

ARTICLE III

SUBDIVISION REGULATIONS

Subpart A. General Subdivision Regulations

§42-74. Purpose

The purpose of this Article III (Subdivision Regulations) is to promote, through proper planning, health, safety and general welfare by providing for the orderly *subdivision* of land in Henderson County. This Article III (Subdivision Regulations) is deemed necessary to:

- A. Establish procedures and standards for the *subdivision* of land;
- B. Provide for orderly growth and development;
- C. Protect and enhance property ownership and land values;
- D. Provide for dedication or reservation of *road right-of-way*;
- E. Assure the proper design and installation of *roads* and utilities;
- F. Assure proper legal description, identification and recordation of property boundaries to maintain an accurate, up-to-date land records management system;
- G. Promote environmental quality;
- H. Preserve areas of the County with productive soils for continued agricultural and *forestry use* by preserving blocks of land large enough to allow for efficient operation;
- I. Encourage the maintenance and enhancement of habitat for various forms of wildlife and to create new woodlands through natural succession and reforestation where appropriate;
- J. Minimize site disturbance and *erosion* through retention of existing vegetation and avoiding development on *steep slopes*; and
- K. Preserve open land, including those lands that contain *unique* (and sensitive) *natural areas*.

§42-75. Comprehensive Plan

This Article III (Subdivision Regulations) is based on *Comprehensive Plan* goals and objectives. All land may not be suitable to be subdivided for the purpose of dense development due to:

- A. Severe topographic conditions;
- B. Inadequate *road* access;
- C. Distance from services;
- D. *Unique natural areas*;
- E. Soils that do not easily support soil drainage systems; and/or
- F. The proximity to existing and incompatible land *uses/zoning*

The reviewing agency should consider *Comprehensive Plan* goals and objectives when reviewing *subdivisions*.

§42-76. Approval for Subdivision Plats

A *final plat* must be prepared and approved when a *subdivision* of land occurs (See §42-343). *Final plats* must be recorded within 18 months of approval or they become null and void and must be re-approved by the appropriate authority.

§42-77. Land Disturbing and Construction Activity

No land disturbing or construction activity carried out in conjunction with the development of a *subdivision* shall begin until a development plan has been approved.

§200A-78. Subdivision Types

Subdivisions shall be either: special, *minor*, *nonstandard* or *major*. Each type of *subdivision* includes subtypes:

- A. Nonstandard Subdivision Subtypes. Public utility (pump station, water tank, etc.), *special use lot* (*sign lot*, *common area*, etc.) or *cemetery lot* (specifically excluding residential, commercial, office institutional, industrial or mixed-use).
- B. Special Subdivision Subtypes. Residential.
- C. Minor Subdivision Subtypes. Residential.
- D. Major Subdivision Subtypes. Residential, commercial, office institutional, industrial or mixed-use.

§200A-79. Reserved

§200A-80. Reserved

§200A-81. Reserved

Subpart B. Regulations Applicable to All Subdivision Types and Subtypes

§200A-82. Road Frontage and Existing Off-Site Access

Tracts to be *subdivided* must have a minimum of: (1) 30 feet of frontage on an existing public road, or (2) private *rights-of-way* no less than 30 feet in width to a public road. *Applicants* shall have the burden to prove private *right-of-way* and existing off-site access is legal, permissible and permanent (evidence may include property deed, title search, recorded *plat*, or other documentation provided by the *applicant*).

Where the minimum frontage and off-site access requirements cannot be met the maximum number of *lots* into which a *tract* may be divided shall be no more than one (1) lot per acre.

Where the minimum road frontage and existing off-site access requirements can be met but the grade of the *road* at any point in the existing off-site access exceeds 18 percent (paved) or 15 percent (gravel), and the *applicant* is proposing more than five (5) *lots*, the approving agency will review the application on a case-by-case basis.

§200A-83. Lot Designs

New subdivision *lots* shall:

- A. Abut on an approved *road* or driveway easement (See §42-104, Residential Private Road Standards by Road Classification);
- B. Be no narrower than 30 feet in width where abutting the *right-of-way* or for purposes of the driveway easement;
- C. Be calculated excluding *road right-of-way* to determine size;
- D. Be of a size, width, depth, shape and orientation reasonable for the type of development;
- E. Where possible, have side *lot* lines at right angles or radial to the *roads* faced; and
- F. Not be designed as *flag lots* except where approval may be obtained from the reviewing agency for unusual circumstances(including severe topographic conditions, the presence of *unique natural areas*, preservation of working agricultural lands, or other limiting site conditions).

§200A-84. Certificate of Understanding

The certificate shall:

- A. Be signed by the property owner(s) and provided at the time of subdivision application submittal:
- B. Acknowledge that all *lots* created from a parent tract will count toward the total number of *lots* permitted under density regulations.
- C. Acknowledge that upgrading existing improvements (including roads) may be necessary in order to expand.

§200A-85. Subdivision Names and Name Signs

The name of a *subdivision* shall not be substantially identical or similar as to likely cause confusion among prospective purchasers to any other *subdivision* or named community in the County. A community identification/subdivision sign: (1) may be provided at the primary entrance, (2) shall be in conformance with the *sign* regulations of Article VII (Sign Regulations), and (3) should be located in dedicated *sign easements*.

§200A-86. Cemeteries

Existing cemeteries shall be deeded as a separate lot in the subdivision and shall be accessed by a minimum twenty (20) foot wide private or public easement. Major subdivisions shall provide access with a minimum twenty (20) foot wide *right-of-way* (road construction is not required).

§200A-87. Advisory Provisions

- A. Soils Map. *Applicants* for *subdivisions* with *lots* smaller than one (1) acre in size should consult a soils map of the property and be knowledgeable of the suitability of ground absorption systems on the property.
- B. Utility Easements. Utility *easements* should be:
 - (1) Centered on rear or side *lot* lines,
 - (2) At least 20 feet in total width, and
 - (3) Identified following discussion with the appropriate utility agency.

- C. Stream Setbacks. See §42-251 (Perennial and Intermittent Surface Water Buffers).
- D. Traffic Impact Study (TIS) and Emergency Services Impact Report (ESIR). See Article IV (Adequate Public Facilities Regulations) for traffic impact study and emergency services impact report requirements.

