

Subpart D. Protected Mountain Ridges

§200A-220. Protected Mountain Ridges. The 300 foot elevation requirement shall be eliminated from the definition of "*protected mountain ridges*" for Henderson County as authorized by NCGS 113A-206(6), and the Board of Commissioners requests that the provisions of NCGS 113A-209 apply to all mountain ridges in Henderson County whose elevation is 500 feet or more above the valley floor beginning January 1, 1984.

Note: The foregoing is a re-codification of an ordinance adopted by Henderson County in 1983. The adoption of the Henderson County Land Development Code only relocated its text within the Henderson County Code. Following is the applicable North Carolina General Statute as of November 6, 1983. Henderson County will make every attempt to update the language in this section in a timely manner as the State revised its *Protected Mountain Ridges* legislation. Below is Article 14 which describes the Mountain Ridge Protection Act of 1983, but readers are directed to the North Carolina General Statutes for the most current text.

ARTICLE 14. MOUNTAIN RIDGE PROTECTION.

§ 113A-205. Short title.

This Article shall be known as the Mountain Ridge Protection Act of 1983. (1983, c. 676, s. 1.)

§ 113A-206. Definitions.

Within the meaning of this Article:

- (1) The word "*person*" includes any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political *subdivisions*, or other legal entity.
- (2) A *person*, as defined in this section, doing business or maintaining an office within a county is a resident of the county.
- (3) "*Tall buildings or structures*" include any *building, structure* or unit within a multiunit *building* with a vertical height of more than 40 feet measured from the top of the foundation of said *building, structure* or unit and the uppermost point of said *building, structure* or unit; provided, however, that where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high side of the *slope* of a ridge exceeds 3 feet, then such measurement in excess of 3 feet shall be included in the 40-foot limitation described herein; provided, further, that no such *building, structure* or unit shall protrude at its uppermost point above the crest of the ridge by more than 35 feet. "*Tall buildings or structures*" do not include:
 - a. Water, radio, telephone or television towers or any equipment for the transmission of electricity or communications or both.
 - b. *Structures* of a relatively slender nature and minor vertical projections of a parent *building*, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, *antennas*, poles, wires, or windmills.
 - c. *Buildings* and *structures* designated as National Historic Sites on the National Archives Registry.
- (4) "Construction" includes reconstruction, alteration, or expansion.
- (5) "Ridge" means the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite *slopes* or sides of a mountain, and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.
- (6) "Protected mountain ridges" are all mountain ridges whose elevation is 3,000 feet and whose elevation is 500 or more feet above the elevation of an adjacent *valley floor*; provided, however, that a county, or a city with a population of fifty thousand (50,000) or more, may elect to eliminate the requirement for an elevation of 3,000 feet, and such election shall apply both to an ordinance adopted under G.S. 113A-208 and the prohibition against construction

under G.S. 113A-209; provided, further, that such ordinance shall be adopted pursuant to the procedures of G.S. 113A-208.

- (7) "Crest" means the uppermost line of a mountain or chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations. (1983, c. 676, s. 1; 1985, c. 713, s. 1.)

§ 113A-207. Legislative findings.

The construction of tall or major *buildings* and *structures* on the ridges and higher elevations of North Carolina's mountains in an inappropriate or badly designed manner can cause unusual problems and hazards to the residents of and to visitors to the mountains. Supplying water to, and disposing of the sewage from, *buildings* at high elevations with significant numbers of residents may infringe on the ground water rights and endanger the health of those *persons* living at lower elevations. Providing fire protection may be difficult given the lack of water supply and pressure and the possibility that fire will be fanned by high winds. Extremes of weather can endanger *buildings*, *structures*, *vehicles*, and *persons*. Tall or major *buildings* and *structures* located on ridges are a hazard to air navigation and *persons* on the ground and detract from the natural beauty of the mountains. (1983, c. 676, s. 1.)

§ 113A-208. Regulation of mountain ridge construction by counties and cities.

