

**ARTICLE VIII**  
**NATURAL RESOURCES**

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

**Subpart A. Flood Damage Prevention**

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

200.1 Statutory authorization:

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

200.2 Findings:

- A. The flood hazard areas of Henderson County are subject to periodic inundation which may result in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. These flood losses are caused by the cumulative effect of *obstructions* in *floodplains* causing increases in flood heights and velocities and by the occupancy in *flood prone areas* of *uses* vulnerable to floods or other hazards.

200.3 Objectives: The objectives of this subpart are to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions and disruptions of family life caused by flooding;
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, *roads*, and bridges located in *floodplains*;
- F. Help maintain a stable tax base by providing for the sound use and development of *flood prone areas* in such a manner as to minimize flood blight areas;
- G. Permit and encourage the retention of open land *uses* which will be so located and designed as to constitute a harmonious and appropriate part of the physical development of the community and which will not impede the flow of flood waters;

- H. Prevent victimization by ensuring that potential land, home and business buyers are notified that property is located in an identified flood hazard area; and
- I. Prevent increased flood levels caused by unwise *floodplain* development.

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

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

**§200A-202. General Provisions**

**202.1 Lands to Which this Subpart Applies:**

The provisions of this Subpart A shall apply to all *Special Flood Hazard Areas* within (1) the unincorporated areas of Henderson County lying outside the extraterritorial jurisdiction of any municipality, and (2) the incorporated areas and extraterritorial jurisdiction of any municipality specifically requesting its enforcement by Henderson County upon the agreement of the Henderson County Board of Commissioners, both in accordance with the *Flood Hazard Boundary Map* (FHBM) or *Flood Insurance Study* (FIS) and its accompanying flood maps such as the *Flood Insurance Rate Map(s)* (*FIRM*) and/or the *Flood Boundary Floodway Map(s)* (*FBFM*), for Henderson County dated March 1, 1982, and subsequent amendments thereto. (In making such a request, the municipality must comply with the requirements of NCGS §160A-360). Unless otherwise provided herein, in no instance shall this subpart apply to any area which is not duly established and identified as a *Special Flood Hazard Area*, either by the methods listed in §202.2 (Basis for Establishing the Special Flood Hazard Areas), or as shown on with the *Flood Hazard Boundary Map* (FHBM) or *Flood Insurance Study* (FIS) and its accompanying flood maps such as the *Flood Insurance Rate Map(s)* (*FIRM*) and/or the *Flood Boundary Floodway Map(s)* (*FBFM*), for Henderson County dated March 1, 1982. Said map and all explanatory matter thereon accompanies and is hereby made a part of this Chapter. The Chapter and map shall be on file in the office of Henderson County Code Enforcement Services.

**202.2 Basis for Establishing the Special Flood Hazard Areas:**

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

- (1) Detailed flood data generated as a requirement of Sections 203.2(K) and 203.2(L) of this subpart;

- (2) Preliminary *FIRMs* where more stringent than the effective *FIRM*; or
- (3) Post-disaster Flood Recovery Maps

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

- B. Delineation of *Floodway*: For the purposes of delineating the *floodway* and evaluating the possibility of flood damages, the *Floodplain Administrator* may:
- (1) Request technical assistance from the competent federal agencies, including the US Army Corps of Engineers, the Soil Conservation Service, and the US Geological Survey, or successor agencies, and
  - (2) Utilize reports and data supplied by federal and State agencies in delineating *floodways* and evaluating the possibilities of flood damages.

202.3 Establishment of *Floodplain Development Permit*:

A *Floodplain Development Permit* shall be required in conformance with the provisions of this subpart prior to the commencement of any development activities within *Special Flood Hazard Areas* as determined in Section 202.2.

202.4 Compliance:

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

202.5 Abrogation and Greater Restrictions:

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

202.6 Other Approval Required:

- A. The granting of a permit under the provisions of this subpart shall in no way affect any other type of approval required by any other statute or ordinance of the State or any political subdivision of the State, or of the United States, but shall be construed as an added requirement.
- B. No permit for the construction of any *structure* to be located within a *floodplain* shall be granted unless the *applicant* has first obtained the permit required by this subpart.

202.7 Interpretation:

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

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

202.8 Warning and Disclaimer of Liability:

The degree of flood protection required by this subpart is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Actual flood heights may be increased by man-made or natural causes. This subpart does not imply that land outside the *Special Flood Hazard Areas* or *uses* permitted within such areas will be free from flooding or flood damages. This subpart shall not create liability on the part of Henderson County or by any officer or employee thereof for any flood damages that result from reliance on this subpart or any administrative decision lawfully made hereunder.

202.9 Penalties for Violation:

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

**§200A-203. Administration**

203.1 Designation of Floodplain Administrator:

The *Floodplain Administrator*, hereinafter referred to as the “*Floodplain Administrator*,” is hereby appointed to administer and implement the provisions of this subpart.

203.2 Floodplain Development Permit Application Requirements:

- A. **Plans and Application Requirements.** A Floodplain Development Permit shall be required for any new development in a *SFHA*, except for *watercourse* alteration and streambank restoration where the same is permitted by the United States Corps of Engineers and, if applicable, the State of North Carolina. For *watercourse* alteration and streambank restoration where a proper and appropriate permit from the United States Corps of Engineers and, if applicable, the State of North Carolina, has been granted, no further permit from Henderson County is required. Application for a Floodplain Development Permit shall be made to the *Floodplain Administrator* on forms furnished by him or her prior to any development activities proposed to be located within *Special Flood Hazard Areas*. The following items/information shall be presented to the *Floodplain Administrator* to apply for a Floodplain Development Permit.

