance with the following procedures:

1. An application shall be accompanied by site plan documentation as required herein.
2. The Planning Administrator shall initially process the application as prescribed herein.
3. The Board of Adjustment shall hold a public hearing on the application for a conditional use. If the Board of Adjustment fails to submit a report within a sixty (60) day period, it shall be deemed to have approved the conditional use. The Board of Adjustment shall consider the proposed conditional use after notice and public hearing and shall take action on the proposed conditional use within sixty (60) days from the date of the public hearing.
4. In addition to the specific requirements for conditional uses as specified in this ordinance, the Board of Adjustment shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

- a. Will be harmonious with and in accordance with the general objectives, or with any specific objective of the County's comprehensive plan and/or this ordinance;
 - b. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
 - c. Will not be hazardous or disturbing to existing or future neighboring areas;
 - d. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
 - e. Will not create excessive additional requirements at public costs for public facilities and services and will not be detrimental to the economic welfare of the community;
 - f. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production to traffic, noise, smoke, fumes, glare, odors, or water pollution;
 - g. Will have vehicular approaches to the property which shall be designed as not to create any interference with traffic on surrounding public streets or roads; and
 - h. Will not result in the destruction, loss or damage of a natural scenic or historic feature of major importance.
5. Conditions set forth above and in Article XIII for the various conditional uses are minimum. In approving a proposed conditional use, the Board of Adjustment may stipulate such additional requirements as are necessary to the public interest. The Board of Adjustment may require an applicant to furnish a performance bond in an amount sufficient for, and condition upon, the fulfilling of any and all conditions and requirements stipulated by the board.
 6. All conditional use decisions made by the Board of Adjustment are subject to an appeal to the Board of Commissioners by any person, firm,

corporation, or government agency aggrieved by said decision or decisions.

Section 1506 Issuance of Zoning Permit

Section 1506.01 Issuance

The Planning Administrator shall issue a zoning permit, in conjunction with a building permit, if necessary, for any approved use or structure alteration, provided such proposed use of land or structure, or structural alteration, is in compliance with the provisions set forth herein. The zoning permit shall indicate the terms of compliance and shall be on file in both Planning and Building Inspections offices. A zoning permit must be obtained from the Planning Administrator prior to the issuance of a permit for a new or expanded septic system from the Environmental Health Department and prior to the issuance of a building permit by the building inspector. The zoning permit shall be issued only after all appropriate federal, state, and local permit or license requirements are met.

Section 1506.02 Expiration

Any zoning permit shall automatically expire twelve (12) months from the date of issuance if the persons, firm, or corporation to which the permit was issued has not clearly demonstrated that the permit is being exercised for the purpose for which it was issued, or if the work so authorized is suspended or discontinued for a period of twelve (12) months. Once the permit expires, it must be reissued as an original.

Section 1507 Denial of Application

Section 1507.01 General Denial

If the application and site plan submitted for all uses except conditional uses describe work which does not conform to the requirements set forth herein, the Planning Administrator shall not issue a zoning permit, but shall return one (1) copy of the site plan to the applicant along with a signed denial in writing. Such disapproval shall state the reasons for denial and shall cite the portions of this ordinance with which the submitted site plan does not comply and shall generally identify such modification or correction as will permit approval. The Planning Administrator shall retain one (1) copy of the site plan and one (1) copy of the refusal and keep them as public record.

Section 1507.02 Denial of Conditional Uses

If the Board of Adjustment disapproves the application for a zoning permit for a proposed conditional use, the board shall inform the applicant of the decision in

writing within six (6) months from the date of the public hearing, stating the reasons for disapproval. The Planning Administrator shall retain one (1) copy of the site plan and one (1) of the refusal, and keep them as a public record.

Section 1507.03 Re-submittal of Application

A property owner, or his appointed agent, shall not initiate action for a zoning permit relating to the same use affecting the same parcel of land more often than once every ninety (90) days.

Section 1508 Burden of Proof

The burden of proof shall rest with the applicant in all proceedings required by this ordinance.

ARTICLE XVI ADMINISTRATIVE REMEDIES

Section 1601 Procedure for Requesting an Amendment to this Ordinance

The Board of Commissioners may, from time to time, after examination, review and entertain a public hearing thereon, amend, supplement or change the provisions herein or subsequently established. Proposals for amendments, whether initiated by the Planning Board, or any person, firm, corporation, or group of citizens shall be treated in accordance with one of the following procedures.

Section 1601.01 Creating Other Use Districts and/or Changes Between Other Use Districts

Anyone requesting to change the use district designation as an amendment to this ordinance shall adhere to the following process. An application for reclassification of property must be in a form prescribed by the Board of County Commissioners, and shall be filed with the Planning Administrator. No application will be accepted until it is complete. A decision by the Planning Administrator that an application is incomplete may be appealed to the Planning Board. A decision by the Planning Board that an application is incomplete may be appealed to the Board of Commissioners.

1. The Planning Administrator will review the proposed amendment and may convene with other governmental departments and entities as part of that review. After such review, and within sixty (60) days of the submittal, the Planning Administrator shall write a report and recommendation setting forth whether the amendment should be granted or denied and the reasons for such recommendations. The report shall advise and comment on whether the proposed amendment is consistent with any adopted comprehensive plan or any other officially adopted plan that is applicable.
2. The Planning Board may hold a public hearing and shall consider the proposed amendment in accordance with North Carolina General Statute 153A-344(a) as amended, and shall present its recommendations in writing to the Board of Commissioners. The recommendations shall advise and comment on whether the proposed amendment is consistent with any adopted comprehensive plan and any other officially adopted plan that is applicable. A written recommendation by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners. If the Planning Board fails to submit its recommendation to the Board of Commissioners within sixty (60) days of the first meeting of the Planning Board after the proposed amendment has been presented, the Board of Commissioners may proceed in its consideration of amendment without the Planning Board report. The

Board of Commissioners shall consider the proposed zoning district creation or change after notice and a public hearing in accordance with North Carolina General Statute 153A-323(a), as amended.

3. The Board of Commissioners shall consider the proposed amendment after notice and a public hearing and shall take action on the proposed amendment within sixty (60) days from the date of the public hearing. At the Commissioners discretion this public hearing may be combined with the Planning Board public hearing. Prior to adopting or rejecting any zoning amendment, the Commissioners shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the Board considers the action to be reasonable and in the public interest. This statement is not subject to judicial review per N.C. General Statute 153A-341.
4. Any petition for an amendment to convert land to other use districts may be withdrawn prior to action thereon by the Board of Commissioners at the discretion of the applicant initiating such a request, upon written notice to the Planning Administrator.
5. No applicant shall initiate action for an amendment to convert land to other use districts affecting any of the same parcels of land more often than once every ninety (90) days.
6. Applications for creating new or changing existing use districts shall be accompanied by an application fee as determined by the fee schedule approved by the Board of County Commissioners.

Section 1601.02 Text Amendments

Proposals to adopt, amend, or repeal the text of this ordinance, shall be treated in accordance with the following process:

1. The Planning Board may hold a public hearing and shall consider a proposed text amendment in accordance with North Carolina General Statute 153A-344(a), and shall present its recommendations to the Board of Commissioners. If the Planning Board fails to submit its recommendations to the Board of Commissioners within sixty (60) days of the first meeting of the Planning Board after the proposed text amendment has been presented, the Board of Commissioners may proceed in its consideration of the amendment without the Planning Board report. The Board of Commissioners shall consider the proposed zoning text amendment after notice and a public hearing in accordance with North Carolina General Statute 153A-323(a), as amended

2. Upon the receipt of a recommendation from the Planning Board or after sixty (60) days from the first Planning Board hearing without action, the Board of Commissioners shall consider the proposed text amendment after notice and a public hearing. The Board of Commissioners shall take action on the proposed text amendment within sixty (60) days from the date of the public hearing. The Commissioners at their discretion may combine this public hearing with the Planning Board public hearing. Prior to adopting or rejecting any zoning amendment, the Commissioners shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the Board considers the action to be reasonable and in the public interest. This statement is not subject to judicial review per N.C. General Statute 153A-341.

Section 1602 Procedure for Requesting a Variance or an Interpretation of the Use District Map

Requests for a Hearing before the Board of Adjustment for a variance or an interpretation of the use district map shall observe the following procedure:

Section 1602.01 Variance and Interpretation

Applications for a variance, or an interpretation of the use district map, as provided for under Section 1602 herein, shall be submitted in writing to the Planning Administrator and shall be accompanied by two (2) copies of an acceptable site plan, where applicable, of the proposed request with such other reasonable information as shall be required by the Planning Administrator. The Planning Administrator shall submit said application concurrently to the Board of Adjustment.

Section 1602.02 Public Hearing

The Board of Adjustment shall consider the proposed request after notice and a public hearing and shall take action on the proposed request within sixty (60) days from the date of the public hearing. This hearing may be combined with the Board of Adjustment public hearing.

Section 1602.03 Withdrawal

Any petition for a variance or interpretation of the use district map may be withdrawn prior to action thereon by the Board of Adjustment at the discretion of the person, firm, or corporation initiating such request, upon written notice to the Planning Administrator.

Section 1602.04 Time Limitation

A property owner, or his appointed agent, shall not initiate action for a variance or

interpretation of the use district map affecting the same parcel of land more often than once every ninety (90) days.

Section 1602.05 Fee

Each application for a variance or interpretation of the use district map shall be accompanied by an application fee as determined by the fee schedule approved by the Board of Commissioners.

Section 1603 Appeals Procedure

Section 1603.01 Decisions by the Planning Administrator

Decisions of the Planning Administrator relating to the administrative enforcement of the provisions herein are subject to an appeal to the Board of Adjustment by any person aggrieved or by any officer, department, or agency of the county affected by said decision or decisions.

1. An appeal shall be submitted in writing to the Planning Administrator who shall immediately refer the written appeal to the Board of Adjustment; such appeal shall specify the grounds for the appeal.
2. An appeal stays all proceedings in the furtherance of the action appealed from unless the Planning Administrator certifies to the Board of Adjustment after by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceeding shall not be stayed otherwise than by a restraining order on application of notice to the officer from whom the appeal is taken and on due cause shown.
3. Each appeal shall be accompanied by payment of a four hundred twenty five dollar (\$425.00) non-refundable fee to help defray the cost of publicizing and conducting the public hearing.
4. The Board of Adjustment shall fix a reasonable time for the hearing of appeals presented, and shall consider appeals after notice and a public hearing and decide the same within sixty (60) days from the date of such public hearing.
5. The Board of Adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the circumstances. To this end the Board of Adjustment has all the powers of the Planning Administrator from who the appeal is taken.

Section 1603.02 Decisions by the Board of Commissioners

All decisions by the Board of Commissioners are subject to an appeal to the superior court by any person, firm, corporation, or government agency aggrieved by said decision or decisions.

Section 1603.03 Decisions by the Board of Adjustment

Each decision of the Board is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within thirty (30) days after the decision of the Board of Adjustment is made, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the Board of Adjustment at the time of the hearing of the case, whichever is later. The decision of the Board of Adjustment may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

ARTICLE XVII RELATIONSHIP OF THIS ORDINANCE TO PUBLIC BODIES

Section 1701 Intent

This article serves to present clearly the responsibilities of the public bodies which administer this ordinance. The responsibilities include those delegated by Section 345, Chapter 153A, Article 16, of the General Statutes of North Carolina as amended, as well as those responsibilities left to local options and assigned by enactment of this ordinance.

Section 1702 The Board of Adjustment

Section 1702.01 Board of Adjustment Membership and Duties

A Board of Adjustment consisting of five (5) members shall be appointed by the Board of Commissioners, with appointments and terms of office as follows.