§200A-88. Conservation Subdivision Standards

A. *Open space* shall:

- (1) Comprise a minimum of 25 percent of the project area.
- (2) Be composed of (in order of which lands should be designated as open space first): *primary conservation area*, *secondary conservation area*, and any remaining lands necessary.
- (3) Be designated so that a minimum of 50 percent of the proposed open space is contiguous and, where possible, adjoins *open space* or other *protected areas* (including protected forests or wildlife areas) outside the project area.
- (4) Be designated so that, where possible, a majority of the lots directly abut *open space* to provide residents with direct views and access.
- (5) Be accessible by safe and convenient pedestrian access from all adjoining *lots* (except in the case of farmland or other resources areas vulnerable to trampling damage or human disturbance).
- (6) Be used as follows:
 - a. Conservation of natural resources, archeological resources or historical resources;
 - b. *Agriculture*, horticulture, or silviculture, provided all applicable *best management practices* are used to minimize environmental impacts;
 - c. Passive recreation;
 - d. Active recreation provided *impervious surfaces* are limited to a maximum of 12 percent of the total *open space* area;
 - e. Nonstructural stormwater management practices;
 - f. *Easements* for drainage, access, and underground utility lines; and
 - g. Water, septic, and sewer systems.
- (7) Not be used as follows:
 - a. For motor vehicles (except for maintenance purposes as provided for in the Open Space Management Plan); and
 - b. Roads, parking lots and impervious surfaces (except when accessory to active recreational uses).

- B. Open Space Ownership. The *applicant* must identify current and future owner(s) of *open space* responsible for maintaining the area/facilities. The responsibility for maintaining the *open space* and its facilities shall be borne by the owner. If a homeowners' association is the owner:

- a. Membership in the association shall be mandatory and automatic for all homeowners in the *subdivision* and their successors; and
 - b. The association shall have lien authority to ensure the collection of dues from all members.
- C. Open Space Management. The *applicant* shall submit “Open Space Management Plan” which includes:
- (1) A statement allocating maintenance responsibilities and establishing guidelines for the upkeep of *open space* and its facilities;
 - (2) Cost estimates for maintenance, operation and insurance needs for the *open space*;
 - (3) A means by which funds will be obtained for all management expenses;
 - (4) A provision allowing the *Subdivision Administrator* to approve plan change; and
 - (5) Criteria for plan enforcement.
- D. Legal Instrument for Permanent Protection. *Open space* shall be protected in perpetuity by a binding legal document recorded with the deed. The document shall be one of the following:
- (1) Permanent conservation *easement* in favor of either:
 - a. A land trust or similar conservation-oriented non-profit organization with legal authority to accept such *easements*. The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer in the event the organization becomes unable to carry out its functions; or
 - b. A governmental entity with an interest in pursuing goals consistent with the intentions of this Section.
 - (2) Permanent restrictive covenant for conservation purposes.
 - (3) Equivalent legal tool providing permanent protection, subject to approval by the County Attorney.

The instrument shall include all restrictions contained in §42-88 (Conservation Subdivision Standards), and any further restrictions the *applicant* chooses to place on the use of the *open space*.

- E. Open Space Density Bonus. Base density is determined by the zoning district in which the *subdivision* is located. Conservation subdivisions proposing more than the minimum required *open space* may be eligible for increased densities. Table 3.1 outlines the criteria for density bonuses. Lands under conservation easement shall not be counted when determining density bonuses. Permitted housing densities shall not exceed the maximum allowances of any applicable *water supply watershed* requirements.

Table 3.1. Open Space Density Bonuses				
Percent <i>Open Space</i> (%)	25-30	31-40	41-50	>51
Percent Housing Density Increase (%)	N/A	10	15	20

- F. Agricultural Preservation Density Bonus. Base density is determined by the zoning district in which the *subdivision* is located. Conservation subdivisions proposed for sustaining existing on-site bona fide agricultural operations are entitled to a five (5) percent increase in permitted density. Residential *lots* in these *subdivisions* should be located in areas less suitable for agricultural production with prime farmland being preserved as *open space*. *Lots* should be located where agricultural operations do not interfere with the safety and well being of future residents. The reviewing agency may require vegetative buffering and/or additional *setbacks* between agricultural operations and *lots* to mitigate potential impacts of noise, vibration, light, and/or odor. This five (5) percent bonus may be used in conjunction and in addition to any applicable *open space* density bonus. Permitted housing densities shall not exceed the maximum allowances of any applicable *water supply watershed* requirements.
- G. Structure Placement. Structures should be placed as closely to *internal roads* as permitted. The reviewing agency may reduce the front yard setback to a minimum of five (5) feet; taking into consideration sound engineering, public safety concerns and community character when applying the standards. *Structures* may be: (1) located in the *side yard* setback required by the zoning district regulations; and (2) placed as closely together as permitted by the North Carolina State Building Code.
- H. Exemption. Conservation subdivision standards can be applied to any subdivision type, but are not required by this Chapter.

§200A-89. Reserved

§200A-90. Reserved

§200A-91. Reserved

Subpart C. Subdivision Road Standards Applicable to All Subdivision Types and Subtypes

§200A-92. Road Disclosure

North Carolina General Statute (NCGS) §136-102.6 requires a developer disclose to each buyer of property the following:

- A. The ownership (public or private) of the *road* serving the *lot*,
- B. How the *road* will be maintained, and
- C. Who shall be responsible for such maintenance.

The law further requires certain *road* maintenance agreements be executed.

§200A-93. Right-of-Way

Right-of-way standards apply within the property being developed. *Rights-of-way* shall be capable of supporting a *road* by meeting the minimum width specified by this Chapter (See Table 3.3). Any portion of an existing recorded *right-of-way* which does not meet minimum width requirements of this Chapter shall be upgraded to:

- (1) Meet the full *right-of-way* requirement when the right-of-way is surrounded by or abutting the tract; or
- (2) Provide one-half (1/2) of the required *right-of-way* (measured from the centerline of the existing *right-of-way*) when the *right-of-way* is not completely contained by the tract to be subdivided.

§200A-94. Out of County Access

Access to a proposed *subdivision* through another County shall meet or exceed all *right-of-way* and road requirements herein.

§200A-95. Existing Private Roads

Any portion of an existing private *road*: (1) located in an existing recorded private *right-of-way* and (2) surrounded by the *tract* to be subdivided shall be upgraded to meet the *road* standards of this Subpart C (Subdivision Road Standards Applicable to All Subdivision Types and Subtypes).