(a) Any county or city may adopt, effective not later than January 1, 1984, and may enforce an ordinance that regulates the construction of tall *buildings* or *structures* on protected mountain ridges by any *person*. The ordinance may provide for the issuance of permits to construct tall *buildings* on protected mountain ridges, the conditioning of such permits, and the denial of permits for such construction. Any ordinance adopted hereunder shall be based upon studies of the mountain ridges within the county, a statement of objectives to be sought by the ordinance, and plans for achieving these objectives. Any such county ordinance shall apply countywide except as otherwise provided in G.S. 160A-360, and any such city ordinance shall apply citywide, to construction of tall *buildings* on protected mountain ridges within the city or county, as the case may be.

A city with a population of 50,000 or more may adopt, prior to January 1, 1986, an ordinance eliminating the requirement for an elevation of 3,000 feet, as permitted by G.S. 113A-206(6).

(b) Under the ordinance, permits shall be denied if a permit application (and shall be revoked if a project) fails to provide for:

- (1) Sewering that meets the requirements of a public *wastewater* disposal system that it discharges into, or that is part of a separate system that meets applicable State and federal standards;
- (2) A *water supply system* that is adequate for *fire protection*, drinking water and other projected system needs; that meets the requirements of any public *water supply system* that it interconnects with; and that meets any applicable State standards, requirements and approvals;
- (3) Compliance with applicable State and local *sedimentation* control regulations and requirements; and
- (4) Adequate consideration to protecting the natural beauty of the mountains, as determined by the local governing body.

(c) Permits may be conditioned to insure proper operation, to avoid or mitigate any of the problems or hazards recited in the findings of G.S. 113A-207, to protect natural areas or the public health, and to prevent badly designed, unsafe or inappropriate construction.

(d) An ordinance adopted under the authority of this section applies to all protected mountain ridges as defined in G.S. 113A-206. A county or city may apply the ordinance to other mountain ridges within its jurisdiction if it finds that this application is reasonably necessary to protect against some or all of the hazards or problems set forth in G.S. 113A-207. Additionally, a city with a population of 50,000 or more may apply the ordinance to other mountain ridges within its extraterritorial planning jurisdiction if it finds that this application is reasonably necessary to protect against some or all of the hazards or problems set forth in G.S. 113A-207.

(e) Determinations by the county or city governing board of heights or elevations under this Article shall be conclusive in the absence of fraud. Any county or city that adopts a ridge ordinance under the authority of this section or other authority shall send a copy of the ordinance to the Secretary of Environment and Natural Resources.

(f) Any county or city that adopts an ordinance pursuant to this section must hold a public hearing before adopting the ordinance upon the question of adopting the ordinance or of allowing the construction of tall *buildings* on protected mountain ridges to be governed by G.S. 113A-209. The public hearing required by this section shall be held upon at least 10 days' notice in a newspaper of general circulation in the unit adopting the ordinance. Testimony

at the hearing shall be recorded and any and all exhibits shall be preserved within the custody of the governing body. The testimony and evidence shall be made available for inspection and scrutiny by any *person*.

(g) Any resident of a county or city that adopted an ordinance pursuant to this section, or of an adjoining county, may bring a civil action against the ordinance-adopting unit, contesting the ordinance as not meeting the requirements of this section. If the ordinance is found not to meet all of the requirements of this section, the county or city shall be enjoined from enforcing the ordinance and the provisions of G.S. 113A-209 shall apply. Nothing in this Article authorizes the State of North Carolina or any of its agencies to bring a civil action to contest an ordinance, or for a *violation* of this Article or of an ordinance adopted pursuant to this Article. (1983, c. 676, s. 1; 1985, c. 713, ss. 2, 4; 1989, c. 727, s. 218(78); 1997-443, s. 11A.119(a).)

§ 113A-209. Certain *buildings* prohibited.

(a) This section applies beginning January 1, 1984, in any county or city that has failed to adopt a ridge protection ordinance pursuant to G.S. 113A-208 by January 1, 1984.

(b) No county or city may authorize the construction of, and no *person* may construct, a tall *building* or *structure* on any protected mountain ridge.

(c) No county or city may authorize the providing of the following utility services to any *building* or *structure* constructed in *violation* of subsection (b) of this section: electricity, telephone, gas, water, sewer, or septic system. (1983, c. 676, s. 1.)

§ 113A-210. Application to existing *buildings*.