1. The Board of Adjustment members appointed hereunder shall serve respectively for terms of one (1) year for one (1) member, two (2) two years for two (2) members, and three (3) years for two (2) members. Subsequent appointments shall be for terms for three (3) years each. Members may be re-appointed to succeed themselves but may not serve more than four consecutive terms.
2. The Board of Commissioners shall also appoint two (2) alternate members to serve on the Board of Adjustment in the absence, for any cause of any regular member. Such alternate members shall be appointed for three (3) year terms, provided however, that in the case of the first appointment of alternate members, one (1) shall be appointed for a two (2) year term, and one (1) shall be appointed for a three (3) year term. Such alternate members, while attending any regular or special meeting of the Board of Adjustment and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent.
3. The members of the Board of Adjustment shall be residents of the county. Two members shall be from the eastern portion of the County and two members shall be from the western portion of the County. The fifth member shall alternate between east and west each term. One member from each portion must reside in an area zoned by the County.
4. A member whose term expires shall continue to serve until his successor qualifies and is appointed.

5. The secretary of the Board of Adjustment shall notify the Board of Commissioners in advance of the expiration of any term of office, if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term.
6. Any member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the Board of Commissioners after a hearing is held after at least fifteen (15) days of notice.

Section 1702.02 Rules for Procedure

The Board of Adjustment shall observe the following procedures:

1. The Board of Adjustment shall adopt rules in accordance with the provisions of this ordinance and consistent with other ordinances of the County and general laws of the State of North Carolina for the conduct of its affairs.
2. The Board of Adjustment shall elect a chairman and vice-chairman from its own membership who shall serve annual terms and may succeed themselves. The Board of Adjustment may elect as its secretary either one of its members or a qualified individual who is not a member of the Board of Adjustment. A secretary who is not a member of the Board of Adjustment shall not be entitled to vote on matters before the Board of Adjustment.
3. The Board of Adjustment shall keep a full public record of its proceedings and shall submit a report of its activities to the Board of Commissioners at least once each year.
4. All meetings of the Board of Adjustment shall be open to the public.
5. Any member of the Board of Adjustment shall be disqualified to act upon a matter before the Board of Adjustment with respect to property in which the member has an interest.
6. The meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as quorum of the board may determine.
7. The chairman, or in his absence, the vice-chairman or acting chairman, may administer oaths and compel the attendance of witnesses.
8. A quorum shall be at least four-fifths of the members to reverse any order, requirement, decision, determination of any administrative official or to decide in favor of the applicant on any variance matter upon which the

Board of Adjustment is required to pass. There shall be a quorum of four (4) members for all other meetings or decisions.

9. A favorable vote of at least four-fifths (4/5) or a minimum of five (5) of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, determination of any administrative official or to decide in favor of the applicant on any variance matter upon which the Board of Adjustment is required to pass. All other decisions will be rendered by majority vote.

Section 1702.03 Duties and Powers

1. To hear and decide appeals from any order, requirement, decision or determination made by the Planning Administrator, or an administrative official in the administration or enforcement of this ordinance, as provided in Sections 1502 and 1603 herein.
2. To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest, when owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of this ordinance shall be observed and substantial justice done as follows:
 - a. When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or conditions of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of this ordinance would effectively prohibit or unreasonably restrict the use of the property or where the Board of Adjustment is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrated hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this ordinance.
 - b. No such variance shall be authorized by the Board of Adjustment unless it finds that all three of the following conditions apply: (1) that the strict application of this ordinance would produce undue hardship; (2) that such hardship is not shared generally by other properties in the county and the same vicinity; and (3) that the authorization of such variance will not be a substantial detriment to adjacent property and that the character of the area will not be changed by the granting of the variance.

- c. No such variance shall be authorized except after reasonable due hearing thereon.
 - d. No variance shall be authorized unless the Board of Adjustment finds that the condition or situation of the property concerned or the intended use of the property is not so general or recurring a nature as to make reasonable practicable the formulation of a general regulation to be adopted as an amendment to this ordinance.
 - e. In authorizing a variance the Board of Adjustment may impose such conditions regarding the location, character, and other features of the proposed structure for use as it may deem necessary in the public interest and may require a guarantee or bond to insure that the property owners are or will comply with the conditions imposed.
 - f. No Such variance shall be authorized that effects a change in permitted uses of land, building, or structure as set forth herein in Section 920.
3. To hear and decide applications of interpretation of the use district map where there is any uncertainty as to the location of a district boundary. The rules for determining boundaries as prescribed in Section 606 of this ordinance will be utilized. After notice to the owners of the property affected by any such question, and after a public hearing with due notice thereof, the Board of Adjustment may interpret the map in such a way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The Board of Adjustment shall not have the power to change substantially the locations of district boundaries as established by this ordinance.
4. No provisions of this ordinance shall be construed as granting the Board of Adjustment the power to change the use of a parcel of land except as otherwise provided herein.

Section 1702.04 Financing the Board of Adjustment

Within the limits of funds appropriated by the Board of Commissioners, the Board of Adjustment may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the Board of Adjustment may receive such compensation as may be authorized by the Board of Commissioners.

Section 1702.05 Appeals to the Board of Adjustment

Requests for compliance permits, administrative review, or variance shall follow procedures specified herein.

Section 1702.06 Decisions of Board of Adjustment

Each variance decision of the Board of Adjustment is subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within thirty (30) days after the decision of the Board of Adjustment is delivered to the aggrieved party, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the Board of Adjustment at the time of its hearing of the case, whichever is later. The decision of the Board of Adjustment may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

Section 1703 The Board of Commissioners

The Board of Commissioners shall have the following responsibilities in the administration of this ordinance:

Section 1703.01

Review and decide requests for amendments to this ordinance and official zoning map as specified in Section 1601 and Article IX-A herein.

Section 1703.02 Public Facilities

Review and decide on the disposition of public facilities and related improvements proposed on site plans in accordance with appropriate provisions herein.

Section 1704 The Planning Board

Section 1704.01 Planning Board Membership and Duties

A Planning Board consisting of seven (7) members shall be appointed by the Board of Commissioners with appointments and terms of office as follows:

1. The Planning Board members appointed hereunder shall serve respectively for terms of one (1) year for one member, two (2) years for three members, and three (3) years for three members. Subsequent appointments shall be for terms of three (3) years each. Members can be re-appointed to succeed themselves but may not serve more than two consecutive terms.
2. The members of the Planning Board shall be residents of the County. Three members shall be from the eastern portion of the County and three members shall be from the western portion of the County. The seventh

- member shall alternate between east and west each term. One member from each portion must reside in an area zoned by the County.
3. A member whose term expires shall continue to serve until his successor qualifies and is appointed.
 4. The secretary of the Planning Board shall notify the Board of Commissioners in advance of the expiration of any term of office, if any vacancy occurs. Appointments to fill vacancies shall be only for the unexpired portion of the term.
 5. Any member can be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the Board of Commissioners, after a hearing is held after at least a fifteen (15) day notice.

Section 1704.02 Rules for Procedure

The Planning Board shall observe the following procedures:

1. The Planning Board shall adopt rules in accordance with the provisions of this ordinance and consistent with other ordinances of the County and general laws of the State of North Carolina for the conduct of its affairs.
2. The Planning Board shall elect a chairman and a vice-chairman from its own membership who shall serve annual terms and may succeed themselves. The Planning Board may elect as its secretary either one of its members or a qualified individual who is not a member of the Planning Board. A secretary who is not a member of the Planning Board shall not be entitled to vote on matters before the Planning Board.
3. The Planning Board shall keep a full public record of its proceedings and shall submit a report of its activities to the Board of Commissioners at least once per year.
4. All meetings of the Planning Board shall be open to the public.
5. Any member of the Planning Board shall be disqualified to act on a matter before the Planning Board with respect to property in which the member has an interest.
6. The meetings of the Planning Board shall be held at the call of the chairman and at other times as a quorum of the board may determine.

7. A quorum shall consist of four members. Any official acts must have a majority vote of the quorum. Tie votes will constitute the failure of a motion to pass.

Section 1704.03 Duties and Powers

The Planning Board shall have the following duties and powers:

1. Review applications for zoning district changes and amendments to this ordinance and make recommendations to the Board of Commissioners as necessary and in accordance with Section 1601 and Article IX-A herein.
2. Review and make comments and/or recommendations on special matters referred to the Planning Board by the Board of County Commissioners as required in this ordinance or for the purpose of carrying out the intent of this ordinance.

Section 1703.04 Financing the Planning Board

Within the limits of funds appropriated by the Board of Commissioners, the Planning Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the Planning Board may receive such compensation as may be authorized by the Board of Commissioners.

ARTICLE XVIII LEGAL PROVISIONS

Section 1801 Conflict with Other Laws and Private Contracts

Section 1801.01 Governmental Laws

Wherever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted statutes, rules, regulations or ordinances, the most restrictive or that imposing higher standards shall govern.

Section 1801.02 Private Contracts

This ordinance bears no relation to any private easement, covenant, agreement, or restriction, nor does this ordinance grant the authority to any public official the responsibility of enforcing such private easement, covenant, agreement, or restriction implied herein. In the enforcement of the provisions herein, where such provisions are more restrictive than those required by private contracts, the provisions of this ordinance shall govern.

Section 1802 All Permits and Licenses to Conform

All departments, officials, and public employees of the county who are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this ordinance. Any such permit, if issued in conflict with the provisions of this ordinance, shall be null and void.

Section 1803 Violations

Section 1803.01 General

In addition to those remedies provided in North Carolina General Statutes 14-4 and 153A-123, as amended and otherwise as law provided, whenever, by provisions of this ordinance, the performance of any act is required, or the performance of any act is prohibited, or whenever any regulation or limitation is imposed on the use of any land and water, or on the erection, removal, or alteration of a structure, a failure to comply with such provisions shall constitute a violation of this ordinance.

Section 1803.02 Liability

The owner, tenant, or occupant of any land or structure, or part thereof, and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this ordinance shall be held responsible for the violation and be subject to the penalties and remedies provided herein.

Section 1803.03 Complaints Regarding Violations

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint, signed, dated, and addressed for public record before such alleged violation is investigated. Such complaint stating fully the causes and basis thereof shall be filed with the Planning Administrator. The Planning Administrator shall record such complaint, immediately investigate, and take action thereon as provided by this ordinance.

Section 1803.04 Procedures upon Discovery of Violation

Upon the determination that any provision of this ordinance is being violated, the Planning Administrator shall send, within five (5) working days, a written notice by registered mail to the person(s) responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Planning Administrator's discretion.

The final written notice, which may also be the initial notice, shall state the action the Planning Administrator intends to take, if the violation is not corrected, and shall advise that the Planning Administrator may seek enforcement without written notice by invoking any of the remedies contained in Sections 1803.05 and 1803.06 herein.

Section 1803.05 Civil Penalties

Violation of any provision of this ordinance shall subject the offender to a civil penalty in the amount of fifty dollars (\$50.00), to be recovered by the county in a civil action in the nature of a debt if the offender does not pay the penalty within a period of three (3) working days after being cited. Citation shall be in writing, signed by the Planning Administrator, and shall be delivered or mailed by certified mail return receipt requested to the offender either at his residence or at his place of business or at the place where the violation occurred. If the violation is not corrected within thirty (30) days after the citation has been mailed, judicial action may be taken.

Section 1803.06 Judicial Penalties

Any person, firm, or corporation who violates the provisions of this ordinance, shall upon conviction be guilty of a misdemeanor and shall be fined not exceeding fifty dollars (\$50.00) or imprisoned not exceeding 30 days. Each day that a violation continues to exist shall be considered a separate offense, provided the violation was not corrected within thirty (30) days after the notice of said violation was given.

