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Register Of Deeds
By RL Deputy/Asst.

Ordinance to Regulate High Impact Land Uses

Wilkes County, N.C.

TABLE OF CONTENTS

ARTICLE I – INTRODUCTION.....	1
Section 1. Authority.....	1
Section 2. Purpose.....	1
Section 3. Territorial Coverage.....	1
ARTICLE II – REGULATED LAND USES.....	1
Section 1. Regulated Uses.....	1
A. Asphalt Plants.....	1
B. Cement Mixing Facilities.....	1
C. Chemical Manufacturing.....	1
D. Electricity Generating Facilities.....	1
E. Fuel Bulk Storage Facilities.....	1
F. Radio and Television Broadcast Towers.....	1
Section 2. Definitions.....	1
Section 3. Regulations and Standards Imposed.....	4
A. Building Height Limits.....	4
B. Bufferyards and Setbacks Required.....	4
C. Landscaping Plans Required.....	5
D. Fencing Requirements.....	6
E. Spacing Requirements – Protected Facilities.....	6
F. Spacing Requirements – Waiver.....	7
G. Minimum Tract Size and Ownership.....	8
ARTICLE III – NONCONFORMING HIGH IMPACT LAND USES.....	8
Section 1. Grandfathering of Pre-existing High Impact Land Uses.....	8
Section 2. Alteration or Expansion of Nonconforming High Impact Land Uses.....	9
Section 3. Reconstruction of Nonconforming High Impact Land Uses.....	9
Section 4. Discontinuance of Nonconforming High Impact Land Uses.....	9
ARTICLE IV – PERMITS.....	10
Section 1. Permitting Process.....	10
A. Permits Required.....	10
B. Intent-to-Construction HILU Permits.....	10
(1) Applications.....	10
(2) Application Fee.....	11
(3) Issuance or Denial of Permit.....	11
(4) Conditions of Permit.....	13
(5) Duration and Scope of Permit.....	13
(6) Alterations and Expansions.....	13

	C.	Operational HILU Permits.....	13
	(1)	Applications.....	13
	(2)	Application Fee.....	15
	(3)	Traffic Impact Study.....	15
	(4)	Consultation with Parkway Superintendent.....	16
	(5)	Consultant with Other Local, State, and Federal Agencies.....	16
	(6)	Issuance or Denial of Permit.....	16
	(7)	Conditions of Permit.....	18
	(8)	Duration and Scope of Permit.....	19
	(9)	Alterations and Expansions.....	19
Section 2.		Revocation of Permit.....	19
Section 3.		Appeal of Permit Denial or Revocation.....	20
Section 4.		Referral to Board of Adjustment.....	20
ARTICLE V – APPEALS AND VARIANCES.....			20
Section 1.		Board of Adjustment.....	20
Section 2.		Powers of Board of Adjustment.....	20
Section 3.		Quorum and Vote Required.....	20
Section 4.		Procedure for Appeals.....	21
Section 5.		Procedure for Variances.....	21
Section 6.		Application of Interpretation Power.....	22
Section 7.		Appeal Stays Further Proceedings.....	22
Section 8.		Exceptions to Stay of Action.....	23
Section 9.		Appeals of Board Actions.....	23
ARTICLE VI – ENFORCEMENT, VIOLATIONS, AND PENALTIES.....			23
Section 1.		Administration and Enforcement.....	23
Section 2.		Interference.....	23
Section 3.		Violations; Penalties.....	24
Section 4.		Equitable Enforcement; Order of Abatement.....	24
Section 5.		Cumulative Remedies.....	24
ARTICLE VII – GENERAL PROVISIONS.....			24
Section 1.		Conflict with Other Laws.....	24
Section 2.		Severability Clause.....	24
Section 3.		Amendment Procedure.....	24
	A.	Planning Board Review.....	24
	B.	Public Hearing.....	25
	C.	Effect of Amendments.....	25
Section 4.		Repeal of Moratorium.....	25
Section 5.		Repeal in Event of County-Wide Zoning.....	25
Section 6.		Effective Date.....	25

ARTICLE I

INTRODUCTION

Section 1. Authority. The Wilkes County Board of Commissioners enacts this Ordinance pursuant to its police powers, as set forth in and authorized by Section 153A-121(a) of the North Carolina General Statutes, and pursuant to its planning and zoning powers, as set forth in and authorized by Article 18 of Chapter 153A of the North Carolina General Statutes.

Section 2. Purpose. The following regulations of high impact land uses are adopted for the purpose of promoting the health, safety, and general welfare of the citizens of Wilkes County, and to promote the peace and dignity of the County. The Wilkes County Commissioners hereby establish certain criteria relating to high impact land uses. These uses by their very nature produce objectionable levels of noise, odors, vibrations, fumes, light, smoke, and/or other impacts upon the lands adjacent to them. These standards shall allow for the placement and growth of such uses, while maintaining the health, safety, and general welfare standards of established residential and commercial areas in Wilkes County.

Section 3. Territorial Coverage. Pursuant to G.S. §153A-122, this Ordinance shall apply to all unincorporated areas of Wilkes County in which no town or city is exercising extraterritorial jurisdiction under Article 19 of Chapter 160A of the North Carolina General Statutes.

ARTICLE II

REGULATED LAND USES

Section 1. Regulated Uses. This Ordinance applies only to the following listed high impact land uses:

- A. Asphalt Plants.
- B. Cement Mixing Facilities.
- C. Chemical Manufacturing.
- D. Electricity Generating Facilities.
- E. Fuel Bulk Storage Facilities.
- F. Radio and Television Broadcast Towers.