General Statutes 113A-208 and 113A-209 apply to *buildings* that existed upon the effective date of this Article as follows:

- (1) No reconstruction, alteration or expansion may aggravate or intensify a *violation* by an existing *building* or *structure* that did not comply (a) with G.S. 113A-209 upon its effective date, or (b) with an ordinance adopted under G.S. 113A-208 upon its effective date.
- (2) No reconstruction, alteration or expansion may cause or create a *violation* by an existing *building* or *structure* that did comply (a) with G.S. 113A-209 upon its effective date, or (b) with an ordinance adopted under G.S. 113A-208 upon its effective date. (1983, c. 676, s. 1.)

§ 113A-211. Enforcement and penalties.

(a) *Violations* of this Article shall be subject to the same criminal sanctions, civil penalties and equitable remedies as *violations* of county ordinances under G.S. 153A-123.

(b) Any *person* injured by a *violation* of this Article or any *person* who resides in the county in which the *violation* occurred may bring a civil action against the *person* alleged to be in *violation*. The action may seek:

- (1) Injunctive relief; or
- (2) An order enforcing the provision violated; or
- (3) Damages caused by the *violation*; or
- (4) Both damages and injunctive relief; or
- (5) Both damages and an enforcement order; or
- (6) Both an enforcement order and injunctive relief.

If actual damages as found by the court or jury in suits brought under this subsection are five hundred dollars (\$500.00) or less, the plaintiff shall be awarded double the amount of actual damages; if the amount of actual damages as found by the court or jury is greater than five hundred dollars (\$500.00), the plaintiff shall receive damages in the amount so found. Injunctive relief or an enforcement order under this subsection may be based upon a threatened injury, an actual injury, or both.

Civil actions under this subsection shall be brought in the General Court of Justice of the county in which the alleged *violation* occurred. The court, in issuing any final order in any action brought pursuant to this section may award costs of litigation, including reasonable attorney and expert-witness fees, to any party, whenever it determines that such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a *bond* or equivalent security, the amount of such *bond* or security to be determined by the court. Nothing in this section shall restrict any right which any *person* or class of *persons* may have under the common law or under any statute to seek injunctive or other relief.

(c) Within the meaning of this section, *violations* of this Article include *violations* of local ordinances adopted pursuant to G.S. 113A- 208. (1983, c. 676, s. 1.)

§ 113A-212. Assistance to counties and cities under ridge law.

(a) The Secretary of Environment and Natural Resources shall provide assistance upon request to the counties and cities in carrying out their functions pursuant to this Article, such as by providing model studies, plans, and ordinances for their consideration.

(b) The Secretary of Environment and Natural Resources shall identify the protected mountain ridge crests in each county by showing them on a map or drawing, describing them in a document, or any combination thereof. Such maps, drawings, or documents shall identify the protected mountain ridges as defined in G.S. 113A-206 and such other mountain ridges as any county may request, and shall specify those protected mountain ridges that serve as all or part of the boundary line between two counties. By November 1, 1983, the map, drawing, or document tentatively identifying the protected mountain ridge crests of each county shall be filed with the board of county commissioners and with the city governing body of each city that requests it. By January 1, 1984, the map, drawing, or document identifying the protected mountain ridge crests shall be permanently filed by the Secretary with the register of deeds in the county where the land lies, and made available for inspection at the Secretary's office in Raleigh. Copies of the maps, drawings, or documents certified by the register of deeds, shall be admitted in evidence in all courts and shall have the same force and effect as would the original.

(b1) By January 1, 1986, a map, drawing, or document tentatively identifying the protected mountain ridge crests of each city with a population of fifty thousand (50,000) or more that has eliminated the requirement for a minimum elevation of 3,000 feet, shall be filed by the Secretary of Environment and Natural Resources with the board of county commissioners and with the city governing body. By March 1, 1986, the map, drawing, or document identifying the protected mountain ridge crests in the city with a population of fifty thousand (50,000) or more shall be permanently filed by the Secretary with the register of deeds in the county where the land within that city with a population of fifty thousand (50,000) or more lies, and shall be made available for inspection at the Secretary's office in Raleigh. Copies of the maps, drawings, or documents certified by the register of deeds shall be admitted in evidence in all courts and shall have the same force and effect as would the original.