- (1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed *floodplain* development:
  - i The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed *structures*, the location of utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
  - ii The boundary of the *Special Flood Hazard Area* as delineated on the *FIRM* or other flood map as determined in Section 202.2, or a statement that the entire *lot* is within the *Special Flood Hazard Area*;
  - iii *Flood zone(s)* designation of the proposed development area as determined on the *FIRM* or other flood map as determined in Section 202.2;
  - iv The boundary of the *floodway fringe* area, if any, as set out in the *FBFM*;
  - v The boundary of the *floodway(s)* or *non-encroachment area(s)* as determined in Section 202.2;
  - vi The *Base Flood Elevation (BFE)*, where provided, as set forth in Sections 202.2, 203.3(K), 203.3(L), 204.4 and/or 204.5;
  - vii Certification of the plot plan by or under the direct supervision of a professional land surveyor or registered professional engineer and certified by same.
- (2) Proposed elevation, and method thereof, of all development within a *Special Flood Hazard Area* including but not limited to:
  - i Elevation in relation to *mean sea level* of the proposed reference level (including *basement*) of all *structures*;
  - ii Elevation in relation to *mean sea level* to which any nonresidential *structure* will be floodproofed; and,
  - iii Elevation in relation to *mean sea level* to which any proposed utility systems will be elevated or floodproofed;
- (3) If *floodproofing*, a *Floodproofing Certificate (FEMA Form 81-65)* and back-up plans from a registered professional engineer or architect certifying that the nonresidential flood-proofed development will meet the flood-proofing criteria in this subpart.
- (4) A Foundation Plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this subpart are met. These details include but are not limited to:
  - i Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers); and,

- ii Details of sufficient openings to facilitate the unimpeded movements of floodwaters should solid foundation perimeter walls be used in *floodplains*, in accordance with this subpart;

- (5) Usage details of any enclosed space below the *regulatory flood protection elevation*.
  - (6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
  - (7) Copies of all other Local, State and Federal permits required prior to *Floodplain Development Permit* issuance (e.g. *Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.*)
  - (8) Documentation for placement of *temporary structures* to ensure Section 204.2(F) of this Subpart A are met.
  - (9) Where the *base flood elevation* data is not provided, the application for a development permit must show construction of the lowest *floor* at least two (2) feet above the *highest adjacent grade*.
  - (10) A Floodplain Development Permit shall be construed as permission to proceed with work and not as authority to violate, cancel, alter, or set aside any of the provisions of this subpart or any regulations included by reference. Issuance of a permit shall not prevent the *Floodplain Administrator* or Inspection Department personnel from thereafter requiring correction of errors in plans or construction, or *violations* of this subpart.
- B. The Floodplain Development Permit shall include, but not be limited to:
- (1) A description of the development to be permitted under the Floodplain Development Permit issuance.
  - (2) The *Special Flood Hazard Area* determination for the proposed development per available data specified in Section 202.2.
  - (3) The *regulatory flood protection elevation* required for the *reference level* and all attendant utilities.
  - (4) The *regulatory flood protection elevation* required for the protection of all public utilities.
  - (5) All certification submittal requirements with timelines.
  - (6) A statement that no fill materials shall encroach into the *floodway, non-encroachment area*, or the *floodway fringe* of any *watercourse*, if applicable, except as permitted in Section 204.1, or pursuant to a *Special Fill Permit* issued pursuant to Section 203.6 hereof.
  - (7) If in a *floodway, non-encroachment area*, or *floodway fringe*, a specification of the location of the minimum foundation opening requirements.
  - (8) A statement of limitations of below *BFE* enclosure *uses* (if applicable), including but not limited to parking, *building* access and limited storage only.

## C. Certification Requirements:

## (1) Elevation Certificates:

- i An Elevation Certificate (*FEMA* Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the *Floodplain Administrator* a certification of the elevation of the *reference level*, in relation to *mean sea level* or *highest adjacent grade*. Elevation certification shall be prepared by, or under the direct supervision of, a professional land surveyor or professional engineer and certified by same. The *Floodplain Administrator* shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit.
- ii An Elevation Certificate *FEMA* (Form 81-31) or *Floodproofing* Certificate (*FEMA* Form 81-65) is required after the *reference level* is established. Within seven (7) calendar days of establishment of the *reference level* elevation, it shall be the duty of the permit holder to submit to the *Floodplain Administrator* a certification of the elevation of the *reference level*, in relation to *mean sea level* or *highest adjacent grade*. Elevation certification shall be prepared by or under the direct supervision of, a professional land surveyor or professional engineer and certified by same. When *floodproofing* is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The *Floodplain Administrator* shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a *stop-work order* for the project.
- iii A Final As-Built Elevation Certificate (*FEMA* Form 81-31) is required after construction is completed and prior to *Floodplain Development Certificate of Compliance/Occupancy* issuance. It shall be the duty of the permit holder to submit to the *Floodplain Administrator* a certification of final as-built construction of the elevation or floodproofed elevation of the *reference level* and all attendant utilities. Said elevation certification shall be prepared by, or under the direct supervision of, a registered land surveyor or professional engineer and certified by same. The *Floodplain Administrator* shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to *Floodplain Development Certificate of Compliance/Occupancy* issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make said corrections required shall

be cause to withhold the issuance of a *Floodplain Development Certificate of Compliance/Occupancy*.