Section 2. Definitions. The following definitions shall be used for the purposes of interpreting this Ordinance. For terms not defined below, the common usage of the term shall prevail.

Agricultural Farm – A bona fide farm whose primary purpose is the production of agricultural products including but not limited to crops, fruits, Christmas trees, vegetables, ornamental or flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

Area of Operations – The portion of a tract of land on which a high impact land use is situated that is actually under use for operations by the high impact land use, including the area occupied by buildings, structures, equipment, parking, storage, and other similar operations.

Asphalt Plant – A plant or facility, with all related equipment, for the manufacture and production of a black or brown “tarlike” variety of bitumen, which, when mixed with proper amounts of sand or gravel or both, results in material suitable for paving and/or roofing, etc.

Assisted Living Facility – Any group housing and services program for two or more unrelated adults, however named, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more North Carolina licensed home care or hospice agencies.

Board of Adjustment – The Wilkes County Board of Adjustment.

Board of Commissioners – The Wilkes County Board of Commissioners.

Chemical – An element, chemical compound, mixture of elements or compounds, or both.

Chemical Manufacturing – A facility primarily involved in the production, synthesis, formation, processing, refining, manufacturing, and/or distribution of chemical products in bulk, for other than retail sales on-site.

Child Care Facility – A child care facility as defined in G.S. §110-86 or any successor statute thereto.

Church – A building used on a regular basis for the primary purpose of serving as a place of public worship.

Construction Activities – Any studies, investigations, operations, improvements, or other activities undertaken at the site of a proposed high impact land use pertaining to the construction, placement, erection, or establishment of the same, including but not limited to surveys, soil and other environmental tests, clearing and grading, pouring footers or pads, placing building materials or equipment at the site, locating or constructing buildings, structures, or other improvements, or any other similar activities.

County – The County of Wilkes.

D.E.N.R. – The North Carolina Department of Environment and Natural Resources.

D.O.T. – The North Carolina Department of Transportation.

Dwelling Unit – A building, manufactured home, or modular home providing complete independent living facilities for a single family, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Two or more manufactured homes which are

combined on one lot or parcel shall be considered as a single dwelling unit if they are joined together in one living unit for the use of a single family and meet all of the requirements for a "dwelling unit" under the Amended Wilkes County Watershed Protection Ordinance.

Educational Facility – An elementary school, secondary school, charter school, private school, community college, college, university, or any other similar institution or facility for the education of persons, including any property owned by such facility used for educational purposes.

Electricity Generating Facility – A stand-alone plant not ancillary to another land use which generates electricity to be distributed to consumers, including but not limited to fossil fuel burning facilities, wind power farms, and solar power farms. This definition shall not include electricity produced at or on an agricultural farm, residence, business, or other facility where use of the electricity so produced is limited primarily to on-site consumption.

Fuel Bulk Storage Facilities – A facility whose primary purpose is the storage, distribution, mixing, or transfer of flammable or combustible liquids, gases, or solids, received or transferred by truck, train, tank vessel, pipelines, tank car, piping, portable tank or containers, or other method, including propane, methane, ethanol, gasoline, kerosene, oil, coal, and other fuels. This definition shall not include filling stations used solely for distribution to individual consumers; nor shall it include fuel stored at or on an agricultural farm, residence, business, or other facility where use of the same is limited primarily to on-site consumption.

High Impact Land Use – A use listed in Article II, Section 1 of this Ordinance.

Hospital – A facility as defined in G.S. §131E-76(3) or any successor statute thereto.

Nursing Home – A facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the operator.

Person – A firm, corporation, general partnership, limited partnership, limited liability company, sole proprietor, individual, individual acting on behalf of another, or any other entity of any type whatsoever.

Planning Department – The Wilkes County Planning Department.

Radio and Television Broadcast Tower – A tower or other similar structure used for the purpose of broadcasting or transmitting radio and/or television signals, but excluding towers governed by the Wilkes County Wireless Communication Tower Ordinance.

Replacement Value – The cost to restore a structure to its previously existing condition as computed by an appraisal which has been conducted by an appraiser holding a North Carolina State Certified General Real Estate Appraisal License and conducted in compliance with generally accepted practices within the appraisal community.

Rural Medical Center – A facility staffed on a regular basis by one (1) or more physicians licensed to practice medicine in the State of North Carolina, which facility is located outside the boundaries of a municipality and is established and maintained for the purpose of providing medical care to members of the community in which it is situated.

Screening Bufferyard – A continuous area, of a width as specified in this Ordinance, which at all times of the year has trees, shrubbery, and/or other natural vegetation sufficient in height, density, and foliage to screen a high impact land use from the view of persons and motorists not on the property and to reasonably prevent airborne particulate matter from escaping therefrom, or which is planted or allowed to grow with such natural vegetation as to be reasonably expected to meet said requirements within five (5) years from the time the same is planted. Where a screening bufferyard is planted, vegetation shall be utilized which is evergreen in nature, such as Leyland cypress trees or other vegetation that has similar growth characteristics.

Section 3. Regulations and Standards Imposed.

A. Building Height Limits.

In order to allow for adequate fire protection, no building which is part of a high impact land use and which is intended or used for human occupancy shall exceed a vertical height of forty (40) feet, measured from the top of the foundation (entrance grade) to the highest point of the roof assembly. No more than one (1) occupancy story may be below this entrance grade.

Excluded from this limitation are the following:

- (1) Water, radio, telephone (including cellular), or television towers or any equipment for the transmission of electricity or communications, or both; and
- (2) Structures which are slender in nature and minor vertical projections of a parent building, including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills, provided no part of the structure which is higher than (forty) 40 feet is intended or used for human occupancy.