Section 1804 Validity

Should any section or provisions of this ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 1805 Effective Date

This ordinance shall take effect and be in force effective 12:01 a.m., January 1, 1997. A certified copy of the foregoing zoning of Burke County, North Carolina, shall be filed in the offices of the chief administrative officer of the County, the Planning Administrator, and the clerk of the superior court. A vote taken on the foregoing ordinance resulted in an affirmative vote.

Section 1806 Development Agreements

The County may enter into development agreements as set forth in the Burke County Development Agreement Ordinance and G.S. 153A-349.

ARTICLE IXX MORGANTON – LENOIR AIRPORT OVERLAY

Section 1901 Intent

The purpose of this Overlay District is to establish height regulations within the Morganton-Lenoir Airport approach zones located within the County of Burke's jurisdiction. The Overlay District is also designed to prohibit obstructions that have the potential for endangering the lives and property of users of the Morganton-Lenoir Airport and property or occupants of land within the district.

Section 1902 Authority and Enactment

Pursuant to the authority conferred by the North Carolina General Statutes, particularly Chapter 63, Article 4, the Board of Commissioners of Burke County, North Carolina hereby ordain and enact into law the following articles and sections.

Section 1903 Administration of the Requirements of this Article

Applications for any development within this overlay district shall be as for any development regulated by this ordinance.

Section 1904 Airport Zones

In order to carry out the provisions of this overlay, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to the Morganton-Lenoir Airport. These zones are shown on the Burke County Zoning Map. The various zones are hereby established and defined as follows:

1. Runway Larger than Utility with a Visibility Minimum as Low as $\frac{3}{4}$ Mile Non-Precision Instrument Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outwards uniformly to a width of 4,000 feet at a horizontal distance of 10,000 feet from the primary surface. Its center line is the continuation of the center line of the runway.

2. Precision Instrument Runway Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of

50,000 feet from the primary surface, its center line being the continuation of the center line of the runway.

3. Runway Larger than Utility with a Visibility Minimum Greater than $\frac{3}{4}$ Mile Non-Precision Instrument Approach Zone

The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its center line is the continuation of the center line of the runway.

4. Transitional Zones

The transitional zones are the areas beneath the transitional surfaces.

5. Horizontal Zone

The horizontal zone is established by a swinging arc of 10,000 feet from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.

6. Conical Zone

The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward there from a horizontal distance of 4,000 feet.

Section 1905 Airport Zone Height Limitations

No structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this article to a height in excess of the applicable height herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

1. Runway Larger than Utility with a Visibility Minimum as Low as $\frac{3}{4}$ Mile Non-Precision Instrument Approach Zone

Slopes 34 outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway center line.

2. Precision Instrument Runway Approach Zone

Slopes upward 50 feet for each foot vertically beginning at the end of and

the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway center line, then at a slope of 40:1 for an additional 40,000 feet.

3. Runway Larger than Utility with a Visibility Minimum Greater than $\frac{3}{4}$ Mile Non-Precision Instrument Approach Zone

Slopes thirty-four (34) feet outward for each foot upward beginning at the end of the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway center line.

4. Transitional Zones

Slope seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 1270' above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the conical surface.

5. Horizontal Surface

Established at 150' above the airport elevation.

6. Conical Zone

Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.

7. Excepted Height Limitations

Nothing in the airport overlay regulations shall be construed as prohibiting the construction or maintenance or any structure, or growth of any tree to a height up to 50 feet above the surface of the land.

Section 1906 Use Restriction

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this overlay in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or

otherwise in any way endanger, or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

Section 1907 Non-Conforming Uses

1. Regulations Not Retroactive

The regulations prescribed in the Airport Overlay section shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the effective date of this amendment, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this amendment, and is diligently prosecuted and completed within one year thereof.

2. Obstructive Marking and Lighting

Notwithstanding the preceding provision of this section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the Planning Administrator to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the Morganton-Lenoir Airport.

Section 1908 Permits

The applicant must supply the Planning Administrator with all information, including specific locational reference points, necessary to ascertain compliance with these regulations before a zoning permit is issued for any development within the overlay district. In no instance shall the language of these overlay regulations contradict the actual airport overlay as digitized on the Official Burke County Zoning Map. Additionally, no permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use or structure to become a greater hazard to air navigation than it was on the effective date of this amendment or any amendments thereto or than it is when the application for a permit is made.

Section 1909 Variances

Requests for variances from these overlay regulations will be processed as per Section 1602 of this ordinance. In addition to the materials specified in that section, the applicant must also provide the Planning Administrator with a determination by the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of

navigation airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and relief granted will not create a hazard to air navigation.

Section 1910 Conflict With Other Laws

Where the provisions of any other law, ordinance, or regulation impose higher standards than are required by the provisions of this article, the provisions of such law, ordinance, or regulation shall govern.

ARTICLE XX: INTERSTATE 40 CORRIDOR OVERLAY DISTRICT (I-40 COD)

Section 2001. Authority and Enactment

Pursuant to the authority conferred by the North Carolina General Statutes, particularly Chapter 153A Part 3, the Commissioners of Burke County, North Carolina hereby ordain and enact into law the following articles and sections.

Section 2002. Statement of Intent

As the property surrounding the interchanges on Interstate 40 and other major and minor thoroughfares are transportation and economic gateways and throughways for Burke County, it is the intent of this article to promote safety, traffic efficiency, aesthetics, economic development, and compatible residential uses within this corridor. As such, it is the intent of this article to promote economic development and increased densities of quality development within the I-40 Corridor Overlay District through distinctive and innovative design, access management, protection of aesthetic and historic qualities, and reducing the impact on pedestrians and surrounding communities. It is also the intent to encourage higher densities of mixed-use and residential uses surrounding the commercial and industrial nodes adjacent to the interstate where infrastructure availability allows.

Section 2003. Severability

Should any court of competent jurisdiction declare any section or provision of this article invalid or unconstitutional, the declaration shall not affect the validity of this article as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

Section 2004. Conflict With Other Laws

Where the provisions of any other law, ordinance, or regulation impose higher standards than are required by the provisions of this article, the provisions of such law, ordinance, or regulation shall govern.

Section 2005. Boundaries

Section 2005.1 Jurisdiction

The jurisdiction of the Interstate 40 Corridor Overlay District (I-40 COD) shall be set forth on the Official Zoning Map of Burke County, with all notations, references, amendments and dates thereto, and other information shown thereon.

Section 2005.2 Amendments to the Highway Overlay District Boundaries

Any amendment to the jurisdiction of the I-40 COD shall be in the form of a zoning map amendment and such changes shall be in accordance with the process and requirements set forth in Article XVI and Section 604 herein.

Section 2006. Applicability

Section 2006.1 Applicability of the I-40 Corridor Overlay District

1. The development of property of any size, type, or density within the boundaries of the I-40 Corridor Overlay District shall comply with the standards set forth herein. More specifically, no building or structure shall be erected or altered for any purpose except in accordance with the requirements set forth herein except as allowed in Section 2006.3.
2. The intent of Section 2006.1(1) is that the following activities shall comply with the requirements of the I-40 COD:
 - a. The development of vacant tracts that occurs after the effective date of this Article;
 - b. The division of land for non-residential use or residential use that is classified as a major subdivision by the Burke County Subdivision Ordinance;
 - c. Any change of use to a non-residential use, mixed-use, or multi-family use of an existing property or structure;
 - d. Any major expansion to an existing non-residential, mixed-use, or multi-family structure or use;
 - e. It is recommended that public schools, public service, public use, and public utility facilities, should meet the requirements of this Article to the extent possible to ensure consistent application of the requirements for development within the I-40 COD.

Section 2006.2 Retrofitting Existing Uses

Any change of use or major expansion to an existing non-residential, multi-family residential, or mixed-use structure or land use shall comply with the Table 2006.2:

Table 2006.2 Retrofitting Existing Uses and Structures X = Compliance with all applicable standards required R = Retrofit to the extent practical						
	Section 2009 Building Design	Section 2010 Access Management	Section 2011 Parking	Section 2012 Landscaping & Screening	Section 2013 Signage	Section 2014 Utilities & Lighting
Change of Existing Use (No Expansion)	R	R	R	R	R	R
Minor Expansion (25% or Less)	R	R	R	R	R	R
Major Expansion (26% to 50%)	X	R	X	R	X	X
Major Expansion (Greater than 50%)	X	X	X	X	X	X

Section 2006.3 Uses Not Applicable to Requirements

The requirements of the I-40 COD do not apply to existing single-family dwellings, manufactured homes, and two-family dwelling units that are used for residential purposes. Additions to such uses and accessory uses are permitted subject to the requirements of the underlying zoning district. Existing single-family dwellings, manufactured homes, and duplexes that are partially or fully destroyed may be repaired or rebuilt as a matter of right and consistent with Section 607 of this ordinance if such use is non-conforming.

Section 2007. Uses

Section 2007.1 Conformity with the Underlying Zoning District

Permitted and conditional uses within the I-40 COD shall be consistent with the underlying general zoning district except as prohibited in Section 2007.2 of this ordinance.

Section 2007.2 Prohibited Uses

The following uses shall not be permitted within the I-40 COD:

- Adult entertainment establishment

- Asphalt and concrete plants
- Auto repair garages and body shops
- Automobile parts recycling facilities
- Billboards and off-site advertising
- Flea markets
- Land clearing and inert debris landfills
- Landfills (sanitary)
- Mines and quarries
- Mobile home parks
- Scrapyards

Section 2008. Site Plan Required

All development subject to the provisions of this article is required to submit a complete site plan consistent with the requirements of Article XIII of the Burke County Zoning Ordinance. In addition to the minimum requirements found in Article XIII, the site shall include and meet the requirements of the I-40 COD.

Section 2009. Building Design Standards

Section 2009.1 General

Development within the I-40 COD shall meet high-quality design standards while permitting diversity in style and ability to define a unique character based on the surrounding natural and architectural characteristics of the surrounding area. The flexibility in design seeks to promote innovative and well-planned development that protects and is consistent with the surrounding natural, cultural, and historical resources.

Section 2009.2 Type of Construction

1. The following design standards shall apply to all non-residential and mixed-use structures and buildings locating in the I-40 COD or when retrofitting such existing structures for additions and changes of use.
2. Manufactured and mobile units shall be prohibited except when permitted as temporary uses for office management and storage during the construction phase of a development. Metal units shall be prohibited except as permitted in Section 2009.3(2)

Section 2009.3 Building Materials

1. Exterior building materials should consist of decorative split-block masonry, brick, stone, wood shingle, wood lapped siding, vertical board and batten, glass, or rough textured stucco. Similar alternative building

materials are permissible and subject to approval by the Planning Administrator.

2. The use of smooth vinyl, unpainted cinder-block walls, or metal paneling shall be prohibited except when used on exterior walls not facing or visible from public thoroughfares or access ways and when permitted, such uses shall be screened from adjacent uses and properties.
3. Accessory structures and signage shall be of consistent design with the primary structure and be constructed of like or architecturally compatible materials.

Section 2009.4 Building Entrances

A primary entrance shall be designed for the pedestrian and be oriented towards new interior streets or access drives. Additional entrances are permitted to be oriented towards side and rear parking areas or on-street parking areas when permitted.

Section 2009.5 Building Orientation

Building shall be oriented to maximize the convenience of pedestrian access and maintain an aesthetic, quality design. Development patterns shall avoid the excessive linear rooflines of a strip plaza.

Section 2009.6 Roof Pitch

Flat roofs or roof pitches less than 3:12 shall include cornice trim along the tops of walls, roof line offsets, and/or the use of a parapet wall to avoid the appearance of strip development and create a prominent edge and architectural interest when viewed against the sky.