§200A-96. Road Construction

Roads should be constructed (1) along the contour of the land because of the difficulty of operating *vehicles* on steep grades and high potential for *erosion*, and (2) so that water will drain from the *road* surface into side ditches.

Roads shall:

- A. Be constructed with suitable stone and compacted properly,
- B. Be constructed on a subbase of suitable soil capable of supporting it, and
- C. Not be constructed on used asphalt (an unacceptable base course).

The *Subdivision Administrator* may require a professional engineer or professional surveyor to certify, or provide applicable proof, that the roads were constructed to standards prescribed in this Subpart C (Subdivision Road Standards Applicable to All Subdivision Types and Subtypes) and approved development plan. This may be accomplished by on-site supervision by the engineer or his designee during the construction of the *road*, or through a series of core sample tests at appropriate key areas or as requested by the *Subdivision Administrator*. The core samples should be spaced accordingly and the location and number of core samples should be agreed upon by the engineer and *Subdivision Administrator* prior to testing. *NCDOT* certification is not required.

§200A-97. Shoulder Stabilization

Permanent stabilization of soils to prevent erosion shall be achieved by seeding areas disturbed by the construction of a *road* (including cut and fill slopes, shoulders, ditch banks, etc.) as soon as feasible after *road* construction. The *Subdivision Administrator*, where seasonal weather prevents seeding, may require:

- A. An improvement guarantee be posted with the County to ensure the installation of permanent stabilization; and
- B. Other materials (straw, mulch, etc.) be applied temporarily until seed can be sewn.

§200A-98. Road Names

Road names are required for all public and private roads (including alleys and *driveway easements*) that access more than two (2) lots. Proposed names for *roads* shall:

- A. Be pre-approved by Henderson County in accordance with Chapter 142 of the Henderson County Code, Property Addressing.
- B. Not duplicate or be phonetically similar to existing road names, irrespective of the use of the suffix (i.e., road, avenue, boulevard, drive, place, court etc.).
- C. Not exceed 15 characters, including spaces (not including prefixes and suffixes).

A proposed *road* obviously in alignment with an existing named *road* shall bear the name of existing *road*.

§200A-99. Road Name Signs and Regulatory Signs

Road name signs and *regulatory signs* (speed limit signs, stop signs, etc.) shall be provided in accordance with Chapter 142 of the Henderson County Code, *Property Addressing* and with applicable local, state and federal laws, rules and regulations.

§200A-100. Road Drainage and Culverts

Road drainage structures, ditches, and culverts shall be designed and constructed in accordance with *State Road Standards* and with sufficient depth and width to carry the expected volume of *stormwater runoff*. Culverts may be required where the *road* crosses streams or minor *watercourses*. *Best Management Practices* should be utilized for road swales (turf matting and vegetation, etc.) to control *erosion* and transport of *sediment* and to filter pollutants from *stormwater runoff*.

§200A-101. Stub Roads

Stub roads shall be designed in locations which will permit the future extension of *subdivision roads*.

§200A-102. Road Type Designation

Applicants shall indicate if *roads* are to be public or private on applications, plans and plats. Where private *roads* are proposed as extensions of existing *public roads*, the developer must clearly justify why proposed *roads* should not be extended for public use. Private *roads* may become public if accepted into the *public road* system by *NCDOT*.

- A. *Public Roads*. Public roads (and their associated public bridges) shall:
 - (1) Be designed and constructed in accordance with *State Road Standards*.
 - (2) Be offered dedication to the public (though this does not guarantee *NCDOT* will accept or agree to assume the maintenance responsibility of the proposed *public road*).
- B. *Private Roads*. Private roads shall be the standards of this Subpart C (Subdivision Road Standards Applicable to All Subdivision Types and Subtypes).

§200A-103. Private Road Standards for Commercial, Office Institutional, Industrial, and Mixed-Use Subdivisions

Private roads and bridges shall be built to State Road Standards for commercial, office institutional, industrial or mixed-use subdivisions.

§200A-104. Residential Private Road Standards by Road Classification

If not specified in Article III (Subdivision Regulations) Subpart C (Subdivision Road Standards Applicable to All Subdivision Types and Subtypes), the design and construction of private roads shall be reviewed using *NCDOT* standards and requirements which reflect local *NCDOT* District Engineer policy modifications.

Private roads shall: (1) Be designated based on the number of *lots* served (See Table 3.2); (2) be designed and constructed in accordance with the standards of this Article III (Subdivision Regulations) (see Table 3.3); and (3) be designed to provide, at all times, adequate and unobstructed access for emergency response.

Table 3.2 Subdivision Private Road Classification by Number of Residential Lots Served					
Road Classification	Subdivision Collector	Subdivision Local	Limited Local	Private Driveway Easement	Alley
Number of Residential Lots Served	50+	6 to 49	1-5	1-5	1-49

Private roads shall meet the minimum design and construction standards according to the following road classifications:

- A. Private Subdivision Collector Road. A “*private subdivision collector road*” shall be required where the road serves:
 - (1) 50 or more units (existing or proposed) within the proposed subdivision or as an aggregate of the proposed subdivision and any other development to which it connects,
 - (2) As a through-road connecting lots within a subdivision to more than one (1) public thoroughfare, or
 - (3) A nonresidential facility within a residential development, (i.e. clubhouse, golf course, etc.)
- B. Private Subdivision Local Road. A “*private subdivision local road*” shall be required where a *private subdivision collector road* is not required and a *private subdivision limited local road* is not permitted.
- C. Private Subdivision Limited Local Road. A “*private subdivision limited local road*” shall be permitted where the road serves:
 - (1) No more than five (5) *lots* or principal units.
 - (2) Only as a maintenance and/or emergency access (regardless of the number of *lots* it adjoins provided the road shall not be used to access *lots* and appropriate signage is provided).
- D. Private Driveway Easements. A private “*driveway easement*” shall be permitted where the driveway serves no more than five (5) *lots* (the *lots* served by the easement shall be

identified on all plans and plats). *Final plats* must contain a note conveying maintenance responsibility of the *easement* to the homeowners' utilizing it to access their property. The note shall state *easement(s)* must be maintained to allow clear passage for emergency response *vehicles*.

- (1) Where private driveway easements are used, the surveyor or engineer shall place and execute the following certification on the plat with their seal and registration or license number.

I, _____, Professional Land Surveyor or Professional Engineer, certify that the lot(s) created by this plat is (are) served and accessed by a recorded driveway easement shown hereon. This easement may or may not meet the standards for roads serving subdivisions in the Henderson County Land Development Code. Neither the undersigned nor Henderson County certify whether this easement meets such standards. This the _____ day of _____, 20____.