B. Bufferyards and Setbacks Required.

- (1) High impact land uses shall, as a condition of receiving and holding an Operational HILU Permit under Article IV below, have or plant a one hundred (100) foot screening bufferyard along side and rear property lines not adjoining a road, and have or plant a fifty (50) foot screening bufferyard along all other property lines, excluding any driveways or entranceways to the premises.

- (2) Where high impact land uses adjoin each other, each shall have or plant along the adjoining property line one-half (1/2) of the screening bufferyard as required under subdivision (1) above. High impact land uses separated by a D.O.T. maintained street or road shall not be considered adjoining for purposes of this subdivision (2).
- (3) Where a screening bufferyard is required to be planted under subdivisions (1) or (2) above, planting of the same shall not have to be undertaken until an Operational HILU Permit has been issued under Article IV below; provided, however, that said planting shall be in full compliance with the requirements of an approved landscaping plan under subsection C below.
- (4) If any portion of a screening bufferyard required under this Ordinance is at any time damaged or destroyed, said portion shall, as soon as practicable following the damage or destruction, be planted with replacement vegetation satisfying the requirements hereof.
- (5) High impact land uses shall be set back fifty (50) feet from the edge of pavement (or graveled surface, for unpaved roads) of all roads, or fifty (50) feet from any recorded right of way or D.O.T. property boundary, whichever shall result in the greater setback.
- (6) Notwithstanding the provisions of subdivisions (1) through (5) above, high impact land uses shall be set back from all perennial waters indicated by blue lines on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps for a distance of 100 feet from the top of the stream bank. Said 100 foot setback shall be utilized as a vegetative buffer, with the first 30 feet from the top of the stream bank being undisturbed and the remaining 70 feet consisting of managed vegetation.
- (7) For purposes of subdivisions (5) and (6) above, in order to establish required setbacks, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building, structure, or outdoor storage used as part of the premises of the high impact land use to the edge of the road or perennial water, as the case may be. Presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying said setback requirements.

C. Landscaping Plan Required.

High impact land uses shall, as a condition of receiving and holding an Operational HILU Permit under Article IV below, be placed or constructed in compliance with a landscaping plan which has been approved by the Planning Department, or the Board of Adjustment if appealed pursuant to Article V of this Ordinance, which:

- (1) Minimizes the visual impact of the high impact land use at road grade level from all sides;
- (2) Maximizes the buffering of noise and particulate matter; and
- (3) Complies with the requirements of subsection B above.

Each applicant for a Permit under Article IV shall submit a landscaping plan together with the application, detailing how the applicant proposes to accomplish the above stated objectives. The Planning Department, or the Board of Adjustment if appealed pursuant to Article V of this Ordinance, may reasonably require adjustments and alterations to any proposed landscaping plan as may be necessary in order to insure compliance with the provisions of this Ordinance.

D. Fencing Requirements.

High impact land uses shall, as a condition of receiving and holding an Operation HILU Permit under Article IV below, have a security fence which surrounds the entire area of operations (as defined in Article II, Section 2 above) for such high impact land use, excluding any driveways or entranceways to the premises. Driveways or entranceways shall be gated during hours when the high impact land use is not open and operating. The security fence required under this subsection D shall be chain link, shall be constructed of nine gauge steel or heavier, and shall be a minimum of six (6) feet in height with one or more strands of barbed wire at the top which raise the height of the fence to seven (7) feet. All gates across driveways or entranceways shall be of similar construction.

E. Spacing Requirements – Protected Facilities.

No high impact land use shall be located within one thousand (1,000) feet of any of the following, which for purposes of this Ordinance are hereinafter referred to as “protected facilities”:

- (1) An educational facility;
- (2) A North Carolina licensed child care facility;
- (3) A North Carolina licensed assisted living facility;
- (4) A North Carolina licensed nursing home;
- (5) A public or privately owned hospital;
- (6) A rural medical center;
- (7) A church;

(8) An occupied dwelling unit.

The provisions of this subsection E shall apply only if the protected facility is already in existence prior to receipt by the Planning Department of an application for an Intent-to-Construct HILU Permit under Article IV below. A protected facility other than a dwelling unit shall be deemed to be in existence if, at the time of receipt by the Planning Department of the application for the Intent-to-Construct HILU Permit, construction of the protected facility has been completed and all required licenses have been duly issued for operation of the same, or a building permit or required license has been duly issued for construction of the same. A dwelling unit shall be deemed to be in existence if, at the time of receipt by the Planning Department of the application for the Intent-to-Construct HILU Permit, construction of the dwelling unit has been completed and it is occupied on a regular basis, or, in the case of a dwelling unit that has not been completed, a building permit has been duly issued for construction of the same.

In the event an application for an Intent-to-Construct HILU Permit is received by the Planning Department prior to the existence of a protected facility as listed above, and such protected facility is thereafter located or constructed so as to make the provisions of this subsection E applicable in the event of an expansion of the high impact land use, said high impact land use may nonetheless undertake any such expansion notwithstanding the spacing requirements established in this subsection E, provided that such expansion is located entirely on property owned by or leased to the high impact land use prior to the existence of the protected facility or use, and provided further that the high impact land use obtains required Permits for the same under Article IV below.