- (2) If nonresidential *floodproofing* is used to meet the *regulatory flood protection elevation* requirements, a Floodproofing Certificate (*FEMA* Form 81-65) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the *Floodplain Administrator* a certification of the floodproofed design elevation of the *reference level* and all attendant utilities, in relation to *mean sea level*. Said *floodproofing* certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The *Floodplain Administrator* shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a *Floodplain Development Permit*. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a *Floodplain Development Certificate of Compliance/Occupancy*.
- (3) If a *manufactured/mobile home* is placed within a *floodway, non-encroachment area, or Floodway fringe* and the elevation of the chassis is above 36 inches in height, an engineered foundation certification is required per Section 204.2(B).
- (4) Certification Exemptions. The following *structures*, if located within a *floodway, non-encroachment area, or Floodway fringe*, are exempt from the elevation/*floodproofing* certification requirements specified in item (C) above:
  - i *Temporary structures* meeting requirements of Section 204.2 (F); and
  - ii *Accessory structures* less than 150 square feet meeting requirements of Section 204.2(G).

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

Duties of the *Floodplain Administrator* shall include, but not be limited to performing the following:

- A. Review all *floodplain* development applications and issue permits for all proposed development within *flood prone areas* to assure that the requirements of this subpart have been satisfied.
- B. Any permittee that additional Federal or State permits (i.e., *Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.*) may be required, and if specific Federal or State permits are known, require that copies of such permits be provided and maintained on file with the Floodplain Development Permit.
- C. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a *watercourse*, and submit evidence of such notification to *FEMA*.
- D. Assure that maintenance is provided within the altered or relocated portion of said *watercourse* so that the flood-carrying capacity is not diminished.

- E. Prevent *encroachments* within *floodways* and *non-encroachment areas* unless the certification and flood hazard reduction provisions of Section 204.1A are met.
- F. Obtain actual elevation (in relation to *mean sea level*) of the *reference level* (including *basement*) and all attendant utilities of all new or substantially improved *structures*, in accordance with this subpart.
- G. Obtain the actual elevation (in relation to *mean sea level*) to which the new or substantially improved *structures* and all utilities have been floodproofed, in accordance with this subpart.
- H. Obtain actual elevation (in relation to *mean sea level*) of all new public utilities, in accordance with this subpart.
- I. Obtain certifications from a registered professional engineer or architect in accordance with this subpart, when *floodproofing* is utilized for a particular *structure*.
- J. Interpret, as needed, the exact location of boundaries of the *Special Flood Hazard Areas* (for example, where there appears to be a conflict between a mapped boundary and actual field conditions. The *person* contesting the location of the boundary shall be given a reasonable opportunity to *appeal* the interpretation as provided in this subpart.
- K. Obtain, review, and reasonably utilize any *Base Flood Elevation (BFE)* data, along with *floodway* data and/or *non-encroachment area* data available from a Federal, State, or other source, including data developed pursuant to this subpart, when *BFE* data has not been provided in accordance with Section 202.2, in order to administer the provisions of this Subpart A.
- L. Obtain, review and reasonably utilize any *floodway* data, and/or *non-encroachment area* data available from a Federal, State, or other source, when *BFE* data is provided but no *floodway* nor *non-encroachment area* data has been provided, in accordance with Section 202.2 in order to administer the provisions of this subpart.
- M. Maintain, in the Floodplain Development Permit file, a copy of all Letters of Map Amendment (LOMAs) issued from *FEMA*.
- N. Maintain, permanently, all records that pertain to the administration of this subpart and make these records available for public inspection.
- O. Make on-site inspections of work in progress, or of any location for which a permit under this subpart has been either been applied or granted. As the work pursuant to a Floodplain Development Permit progresses, the *Floodplain Administrator* shall make as many inspections of the work as may be necessary in order to attempt to ensure that the work is being done according to the provisions of this subpart and the terms of the permit. In exercising this power, the *Floodplain Administrator* has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of Henderson County at any reasonable hour for the purposes of inspection or other enforcement action.
- P. Issue certificates of compliance for permitted projects once as-built certifications have been received and approved and once final inspections have been completed.
- Q. Issue *stop-work orders* as required. Whenever a *building* or part thereof is being constructed, reconstructed, altered, or repaired in *violation* of this subpart, the *Floodplain*

*Administrator* may order the work to be immediately stopped. The *stop-work order* shall be in writing and directed to the *person* doing the work. The *stop-work order* shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed.