Professional Surveyor or Engineer

- E. Alley. An alley shall be permitted where the residential *lot* is also accessible by another public or private road and the alley serves as primary access for the future homeowner and for utility services (i.e. trash collection). Visitors to the residential *lot* will use the principal access road to the property.

Table 3.3. Subdivision Private Road Standards						
Requirements		Private Road Classification				
		Subdivision Collector	Subdivision Local	Limited Local	Private Driveway Easement	Alley
Number of Residential Lots Served		50+	6 to 49	1-5	1-5	1-49
Right-of-Way Width (ft.)	Roads (feet)	50	45	30	-	20
	Cul-de-sac (radius)	-	50	50	-	-
Easement Width (ft.)		-	-	-	30	-
Sight Distance on Vertical Curves (ft.)		150	110	110	-	-
Center Line Curve Radius (ft.) – See section F. below		90	90	90	-	-
Maximum Grade %	Stone Only	12	15	15	-	-
	Paved Surface	16	18	18	-	-
Minimum Travelway Width (ft.) (two-way road)		18	16	16	-	12
Minimum Travelway Width (ft.) (one-way road)		12	12	12	-	12
Shoulder Width (each side, two-way road) (ft.)		6	4	2	-	-
Shoulder Width (each side, one-way road) (ft.)		2	2	2	-	-
Stone Base (ABC) Compacted (in.)		8	6	6	-	-
Asphalt		(1½ of S-9.5B or BST)				
Cut and Fill Slope		2:1	1.5:1	1.5:1	-	-
Ditch Slope		4:1	3:1	3:1	-	-
Vertical Clearance (ft.)		13.5	13.5	13.5	13.5	13.5

F. Center Line Curve Radius. The pavement width and stone base indicated in Table 3.3 shall be increased within the curve where the road centerline is less than a 90-foot radius. If the radius is 70 to 90 feet, increase pavement and stone base width by 25 percent. If the radius is 60 to 70 feet, increase the pavement and stone base width by 35 percent. If the radius is 50 to 60 feet, increase the pavement and stone base width by 45 percent. If the radius is 40 to 50 feet, increase the pavement and stone base width by 50 percent. No turn radius shall be less than 40 feet.

§200A-105. Additional Road Design Standards Applicable to all Road Classifications.

A. Intersections. Acceptable angles of intersection are:

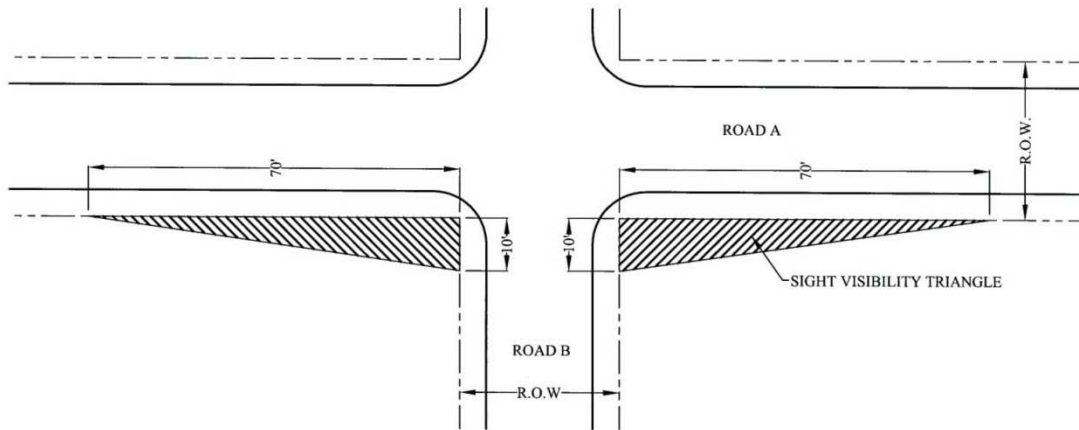
- (1) 90 to 75 degrees (preferred)
- (2) 75 to 60 degrees (acceptable under extreme conditions as determined by the reviewing agency).

B. Adequate Sight Distances. Adequate sight distances (see Figure 3B. Sight Visibility Triangle) along a proposed road shall be provided by:

- (1) Choosing a good location for the *right-of-way* and clearing *sight visibility triangles* when constructing the road (the minimum sight distance is 70 feet along the “existing” road *right-of-way* and ten (10) feet along the “new” road *right-of-way*).
- (2) Providing an adequate place for *vehicles* to stop before entering the road.
- (3) Providing an apron design at proposed intersections to permit a *vehicle* to enter when another *vehicle* is waiting to turn.

Figure 3B. Sight Visibility Triangle

Not to Scale



- C. Gates. *Entry gates* shall be constructed and maintained as required by and in accordance with Chapter 89 of the Henderson County Code, *Entry Gates*, and SR 3.7 (Gates and/or Guardhouses).
- D. Dead Ends, Cul-de-sacs and Turnarounds. *Vehicle* turnaround areas shall be provided at the end of all dead-end *roads* that exceed 300 feet. Loop *roads* should be encouraged where possible in lieu of culs-de-sac or turnarounds. The reviewing agency may also require installation of turnarounds at:
- (1) Intermediate locations along dead end *roads* with a centerline length of greater than 2,500 feet.
 - (2) The end of a *phase* of a project.
 - (3) An intermediate location along any *road* that exceeds 1,500 feet in length.

Acceptable alternative turnaround designs for residential *subdivisions* are shown in Figures 3C, 3D, and 3E. Turnaround areas of a dead-end *road* cul-de-sac shall have a radius of not less than 35 feet.