In order to establish permitted locations, measurement shall be made in a straight line, without regard to intervening structures or objects, from a point at the center of the primary building, structure, or operation located on the premises of the high impact land use, to the nearest point of any building, structure, or use comprising all or a portion of the protected facility; provided, that where the protected facility is a dwelling unit, measurement shall be to the nearest point of the principal building or structure. Presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the spacing requirements of this subsection. All measurements made hereunder shall be taken by the Planning Department, utilizing aerial photographs from the Wilkes County Tax Mapping Office, scaled for distance, or such other method as the Planning Department determines in its discretion to be reasonable and accurate.

F. Spacing Requirements – Waiver.

A protected facility as listed in subsection E may, for itself but not on behalf of another protected facility, waive all or any portion of the spacing requirements set forth therein. Said waiver shall be in writing and shall be in the form of an easement as set forth in Appendix "A" to this Ordinance. The waiver shall be signed by a duly authorized officer or officers of the protected facility, or, in the case of an occupied dwelling unit or a North Carolina licensed child care facility located in a dwelling unit, by all of the owners of the dwelling unit. Where the dwelling unit is the subject of a current lease agreement, the waiver shall further be signed by the

person(s) named as tenant(s) thereunder. The waiver shall also be signed by the owner of the high impact land use, and, if different, by all of the owners of the property on which the high impact land use is situated. The waiver shall further be signed by the County Attorney, whose signature shall serve as a certification that the requirements of this subsection F have been met. All of said signatures shall be notarized, whereupon the waiver shall be recorded in the Wilkes County Register of Deeds Office at the expense of the high impact land use. Following such recording, the spacing requirements of subsection E as between said protected facility and said high impact land use shall be deemed amended to conform to the provisions of the waiver. The easement granted by said waiver shall be appurtenant to and run with the land and shall be binding on the parties, their heirs, successors, and assigns; provided, that the same shall by its express provisions terminate at such time as the high impact land use ceases to have a valid Operational HILU Permit under Article IV, Section 1, subsection C hereunder for the operations and/or facility which is/are the subject of the waiver.

G. Minimum Tract Size and Ownership.

No high impact land use shall be located on a tract less than ten (10) acres in size, which tract is owned by or leased to the applicant or Permit holder for the same. Such tract shall continue to be owned by or leased to the applicant or Permit holder for so long as the high impact land use continues to be located thereon. The deed, lease instrument, or memorandum of lease evidencing said ownership or leasehold interest shall be recorded in the Wilkes County Register of Deeds Office, and any subsequent conveyance of said property or portion thereof, or termination of such lease, shall be recorded in like manner. Adjoining tracts may be combined for purposes of meeting the requirements of this subsection F; provided, that in the case of ownership, said tracts shall be described in a single deed in the name of the applicant or Permit holder as recorded in the Wilkes County Register of Deeds Office; provided further, that in the case of a leasehold interest, the lease instruments or memoranda thereof for said tracts, as recorded in the Wilkes County Register of Deeds Office, shall name the applicant or Permit holder as lessee. Nothing herein shall be construed to alter or in any way modify the requirements of the Amended Wilkes County Watershed Protection Ordinance insofar as the same may be applicable to said tract or tracts and the development of impervious surface thereon.

ARTICLE III

NONCONFORMING HIGH IMPACT LAND USES

Section 1. Grandfathering of Pre-existing High Impact Land Uses. Any high impact land use existing and in operation upon the date of adoption of this Ordinance which does not conform to the requirements hereof shall constitute a nonconforming use. Such nonconforming use may continue at the site of said operations, subject to the provisions of Sections 2, 3, and 4 below. In all cases the burden shall be upon the owner or operator of the high impact land use to establish by clear, cogent, and convincing evidence that the same qualifies as a pre-existing use under the provisions of this Section 1.

Section 2. Alteration or Expansion of Nonconforming High Impact Land Uses. A nonconforming high impact land use may be altered, added to, expanded, or enlarged at the site of its operations as specified in Section 1 above without having to meet the requirements of this Ordinance if the same is undertaken solely on property:

A. Owned by or leased to the high impact land use as of the date of adoption of this Ordinance; or

B. Acquired by or leased to the high impact land use subsequent to the date of adoption of this Ordinance, provided that such property is contiguous to property which meets the requirements of subsection A above.

In all other cases a nonconforming high impact land use may not be altered, added to, expanded, or enlarged unless Permits are obtained for the entire facility pursuant to Article IV below and said facility meets all of the requirements of this Ordinance.

Alteration, addition to, expansion, or enlargement of a nonconforming high impact land use under this Section 2 shall be deemed to take place only if it is such as to require the issuance of a building permit, zoning permit, environmental health permit, watershed permit, or State or Federal environmental or department of transportation permit.

Section 3. Reconstruction of Nonconforming High Impact Land Uses. In cases of damage to a nonconforming high impact land use by fire, flood, or other hazard, repairs may be made and the nonconforming high impact land use may be continued; provided, that said hazard was not caused by the intentional conduct of the owner or operator; provided further, that in making repairs the owner or operator shall ensure that the footprint(s) of the original building(s) is/are maintained, or, in case of an expansion of the same, that said expansion meets the requirements of Section 2 above. In all other cases of damage to a nonconforming high impact land use, the same may be repaired and continued only if Permits are obtained pursuant to Article IV below and all of the requirements of this Ordinance are met.