- R. Revoke Floodplain Development Permits as required. The *Floodplain Administrator* may revoke and require the return of the Floodplain Development Permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any Floodplain Development Permit mistakenly issued in *violation* of an applicable State or local law may also be revoked.
- S. Investigate and inspect, as reasonably deemed necessary to carry out the duties as prescribed in this subpart, and for this purpose and in compliance with applicable law to enter at reasonable times upon any property, public or private, within the jurisdiction of Henderson County, the sites of any complaints or alleged *violations* of this subpart.
- T. Require written statements, certificates and certifications or the filing of reports under oath, with respect to pertinent questions relating to complaints or alleged *violations* of this Subpart A.
- U. Follow through with corrective procedures of Section 203.5.
- V. Maintain a current map repository to include, but not limited to, the FIS Report, *FIRM* and/or other official flood maps/studies adopted under this subpart, including any revisions thereto including LOMA, issued by State and/or *FEMA*. Notify State and *FEMA* of mapping needs.
- W. Consider the effects of a proposed artificial *obstruction* in a *floodplain* in creating danger to life and property, prior to the issuance of any permit:
  - (1) By water which may be backed up or diverted by such *obstruction*;
  - (2) By the danger that the *obstruction* will be swept downstream to the injury of others; and
  - (3) By the injury or damage to the site of the *obstruction* itself.

For this purpose, the *Floodplain Administrator* may take into account anticipated development in the foreseeable future which may be adversely affected by the *obstruction*, as well as *existing development*.

#### 203.4 Fees:

The Board of Commissioners shall establish a Schedule of Fees, charges and expenses, and a collection procedure, for permits, plan review, inspections, *variances*, *appeals* and other matters pertaining to this subpart. No application for a permit, certificate, or *variance*, shall be processed unless or until such fees, as established, and all estimated expenses have been paid in full, nor shall any action be taken on *appeals* before the Henderson County Flood Damage Prevention Board unless and until any fees and estimated expenses have been paid in full.

#### 203.5 Corrective Procedures:

- A. When the *Floodplain Administrator* finds *violations* of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the *building* of the *violation*. The owner or occupant shall immediately remedy each of the *violations* of law pertaining to their property.
- B. If the owner of a *building* or property shall fail to take prompt corrective action, the *Floodplain Administrator* shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
  - (1) That the *building* or property is in *violation* of the Flood Damage Prevention subpart of this Chapter;
  - (2) That an informal hearing will be held before the *Floodplain Administrator* at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in *person* or by counsel and to present arguments and evidence pertaining to the matter; and,
  - (3) That following the hearing, the *Floodplain Administrator* may issue such order to alter, vacate, or demolish the *building*; or to remove fill as appears appropriate.
- C. If, upon a hearing held pursuant to the notice prescribed above, the *Floodplain Administrator* shall find that the *building* or development is in *violation* of the Flood Damage Prevention subpart of this Chapter, he or she shall make an order in writing to the owner, requiring the owner to remedy the *violation* within a specified time period, not less than 60 days. Where the *Floodplain Administrator* finds that there is imminent danger to life or other property, s/he may order that corrective action be taken in such lesser period as may be feasible.
- D. Any owner who has received an order to take corrective action may *appeal* the order to the Henderson County Flood Damage Prevention Board by giving notice of *appeal* in writing to the *Floodplain Administrator* within ten (10) days following issuance of the final order. In the absence of an *appeal*, the order of the *Floodplain Administrator* shall be final. The Henderson County Flood Damage Prevention Board shall hear an *appeal* within a reasonable time and may affirm, modify and affirm, or revoke the order.
- E. If the owner of a *building* or property fails to comply with an order to take corrective action from which no *appeal* has been made, or fails to comply with an order of the Board of Commissioners following an *appeal*, he shall be guilty of a misdemeanor and shall be punished at the discretion a court of competent jurisdiction.

#### 203.6 Variance and Appeal Procedures:

- A. The Zoning Board of Adjustment as established by Henderson County, shall be hereinafter referred to as the Henderson County Flood Damage Prevention Board, and shall hear and decide requests for *variances* from the requirements of this subpart, and *appeals* of the *Floodplain Administrator's* decisions.
- B. Any *person* aggrieved by the decision of the board may *appeal* such decision to a court of competent jurisdiction, as provided in Chapter 7A of the North Carolina General Statutes.
- C. *Variances* may be issued for:

- (1) The repair or rehabilitation of historic *structures* upon the determination that the proposed repair or rehabilitation will not preclude the *structure's* continued designation as an historic *structure* and the *variance* is the minimum necessary to preserve the historic character and design of the *structure*;
  - (2) Functionally dependent facilities if determined to meet the definition as stated in Article XIV of this Subpart A; or
  - (3) Any other type of development, provided it meets the requirements stated in this section,
  - (4) But not for *special fill permits*, pursuant to Section 203.7 herein.
- D. In determining whether to grant or deny *variances*, the board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this subpart, and:
- (1) The danger that materials may be swept onto other lands to the injury of others;
  - (2) The danger to life and property due to flooding or *erosion* damage;
  - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (4) The importance of the services provided by the proposed facility to the community, including the retention of land for *agriculture*;
  - (5) The necessity to the facility of a waterfront location, where applicable;
  - (6) The availability of alternative locations, not subject to flooding or *erosion* damage, for the proposed *use*;
  - (7) The compatibility of the proposed *use* with existing and anticipated development;
  - (8) The relationship of the proposed *use* to the *Comprehensive Plan* and *floodplain management* program for that area;
  - (9) The safety of access to the property in times of flood for ordinary and emergency *vehicles*;
  - (10) The expected heights, velocity, duration, rate of rise, and *sediment* transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
  - (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and *roads* and bridges.
- E. A written report addressing each of the above factors shall be submitted by the *applicant* with the application for a *variance*.
- F. Upon consideration of the factors listed above and the purposes of this subpart, the board may attach such conditions to the granting of *variances* as it deems necessary to further the purposes of this subpart.
- G. Other considerations to be considered by the board in determining to grant or deny a *variance*:

- (1) *Variances* shall not be issued within any designated *floodway* or *non-encroachment area* if any increase in flood levels during the *base flood* discharge would result.
  - (2) *Variances* shall not be issued when the *variance* will make the *structure* in *violation* of other Federal, State, or local laws, regulations, or ordinances.
  - (3) *Variances* shall only be issued upon a determination that the *variance* is the minimum necessary, considering the flood hazard, to afford relief.
  - (4) *Variances* shall only be issued upon:
    - i A showing of good and sufficient cause;
    - ii A determination that failure to grant the *variance* would result in exceptional hardship; and
    - iii A determination that the granting of a *variance* will not result in increased flood heights, additional threats to *public safety*, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- H. Any *applicant* to whom a *variance* is granted shall be given written notice specifying the difference between the *Base Flood Elevation (BFE)* and the elevation to which the *structure* is to be built and a written statement that the cost of *flood insurance* will be commensurate with the increased risk resulting from the reduced *reference level* elevation. Such notification shall be maintained with a record of all *variance* actions.
- I. The *Floodplain Administrator* shall maintain the records of all *appeal* actions and report any *variances* to *FEMA* and the State of North Carolina upon request.

#### 203.7 Special Fill Permit Procedures:

- A. The Board of County Commissioners shall have the power to grant, in particular cases meeting specific community need and subject to appropriate conditions and safeguards, permits for special fill in the *floodway fringe*.
- B. Application:
- (1) The application for the permit shall be on a form provided by the Henderson County Code Enforcement Services Department, and shall be submitted prior to any fill activity requiring a *special fill permit*.
  - (2) The application shall include the following:
    - i Certification, on a form as published by *FEMA*, or acceptable alternative form approved by *FEMA*, of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, that the proposed *encroachment* would not result in any increase in the flood levels during the occurrence of the *base flood*; or
    - ii Technical documentation in the form of hydraulic analysis of the existing and proposed conditions. This documentation shall be either: complete runs of existing and proposed conditions using the HEC II/HEC-RAS step

backwater analysis computer program as prepared by the US Army Corp. of Engineers for the analysis of flow plan hydraulics; or

- iii An alternative method currently approved by *FEMA* for *use* in the revision process for *FEMA* flood maps. In this case, the engineer shall provide a letter from *FEMA* indicating that the method used is acceptable; and,
  - iv Any other technical documentation in the form of detailed site and construction plans, showing that all requirements of this subpart are met.
- (3) The application shall also include certification of hydrological and hydraulic analyses, performed in accordance with standard engineering practice, demonstrating that the permit, if granted, will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed.
- (4) The application shall include information demonstrating compliance with the *Comprehensive Plan*, and demonstrating the substantial public or community purpose(s) which the permit, if granted, will advance. Examples of substantial public or community purpose(s) advanced by the permit, if granted, which must be demonstrated include:
- i Advancing a governmental purpose, which includes promoting and preserving *use* of land for *agriculture*.
  - ii Meeting public *infrastructure* needs.
  - iii Projects which fall under the Board of Commissioners' Economic Incentives Guidelines.
  - iv Redevelopment projects which have the effect of substantially increasing the flood-control capabilities of the parcel.
- (5) A complete listing of the names and mailing addresses of all owners of real property adjacent to the parcel upon which the *special fill permit* is proposed.

#### C. Procedure

- (1) Applications shall be made to the *Floodplain Administrator*, and shall be accompanied by any fee therefore as set by the Board of Commissioners and all estimated costs to the County as determined by the Zoning Department staff. Zoning Department staff shall review the application for compliance with this subpart and transmit the application to Federal, State and local agencies for review and comment. Zoning Department staff shall place the application on the agenda of the first regular Planning Board meeting after at least 30 days from the receipt of a complete application.
- (2) Neither the review by the Planning Board nor the hearing before the Flood Damage Prevention Board shall be quasi-judicial in nature.
- (3) The Board of County Commissioners may establish and maintain a fee schedule for *special fill permit* applications. Such fee, plus the estimated cost of all notices to be given for hearings for a *special fill permit* application, shall be paid by the *applicant* before a *special fill permit* application is processed.