Section 2009.7 Street Walls and Facades

In order to ensure that buildings do not display blank, unattractive walls to the adjacent street(s) or residential areas, walls facing public or private street rights-of-way shall comply with the following requirements:

1. Commercial, office, and institutional uses shall not have blank walls greater than thirty (30) feet in length.
2. Industrial uses shall not have blank walls greater than sixty (60) feet in length.
3. The use of masonry, belt courses of a different color and texture, projecting cornice, projecting canopy, windows and doors, decorative tile

work, trellis containing planting, medallions, lighting fixtures, columns, artwork, building wall offsets such as projections, recesses, and changes in floor level, or other architectural elements as approved by the Planning Administrator that meet the intent of this ordinance may be incorporated into these walls.

Section 2009.8 Decorative Elements

The use of decorative elements such as fountains, outdoor seating and benches, works of art, and statues are encouraged in pedestrian and open space areas.

Section 2009.9 Loading and Service Areas

Loading and service areas should be designed out of view from public roads. Loading and service areas shall be designed to ensure the safety of pedestrians and private property. Such areas shall have sufficient space to be properly accessed and the use of these areas shall not block public road rights-of-way nor hinder access or traffic flow.

Section 2010. Access Management

Section 2010.1 General

Access management is a process for providing access to the development of land, while preserving traffic flow on surrounding roadways in terms of safety, capacity, and speed. This is achieved through managing location, design and operation of driveways, median openings, and street connections to a roadway. Additionally, access management involves the use of auxiliary lanes, such as turn lanes or bypass lanes, to remove turning vehicles from through-traffic movement.

Section 2010.2 Traffic Impact Study Required

A Traffic Impact Study (TIS) shall be prepared and submitted by the developer of projects subject to the major site review process when a TIS is recommended by the NC DOT District Engineer or when required as part of a parallel conditioning rezoning as necessary to protect the functional integrity of the affected roads or highways. The traffic impact study shall be prepared by a qualified transportation or traffic engineer or certified planner and shall include the following information:

1. Existing traffic conditions within the study area boundary, as determined by the NC DOT;
2. Traffic volumes generated by the existing and proposed development on the project area, including the morning peak, afternoon or evening peak, and average annual traffic levels;

3. The distribution of existing and proposed trips through the street network;
4. Analysis of capabilities of intersections and access points located within the study area boundary;
5. Recommendations for improvements designed to mitigate traffic impacts of the proposed development and to enhance pedestrian access to the development from the public right-of-way, and;
6. Other pertinent information including but not limited to accidents, noise, and impacts on air quality and other natural resources.

Section 2010.3 Location of Access Points

1. On existing or proposed thoroughfares and major collectors, driveways shall conform to the requirements of the following table. When conflict exists between NC DOT Policy on Street Access to North Carolina Highways and these regulations, the stricter of the two standards applies.

Access Management: Driveway Connection Table		
Frontage (feet)	# of Driveways Allowed	Minimum Spacing (feet)
Less than 500	1	400
501-999	2	400
More than 1,000	3	400

2. The minimum distance between a driveway and an existing State Road intersection on an existing or proposed thoroughfare or major collector shall be five-hundred (500) feet. On local and minor collector streets, the minimum distance between a driveway and an existing State Road intersection shall be two-hundred (200) feet. No commercial driveways or road right-of-ways shall be placed within five-hundred (500) feet of an I-40 interchange right-of-way. When conflict exists between NC DOT Policy on Street Access to North Carolina Highways and these regulations, the stricter of the two standards applies.

Section 2010.4 Off-Site Traffic Improvements

Transition tapers and deceleration lanes shall be required for all I-40 COD development projects where a site access study requires or a recommendation from NC DOT indicates that such improvements are necessary. The costs of such improvements shall be the responsibility of the owner or the developer of the property.

Section 2010.5 Shared Access

Mutual shared access agreements shall be required between adjacent property

owners with frontage on existing or proposed thoroughfares and major collectors when site plans are submitted concurrently. When access is to be shared, easements, liability arrangements, and a maintenance agreement must be submitted to the local government prior to occupancy. Where no mutual shared access is feasible due to topographical or other physical constraints, access shall be in conformance with Section 2010.3 of this ordinance or the NC DOT Policy on Street and Driveway Access to North Carolina Highways, whichever is stricter.

Section 2010.6 Connected Interior Driveways and Parking

1. Interior driveways and parking areas shall be designed to provide safe and efficient circulation, in accordance with commonly accepted traffic engineering practices and subject to the review and approval of the site plan review committee.
2. Adjacent commercial developments with access to existing or proposed thoroughfares and major collectors shall connect interior parking and driveways. Where adjacent commercial property is vacant, sufficient provisions to connect to the properties shall be submitted.
3. Parcels with frontage on existing or proposed thoroughfares and major collectors shall also be required to reserve sufficient access to any adjacent properties with poor or non-existent access. Such reserved areas for future roads shall be shown on the site plan at a location where, according to sound engineering practices, actual construction of the road would be practicable.

Section 2010.7 Channelization

Channelization, or the separation of conflicting traffic movements into well-defined paths of travel by traffic islands or significant pavement markings, shall be considered when a site access study is required. All developments with multiple tenants, parcels, and/or buildings subject to the major site plan review process shall provide for the installation of a median-type entranceway when located on proposed or existing thoroughfares and major collectors.

Section 2010.8 Signalization

Signalizations may be installed only after all other traffic improvements have been explored. Although traffic signals may reduce the frequency of turning conflicts, signals significantly disrupt efficient traffic flow.

Section 2010.9 Street Design

1. All streets shall be designed, constructed, and maintained to NC DOT road standards. Streets may be designated as either public or private.

2. A maintenance agreement is required for all private and public roads until such time the road(s) is accepted for public maintenance.
3. NC DOT road plan approval is required prior to the issuance of a zoning permit.
4. For multi-phase developments, road, parking, and access management improvements for initial phases must be completed prior to approval to begin construction on subsequent phases.

Section 2011. Parking Requirements

Section 2011.1 General

Parking areas should be designed in a manner to provide safe and efficient circulation of traffic and provide safe access ways for pedestrians to travel from vehicles to buildings.

Section 2011.2 Parking Design

Parking areas shall be located to the side or rear of the building when a development fronts on arterial roads and major or minor thoroughfares. No parking space shall be located more than three hundred (300) feet from a building entrance. When parking is placed in front of the building due to topographic or other physical constraints, screening shall be provided through decorative walls or fences, bushes, shrubs, or small trees that limit the view of the parking area but do not necessarily screen visibility to the building. Perimeter tree planting as required in Section 2012.5(4) is still applicable in such cases.

Section 2011.3 Shared Parking and Connectivity

When feasible, all parking areas should be designed to allow linkages to adjacent developments to promote efficient traffic flow and encourage shared parking areas to reduce the use of land for parking and development costs and impacts associated with impervious surfaces. Internal areas between buildings in a development should incorporate shared parking areas.

Section 2011.5 Construction Standards

In order to provide a safe and suitable surface for the quantity and quality of traffic expected to use a development, parking areas shall be required to meet the following requirements:

1. Parking areas shall be paved unless an alternative that provides a durable surface suitable for the quantity and quality of traffic expected to use it is approved by the Planning Administrator.
2. Parking lots shall provide spaces in sufficient number and design that are

accessible to a curb ramp or curb cut, when necessary to provide access to a building or structure, for persons with disabilities in a manner compliant with Americans with Disabilities Act (ADA) requirements or other federal, state, and local laws.

3. Parking areas shall be designed and constructed to dispose of all surface water accumulated within the area in a manner that will not contribute to the subsidence, erosion, or sedimentation of the development site or off-site.

Section 2012. Landscaping, Buffering, and Screening Requirements

Section 2012.1 General Intent and Requirements

The use of landscaping, buffers, and screening in the design of developments in the I-40 COD is required to enhance the natural beauty by creating the appearance that manmade development is situated within a natural setting. Additionally, these requirements are designed to reduce the impact of development on neighboring uses and residential communities existing and developed within the I-40 COD. As such, development should occur in a manner that maintains and enhances the pre-existing, surrounding natural landscape and appearance along the corridor.

1. No structures, buildings, or parking may be located within buffer areas, with the exception of permitted signage, pedestrian amenities, and decorative elements.
2. Stormwater retention areas, kept in good aesthetic and functioning condition, may be placed in buffer areas except for the I-40 buffer area.

Section 2012.2 Protection of Water Bodies and Natural Areas

Developments should strive to maintain the contours of the land and utilize existing natural vegetation and topography to screen parking and maintenance areas to the maximum extent possible. When natural bodies of water are on site, a minimum thirty (30) foot natural vegetative buffer shall be maintained. Properties located in water supply watersheds are subject to the vegetative buffer requirements in Section 304 of the Water Supply Watershed Management & Protection Ordinance.

Section 2012.3 Maintenance of Landscaped Areas and Screening

1. All construction debris and vegetative resulting from development shall be removed from the site before final occupancy.
2. All landscaping and screening shall be maintained so as to continue their

effectiveness.

Section 2012.4 Buffering and Screening

1. Residential buffers

A thirty (30) foot vegetative buffer is required when developments in the I-40 COD are adjacent to a residential zoning district. The screening shall comply with either the planting requirements of Section 1106.01 or the fences and retaining wall provision in Section 1106.02.

2. Interstate 40 (I-40) Buffer

- a. A vegetative buffer, whether natural or grass and selected plantings, of sixty (60) feet shall be maintained on properties adjacent to the Interstate 40 right-of-way
- b. When a property adjacent to the Interstate 40 right-of-way fronts on an access road located between the development and the Interstate, the buffer requirements of Section 2012.4(3) shall apply.
- c. When a development is proposed adjacent to an Interstate 40 interchange that has not been improved to current NC DOT standards, a building setback of two-hundred (200) feet shall apply until a study of the interchange is conducted to determine necessary space required for such improvements. Upon completion of a deficient interchange study, the building setback line shall be set from the future right-of-way line. This requirement is consistent with the findings of intersection deficiencies in the Burke County Thoroughfare Plan and recommendations set forth by the I-40 Corridor Study adopted by Burke County in December 2003.

3. Existing or proposed thoroughfare and major collector buffers

A thirty (30) foot vegetative buffer is required for all developments that front on existing or proposed thoroughfares and major collectors.

4. Maintenance and storage area screening

All loading, shipping, dumpster, storage and maintenance areas shall be heavily landscaped with mature trees, at least six (6) feet tall, or other screening of at least equal height, while maintaining sufficient space for ingress and egress of vehicles. Mechanical areas on the tops of buildings shall be screened in a manner consistent with the building design or compatible in appearance with roofing materials.

Section 2012.5 Landscaping Requirements

1. Entranceways

Medians, when required, shall be grassed and landscaped. Landscaping and plantings shall not affect visibility within site triangles and entrance drives.

2. Interior streets

For all developments with multiple tenants, parcels, or buildings subject to major site plan review, shade trees shall be planted along both sides of all interior streets, excluding those not typically used by the public. Typical plantings must include a minimum of fourteen (14) shade trees per 1,000 linear feet which are at least eight (8) feet tall at planting and will be a minimum of twenty (20) feet tall at maturation.

3. Parking areas

Within parking areas, tree planting areas shall be provided for every 10 parking spaces. Tree planting areas shall be at least eight (8) feet wide, a minimum of 200 square feet in area, include at least one (1) shade tree, and be designed to minimize damage to trees by parking or moving vehicles. The remaining area shall be landscaped with plantings (bushes, shrubs, flower beds). Pedestrian ways are permitted within parking landscaped areas but do not count towards the area requirement.