Section 4. Discontinuance of Nonconforming High Impact Land Uses. Notwithstanding the provisions of Section 3 above, if a nonconforming high impact land use is for any reason discontinued for one hundred eighty (180) or more consecutive days, such use may not resume until Permits are obtained pursuant to Article IV below and all of the requirements of this Ordinance are met. In the event of damage to a nonconforming high impact land use by fire, flood, or other hazard, which is not caused by the intentional conduct of the owner or operator, and which causes the high impact land use to discontinue operations for one hundred eighty (180) or more consecutive days, the owner or operator may file a request for a variance with the Board of Adjustment as set forth under Article V below for one (1) or more extensions of said one hundred eighty (180) day period, up to a combined maximum of one hundred eighty (180) additional days; provided, that the variance request shall set forth the reason(s) why repairs cannot be completed and operations resumed within the time required hereunder; provided further, that any such variance request shall be filed prior to the expiration of the preceding period during which repairs were to be completed and operations resumed.

For purposes of this Section 4, a high impact land use shall not be deemed to be discontinued during such time as the owner or operator thereof has temporarily suspended operations solely due to the seasonal nature of the business.

ARTICLE IV

PERMITS

Section 1. Permitting Process.

A. Permits Required.

No building or other structure subject to this Ordinance shall be placed, erected, moved, added to, or structurally altered, nor shall any use of land which is subject to this Ordinance be undertaken, commenced, expanded, or enlarged, without permits for the same having been issued by the Planning Department as set forth in this Article IV; provided, that no such permits shall be required for nonconforming uses which meet the requirements of Article III above. The permits required under this Article IV shall be:

- (1) An Intent-to-Construct High Impact Land Use (HILU) Permit, which shall be issued before the owner or operator of a proposed high impact land use commences any construction activities (as defined in Article II, Section 2 above) with respect thereto; and
- (2) An Operational High Impact Land Use (HILU) Permit, which shall be issued after the Intent-to-Construct HILU Permit but before the owner or operator of the high impact land use commences operations at the site.

B. Intent-to-Construct HILU Permits.

- (1) Applications.

All applications for Intent-to-Construct HILU Permits shall be on a form approved by the County, shall be fully completed, and shall be signed by the applicant. All applications shall be accompanied by a Wilkes County tax map of the tract or tracts on which the high impact land use is proposed to be situated, and by a rough sketch or drawing (which may be on the tax map or may be separate) depicting: the lay-out of the proposed high impact land use; all structures and facilities planned for the same; the location of any protected facilities which may possibly be affected; a radius in all directions showing the spacing requirements as set forth in Article II, Section 3, subsection E of this Ordinance; the boundary lines of the tract or tracts on which the high impact land use is to be located; the boundary lines of all tracts affected by the above required radius; and the current owners of all such tracts. The application shall additionally contain certifications that:

- (i) The high impact land use for which the Permit is being requested will at all times comply with the applicable regulations and standards imposed under this Ordinance.
- (ii) The applicant has not constructed, maintained, operated, or modified any high impact land use within Wilkes County without the approval of the County.
- (iii) No Permit issued to the applicant under this Ordinance, or under any successor Ordinance hereto, has ever been revoked.

(2) Application Fee.

All applications for Intent-to-Construct HILU Permits shall be accompanied by such fee as may have been established by the Board of Commissioners. Said fee is non-refundable.

(3) Issuance or Denial of Permit.

The Planning Department shall complete its review of the application and notify the applicant in writing as to what action has been taken with respect to the same. Said written notification shall be issued no later than forty-five (45) days from the receipt by the Planning Department of all information required to be submitted by the applicant under this subsection B. During said forty-five (45) day period the Planning Department shall conduct a visit to the site of the proposed high impact land use, shall establish a record of all surrounding development existing as of the time of the filing of the application, and shall take such further steps as it shall deem reasonable and necessary in order to assess the application under the requirements of this subsection B. Action by the Planning Department at the conclusion of its review shall consist of one of the following:

- (i) If the Planning Department determines that the application or the proposed high impact land use, or both, fails to meet one or more of the requirements of this Ordinance, or that any one or more of the certifications in subdivision (1) above cannot truthfully and correctly be made, the application for an Intent-to-Construct HILU Permit shall be denied. Written notification of the denial from the Planning Department to the applicant shall note the reason(s) for the denial and shall refer to the specific section(s) of this Ordinance with which the application or proposed high impact land use does not comply. The

applicant shall have sixty (60) days from receipt of said written notification to bring the application and proposed high impact land use into compliance, in which event the provisions of subparagraph (iii) below shall apply. If the applicant fails to do so within said period of sixty (60) days, the applicant shall be required to file a new application, or, in the alternative, the applicant may file an appeal under Section 3 below. The Planning Department shall provide written notification to the applicant as to the Planning Department's decision with regard to any attempts by the applicant to bring the application or proposed high impact land use into compliance.

- (ii) An application for an Intent-to-Construct HILU Permit shall further be denied upon a determination by the Planning Department that said application or information submitted in connection therewith contains a material misrepresentation, either of commission or omission.
- (iii) If the Planning Department determines that the application and proposed high impact land use meet all of the requirements of this Ordinance, and that the application does not violate the provisions of subparagraph (ii) above, the Planning Department shall issue an Intent-to-Construct HILU Permit to the applicant.
- (iv) If the Planning Department fails within the above stated period of forty-five (45) days to notify the applicant as to what action has been taken, the application shall be deemed approved and an Intent-to-Construct HILU Permit shall be issued to the applicant. For purposes of this subparagraph (iv), the date of notification shall be the date on which the same is mailed, faxed, or otherwise sent or delivered to the applicant.