Figure 3C. Alternative Turnaround Design – Island
Not to Scale

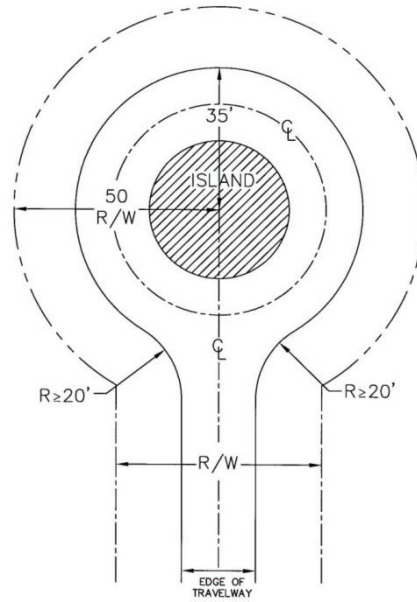


Figure 3D. Alternative Turnaround Design – Branch Turnaround
Not to Scale

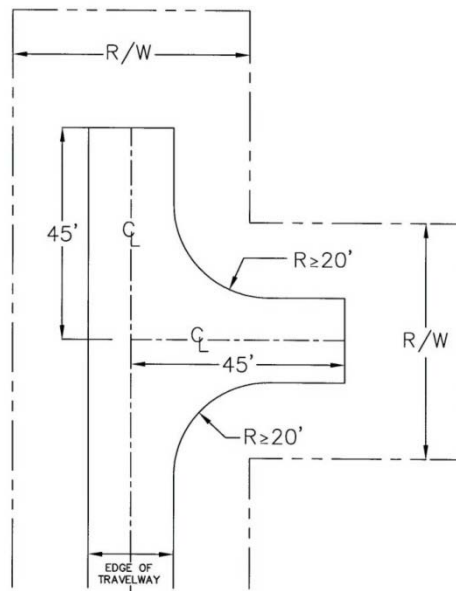
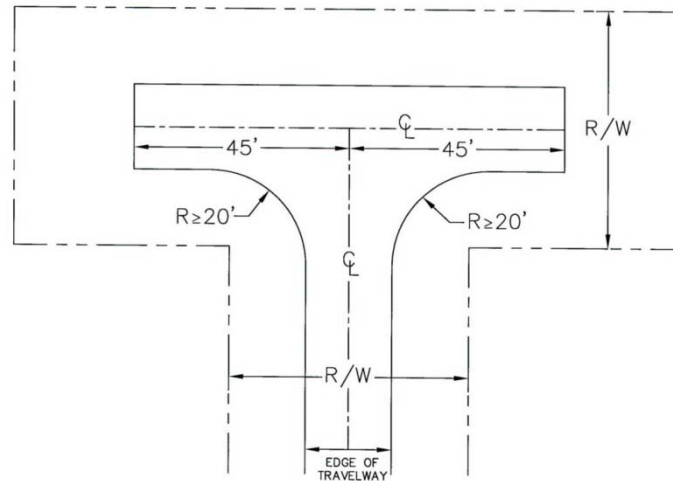


Figure 3E. Alternative Turnaround Design – T Turnaround
Not to Scale



F. Bridges. Bridges shall:

- (1) Be engineered to a minimum weight capacity of 50,000 pounds (For purposes of emergency management *vehicle* access) and documentation shall be provided to indicate such (the 50,000 pound weight capacity requirement shall not apply to *driveways*);
- (2) Adhere to *State Road Standards* for drainage, hydraulics and minimum live load;
- (3) Adhere to standards for *vertical clearance* for *roads* (See Table 3.3);
- (4) Provide a *travelway* width not less than the *travelway* width of the *road* on either side of the bridge, and in no case less than 12 feet in width;
- (5) Include a paved or gravel turnout on each end of the bridge to provide space for at least one (1) vehicle to safely pull over and allow an oncoming vehicle to traverse the bridge where the *travelway* width is less than 18 feet and is proposed to accommodate two-way traffic; and
- (6) Provide adequate line-of-sight distances for safe operation of two-way traffic.

§200A-106. Private Road Standard Reductions

- A. Right-of-way Width Reduction. Right-of-way width requirements may be reduced to 30 feet in width where no more than five (5) lots are proposed and it is unlikely (due to design, topographic conditions or existing development) that any road contained therein would be extended to serve more than five (5) lots.

Right-of-way width reductions are also permitted where the development is a *dwelling, multifamily, five (5) or more units*, provided these modifications are approved by the reviewing agency with consideration to sound engineering, public safety concerns and community character.

- B. Travelway Width Reduction. Travelway width requirements for *private subdivision limited local roads* in special *subdivisions* may be reduced to nine (9) feet where an

existing road with a travelway width of at least nine (9) feet occurs. The *Subdivision Administrator* will permit the reduction only upon inspection for road stability and provided that all other *private subdivision limited local road* standards are met. Existing roads shall be improved to meet the *private subdivision limited local road* standards before a *final plat* can be approved.

C. Centerline Curve Radius Reductions. Centerline curve radius reductions may be reduced to:

- (1) 80 feet where the existing cross slope on *private subdivision collector roads* is 15 percent or greater, or
- (2) 60 feet where the existing cross slope on *private subdivision limited local residential subdivision roads* or *private subdivision local residential subdivision roads* is 15 percent or greater.

Centerline curve radius reductions are also permitted where the development is a *dwelling, multifamily, five (5) or more units*, provided these modifications are approved by the reviewing agency with consideration to sound engineering, public safety concerns and community character.

D. Shoulder Width Reduction. Shoulder width shall be reduced for:

- (1) *Private subdivision local roads* and *private subdivision collector roads* to a minimum of two (2) feet in cases where the existing cross slope is 20 percent or greater; and
- (2) *Private subdivision collector roads* to a minimum of four (4) feet in cases where the existing cross slope is greater than ten (10) but less than 20 percent or greater.

E. Cut and Fill Slopes. Cut and fill slopes shall be reduced to 1:1 where the existing cross slope is 20 percent or greater.

§200A-107. Reserved

§200A-108. Reserved

§200A-109. Reserved

Subpart D. Subdivision Standards by Type.

§200A-110. Nonstandard Subdivisions

Nonstandard subdivision *lots* shall:

- A. Be exempt from the density requirements of this Chapter.
- B. Include *special use lots* (the *structures* located thereon must meet any applicable zoning or *water supply watershed* requirements) clearly identified for a designated use.
- C. Be identified and encumbered to its specified use on a *final plat*.

- D. Be provided with a platted or deeded right-of-way that connects each proposed *lot* and remainder parcel to a public *road*.
- E. Not be counted in the number of *lots* in a *subdivision* for administrative purposes.

§200A-111. Special Subdivisions (Five (5) or Fewer Lots)

Where there is insufficient acreage to meet the density regulations of the zoning districts, up to five (5) lots may be created where each lot is at least one half (1/2) acre (21,780 square feet in size).

§200A-112. Minor Subdivisions (Six (6) to Ten (10) Lots)

Minor subdivisions shall adhere to all applicable requirements of this Chapter.