(c) Determinations by the Secretary of elevations under this section shall be conclusive in the absence of fraud. (1983, c. 676, s. 1; 1985, c. 713, s. 3; 1989, c. 727, s. 218(79); 1997-443, s. 11A.119(a).)

§ 113A-213. Article is supplemental.

This Article provides a supplemental source of authority in addition to other present or future legislation and shall not be construed as prescribing an exclusive procedure or as granting exclusive powers. (1983, c. 676, s. 1.)

§ 113A-214. Choosing coverage or removal from coverage of this Article.

(a) This Article shall apply in all counties and cities unless and until the jurisdiction adopts an ordinance exempting itself from the coverage of this Article.

This exemption shall only be effective after a binding referendum, in which all registered voters in the jurisdiction are eligible to vote, which shall be held on or before May 8, 1984. The binding referendum shall be held either as a result of a resolution passed by the governing body of the jurisdiction or as a result of an initiative petition signed by fifteen percent (15%) of the registered voters in the jurisdiction and filed with the Board of Elections of that county not later than 60 days before the election is to be held. At that referendum, each qualified voter desiring to vote shall be provided a ballot on which shall be printed the following:

FOR coverage under the Mountain Ridge Protection Act of 1983.

AGAINST coverage under the Mountain Ridge Protection Act of 1983.

(b) If a jurisdiction removes itself from the coverage of this Article, by means of a binding referendum, as provided for in subsection (a) of this section, then it shall have until May 13, 1986 to place itself again under the coverage of this Article by means of an ordinance passed after a similar binding referendum. Once a jurisdiction opts out and then opts back under the Article, it may not take any further action to again remove itself from the coverage of the Article.

(c) If a county has chosen the permit procedure authorized by G.S. 113A-208, and then opts out of and either the county or any city in the county opts back under the coverage of this Article, then that jurisdiction may choose the permit procedure even after January 1, 1984.

(d) When a county removes itself from the coverage of this Article all cities within the county shall be removed from the coverage of this Article. Provided, however, a city in a county that has removed itself from coverage may, under the procedure set forth in subsection (b) of this section, place itself again under the coverage of this Article.

(e) When a protected mountain ridge is any part of the boundary between two jurisdictions then that part of the ridge shall be covered by this Article unless both jurisdictions remove themselves from the coverage of this Article. (1983, c. 676, s. 1.)

§§ 113A-215 through 113A-219. Reserved for future codification purposes.

Subpart E. Soil Erosion and Sedimentation Control

§200A-221. Purpose

This subpart is adopted for the purposes of: (1) regulating certain *land-disturbing activity* to control *accelerated erosion* and *sedimentation* in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by *sedimentation*; (2) protecting economic and ecological integrity of the County; and (3) establishing procedures through which these purposes can be fulfilled.

§200A-222. Scope and Exclusions

- A. Geographical Scope of Regulated Land-Disturbing Activity. This subpart shall apply to *land-disturbing activity* within the unincorporated areas of Henderson County and its municipalities as allowed by agreement between *local governments*, other appropriate legal instrument or law.
- B. Exclusions from Regulated Land-Disturbing Activity. Notwithstanding the general applicability of this subpart to all *land-disturbing activity*, this subpart shall not apply to the following types of *land-disturbing activity*:
 - (1) An activity, including breeding and grazing of livestock, *undertaken* on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - a. forage and sod crops, grain and feed crops, tobacco, cotton, orchards and fruit crops, and peanuts.
 - b. dairy animals and dairy products.
 - c. poultry and poultry products.
 - d. livestock, including beef cattle, sheep swine, horses, ponies, mules, and goats.
 - e. bees and apiary products.
 - f. fur producing animals.
 - (2) An activity *undertaken* on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by *NC DENR*. If *land-disturbing activity undertaken* on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this subpart shall apply to such activity and any related *land-disturbing activity* on the *tract*.
 - (3) An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the *NCGS*.
 - (4) A *land-disturbing activity* over which the State has exclusive regulatory jurisdiction as provided in *NCGS* §113A-56(a).