All Intent-to-Construct HILU Permits hereunder are issued on the condition that they are and shall remain subject to the holder's continued compliance with those certifications contained in the application and with the requirements of this Ordinance. No Intent-to-Construct HILU Permit may be assigned or transferred by the holder to any other person. The issuance by the Planning Department of an Intent-to-Construct HILU Permit under this subsection B shall not serve as a certification or other assurance that the applicant is automatically entitled to issuance of an Operational HILU Permit under subsection C below for the same proposed high impact land use.

(4) Conditions of Permit.

Each Intent-to-Construct HILU Permit approved hereunder shall be issued on condition that:

- (i) The certifications contained in the application are true and correct, and, if continuing in nature, shall at all times remain true and correct;
- (ii) The application, and information submitted in support of the same, contains no material misrepresentation, either of commission or omission;
- (iii) All buildings, structures, facilities, and other aspects of the high impact land use will be constructed as shown in the application and accompanying information; and
- (iv) The applicant is and will at all times remain in compliance with the terms and conditions of the Intent-to-Construct HILU Permit and with all requirements of this Ordinance.

(5) Duration and Scope of Permit.

An Intent-to-Construct HILU Permit, unless revoked under Section 2 below or voluntarily surrendered by the holder thereof, shall be valid until such time as an application for an Operational HILU Permit for the same proposed high impact land use is filed under subsection C below, or for a period of one (1) year from the issuance of the Intent-to-Construct HILU Permit, whichever period is shorter. The Intent-to-Construct HILU Permit shall be valid only for the proposed high impact land use as described in the application for the same.

(6) Alterations and Expansions.

Any alteration, addition to, expansion, or enlargement of a high impact land use shall require the application for and issuance of a new Intent-to-Construct HILU Permit hereunder. For purposes of this subsection B, an alteration, addition to, expansion, or enlargement of a high impact land use shall be deemed to require a new Intent-to-Construct HILU Permit if it is such as to require the issuance of a building permit, zoning permit, environmental health permit, watershed permit, or State or Federal environmental or department of transportation permit.

C. Operational HILU Permits.

(1) Applications.

All applications for Operational HILU Permits shall be on a form approved by the County, shall be fully completed, and shall be signed by the applicant; provided, that no such application may be filed until an Intent-to-Construct HILU Permit for the same proposed high impact land use has been issued under subsection B above. All applications shall be accompanied by an as-built survey showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of any buildings or structures already existing; the location and dimensions of all proposed buildings, facilities, and other aspects of the operations to be conducted, or alterations thereto; and compliance with the standards of Article II. The application shall further include a description of all existing or proposed buildings or operations, or alterations thereto; a description of all existing and proposed uses of the buildings and land; a description of all conditions existing on the land parcel; scale drawings of all proposed buildings and other structures; a landscaping plan as required under Article II above; copies of all required permits as referenced below; a Traffic Impact Study if required under subdivision (3) below; recorded copies of the deed, lease instruments, or memoranda of lease evidencing the applicant's ownership of or leasehold interest in the property on which the high impact land use is to be situated, as required under Article II above; and such other information as may reasonably be required by the Planning Department to determine conformance with and provide for the enforcement of this Ordinance. The application shall additionally contain certifications that:

- (i) The high impact land use for which the Permit is being requested will at all times comply with the applicable regulations and standards imposed under this Ordinance.
- (ii) The applicant has not constructed, maintained, operated, or modified any high impact land use within Wilkes County without the approval of the County.
- (iii) No Permit issued to the applicant under this Ordinance, or under any successor Ordinance hereto, has ever been revoked.
- (iv) The proposed high impact land use is properly permitted under and complies with, and at all times will be maintained and operated and will continue to be permitted under, all rules, regulations, and

other requirements imposed by D.O.T., D.E.N.R., and any other applicable regulatory agency or governmental body.

- (v) The applicant is the owner or lessee of the tract or tracts on which the high impact land use is located or is proposed to be located, and will continue to be the owner or lessee of the same for so long as the high impact land use is situated thereon.
- (vi) The applicant has been duly issued an Intent-to-Construct HILU Permit by the Planning Department for the same proposed high impact land use, which Permit is still valid as of the date of filing of the application for the Operational HILU Permit.

(2) Application Fee.

All applications for Operational HILU Permits shall be accompanied by such fee as may have been established by the Board of Commissioners. Said fee is non-refundable.

(3) Traffic Impact Study.

The Planning Department may, in its discretion, require the applicant to obtain and submit, at the applicant's expense, a Traffic Impact Study (TIS), if the Planning Department determines that the nature of the applicant's proposed operations and their proximity to and resulting use of public roads and highways may have a significant effect on traffic safety and/or the protection of the public. The Planning Department may not, however, require a TIS if D.O.T. has already required one with respect to the proposed high impact land use and has issued a driveway permit following evaluation of the same; provided, that in such event the Planning Department may require the applicant to submit a copy of said TIS and driveway permit together with the application hereunder. In the event a TIS is required under this subdivision (3), the following provisions shall apply:

- (i) The TIS shall comply in all respects with those guidelines as established in Chapter 5 of the D.O.T. Policy on Street and Driveway Access to North Carolina Highways, July 2003 edition, or subsequent editions as amended or superseded from time to time.

(ii) The Planning Department may, in its discretion, employ a licensed North Carolina Professional Engineer with expertise in traffic engineering in order to assist the Planning Department in reviewing and evaluating the TIS. In such case any additional reasonable costs incurred by the Planning Department for such review and evaluation shall be reimbursed by the applicant directly to the Planning Department prior to the issuance of the HILU Permit, or, at the Planning Department's election, paid to the Planning Department by the applicant prior to the Planning Department's incurring said costs (based on such estimate of said costs as shall have been obtained by the Planning Department).