§200A-113. Major Subdivisions (Ten (10) or more Lots or Commercial, Office Institutional, or Industrial)

A. Subdivisions of 35 or More Lots.

- (1) Shall provide a minimum of two (2) entrance *roads*. (The second entrance requirement must be specifically waived by the approving authority, and only where unique circumstances (including severe topographic conditions, the presence of *unique natural areas*, existing development patterns, or other limiting site conditions) would prevent the addition of a second entrance.)
- (2) No more than 35 *lots* within a *subdivision* shall be accessed by a dead-end *road*, cul-de-sac or turnaround or a series of dead-end *roads*, cul-de-sacs or turnarounds to access the main entrance(s)/exit(s) for the *subdivision* (except where a stub *road* is proposed as a future connection (however, stub *road* proposals do not entitle adjoining property owners access to the *subdivision*).

B. Soil Erosion and Sedimentation Control Plan. The applicant must provide written notice from:

- (1) The appropriate state and/or local agencies verifying an Erosion and Sedimentation Control Plan has been received, or
- (2) A professional land surveyor, engineer, landscape architect, architect, or professional planner certifying no plan is required.

Developers should not disturb and clear more land than needed for infrastructure and other *subdivision* related improvements.

C. Water Supply System and Sewage Disposal System Required. Every *lot* shall be served by a *water supply system* and *sewage disposal system* adequate to accommodate the reasonable needs of the proposed *use* and comply with all applicable health regulations. The *applicant* must provide evidence that *water supply system* and *sewage disposal system* plans have received final approvals by the appropriate agency prior to *final plat* approval (except as noted in item C(1) below).

- (1) Individual Water Supply and Sewer Systems (Well and Septic Tanks). Where the *water supply system* and/or *sewage disposal system* to be installed is an individual

system for each *lot*, the installation of said systems will not be required prior to *final plat* approval.

Where a *subdivision* is located entirely or partially in those areas designated as Rural (RAA) in the *Comprehensive Plan*, the *applicant* shall adhere to one (1) of the following two (2) options:

- (2) Community Well System. Provide a community well system (a type of *public water supply system*) that meets State standards for *public community water systems* (individual wells shall not be permitted in this situation). The location of each well and the waterlines shall be shown on the development plan. If the locations of the well(s) or waterlines change, the *applicant* shall submit a revised development plan. The distribution system (waterlines) is not required to be constructed and installed prior to beginning land disturbing/construction activity or any other improvements.
- (3) Individual Wells (not recommended). The *applicant* shall provide reasonable documentation demonstrating there is sufficient water supply to support 60 percent of the proposed *lots*. The location of each well shall be shown on the development plan.

The *applicant* shall provide documentation for either Option a or Option b prior to beginning any land disturbing/construction activity or any other improvements not associated with the installation of the well or wells.

- (4) Municipal Water Supply Systems and Municipal and Approved Public or Community Sewage Disposal System Requirements. Where a *municipal water supply system* or *municipal sewage disposal system* is/are proposed, a letter from the respective agency/agencies stating there is sufficient capacity to a make connection to the system(s), must accompany the *subdivision* application.

All *public water supply systems*, *municipal sewage disposal systems*, and *approved public or community sewage disposal systems* shall be installed and shall meet the requirements of the local or State authorities having jurisdiction thereof.

- (5) Required Connection to a Municipal Water Supply System and Municipal Sewage Disposal System. The approving authority may require a *subdivision* of 300 or more units connect to a *municipal water supply system* if located within two (2) miles of an existing *municipal water supply system*. If a *subdivision* is within 5,000 feet of an existing *municipal water supply system* and the distance is equal to or less than the product of 100 feet multiplied by the number of proposed *lots*; the *subdivision* shall be required to connect to the municipal water supply system.

The Approving Authority may require a *subdivision* of 300 or more units connect to a *municipal sewage disposal system* if the *subdivision* is located within one (1) mile of an existing *municipal sewage disposal system*. If a *subdivision* is within 2,500 feet of an existing *municipal sewage disposal system* and the distance is equal to or less than the product of 50 feet multiplied by the number of proposed *lots*, the *subdivision* shall be required to connect to the *municipal sewage disposal system*.

No *subdivision* located within those areas designated as Rural (RAA) in the *Comprehensive Plan*, shall be required by the approving authority to connect to a *municipal water supply system* or *municipal sewage disposal system*.

Required connects may be provided exception on the basis of terrain, availability of acquiring *easements*, denial of allocation by the public utility, insufficient capacity of the municipal system or other circumstances unusual or unique to the site. Requests for exceptions must be made, in writing, to the *Subdivision Administrator* who may require that such requests be supported by a professional engineer's review of the *subdivision* plans and planned route of the utility extension. If the *Subdivision Administrator* determines that it would not be economically feasible for a *subdivision* to be connected to a *municipal water supply system* or *municipal sewage disposal system*, another system may be used, subject to approval by the appropriate agencies.

D. Fire Protection Requirements. Either:

- (1) Install a minimum of one (1) hydrant per 1000 feet of linear *road* distance (if served by a *public water supply system* who may impose more stringent *fire protection* requirements where necessary): or
- (2) Install a dry fire hydrant system (the type and location of which is to be determined by the County Fire Marshal) and all-weather access *road* for fire-fighting equipment to a permanent surface water supply (minimum 100,000 gallon storage in a 50 year drought).
- (3) If the *subdivision* is neither served by a *public water supply system* nor has or is adjacent to an adequate permanent surface water supply it shall be thoroughly reviewed by the reviewing agency and *applicant* to determine if alternative measures to ensure adequacy of *fire protection* exist. Where deemed necessary and without creating an undue hardship on the *applicant*, the reviewing agency may require the *applicant* to install alternative *fire protection* measures.

E. Stormwater Drainage. Drainage systems (swales, ditches, pipes, culverts, detention ponds, lakes or similar devices) shall be designed to minimize adverse effect on the proposed *subdivision* and on adjacent and downstream properties. Drainage improvements shall be designed and constructed in accordance with applicable *State Road Standards* and to:

- (1) Follow natural drainage (where possible),
- (2) Contain points of stormwater discharge onsite (unless offsite discharge is approved by the reviewing agency and adjoining property owners),
- (3) Maintain desirable groundwater conditions,
- (4) Minimize *erosion*, downstream *sedimentation*, flooding or standing water conditions,
- (5) Filter pollutants before stormwater reaches surface water, and
- (6) Avoid excessive stormwater discharge.