- (4) Review and recommendation by the Henderson County Planning Board.
  - i Notice of the review by the Planning Board, including notification of adjoining property owners, shall be substantially identical in type and scope as that provided for *special uses* under this Chapter of the Henderson County Code, or any successor land development ordinance.
  - ii At such review, the Planning Board shall hear a summary and review of the application by Zoning Department staff, evidence as presented by the *applicant*, and such other evidence as the Planning Board may find useful.
  - iii The Planning Board shall, within 60 days of the date the application is first considered by the Planning Board, issue its recommendation to the Board of Commissioners as to the grant or denial of the application.
- (5) Public hearing by the Flood Damage Prevention Board.
  - i Notice of the public hearing before the Flood Damage Prevention Board, including notification of adjoining property owners, shall be identical to that provided for *special uses* under this Chapter of the Henderson County Code, or any successor land development ordinance.
  - ii The Flood Damage Prevention Board shall consider a summary of the proposed project from the Zoning Department staff, evidence in support of the project and concerning the issues upon which proof must be submitted under this subpart from the *applicant*, evidence from adjacent property owners, and such other evidence as the Flood Damage Prevention Board finds useful.
  - iii At the conclusion of the public hearing, the Flood Damage Prevention Board shall issue its decision within the time limits established in Rule 47 of the Board of Commissioners' Rules of Procedure.
- D. Standards for grant or denial of application. In order to grant a *special fill permit*, the Flood Damage Prevention Board must conclude:
  - (1) That the proposed *encroachment* would not result in any increase in the flood levels during the occurrence of the *base flood*; and,
  - (2) That the permit, if granted will result in no net decrease in flood storage capacity on the parcel upon which the fill is proposed; and,
  - (3) That the proposed *encroachment* will not violate any other Federal, State or Henderson County laws, rules, ordinances, or regulations; and,
  - (4) That the permit, if granted, will comply with the *Comprehensive Plan*, and that, if granted, it will advance a public or community purpose, and that such purpose is sufficiently substantial to justify issuance of the permit.
- E. Any grant of a *special fill permit* by the Flood Damage Prevention Board may include conditions, which must be satisfied by the *applicant*. These conditions must be based on evidence presented at the hearing, and must be related to increasing the flood-control capabilities of the parcel for which the fill permit is sought.

## §200A-204. Flood Hazard Reduction

### 204.1 General Standards:

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

- A. No *encroachment*, construction or fill shall be permitted in the *floodway* or *non-encroachment area* within the *Special Flood Hazard Areas*, except *water dependent structures*, excluding *enclosed buildings*, new water and sewer lines provided no viable alternative exists, recreational *uses* (excluding *enclosed buildings*) and streambank restoration projects, provided the requirements of Section 204.2 are met. Notwithstanding, no *encroachment*, construction or fill shall be permitted in the *floodway* or *non-encroachment area* within the *Special Flood Hazard Areas* without the parcel owner first having obtained and submitted to the *Floodplain Administrator* an acceptable certification by a registered professional engineer proving that the anticipated *encroachment(s)* shall not result in any increase in the elevation of the regulatory flood during an occurrence of the *base flood*. The *Floodplain Administrator* shall require documentation of the certification which shall include either:
- (1) A completed “engineering no-rise” certification form as published by *FEMA*, or acceptable alternative form approved by *FEMA*;
  - (2) Technical documentation in the form of detailed site and construction plans, showing that all requirements of this subpart are met;
  - (3) Technical documentation in the form of hydraulic analysis of the existing and proposed conditions. This documentation shall be either: complete runs of existing and proposed conditions using the HEC II/HEC-RAS step backwater analysis computer program as prepared by the US Army Corp. of Engineers for the analysis of flow plan hydraulics; or
  - (4) An alternative method currently approved by *FEMA* for *use* in the revision process for *FEMA* flood maps. In this case, the engineer shall provide a letter from *FEMA* indicating that the method used is acceptable.
- B. In the *floodway fringe* area as indicated on the *FBFM*, no fill whatsoever shall be allowed except on parcels of land, the boundaries of which are of record in the Henderson County Registry as of the original date of adoption of these regulations (July 5, 2005) , and then only upon no more than 20% of the total of the *floodway fringe* area contained in each such parcel, except that additional fill may be permitted in the *floodway fringe* pursuant to a *special fill permit* granted pursuant to Section 203.7 of this subpart.
- C. All new and substantially improved *structures* shall be anchored to prevent flotation, collapse, or lateral movement of the *structure*.
- D. All new and substantially improved *structures* shall be constructed with materials and utility equipment resistant to flood damage.
- E. All new construction or *substantial improvements* shall be constructed by methods and practices that minimize flood damages.

- F. All new utility equipment, substations, lines and other materials used in the provision of services to the public such as telephone, electricity, natural gas, and cable television shall be located outside a *floodplain*, unless no viable alternative exists.
- G. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include but are not limited to HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric meter panels/boxes, utility/cable boxes, appliances (i.e. washers, dryers, refrigerator, etc.), hot water heaters, electric outlets/switches.
- H. All new and replacement *water supply systems* shall be located outside the *Special Flood Hazard Area*, unless no other viable alternative exists, and designed to minimize or eliminate infiltration of flood waters into the system, and also to meet all other applicable state and local requirements.
- I. All new and replacement sanitary sewage and on-site waste disposal systems shall be located outside the *Special Flood Hazard Area*, unless no other viable alternative exists, and designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and also to meet all other applicable state and local requirements. On-site waste disposal systems constructed near or adjoining *Special Flood Hazard Areas* shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- J. No new private wells shall be located within the *Special Flood Hazard Area* unless no viable alternative exists and that such wells meet all other applicable state and local requirements. Private wells constructed near or adjoining *Special Flood Hazard Areas* shall be located and constructed to minimize or eliminate infiltration of flood water into the system.
- K. Any alteration, repair, reconstruction, or improvements to a *structure* which is in compliance with the provisions of this subpart, shall meet the requirements of “new construction” as contained in this subpart.
- L. Any fill material on which a *structure* is located:
  - (1) Shall be extended to grade ten (10) feet beyond the limits of the *structure* foundation; and
  - (2) Shall be graded to drain; and
  - (3) Shall be protected against *erosion*; and
  - (4) Shall have a side *slope* no steeper than two (2) feet horizontal to one (1) foot vertical; and
  - (5) Shall not contain any contaminated, toxic or hazardous materials; and
  - (6) Shall be approved before placement
- M. *Nonconforming structures* or other development may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this subpart. Provided, however, nothing in this subpart shall prevent the repair, reconstruction, or replacement of a *building* or *structure* existing on the original