(4) Consultation with Parkway Superintendent.

The Planning Department may, in its discretion, consult with the Superintendent of the Blue Ridge Parkway in Asheville, North Carolina, or such other regional office as may be appropriate, following receipt of an application for an Operational HILU Permit concerning a high impact land use which is to be located within a view area of the Blue Ridge Parkway as determined by the National Park Service. Said consultation shall be for the purpose of requesting a written opinion from the Parkway Superintendent with reference to the location and visibility of the proposed high impact land use and whether the Parkway Superintendent consents or objects to the same. The Planning Department shall consider, but shall not be bound by, said written opinion in deciding whether to issue the Permit.

(5) Consultation with Other Local, State, and Federal Agencies.

The Planning Department may, in its discretion, consult with other local, State, and Federal agencies following receipt of an application for an Operational HILU Permit, when in the opinion of the Planning Department a report from such agency would be relevant in determining whether the proposed high impact land use is able to comply with the certification in subdivision (1)(iv) above.

(6) Issuance or Denial of Permit.

The Planning Department shall complete its review of the application and notify the applicant in writing as to what action has been taken with respect to the same. Said written notification shall

be issued no later than forty-five (45) days from the later of the following to occur: receipt by the Planning Department of all information required to be submitted by the applicant under this subsection C; and receipt by the Planning Department of all information which it is authorized to obtain hereunder. Action by the Planning Department shall consist of one of the following:

- (i) If the Planning Department determines that the application or the proposed high impact land use, or both, fails to meet one or more of the requirements of this Ordinance, or that any one or more of the certifications in subdivision (1) above cannot truthfully and correctly be made, the application for an Operational HILU Permit shall be denied. Written notification of the denial from the Planning Department to the applicant shall note the reason(s) for the denial and shall refer to the specific section(s) of this Ordinance with which the application or proposed high impact land use does not comply. The applicant shall have sixty (60) days from receipt of said written notification to bring the application and proposed high impact land use into compliance, in which event the provisions of subparagraph (iii) below shall apply. If the applicant fails to do so within said period of sixty (60) days, the applicant shall be required to file a new application, or, in the alternative, the applicant may file an appeal under Section 3 below. The Planning Department shall provide written notification to the applicant as to the Planning Department's decision with regard to any attempts by the applicant to bring the application or proposed high impact land use into compliance.
- (ii) An application for an Operational HILU Permit shall further be denied upon a determination by the Planning Department that said application or information submitted in connection therewith contains a material misrepresentation, either of commission or omission.
- (iii) If the Planning Department determines that the application and proposed high impact land use meet all of the requirements of this Ordinance, and that the application does not violate the provisions of subparagraph (ii) above, the Planning Department

shall issue an Operational HILU Permit to the applicant.

- (iv) If the Planning Department fails within the above stated period of forty-five (45) days to notify the applicant as to what action has been taken, the application shall be deemed approved and an Operational HILU Permit shall be issued to the applicant. For purposes of this subparagraph (iv), the date of notification shall be the date on which the same is mailed, faxed, or otherwise sent or delivered to the applicant.

All Operational HILU Permits hereunder are issued on the condition that they are and shall remain subject to the holder's continued compliance with those certifications contained in the application and with the requirements of this Ordinance. No Operational HILU Permit may be assigned or transferred by the holder to any other person.

(7) Conditions of Permit.

Each Operational HILU Permit approved hereunder shall be issued on condition that:

- (i) The certifications contained in the application are true and correct, and, if continuing in nature, shall at all times remain true and correct;
- (ii) The application, and information submitted in support of the same, contains no material misrepresentation, either of commission or omission;
- (iii) All buildings, structures, facilities, and other aspects of the high impact land use will be constructed as shown in the application and accompanying information; and
- (iv) The applicant is and will at all times remain in compliance with the terms and conditions of the Operational HILU Permit and with all requirements of this Ordinance.

(8) Duration and Scope of Permit.

An Operational HILU Permit shall be valid only for the proposed high impact land use as described in the application for the same and, unless revoked under Section 2 below or voluntarily surrendered by the holder thereof, shall remain valid until such time as said high impact land use has for any reason been discontinued for one hundred eighty (180) or more consecutive days. In the event of damage to a nonconforming high impact land use by fire, flood, or other hazard, which is not caused by the intentional conduct of the owner or operator, and which causes the high impact land use to discontinue operations for one hundred eighty (180) or more consecutive days, the owner or operator may file a request for a variance with the Board of Adjustment as set forth under Article V below for one (1) or more extensions of said one hundred eighty (180) day period, up to a combined maximum of one hundred eighty (180) additional days; provided, that the variance request shall set forth the reason(s) why repairs cannot be completed and operations resumed within the time required hereunder; provided further, that any such variance request shall be filed prior to the expiration of the preceding period during which repairs were to be completed and operations resumed. For purposes of this subdivision (8), a high impact land use shall not be deemed to be discontinued during such time as the owner or operator thereof has temporarily suspended operations solely due to the seasonal nature of the business.

(9) Alterations and Expansions.

Any alteration, addition to, expansion, or enlargement of a high impact land use shall require the application for and issuance of a new Operational HILU Permit hereunder. For purposes of this subsection C, an alteration, addition to, expansion, or enlargement of a high impact land use shall be deemed to require a new Operational HILU Permit if it is such as to require the issuance of a building permit, zoning permit, environmental health permit, watershed permit, or State or Federal environmental or department of transportation permit.