- F. Farmland Preservation District Setback. A minimum 100 foot *setback* for all *buildings* or *structures* is required from any Farmland Preservation District (marked on official maps maintained by the Henderson County Soil and Water Conservation District). *Subdivisions* located adjacent to a Farmland Preservation District should be developed using §42-88 Conservation Subdivision Standards.
- G. Reasonable pedestrian access shall be provided to promote healthy and safe walking environments.
- (1) Pedestrian facilities (sidewalks and/or walking trails) shall be:
 - a. 100 or more *lots* or
 - b. A *density* equal to or greater than two (2) units per acre
 - (2) Provide one (1) linear foot of sidewalk or walking trail for every linear foot of improved or newly proposed roadway within the tract.
 - (3) Located in a *road right-of-way*, pedestrian access *easement*, or other dedicated *open space*.
 - (4) Five (5) feet in width or more.
 - (5) Constructed (sidewalks only) with concrete, asphalt, or other permanent all-weather surface such as gravel.

The location and design of such facilities shall be approved by the reviewing agency. The maintenance and expansion of pedestrian facilities will fall under the authority of the homeowners' association, which must be established where pedestrian facilities are required.

- H. Street Tree Requirements. Street trees shall be required in accordance with Article V (Landscape Design Standards) Subpart C (Street Tree Requirements).
- I. Subdivision Setback and Buffering. When a *tract* to be *subdivided* is located outside a *Comprehensive Plan* designated Community Service Center Node and within a residential zoning district, the following shall be required:
- (1) A 50 foot *structure setback* from any *external road* which is not classified as a *local road*, with the understanding that *lots* may be created which contain all or portions of the *setback*.
 - (2) Installation of a B2 *buffer* (see Article V (Landscape Design Standards) Subpart A (Buffer Requirements)) within the required setback where the *tract* is located along a: *collector road, thoroughfare, boulevard, expressway* or *freeway*. The *applicant* should, where possible, maintain existing stands of trees in accordance with §42-185 (Credits for Preserving Existing Trees) to meet this standard.
- J. Air Quality. As required by *NCGS* Chapter 143, Article 21, all *subdivisions* shall show proof of compliance, if applicable, with air quality guidelines established by the Division of Environmental Management and *NC DENR*.

§200A-114. Affordable Housing Subdivisions (Reserved)

Subpart E. Subdivision Improvement Guarantees

§200A-115. General

Where the required improvements have not been completed, prior to the submission of the *final plat* for approval, the approval of said *plat* shall be subject to the *applicant* guaranteeing the installation of the improvements within thirty (30) months provided the following:

- A. A minimum of twenty-five (25) percent of the required on-site improvements (based on total project cost that the applicant is guaranteeing) is in place. The required improvements shall include rough grading for all proposed roads that are part of said *improvement guarantee*.
- B. All required Federal, State and Local permits for the development must be issued with copies provided to the Subdivision Administrator (includes any required U.S. Army Corps of Engineers permits, NCDENR permits, water supply and distribution system permits, wastewater collection and treatment system permits, approvals for the extension of electrical power service and other necessary utilities, and all applicable Federal and State permits).
- C. All associated design plans and construction specifications for the required improvements (i.e. roads, bridges, water and sewer infrastructure, stormwater infrastructure, pedestrian infrastructure, etc.) including the design engineer's release of such approved plans are submitted to the *Subdivision Administrator*.

§200A-116. Cost Estimate Standards

Plans, specifications, quantities, unit costs and estimated total costs shall be provided by the *applicant* to the *Subdivision Administrator*. Cost estimates shall:

- A. Be prepared by a professional engineer licensed in N.C., or certified by a professional land surveyor or landscape architect who is routinely engaged in cost estimates and licensed in N.C., at the *applicant's* expense. Water and sewer system infrastructure improvements shall be prepared by a professional engineer licensed in N.C. at the *applicant's* expense.
- B. Provide a schedule for initiation and completion of work.
- C. Include separate estimates for roads, bridges, water and sewer infrastructure, stormwater infrastructure, pedestrian infrastructure, utilities (including electrical power, natural gas and communication lines), etc. consistent with the approved design plans construction specifications.
- D. Include separate estimates for any off-site infrastructure improvements such as roadways, stormwater system, water system, sanitary sewer system, etc are required to be included in the improvement guarantee.
- E. Include all Federal and/or State mitigation fees due but not paid at the time of the execution of the improvement guarantee. Proof of payment for remediation fees shall be provided to the Subdivision Administrator.

- F. Include all professional engineering and land surveying fees associated with the bidding and award, construction contract administration and engineering certifications associated with the development of the infrastructure for the proposed development.

§200A-117. Improvement Guarantee Instrument

- A. Amount of Guarantee. The improvement guarantee shall be in the amount of one hundred twenty-five (125) percent of the cost to complete the work as determined by cost estimates.
- B. Guarantee. The applicant shall guarantee the installation of such improvements in an amount equal to the improvement guarantee cost to complete the work as determined by cost estimates amount by either of the methods described below.
 - (1) Filing a performance or surety *bond* or an irrevocable standby letter of credit.
 - (2) Depositing a certified check or cash.
- C. Release of Funds. Portions of the improvement guarantee may be released as work progresses, provided the following:
 - (1) The applicant submits a new cost estimate as described in §42-117A (Amount of Guarantee) detailing the work that has been complete and the work that is remaining. The amount remaining under the improvement guarantee shall meet or exceed the cost of the remaining improvements.
 - (2) Funds shall not be released if the property is in violation of any laws until the violations are remedied to the satisfaction of the charging party.
 - (3) A total of not more than four (4) requests for release of funds shall be allowed. The first request for release is eligible when twenty-five (25) percent of the work is completed. The second and third request for release is eligible when fifty (50) percent and seventy-five (75) percent of the work is completed. The fourth and final release is eligible upon completion of all required improvements listed in the improvement guarantee. The release of funds must include a professional Engineer's statement certifying that the work has been satisfactorily completed.