4. Perimeter parking area landscaping

A vegetative strip of at least ten (10) feet in diameter shall be maintained at the perimeter of parking areas. A minimum of one (1) large canopy tree per fifty (50) feet should line the parking areas. Grass, shrubs, bushes, flower beds, pedestrian amenities, decorative walls and fences, stormwater retention areas, and sidewalks may be placed in this area. Only where existing overhead utility lines prevent use of large maturing trees may small maturing trees be substituted.

Section 2013. Signs

Section 2013.1 General

The location and design of all on-site signs should be consistent with the objective of high-quality development and safe and efficient traffic flow within the I-40 COD. Signage should be compatible and consistent with the design features of the primary structure.

Section 2013.2 On-Site Signs

1. Permitted signs shall include the following designs; free-standing, wall, name plate, and canopy.
2. Prohibited signs shall include the following designs; billboard, flashing light, rotating, and portable.
3. Setbacks – Signage shall be setback a minimum of ten (10) feet from all road rights-of-way except for signs to be located within a median in a road right-of-way. In the case of a sign located within a median, the North Carolina Department of Transportation must grant permission to place a sign within a median of a public right-of-way or all property owners must grant permission to place a sign within a median of a private-right-of-way.
4. Visibility – Signs shall not block or impair visibility in order to ensure proper line-of-sight for all motorists and pedestrians. Signs shall not block visibility from three-to-eight (3-8) vertical feet within twenty (20) feet of any road intersection.

Section 2013.3 Off-Site Signs

New off-site outdoor advertising signs are not permitted in the I-40 COD, except for the use of logo signage as outlined in Section 2014.4. The continued use of existing off-site outdoor advertising signs shall be allowed consistent with non-conforming structures as referenced in Section 607 of this ordinance.

Section 2013.4 Use of Logo Signage Encouraged

The use of logo signage is encouraged for the promotion of travel and tourism based business within the I-40 COD. Such signs shall be permitted in conjunction with an approved NC DOT logo sign program

Section 2014. Utilities and Lighting Requirements

Section 2014.1 Public Utilities Required

1. For developments requiring a major site plan review and when technically applicable, the developer will connect to a public water and/or sewer system if located within 1,000 feet of the property to be developed and such lines can be extended within public road rights-of-way and property easements.
2. For developments requiring a minor site plan review and when technically applicable, the developer will connect to a public water and/or sewer system if adjacent to the property to be developed.

3. Review and approval from NC DENR is required for both new systems and extensions to existing systems for both public water and sewer utilities. Proof of plan approval is required prior to issuance of a zoning permit, but is not necessary for site plan approval.
4. When the proposed water or sewer system is to be connected to an existing system, approval of the project must also be obtained from the owner of the existing system prior to construction, and the system shall be constructed according to the specifications and standards of the existing system. A letter of approval from the owner of the existing system shall also be submitted prior to issuance of a zoning permit.
5. Where a development is to be constructed in phases, the infrastructure and improvements must be in place on the initial phase before subsequent phases are developed.
6. Site Plan Requirements for Utilities
 - a. Proposed utility easements, proposed line location, line capacity, and line size shall be shown on all applicable site plans;
 - b. Location of existing public utilities on or adjacent to the site and existing lighting when applicable, and;
 - c. Proposed lighting plans showing location, type of lighting, and area that will be lighted.

Section 2014.2 Location of Utilities

1. Utilities shall be located within public road rights-of-ways or within utility easements. Utility easements shall not be located laterally within the interstate buffer laterally, but may cross vertically when necessary.
2. All on-site utilities should be located underground unless technical restrictions exist for not doing so. When utilities must be located above ground, provisions shall be made to significantly reduce the visual impact of the utility from public road rights-of-way and pedestrian areas.

Section 2014.3 Encroachment Agreement

The developer should obtain a right-of-way encroachment agreement from NC DOT when any utility lines are constructed or expanded in the State's rights-of-way.

Section 2014.4 General Lighting Requirements

In order to reduce the impact of lighting on neighboring residential uses, potential safety hazards to the traveling public, and affect on viewsheds and nightscapes, lighting within the I-40 COD shall meet the following requirements:

1. Exterior lighting shall be fully shielded and directed to avoid illuminating the night sky.
2. Lighting shall not illuminate neighboring residential properties.
3. Lighting shall not be directed towards or illuminate the I-40 Interstate right-of-way or be directed in a manner as to distract or harm the traveling public on road rights-of-way.

Section 2014.5 Lighting of Buildings and Pedestrian Areas

On-site lighting may be used to accent architectural elements and provide safety and security on pedestrian walkways, at building entrances, and public areas between buildings, but shall not be used to illuminate entire portions of building(s).

Section 2014.6 Entranceway, Street, and Parking Area Lighting

In order to promote safety and security in developments, lighting should be used at intersections, development entrances, and in parking areas.

Section 2015. Pedestrian Design

1. To provide a safe, comfortable, and convenient environment for visitors and employees, developments shall be designed in a manner to provide a unified and well organized arrangement of buildings, parking areas, pedestrian and landscaped common areas to permit the pedestrian to conduct business with a minimum of conflict with vehicles.
2. Developments that qualify for major site plan review shall include provisions for pedestrian scale amenities such as benches, picnic tables, courtyards, plazas, water attractions, trash receptacles, bicycle parking, and other such elements that promote an efficient and functional pedestrian environment and maintain a sense of place.
3. Loading zones and maintenance areas shall be located and arranged to prevent the interference with pedestrian movement within the development.

4. Linkages for pedestrian movement, such as sidewalks, bikeways, and walking paths, shall be provided between buildings or building clusters within a development and should connect adjacent uses when feasible.
5. Pedestrian ways shall be located and designed in a manner that reduces congestion and hazards with vehicular traffic.

Section 2016. Preservation of Cultural and Historical Sites

In order to promote tourism and economic development through the preservation of Burke County's unique cultural and historical heritage, developments within the I-40 COD shall meet the following requirements:

1. All cultural, historical, or naturally significant sites shall be identified on the development site plan.
2. Developments shall be designed to preserve and minimize the impact of development on the historic, cultural, and naturally significant sites when feasible.

ARTICLE XXI: SCENIC OVERLAY DISTRICT

Section 2101. Authority and Enactment

Pursuant to the authority conferred by the North Carolina General Statutes, particularly Chapter 153A Part 3, the Commissioners of Burke County, North Carolina hereby ordain and enact into law the following article and sections.

Section 2102. Statement of Intent

The Scenic Overlay District is enacted to encourage reasonable and appropriate development that is sensitive to aesthetic, environmental, and economic concerns. Development in this district should be compatible with the area's natural resources, cultural history, wildlife habitat, and scenic landscapes while promoting tourism and recreational activities for both residents and visitors to the area.

Section 2103. Severability

Should any court of competent jurisdiction declare any section or provision of this article invalid or unconstitutional, the declaration shall not affect the validity of this article as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

Section 2104. Conflict With Other Laws

Where the provisions of any other law, ordinance, or regulation impose higher standards than are required by the provisions of this article, the provisions of such law, ordinance, or regulation shall govern.

Section 2105. Boundaries

Section 2105.1 Jurisdiction

The jurisdiction of the Scenic Overlay District shall be set forth on the Official Zoning Map of Burke County, with all notations, references, amendments and dates thereto, and other information shown thereon.

Section 2105.2 Amendments to the Scenic Overlay District Boundaries

Any amendment to the jurisdiction of the Scenic Overlay District shall be in the form of a zoning map amendment and such changes shall be in accordance with the process and requirements set forth in Article XVI and Section 604 herein.

Section 2106. Applicability

Section 2106.1 Applicability of the Scenic Overlay District

1. The development of property of any size, type, or density within the boundaries of the Scenic Overlay District shall comply with the standards set forth herein. More specifically, no building or structure shall be erected or altered for any purpose except in accordance with the requirements set forth herein except as allowed in Section 2106.3.
2. The intent of Section 2106.1(1) is that the following activities shall comply with the requirements of the Scenic Overlay District:
 - a. The development of vacant tracts that occurs after the effective date of this Article;
 - b. The division of land for non-residential use or residential use that is classified as a subdivision by the North Carolina General Statutes and the Burke County Subdivision Ordinance;
 - c. Any change of use to a non-residential use, mixed-use, or multi-family use of an existing property or structure;
 - d. Any major expansion to an existing non-residential, mixed-use, or multi-family structure or use;
 - e. It is recommended that public schools, public service, public use, and public utility facilities, should meet the requirements of this Article to the extent possible to ensure consistent application of the requirements for development within the Scenic Overlay District.

Section 2006.2 Retrofitting Existing Uses

Any change of use or expansion to an existing non-residential, multi-family residential, or mixed-use structure or land use shall comply with the following Table:

Table 2106.2 Retrofitting Existing Uses and Structures X = Compliance with all applicable standards required R = Retrofit to the extent practical						
	Section 2109 Building Design	Section 2110 Access Management	Section 2111 Parking	Section 2112 Landscaping & Screening	Section 2113 Signage	Section 2114 Utilities & Lighting
Change of Existing Use (No Expansion)	R	R	R	R	R	R
Minor Expansion (25% or Less)	R	R	R	R	R	R
Major Expansion (26% to 50%)	X	R	X	R	X	X
Major Expansion (Greater than 50%)	X	X	X	X	X	X

Section 2106.3 Uses Not Applicable to Requirements

The requirements of the Scenic Overlay District do not apply to existing single-family dwellings, manufactured homes, and two-family dwelling units that are used for residential purposes. Additions to such uses and accessory uses are permitted subject to the requirements of the underlying zoning district. Existing single-family dwellings, manufactured homes, and duplexes that are partially or fully destroyed may be repaired or rebuilt as a matter of right and consistent with Section 607 of this ordinance if such use is non-conforming.

Section 2107. Uses

Section 2107.1 Conformity with the Underlying Zoning District

Permitted and conditional uses within the Scenic Overlay District shall be consistent with the underlying general zoning district except as prohibited in Section 2107.2 and conditionally permitted in Section 2107.3 of this ordinance.

Section 2107.2 Prohibited Uses

The following uses shall not be permitted within the Scenic Overlay District:

Adult entertainment establishments
Airport / airstrip
Armories
Asphalt and concrete plants
Auto repair garages and body shops
Automobile parts recycling
Off-site advertising not located on County logo signs
Bottling plants
Building materials storage and sales yards
Cabinet / upholstery / woodworking shops (more than 10 employees)
Correctional facilities and jails
Exterminators
Flea markets
Flour and feed mills
Fruit or vegetable packing shed
Garbage disposal service
Go-cart track
Hospitals
Industrial supplies and equipment (sales and service)
Land clearing and inert debris landfill
Landfill (sanitary)
Manufactured home sales
Manufactured home (Class E)
Manufacturing / processing facilities
Mines and quarries
Mobile home park
Office / professional space (greater than 30,000 square feet)
Printing / engraving / publishing establishments
Public works facilities (storage and service yards)
Racetrack
Retail sales, shopping centers (greater than 100,000 square feet)
Scrapyards
Street vendors
Television and radio stations
Theater, Drive-in
Tire recapping shops
Trucking terminals
Warehouse
Warehouse: hazardous materials
Wholesale establishment

Section 2107.3 Conditional Uses

The following uses shall be conditionally permitted within the Scenic Overlay District:

Auto, truck, boat, recreation vehicle, and motorcycle sales
Boat storage and maintenance facility
Colleges, universities, and technical college
Communication towers
Contractor's office and storage yards
Dwelling units: multiple-family
Elementary and secondary schools
Funeral home
Grocery stores / supermarkets
Golf courses
Hobby cattle or poultry operations
Mini-warehouses
Motels and hotels
Office / professional space (3,000 – 30,000 square feet)
Parking lots and parking garages
Planned unit developments and group residential projects
Public service facilities
Retail sales, shopping centers (10,000 – 100,000 square feet)
Structures greater than fifty (50) feet in height
Zoos

Section 2108. Site Plan Required

All applicable development subject to the provisions of this article is required to submit a complete site plan consistent with the requirements of Article XIII of the Burke County Zoning Ordinance. In addition to the minimum requirements found in Article XIII, the site shall include and meet the requirements of the Scenic Overlay District. Additionally, Applications for a zoning permit for residential uses must submit a sketch plan to indicate that appropriate provisions of this article are met.