effective date of these regulations (July 30, 2005) and located totally or partially within the *floodway*, *non-encroachment area*, or *stream setback*, provided that the bulk of the *building* or *structure* below the *regulatory flood protection elevation* in the *floodway*, *non-encroachment area*, or *stream setback* is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this subpart, and nothing in this subpart shall prevent the permitted maintenance, repair, reconstruction or replacement of *agriculture*-related water diversion *structures* where the permit for the same is granted by other than Henderson County. No permit shall be required from Henderson County to reconstruct agricultural development which pre-exists the original effective date of these regulations (July 30, 2005).

- N. The following are permitted *uses* for the *floodway fringe*: all *uses* otherwise permitted by the applicable land *use* regulations, so long as such *uses* are in compliance with the terms of this subpart.
- O. New *solid waste disposal facilities*, *hazardous waste management facilities*, *solid waste sites*, *salvage yards*, and *chemical storage facilities* shall not be permitted in *Special Flood Hazard Areas*, except by *variance* as specified in this subpart. A *structure* or tank for chemical or fuel storage incidental to an allowed *use*, including but not limited to *agriculture*, or to the operation of a water treatment plant or *wastewater* treatment facility may be located in a *Special Flood Hazard Area* only if the *structure* or tank is either elevated or floodproofed to at least the *regulatory flood protection elevation* and certified according to Section 203.2(C) of this subpart.
- P. All development proposals shall be consistent with the need to minimize flood damage.
- Q. All development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- R. All development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

#### 204.2 Specific Standards:

In all *Special Flood Hazard Areas* where *BFE* data has been provided, as set forth in this subpart, the following provisions in addition to those required in Section 204.1 are required:

- A. Residential Construction. New construction or *substantial improvement* of any residential *structure* (including *manufactured/mobile homes*) shall have the *reference level*, including *basement*, elevated no lower than the *regulatory flood protection elevation*.

Nonresidential Construction. New construction or *substantial improvement* of any nonresidential *structure* shall have the *reference level*, including *basement*, elevated no lower than the *regulatory flood protection elevation*. *Structures* located in *floodway fringe* may be floodproofed to the *regulatory flood protection elevation* in lieu of elevation provided that all areas of the *structure* below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the *Floodplain Administrator* as set forth in Section 203.2(C).

- B. Manufactured/Mobile Homes. No *manufactured/mobile homes* shall be permitted except replacement *manufactured/mobile homes* in an existing *manufactured home park*, existing *manufactured home subdivision*, or replacement *manufactured/mobile homes* on an individual parcel, provided the following conditions are met:
- (1) *Manufactured/mobile homes* shall be elevated so that the *reference level* of the *manufactured/mobile home* is no lower than the *regulatory flood protection elevation*.
  - (2) *Manufactured/mobile homes* shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement in accordance with the State of North Carolina Regulations for *Manufactured/Mobile Homes*, 1995 Edition, and any revision thereto adopted by the Commissioner of Insurance pursuant to NCGS §143-143.15 or a certified engineered foundation. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.
  - (3) All foundation enclosures or skirting shall be in accordance with this subpart.
  - (4) An evacuation plan must be developed for evacuation of all residents of all substantially improved or substantially damaged *manufactured/mobile home parks* or *subdivisions* located within *flood prone areas*. This plan shall be filed with and approved by the *Floodplain Administrator* and the local Emergency Management coordinator.
- C. Enclosed areas, of new construction or substantially improved *structures*, which are below the *regulatory flood protection elevation*:
- (1) Shall not be designed to be used for human habitation, but shall only be used for parking of *vehicles*, *building* access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of *vehicles* (*garage* door) or limited storage of maintenance equipment (standard exterior door). Or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas;
  - (2) Shall be constructed entirely of flood resistant materials below the *regulatory flood protection elevation*;
  - (3) Shall include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must be certified by a professional engineer or architect on the elevation certification form and meet the following minimum design criteria;
    - i Provide a minimum of two (2) openings on different sides of each enclosed area subject to flooding.
    - ii The total net area of all openings must be at least one (1) square inch for each square foot of each enclosed area subject to flooding.

- iii If a *building* has more than one (1) enclosed area, each area must have openings on exterior walls to allow floodwater to directly enter;
- iv The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade; and,
- v Openings may be equipped with screens, louvers, or other opening coverings or devices provided they permit the automatic flow of floodwaters in both directions. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood skirting, regardless of structural status, is considered an enclosure and requires openings as outlined above.