§200A-118. Amount and Terms of Guarantee; Time Limits

- A. Approval. All guarantees shall be accompanied by a written agreement (performance agreement) specifying the terms and the amount of the guarantee. The *Planning Director* shall have the authority to approve all improvement guarantee applications taking into consideration the amount and terms of the guarantees for improvements (including time of initiation and completion of the work).
- B. Temporary Access and Construction Easement. The applicant shall provide temporary access and permanent construction easements for all infrastructure improvements.
- C. Amount and Terms. The amount of the guarantee shall be sufficient to provide adequate funds to the County to ensure, in the case of default, the installation of all required improvements uncompleted at the time of default. All *improvement guarantees* shall comply with applicable statutory requirements and shall be satisfactory to the County Attorney or Staff Attorney as to form, sufficiency and manner of execution. Guarantees employing lending institutions shall require that those banking corporations be licensed

to do business in North Carolina and be from a national association or FDIC registered group.

The following terms shall be stated in the performance agreement:

- (1) The applicant shall be provided 15 days to identify a new security provider or prove alternate security where the security provider is in default, bankruptcy, or otherwise determined to be insolvent by the County after which time the County may redeem the improvement guarantee.
 - (2) The applicant shall provide the County with specific benchmarks for completion of work and, as a term of the agreement, should the applicant fail to meet the self-imposed benchmarks the County may redeem the improvement guarantee.
 - (3) If in violation of any other provision of this Chapter 42, Henderson County Land Development Code, where the applicant has been notified of the violation, and the applicant has been provided the period for remediation authorized by the approving agency, and where applicant is in continued violation, the County may consider this to be a breach of the agreement and call the improvement guarantee to prevent further violation of Chapter 42, Land Development Code.
- D. Time Limits. The *improvement guarantee* is valid for a period of eighteen (18) months from the date of execution.
- E. Extensions. The *Planning Director*, upon proof of difficulty, may grant an extension for a maximum of one (1) additional year. Improvements not completed within thirty (30) months shall be in breach with the requirements of this section and the *improvement guarantee* and any and all monies and accrued interest shall be forfeited by the *applicant*.
- F. Second Improvement Guarantee. If the *Planning Director* has found that the *applicant* has made a good faith effort in completing the required improvements within the thirty (30) months the County may allow the *applicant* to execute a second *improvement guarantee*. Said agreement must be in the form of cash on deposit equal to the cost as described in §42-117A (Amount of Guarantee) of the remaining improvements. The County shall assess an administrative fee equal to ten (10) percent of the new *improvement guarantee* monies.

§200A-119. Violations and Penalties

If an *applicant* of a *subdivision* is in *violation* of any County regulations (including Soil Sedimentation and Erosion Control Permits) the County will not release the *improvement guarantee* prior to the expiration date unless the violations are corrected.

The County may charge for the cost for construction and project administration for any *improvement guarantee* that is executed.

§200A-120. Reserved

§200A-121. Reserved

§200A-122. Reserved

§200A-123. Reserved

Subpart F. Application, Enforcement and Legal Status Provisions

§200A-124. Designation of Agent

The *applicant* for any *subdivision* review or approval procedure may submit, along with any initial application, an affidavit specifying an agent who may represent the *owner* in all matters.

§200A-125. Approval Prerequisite to Plat Recordation

Pursuant to *NCGS* §153A-331, and except where otherwise provided in this Chapter, no *final plat* of a *subdivision* within the jurisdiction of this Chapter shall be recorded by the Register of Deeds of Henderson County until it has been approved by the *Subdivision Administrator*, Technical Review Committee, or Planning Board as provided herein. The Register of Deeds shall not file or record a *plat* of the *subdivision* of land, any part of which is located within the jurisdiction of this Chapter that has not been approved in accordance with these provisions. In addition to meeting the requirements of this Chapter, *subdivisions* proposed within designated *water supply watershed* areas shall be subject to the provisions of the *Water Supply Watershed Protection* requirements of this Chapter, and the *Water Quality Administrator* or his designee shall certify on such *plats* that the *subdivision* complies with the provisions of the *Water Supply Watershed Protection* requirements of this Chapter.

§200A-126. Certification of Exemptions

Any *plat* of property exempted from the regulations of this Chapter shall be certified by the *Subdivision Administrator* or a professional land surveyor as exempt, prior to such *plat* being recorded. Such *plat* is not exempt from the other requirements set forth in this Chapter or any other local ordinances. Pursuant to *NCGS* §47-30 (f) 11 (Duty of the Surveyor), a professional land surveyor may certify that such *plat* represents an exception to the definition of *subdivision* and is not subject to the provisions of this Article III (Subdivision Regulations). Such *plat* may be recorded without being certified by the *Subdivision Administrator*. Any exemption from the regulations of this Chapter shall not be deemed an exemption from any other applicable ordinance. Any court-ordered *subdivision* should comply, to the maximum extent possible, with the provisions of this Chapter.

§200A-127. Plat Approval Required for Building Permit

No building permit may be issued for any construction on any proposed *lot* shown on a development plan until a *final plat* has been approved and recorded, except that a building permit may be issued for one (1) *structure* on one (1) *lot* shown on any approved development plan prior to recordation of a *final plat*. The Building Services Department shall deny building permits for *subdivision lots* created in *violation* with the terms and conditions of this Chapter.

§200A-128. Land Auctions

Where application for *major* or *minor subdivisions* is made with the intent that such divided property will be sold at land auction, the *final plat* shall clearly state the following: "The property herein is to be sold by auction. Any further *subdivisions* must meet applicable standards set forth in the Henderson County Land Development Code." In addition, restrictive covenants regarding *road* maintenance for any dedicated *rights-of-way* must be approved in advance by the appropriate reviewing agency and recorded prior to such auction.

§200A-129. Limitation on Applications Pending

Only one (1) application for a *subdivision* may be reviewed by any reviewing agency at any one (1) time on any of the original property boundaries. An application is only valid for up to one (1) year after its submission to the Planning Department. Applications submitted over one (1) year prior must be updated and resubmitted.

§200A-130. Violations and Penalties

If an *applicant* of a *phased minor* or is in *violation* of any regulation in Article III (Subdivision Regulations) for the first *phase* of the *subdivision* then the *applicant* will not be allowed to continue developing future *phases* of the *subdivision* and any County issued permits may be revoked or suspended by the County. Upon verification by Henderson County Planning Staff that the *subdivision* no longer violates the provisions of Article III (Subdivision Regulations), *subdivision* approval and any suspended permits will become valid. The *applicant* may reapply pursuant to applicable provisions of the Land Development Code to have any revoked permits reinstated.

§200A-131. Reserved

§200A-132. Reserved

§200A-133. Reserved

§200A-134. Reserved

§200A-135. Reserved