Section 2109. Building Design Standards

Section 2109.1 General

Development within the Scenic Overlay District shall meet high-quality design standards and enhance the natural and architectural characteristics of the surrounding area. The flexibility in design seeks to promote innovative and well-planned development that protects and is consistent with the surrounding natural, cultural, and historical resources. Corporate identity and trademark architecture

must be designed and constructed in such a way as to be compatible with the local vision of rusticity and modest scale.

Section 2109.2 Type of Construction

1. The following design standards shall apply to all non-residential and mixed-use structures and buildings locating in the Scenic Overlay District or when retrofitting such existing structures for additions and changes of use. Residential requirements are also noted where applicable.
2. Manufactured and mobile units shall be prohibited except when permitted in the underlying zoning district or as temporary uses for office management and storage during the construction phase of a development. Metal units shall be prohibited except as permitted in Section 2109.3(2)
3. All structures, both residential and non-residential, shall be designed in such a way as to compliment the visual character of natural features within the site and to minimize the obstruction of scenic views to and from the natural features in the area.

Section 2109.3 Building Materials

1. Exterior non-residential building materials should consist of decorative natural elements such as brick, stone, logs, wood shingle, wood lapped siding, vertical board and batten, glass, or rough textured stucco. Roofing materials shall be chosen to blend in harmoniously with the natural tree canopy. Similar alternative building materials are permissible and subject to approval by the Planning Administrator. These requirements shall also apply to site-built homes and modular homes located on new lots created after May 3, 2005 in residential subdivisions.
2. The use of unpainted cinder-block walls or metal paneling shall be prohibited except when used on exterior walls not facing or visible from public thoroughfares or access ways and when permitted, such uses shall be screened from adjacent uses and properties.
3. Accessory structures shall be of consistent design with the primary structure and be constructed of like or architecturally compatible materials.
4. Dominant exterior building colors should be chosen to blend in with the natural surroundings and should not stand out when seen through wooded areas. All shades of white, cream, or beige are prohibited from being used as the primary exterior color on any structure unless such shades are used in a manner consistent with surrounding historic structures and

structure design. Mobile homes are encouraged to comply with this component when possible.

5. Any fencing visible to the public shall be constructed of natural materials and designed to enhance the architectural elements of the primary structure.

Section 2109.4 Building Entrances

A primary entrance shall be designed for the pedestrian and be oriented towards new interior streets or access drives. Additional entrances are permitted to be oriented towards side and rear parking areas or on-street parking areas when permitted.

Section 2109.5 Non-Residential Building Orientation and Height

Buildings shall be oriented to maximize the convenience of pedestrian access and maintain an aesthetic, quality design. Development patterns shall avoid the excessive linear rooflines of a strip plaza. Multi-level buildings shall follow the general slope of the site in order to keep the building height and profile in scale with surrounding natural features.

Section 2109.6 Roof Pitch

Flat roofs or roof pitches less than 3:12 shall include cornice trim along the tops of walls, roofline offsets, and/or the use of a parapet wall to avoid the appearance of strip development and create a prominent edge and architectural interest when viewed against the sky.

Section 2109.7 Street Walls and Facades

In order to ensure that non-residential buildings do not display blank, unattractive walls to the adjacent street(s) or residential areas, walls facing public or private street rights-of-way shall comply with the following requirements:

1. Commercial, office, and institutional uses shall not have blank walls greater than thirty (30) feet in length.
2. Industrial uses shall not have blank walls greater than sixty (60) feet in length.
3. The use of masonry, belt courses of a different color and texture, projecting cornice, projecting canopy, windows and doors, decorative tile work, trellis containing planting, medallions, lighting fixtures, columns, artwork, building wall offsets such as projections, recesses, and changes in floor level, or other architectural elements as approved by the Planning

Administrator that meet the intent of this ordinance may be incorporated into these walls.

Section 2109.8 Decorative Elements

The use of decorative elements such as fountains, outdoor seating and benches, works of art, and statues are encouraged in pedestrian and open space areas.

Section 2109.9 Loading and Service Areas

Loading and service areas should be designed out of view from public roads. Loading and service areas shall be designed to ensure the safety of pedestrians and private property. Such areas shall have sufficient space to be properly accessed and the use of these areas shall not block public road rights-of-way nor hinder access or traffic flow.

Section 2110. Access Management

Section 2110.1 General

Access management is a process for providing access to the development of land, while preserving traffic flow on surrounding roadways in terms of safety, capacity, and speed. This is achieved through managing location, design and operation of driveways, median openings, and street connections to a roadway. Additionally, access management involves the use of auxiliary lanes, such as turn lanes or bypass lanes, to remove turning vehicles from through-traffic movement.

Section 2110.2 Traffic Impact Study Required

A Traffic Impact Study (TIS) shall be prepared and submitted by the developer of projects subject to the major site review process or major subdivision review process when a TIS is recommended by the NC DOT District Engineer or when required as part of a parallel conditioning rezoning as necessary to protect the functional integrity of the affected roads or highways. The traffic impact study shall be prepared by a qualified transportation or traffic engineer or certified planner and shall include the following information:

1. Existing traffic conditions within the study area boundary, as determined by the NC DOT;
2. Traffic volumes generated by the existing and proposed development on the project area, including the morning peak, afternoon or evening peak, and average annual traffic levels;
3. The distribution of existing and proposed trips through the street network;

4. Analysis of capabilities of intersections and access points located within the study area boundary;
5. Recommendations for improvements designed to mitigate traffic impacts of the proposed development and to enhance pedestrian access to the development from the public right-of-way, and;
6. Other pertinent information including but not limited to accidents, noise, and impacts on air quality and other natural resources.

Section 2110.3 Location of Access Points

1. On existing or proposed thoroughfares and major collectors, driveways shall conform to the requirements of the following table. When conflict exists between NC DOT Policy on Street Access to North Carolina Highways and these regulations, the stricter of the two standards applies.

Access Management: Driveway Connection Table		
Frontage (feet)	# of Driveways Allowed	Minimum Spacing (feet)
Less than 500	1	400
501-999	2	400
More than 1,000	3	400

2. The minimum distance between a driveway and an existing State Road intersection on an existing or proposed thoroughfare or major collector shall be five-hundred (500) feet. On local and minor collector streets, the minimum distance between a driveway and an existing State Road intersection shall be two-hundred (200) feet. When conflict exists between NC DOT Policy on Street Access to North Carolina Highways and these regulations, the stricter of the two standards applies.
3. All lots in major residential subdivisions shall be accessed through interior roads. Direct driveway access is not permitted unless it is not topographically feasible or when the Planning Board determines that the installation of such interior roads would result in a design that is not within the intent of the Scenic Overlay District.

Section 2110.4 Off-Site Traffic Improvements

Transition tapers and deceleration lanes shall be required for all development projects in the Scenic Overlay District where a site access study requires or a recommendation from NC DOT indicates that such improvements are necessary. The costs of such improvements shall be the responsibility of the owner or the developer of the property.

Section 2110.5 Shared Access

Mutual shared access agreements shall be required between adjacent property owners with frontage on existing or proposed thoroughfares and major collectors when site plans are submitted concurrently. When access is to be shared, easements, liability arrangements, and a maintenance agreement must be submitted to the local government prior to occupancy. Where no mutual shared access is feasible due to topographical or other physical constraints, access shall be in conformance with Section 2110.3 of this ordinance or the NC DOT Policy on Street and Driveway Access to North Carolina Highways, whichever is stricter.

Section 2110.6 Connected Interior Driveways and Parking

1. Interior driveways and parking areas shall be designed to provide safe and efficient circulation, in accordance with commonly accepted traffic engineering practices and subject to the review and approval of the site plan review committee.
2. Adjacent commercial developments with access to existing or proposed thoroughfares and major collectors shall connect interior parking and driveways. Where adjacent commercial property is vacant, sufficient provisions to connect to the properties shall be submitted.
3. Parcels with frontage on existing or proposed thoroughfares and major collectors shall also be required to reserve sufficient access to any adjacent properties with poor or non-existent access. Such reserved areas for future roads shall be shown on the site plan at a location where, according to sound engineering practices, actual construction of the road would be practicable.

Section 2110.7 Channelization

Channelization, or the separation of conflicting traffic movements into well-defined paths of travel by traffic islands or significant pavement markings, shall be considered when a site access study is required. All developments with multiple tenants, parcels, and/or buildings subject to the major site plan review process shall provide for the installation of a median-type entranceway when located on proposed or existing thoroughfares and major collectors.

Section 2110.8 Signalization

Signalizations may be installed only after all other traffic improvements have been explored. Although traffic signals may reduce the frequency of turning conflicts, signals significantly disrupt efficient traffic flow.

Section 2110.9 Street Design

1. All streets shall be designed, constructed, and maintained to NC DOT road standards, except as permitted in minor subdivisions as allowed in Section 808 of the Burke County Subdivision Ordinance or when permitted in an approved parallel conditional zoning district application as per Article IX-A of this Ordinance.
2. A maintenance agreement is required for all private and public roads until such time the road(s) is accepted for public maintenance.
3. NC DOT road plan approval is required prior to the issuance of a zoning permit.
4. For multi-phase developments, road, parking, and access management improvements for initial phases must be completed prior to approval to begin construction on subsequent phases.

Section 2111. Parking Requirements

Section 2111.1 General

Parking areas should be designed in a manner to provide safe and efficient circulation of traffic and provide safe access ways for pedestrians to travel from vehicles to buildings.

Section 2111.2 Parking Design

Parking areas shall be located to the side or rear of the building when a development fronts on arterial roads and major or minor thoroughfares. No parking space shall be located more than three hundred (300) feet from a building entrance. When parking is placed in front of the building due to topographic or other physical constraints, screening shall be provided through decorative walls or fences, bushes, shrubs, or small trees that limit the view of the parking area but do not necessarily screen visibility to the building. Perimeter tree planting as required in Section 2112.5(4) is still applicable in such cases.

Section 2111.3 Shared Parking and Connectivity

When feasible, all parking areas should be designed to allow linkages to adjacent developments to promote efficient traffic flow and encourage shared parking areas to reduce the use of land for parking and development costs and impacts associated with impervious surfaces. Internal areas between buildings in a development should incorporate shared parking areas.

Section 2111.4 Construction Standards

In order to provide a safe and suitable surface for the quantity and quality of traffic expected to use a development, parking areas shall be required to meet the following requirements:

1. Parking areas shall be paved unless an alternative that provides a durable surface suitable for the quantity and quality of traffic expected to use it is approved by the Planning Administrator.
2. Parking lots shall provide spaces in sufficient number and design that are accessible to a curb ramp or curb cut, when necessary to provide access to a building or structure, for persons with disabilities in a manner compliant with Americans with Disabilities Act (ADA) requirements or other federal, state, and local laws.
3. Parking areas shall be designed and constructed to dispose of all surface water accumulated within the area in a manner that will not contribute to the subsidence, erosion, or sedimentation of the development site or off-site.