D. Additions/Improvements.

- (1) *Additions* and/or improvements to *pre-FIRM structures* where the *addition* and/or improvements in combination with any interior modifications to the existing *structure* are:
    - i Not a *substantial improvement*, the *addition* and/or improvements must be designed to minimize flood damages and must not be any more *nonconforming* than the existing *structure*.
    - ii A *substantial improvement*, both the existing *structure* and the *addition* and/or improvements must comply with the standards for new construction.
  - (2) *Additions* to *post-FIRM structures* with no modifications to the existing *structure* shall require only the *addition* to comply with the standards for new construction.
  - (3) *Additions* and/or improvements to *post-FIRM structures* where the *addition* and/or improvements in combination with any interior modifications to the existing *structure* are:
    - i Not a *substantial improvement*, the *addition* and/or improvements only must comply with the standards for new construction.
    - ii A *substantial improvement*, both the existing *structure* and the *addition* and/or improvements must comply with the standards for new construction.
- E. Where a fire wall or independent perimeter load-bearing wall is provided between the *addition* and the existing *building*, the addition(s) shall be considered a separate *building* and only the *addition* must comply with the standards for new construction.
- F. Temporary Nonresidential Structures. Prior to the issuance of a Floodplain Development Permit for a *temporary structure*, the following requirements must be met:
- (1) *Applicants* must submit to the *Floodplain Administrator* a plan for the removal of such *structure(s)* in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the *Floodplain Administrator* for review and written approval:

- i A specified time period for which the *temporary use* will be permitted;
- ii The name, address, and phone number of the individual responsible for the removal of the *temporary structure*;
- iii The time frame prior to the event at which a *structure* will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
- iv A copy of the *contract* or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and
- v Designation, accompanied by documentation, of a location outside the *Special Flood Hazard Area* to which the *temporary structure* will be moved.

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

G. When *accessory structures* are to be placed within a *Special Flood Hazard Area*, the following criteria shall be met:

- (1) *Accessory structures* shall be designed to have low flood damage potential;
- (2) *Accessory structures* shall be constructed and placed on the *building* site so as to offer the minimum resistance to the flow of floodwaters;
- (3) *Accessory structures* shall be firmly anchored in accordance with Section 204.1(C);
- (4) All service facilities such as electrical and heating equipment shall be installed in accordance with Section 204.1(D);
- (5) Openings to relieve hydrostatic pressure during a flood shall be provided below *regulatory flood protection elevation* in conformance with Section 204.2(C)(3).
- (6) An *accessory structure* with a *footprint* less than 150 square feet does not require an elevation or *floodproofing* certificate (a Floodplain Development Permit is still required). Elevation or *floodproofing* certifications are required for all other *accessory structures* in accordance with Section 203.2(C).

204.3 Subdivisions, Manufactured Home Parks, Manufactured Home Subdivisions, And Other Residential Development:

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

- A. Be consistent with the need to minimize flood damage;

- B. Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- C. Have adequate drainage provided to reduce exposure to flood hazards; and,
- D. Have *Base Flood Elevation (BFE)* data provided if development is greater than the lesser of five (5) acres or 50 lots. Such *Base flood elevation (BFE)* data shall be adopted by reference in accord with Section 202.2 in implementing this subpart.

204.4 Standards for Floodplains Without Established Base Flood Elevations:

Within the *Special Flood Hazard Areas* established in Section 202.2, where no *BFE* data has been provided by *FEMA*, the following provisions, in addition to Section 204.1, shall apply:

- A. No *encroachments*, including fill, new construction, *substantial improvements* or new development shall be permitted within a distance of 20 feet from each side of the stream measured from the top of the bank or five (5) times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such *encroachments* shall not result in any increase in flood levels during the occurrence of the *base flood*.
- B. The *BFE* used in determining the *regulatory flood protection elevation* shall be determined based on one of the following criteria set in priority order:
  - (1) If *BFE* data is available from other sources, such as Federal, State or other, all new construction and *substantial improvements* within such areas shall also comply with all applicable provisions of this subpart and shall be elevated or floodproofed in accordance with standards in this subpart.
  - (2) When *BFE* data is not available from a Federal, State, or other source as outlined above, the *reference level* shall be elevated above the *highest adjacent grade* as required in the *regulatory flood protection elevation* definition.

204.5 Standards for Riverine Floodplains With BFE Data but Without Established Floodways or Non-encroachment Areas:

Along rivers and streams where *BFE* data is provided but neither *floodway* nor *non-encroachment areas* are identified for a *Special Flood Hazard Area* on the *FIRM* or in the *FIS*, the following requirements shall apply to all development within such areas:

- A. Standards outlined in §200A-204 (Flood Hazard Reduction); and
- B. No *encroachments*, including fill, new construction, *substantial improvements*, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the *water surface elevation* of the *base flood* more than one (1) foot at any point within the community.

**§200A-205. Legal Status**

205.1 Reserved.

205.2 Effect on Outstanding Building Permits:

Nothing herein contained shall require any change in the plans, construction, size or designated *use* of any development or any part thereof for which a Building Permit has been granted by the Building Codes Administrator or his authorized agents before the time of passage of this subpart (July 5, 2005); provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to passage of this subpart or any revision thereto, construction or *use* shall be in conformity with the provisions of this subpart.

205.3 Effective Date:

This Subpart A originally became effective 30 July 2005.

**Subpart B. Water Supply Watershed Protection**

**§200A-206. Statutory Authorization**

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

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

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

**§200A-208. Purpose**

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

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

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