Section 2112. Landscaping, Buffering, and Screening Requirements

Section 2112.1 General Intent and Requirements

The use of landscaping, buffers, and screening in the design of developments in the Scenic Overlay District is required to enhance the natural beauty by creating the appearance that manmade development is situated within a natural setting. Additionally, these requirements are designed to reduce the impact of development on neighboring uses and residential communities existing and developed within the Scenic Overlay District. As such, development should occur in a manner that maintains and enhances the pre-existing, surrounding natural landscape and appearance along in the area.

1. No structures, buildings, or parking may be located within buffer areas, with the exception of permitted signage, pedestrian amenities, and decorative elements.
2. Stormwater retention areas, kept in good aesthetic and functioning condition, may be placed in buffer areas that are not adjacent to any lake, creek, or stream. Such facilities may not be placed in any portion of a right-of-way.

Section 2112.2 Protection of Water Bodies and Natural Areas

Developments should strive to maintain the contours of the land and utilize existing natural vegetation and topography to screen parking and maintenance

areas to the maximum extent possible. When natural bodies of water are on site, a minimum fifty (50) foot natural vegetative buffer shall be maintained. All properties developed in designated watersheds must comply with the vegetative buffer requirements in Section 304 of the Water Supply Watershed Management & Protection Ordinance.

Section 2112.3 Maintenance of Landscaped Areas and Screening

1. All construction debris and vegetative debris resulting from development shall be removed from the site before final occupancy.
2. All landscaping and screening shall be maintained so as to continue their effectiveness.

Section 2112.4 Buffering and Screening

1. Residential buffers

A thirty (30) foot vegetative buffer is required when non-residential developments in the Scenic Overlay District are adjacent to a residential zoning district. The screening shall comply with either the planting requirements of Section 1106.01 or the fences and retaining wall provision in Sections 1106.02 and 2109.3(5).

2. Maintenance and storage area screening

All loading, shipping, dumpster, storage and maintenance areas shall be heavily landscaped with mature trees, at least six (6) feet tall, or other screening of at least equal height, while maintaining sufficient space for ingress and egress of vehicles. Mechanical areas on the tops of buildings shall be screened in a manner consistent with the building design or compatible in appearance with roofing materials.

Section 2112.5 Landscaping Requirements

1. Entranceways

Medians, when required, shall be grassed and landscaped. Landscaping and plantings shall not affect visibility within site triangles and entrance drives.

2. Interior streets

For all developments with multiple tenants, parcels, or buildings subject to major site plan review, shade trees shall be planted along both sides of all interior streets, excluding those not typically used by the public.

Typical plantings must include a minimum of fourteen (14) shade trees per 1,000 linear feet which are at least eight (8) feet tall at planting and will be a minimum of twenty (20) feet tall at maturation.

3. Parking areas

Within parking areas, tree planting areas shall be provided for every 10 parking spaces. Tree planting areas shall be at least eight (8) feet wide, a minimum of 200 square feet in area, include at least one (1) shade tree, and be designed to minimize damage to trees by parking or moving vehicles. The remaining area shall be landscaped with plantings (bushes, shrubs, flower beds). Pedestrian ways are permitted within parking landscaped areas but do not count towards the area requirement.

4. Perimeter parking area landscaping

A vegetative strip of at least ten (10) feet in diameter shall be maintained at the perimeter of parking areas. A minimum of one (1) large canopy tree per fifty (50) feet should line the parking areas. Grass, shrubs, bushes, flower beds, pedestrian amenities, decorative walls and fences, stormwater retention areas, and sidewalks may be placed in this area. Only where existing overhead utility lines prevent use of large maturing trees may small maturing trees be substituted.

Section 2113. Signs

Section 2113.1 General

The location and design of all on-site signs should be consistent with the objective of high-quality development and safe and efficient traffic flow within the Scenic Overlay District. Signage should be compatible and consistent with the design features of the primary structure.

Section 2113.2 On-Site Signs

1. Permitted signs shall include the following designs; free-standing, wall, name plate, and canopy.
2. Prohibited signs shall include the following designs; billboard, flashing light, rotating, and portable.
3. Setbacks - Signage shall be setback a minimum of ten (10) feet from all road rights-of-way.
4. Visibility – Signs shall not block or impair visibility in order to ensure proper line-of-sight for all motorists and pedestrians. Signs shall not block

visibility from three-to-eight (3-8) vertical feet within twenty (20) feet of any road intersection.

5. Signage on commercial buildings shall be made of natural materials, may not be internally illuminated, and must comply with all other relevant portions of Article XI.

Section 2113.3 Off-Site Signs

New off-site outdoor advertising signs are not permitted in the Scenic Overlay District, except for the use of logo signage as outlined in Section 2113.4. The continued use of existing off-site outdoor advertising signs shall be allowed consistent with non-conforming structures as referenced in Section 607 of this ordinance.

Section 2113.4 Use of Logo Signage Encouraged

The use of logo signage is encouraged for the promotion of travel and tourism based business within the Scenic Overlay District. Such signs shall be permitted in conjunction with an approved NC DOT and Burke County logo sign program and facilitated by logo signs made out of natural materials at several locations within the District.

Section 2114. Utilities and Lighting Requirements

Section 2114.1 Public Utilities Required

1. For developments requiring a major site plan review or major subdivision review and when technically applicable, the developer will connect to a public water and/or sewer system if located within 1,000 feet of the property to be developed and such lines can be extended within public road rights-of-way and property easements.
2. For developments requiring a minor site plan review and when technically applicable, the developer will connect to a public water and/or sewer system if adjacent to the property to be developed.
3. Review and approval from NC DENR is required for both new systems and extensions to existing systems for both public water and sewer utilities. Proof of plan approval is required prior to issuance of a zoning permit, but is not necessary for site plan approval.
4. When the proposed water or sewer system is to be connected to an existing system, approval of the project must also be obtained from the owner of the existing system prior to construction, and the system shall be constructed according to the specifications and standards of the existing system. A letter of approval from the owner of the existing system shall

also be submitted prior to issuance of a zoning permit.

5. Where a development is to be constructed in phases, the infrastructure and improvements must be in place on the initial phase before subsequent phases are developed.
6. Site Plan Requirements for Utilities
 - a. Proposed utility easements, proposed line location, line capacity, and line size shall be shown on all applicable site plans;
 - b. Location of existing public utilities on or adjacent to the site and existing lighting when applicable, and;
 - c. Proposed lighting plans showing location, type of lighting, and area that will be lighted.

Section 2114.2 Location of Utilities

1. Utilities shall be located within public road rights-of-ways or within utility easements. Utility easements shall not be located laterally within a water body buffer laterally, but may cross vertically when necessary.
2. All on-site utilities should be located underground unless technical restrictions exist for not doing so. When utilities must be located above ground, provisions shall be made to significantly reduce the visual impact of the utility from public road rights-of-way and pedestrian areas.

Section 2114.3 Encroachment Agreement

The developer should obtain a right-of-way encroachment agreement from NC DOT when any utility lines are constructed or expanded in the State's rights-of-way.

Section 2114.4 General Lighting Requirements

In order to reduce the impact of lighting on neighboring residential uses, potential safety hazards to the traveling public, and affect on viewsheds and nightscapes, lighting within the Scenic Overlay District shall meet the following requirements:

1. Exterior lighting shall be fully shielded and directed to avoid illuminating the night sky.
2. Lighting shall not illuminate neighboring residential properties.
3. Lighting shall not be directed towards in a manner as to distract or harm

the traveling public on road rights-of-way.

Section 2114.5 Lighting of Buildings and Pedestrian Areas

On-site lighting may be used to accent architectural elements and provide safety and security on pedestrian walkways, at building entrances, and public areas between buildings, but shall not be used to illuminate entire portions of building(s). Neon and laser lighting shall not be utilized in signage or building ornamentation in the Scenic Overlay District.

Section 2114.6 Entranceway, Street, and Parking Area Lighting

In order to promote safety and security in developments, lighting may be used at intersections, development entrances, and in parking areas.

Section 2115. Pedestrian & Bicycle Design

1. To provide a safe, comfortable, and convenient environment for visitors and employees, developments shall be designed in a manner to provide a unified and well organized arrangement of buildings, parking areas, pedestrian and landscaped common areas to permit the pedestrian to conduct business with a minimum of conflict with vehicles.
2. Developments that qualify for major site plan review shall include provisions for pedestrian scale amenities such as benches, picnic tables, courtyards, plazas, water attractions, trash receptacles, bicycle parking, and other such elements that promote an efficient and functional pedestrian environment and maintain a sense of place.
3. Loading zones and maintenance areas shall be located and arranged to prevent the interference with pedestrian movement within the development.
4. Linkages for pedestrian and bicycle movement, such as sidewalks, bikeways, and paths, shall be provided between buildings or building clusters within a development and should connect adjacent uses when feasible or consistent with adopted land use recommendations or transportation plans.
5. Pedestrian ways shall be located and designed in a manner that reduces congestion and hazards with vehicular traffic.
6. For convenience and security, bicycle parking facilities shall be located near building entrances, shall be visible from the land uses they serve, and shall not be in remote automobile parking areas. Such facilities shall not, however, be located so as to impede pedestrian or automobile traffic

flow or so as to cause damage to plant material from bicycle traffic.

Section 2116. Preservation of Natural, Cultural and Historical Sites

In order to promote environmental integrity, tourism, and economic development through the preservation of Burke County's unique natural, cultural, and historical heritage, developments within the Scenic Overlay District shall meet the following requirements:

1. All cultural, historical, or naturally significant sites shall be identified on the development site plan.
2. Developments shall be designed to preserve and minimize the impact of development on the historic, cultural, and naturally significant sites when feasible.
3. Projects shall be designed to preserve significant existing trees and other significant existing vegetation on the site.
4. The project shall be designed to integrate with and otherwise preserve existing site topography, including but not limited to such characteristics as steepness of slopes, existing drainage features, rock outcroppings, river and stream terraces, valley walls, ridgelines, and scenic topographic features.
5. The project shall be designed to preserve or enhance the ecological character or function and wildlife use of the natural habitat or features and to minimize or adequately mitigate the foreseeable impacts of development.

Section 2117. Compatibility with Public Natural Areas or Conserved Land

If the project contains or abuts a publicly owned natural area or conserved land, the development plan shall be designed so that it will be compatible with the management of such natural area or conserved land. In order to achieve this, the development plan shall include measures such as barriers or landscaping to minimize wildlife contacts, setbacks or open space to provide a transition between the development and the publicly owned natural area or conserved land, and educational signage or printed information regarding the natural values, management needs and potential conflicts associated with living in close proximity to such natural area or conserved land.

ARTICLE XXII WATER SUPPLY WATERSHED PROTECTION OVERLAY DISTRICT

Section 2200. Establishment of Watershed Areas

Within the County Planning jurisdiction the following watershed overlay districts shall be established:

- Warrior Fork WS-III-CA (Critical Area) (150 acres)
- Warrior Fork WS-III-BW (Balance of Watershed) (53,144 acres)
- Jacob Fork WS-III (Balance of Watershed) (29,833 acres)
- Catawba River WS-IV-CA (Critical Area) (190 acres)
- Catawba River WS-IV-PA (Protected Area) (8,677 acres)
- Lake Hickory WS-IV-CA (Critical Area) (two intakes) (1,619 acres)
- Lake Hickory WS-IV-PA (Protected Area) (11,501 acres)
- Lake Rhodhiss WS-IV-CA (Critical Area) (three intakes) (12,161 acres)
- Lake Rhodhiss WS-IV-PA (Protected Area) (56,601 acres)
- Lake James WS-IV-CA (Critical Area) (988 acres)
- Lake James WS-IV-PA (Protected Area) (1,532 acres)

Section 2201. Intent

The purpose of the Water Supply Watershed Protection Overlay District (WSWP) is to define the area of water supply watersheds within the County. The intent of the overlay district is to manage the uses of land and structures encompassed by water supply watersheds within the County in order to maintain a high quality of surface water in these watersheds; this being accomplished by enforcing standards that limit the impact from existing or potential sources of contamination through the regulation of average lot size, development intensity, and built upon area.

Section 2201.01 Scope

Land use within the WSWP overlay district must comply with all the requirements of both the underlying general use district and the applicable Water Supply Watershed overlay district classification. If a use or class of use is not specifically indicated as being permitted in a watershed area, such use or class of use is prohibited.

Section 2201.02 Establishment of Boundaries

This incorporates by reference the "Official Water Supply Watershed Map for Burke County," hereinafter "Official Water Supply Watershed Map," and subsequent amendments thereto, showing all water supply watershed areas designated by the NCEMC. The Official Water Supply Watershed Map shall be maintained by the Planning Director and kept in the Planning Department. The Official Water Supply Watershed Map shall also be shown as an overlay district

on and become part of the Official Zoning Map for the County. The rules of interpretation for the boundaries of the map (see Article VI, Sec. 606 Rules for Determining Boundaries) apply. In addition, where any WSWP overlay district boundaries lie at a scaled distance of more than 25 feet from any parallel lot line, the location of these map boundaries shall be determined by using the scale of the map.

If a property owner can demonstrate his or her land drains into another watershed or into the receiving stream below the intake in the same watershed, the Zoning Administrator can exempt that specific area from the watershed regulations. Minor boundary interpretations must be sent to NCDWQ for verification and final approval.

Section 2201.03 Impact on Water Quality and Public Health

No activity, situation, structure or land use shall be allowed within a WSWP overlay sub-district that poses a threat to water quality and/or the public health, safety and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality. The Zoning Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality. Where such activities are found, the Zoning Administrator shall take any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

Section 2201.04 General.

(a) Watershed Protection Permit shall be part of the Burke County Zoning Permit.

(b) Prior to issuance of a Watershed Protection Permit, the Zoning Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance.

Section 2201.05. Existing Development.

Any existing development as defined in this ordinance may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this ordinance; however, the built-upon area of the existing development is not required to be included in the density built-upon area calculations if built prior to January 1, 1994.

Section 2202. Watershed Areas Described.

Section 2202.01 WS-III Watershed Areas - Critical Area (WS-III-CA).

Applicable to Warrior Fork WS-III-CA

In order to maintain a low to moderate land use intensity pattern, single family residential uses shall be allowed at a maximum of one dwelling unit per acre. All other residential and non-residential development shall be allowed at a maximum twelve percent (12%) built-upon area. New residuals application sites and landfills are specifically prohibited.

(1) Allowed Uses:

- (a) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.
- (b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.-0101-.0209).
- (c) Residential.
- (d) Non-residential development, excluding: 1) landfills and 2) sites for land application residuals or petroleum contaminated soils.

(2) Density and Built-upon Limits:

- (a) Single Family Residential--development shall not exceed one dwelling unit per acre (1 du/ac) on a project by project basis. No residential lot shall be less than one acre except within an approved cluster development.
- (b) All Other Residential and Non-Residential--development shall not exceed twelve percent (12%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

Section 2202.02 WS-III Watershed Areas - Balance of Watershed (WS-III-BW).

Applicable to Warrior Fork WS-III and Jacob Fork WS-III

In order to maintain a low to moderate land use intensity pattern, single family detached uses shall develop at a maximum of two (2) dwelling units per acre (2du/ac). All other residential and non-residential development shall be allowed a maximum of twenty-four percent (24%) built-upon area.

In addition, new development and expansions to existing development may occupy ten percent (10%) of the balance of the watershed area in the county with up to seventy Percent (70%) built upon area when approved

as a special intensity allocation (SIA). The Zoning Administrator is authorized to approve SIA's consistent with the provisions of this ordinance. Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices (BMPs) to minimize water quality impacts. Non-discharging landfills and residuals application sites are allowed (landfills (see Article IX, Sec. 920 Table of Permitted and Permissible Uses by District). Projects applying for an SIA will be considered on a case by case basis and in a first come first serve order. When ten percent (10%) of the balance of the watershed has received SIAs no further SIAs will be allowed. *Warrior Fork WS-III shall have 5,314 acres for SIA; Jacob Fork WS-III shall have 2,983 acres for SIA.*

(1) Allowed Uses:

- (a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
- (b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).
- (c) Residential development.
- (d) Non-residential development excluding discharging

(2) Density and Built-upon Limits:

- (a) Single Family Residential--development shall not exceed two (2) dwelling units per acre on a project by project basis. No residential lot shall be less than one half (1/2) acre except within an approved cluster development.

Section 2202.03 WS-IV Watershed Areas - Critical Area (WS-IV-CA).
Applicable to Lake James WS-IV-CA, Catawba River WS-IV-CA, Lake Hickory
WS-IV-CA, Lake Rhodhiss WS-IV-CA

All new development activities that require an erosion/sedimentation control plan under State law are required to meet the provisions of this ordinance when located in the WS-IV-CA watershed. In order to address a moderate to high land use intensity pattern, single family residential uses are allowed at a maximum of two (2) dwelling units per acre or as established in Sec. 1001, Minimum Lot Area. All other residential and non-residential development shall be allowed twenty-four percent (24%) built-upon area. New residuals application sites and landfills are specifically prohibited.

(1) Allowed Uses:

(a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11-.0101-.0209).

(c) Residential.

(d) Non-residential development, excluding: 1) landfills, and 2) sites for land application of residuals or petroleum contaminated soils.

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed two dwelling units per acre on a project by project basis. No residential lot shall be less than one half (1/2) acre except within an approved cluster development.

(b) All Other Residential and Non-Residential--development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

Section 2202.04 WS-IV Watershed Areas - Protected Area (WS-IV-PA).
Applicable to Lake James WS-IV-CA, Catawba River WS-IV, Lake Hickory WS-IV-PA, Lake Rhodhiss WS-IV-PA

Only new development activities that require an erosion/sedimentation control plan under State law are required to meet the provisions of this ordinance when located in the WS-IV-PA watershed. In order to address a moderate to high land use intensity pattern, single family residential uses shall develop at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built upon area.

(1) Allowed Uses:

(a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11-.0101-.0209).

(c) Residential development.

(d) Non-residential development.

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed two (2) dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than one-half (1/2) acre except within an approved cluster development (see Article X, Sec. 1001 Minimum Lot Area).

(b) All Other Residential and Non-Residential--development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. A maximum of thirty-six percent (36%) built-upon area is allowed for projects without a curb and gutter street system. For the purposes of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.

(c) In addition to the development allowed under paragraphs (a) and (b) above, other development may occupy up to ten percent (10%) of the protected area with up to seventy percent (70%) built-upon area on a project by project basis, when approved as a special intensity allocation (SIA). The Zoning Administrator is authorized to approve SIAs consistent with the provisions of this ordinance. *Catawba River WS-IV-PA shall have 868 acres for SIA; Lake Hickory WS-IV-PA shall have 1,150 acres for SIA; and Lake Rhodhiss WS-IV-PA shall have 5,660 acres for SIA.* Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate best management practices (BMPs) to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

Section 2203 Cluster Development.

Clustering of development is allowed in all Watershed Areas under the following conditions:

(A) Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments. Density or built-upon area of the project shall not exceed that allowed for the critical area or balance of watershed or protected area, whichever applies.

(B) All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

(C) Areas of concentrated density development shall be located in upland area and away, to the maximum extent practicable, from surface waters and drainageways.

(D) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowners association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

(E) Cluster developments that meet the applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

Section 2204 Buffer Areas Required

(A) A minimum one hundred (100) foot vegetative buffer is required for all new development activities that exceed the low density option (utilize the 10/70 provision); otherwise, a minimum thirty (30) foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures, other structures such as flag poles, signs and security lights which result in only diminutive increases in impervious area and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater best management practices (BMPs).

Section 2205 Administration

Section 2205.01 Recordkeeping.

The Zoning Administrator shall enforce the provisions of the zoning chapter as specified in Article XV, Sec. 1502. Within the watershed overlay districts, he or she shall have the following additional duties:

- (1) Submit copies of all amendments upon adoption to the NC Division of Water Quality;
- (2) Maintain list of all variances, including a description of each project

receiving a variance and the reasons for granting the variance, and submit a copy each calendar year to the NC Division of Water Quality by January 1 of each calendar year;

- (3) Keep records of the jurisdiction's utilization of the provision that a maximum of 10% of the non-critical area of the *Warrior Fork WS-III* (5,314 acres SIA); *Jacob Fork WS-III* (2,983 acres SIA), *Catawba River WS-IV-PA* (868 acres SIA), *Lake Hickory WS-IV-PA* (1,150 acres SIA) and *Lake Rhodhiss WS-IV-PA* (5,660 acres SIA) may be developed to a maximum of 70% built-upon area;
- (4) Monitor land-use activities in the watershed to identify situations that may threaten water quality. He or she shall report these situations to the agency with direct regulatory responsible for these activities;
- (5) Ensure that a certificate of approval is included on all plats subject to the Burke County Subdivision Regulations as follows:

I certify that the plat shown hereon complies with the Burke County Watershed Protection Overlay District and is approved for recording in the Register of Deeds office.

Date

Zoning Administrator

Section 2205.02 Appeals.

All appeals from the decision of the zoning enforcement officer shall be submitted to the Board of Adjustment (see Article XVII, Sec. 1702). Further, any appeals from the board of adjustment shall be to the Superior Court within 30 days (see Article XVII, Sec. 1702.05), not to the County Board of Commissioners.

Section 2205.03 Amendments.

All amendments to the watershed regulations shall be handled as specified (Article XVI, Sec. 1601) through (Article XVI, Sec.1603). Under no circumstances shall the county amend supplement or change the watershed regulations that would cause the regulations to violate the watershed protection rules as adopted by the NCEMC (NCGS 143-214.5 and 15A NCAC .0100 and .0200). All amendments shall be filed with NCDWQ.

Section 2205.04 Watershed Variances.

- (1) The Board of Adjustment shall handle minor variances.

(2) *Major variance.*

(a) If a **MAJOR VARIANCE** (see definition) is requested, Board of Adjustment, after making a favorable decision in granting the request, shall prepare a preliminary record of the hearing. The preliminary record of the hearing shall include:

1. The variance application;
2. The hearing notices;
3. The evidence presented;
4. Motions, offers of proof, objections to evidence, and rulings on them;
5. Proposed findings and exceptions;
6. The proposed decision, including all conditions proposed to be added to the permit.

(b) The information shall be sent to the NCEMC for its review.

(c) North Carolina Environmental Management Commission.

1. The NCEMC shall review the preliminary record and determine whether or not:
 - a. The request qualifies as a major variance;
 - b. The property owner can secure no reasonable return from, nor make any practical use of, the property, unless the proposed variance is granted; and
 - c. The variance, if granted, will result in a serious threat to the water supply. Based on its findings the NCEMC shall approve the variance as proposed or approve the proposed variance with conditions and stipulations, or disapprove it. The NCEMC shall prepare a decision and send it to the County Board of Adjustment. This Board shall prepare a final decision, based on the determination of the NCEMC.

(3) In designated drinking water supply watersheds, the Zoning Administrator shall notify and allow a reasonable comment period for any jurisdictions within the watershed and the entity using the water supply for consumption of a proposed variance to the watershed regulations. Local governments may submit any comments to the Zoning Administrator

before the public hearing by the County Board of Adjustment.