Section 2. Revocation of Permit. The Planning Department may, after due notice to the holder of an Intent-to-Construct HILU Permit or Operational HILU Permit and an opportunity to be heard, revoke such Permit upon a finding that:

A. The holder has violated any of the terms or conditions of the Permit or any of the requirements of this Ordinance; or

B. The application on which issuance of the Permit was based contains a material misrepresentation, either of commission or omission.

Section 3. Appeal of Permit Denial or Revocation. If an application for an Intent-to-Construct HILU Permit or Operational HILU Permit is denied, or if such Permit is revoked, the applicant or holder may appeal the action of the Planning Department to the Board of Adjustment as set forth in Article V below.

Section 4. Referral to Board of Adjustment. The Planning Department may, at any time prior to the filing of an appeal by the applicant under Article V below, refer consideration of an application or any aspect thereof under this Article IV to the Board of Adjustment. In such cases the Board of Adjustment shall exercise all powers and authority of the Planning Department as set forth in this Article IV; provided, however, that the exercise of said powers and authority shall be limited to the specific matter referred to it by the Planning Department; provided further, that the Board of Adjustment procedures set forth in Article V below shall not apply in the case of referrals, and that the Board of Adjustment may act on a referral by simple majority vote, a quorum (three-fifths (3/5) of the total membership of the Board) being present; provided further, that any appeal from action of the Board of Adjustment taken pursuant to a referral shall be as set forth in Article V, Section 9.

ARTICLE V

APPEALS AND VARIANCES

Section 1. Board of Adjustment. The Wilkes County Board of Adjustment, as established by G.S. §153A-545, shall hear all appeals, referrals by the Planning Department, requests for variances, and all challenges to the decision or interpretation of the Planning Department under this Ordinance.

Section 2. Powers of Board of Adjustment. The Board shall have the following powers:

A. To hear, decide, and review appeals from any order, requirement, decision, or determination made by the Planning Department in the performance of its duties hereunder;

B. To hear and decide all referrals by the Planning Department under Article IV, Section 4; and

C. To hear and decide applications for variances from the requirements of this Ordinance in accordance with Article V, Section 5.

Section 3. Quorum and Vote Required. A quorum of the Board, necessary to conduct any business of the Board, shall consist of four-fifths (4/5) of the total membership of the Board.

The concurring vote of four-fifths (4/5) of the total membership of the Board shall be necessary in order to:

A. Reverse any order, requirement, decision, or determination of the Planning Department;

B. Decide in favor of the applicant any matter upon which it is required to pass by this Ordinance; or

C. Approve an application for a variance.

The provisions of this Section 3 are expressly made subject to Article IV, Section 4 above concerning referrals to the Board of Adjustment.

Section 4. Procedure for Appeals.

A. Notice of appeal from any order, requirement, decision, or determination made by the Planning Department hereunder shall be in writing, shall specifically state the grounds on which the same is based, and shall be forwarded or delivered to the Clerk to the Board of Adjustment. Said notice of appeal must be received by the Clerk within thirty (30) days following the applicant's or Permit holder's receipt of the final decision of the Planning Department. Appeals not complying with the above requirements shall not be considered.

B. In presenting an appeal, the appellant shall bear the burden of proof, which shall be by the greater weight of the evidence.

C. All evidence presented to the Board of Adjustment shall be sworn.

D. The person acting as Chairman of the Board of Adjustment is authorized to administer oaths to any witnesses in any matter coming before the Board.

Section 5. Procedure for Variances.

A. Upon compliance with the requirements of this Section 5, a variance may be authorized by the Board of Adjustment as to any of the requirements in Article II, Section 3 of this Ordinance, or for one (1) or more extensions of time under Article III, Section 4 of this Ordinance, or for one (1) or more extensions of time under Article IV, Section 1, subsection C, subdivision (8) of this Ordinance; provided, that in no event shall a variance be authorized which destroys or is directly contrary to the intent of the Ordinance; provided further, that in no event shall a variance be authorized which is based on circumstances that are the fault of the applicant. The granting or denial of all variances shall be recorded in the minutes of the Board of Adjustment. Variances as to any of the requirements in Article II, Section 3 shall be granted only in cases involving unnecessary hardships, which, for purposes of this Section 5, shall refer solely to the unique or unusual character of the proposed site, including but not limited to its size, shape, topography, or distance requirement. Hardships which are solely economic or financial in nature shall not be considered. Variances for an extension of time under Article III, Section 4, or for an extension of time under Article IV, Section 1, subsection C, subdivision (8), shall be granted only in cases where the owner or operator of a high impact land use establishes

good and sufficient reason for being unable to complete repairs and resume operations within the previous time allowed.

B. All requests for variances shall be in writing, shall specifically describe the variance requested, and shall demonstrate how the requirements of this Ordinance applicable to the variance requested have been satisfied. Requests for variances shall be forwarded or delivered to the Clerk to the Board of Adjustment.

C. Following receipt of a request for variance, the Clerk to the Board of Adjustment shall schedule the same for hearing before the Board of Adjustment. Notice of the date, time, place, and subject of said hearing, together with a copy of the variance request, shall be forwarded by registered or certified mail, return receipt requested, to the following persons, and the return receipt for the same shall evidence that it was received at least ten (10) days prior to the hearing by said persons:

- (1) The high impact land use owner or operator requesting the variance; and
- (2) The owner of the real property on which the high impact land use is situated, if different from (1) above; and
- (3) The record owners of all tracts of real property which are contiguous to the tract(s) owned by or leased to the high impact land use.

D. In presenting a variance request, the applicant shall bear the burden of proof that the requirements of this Ordinance with respect to variances have been met, which shall be by the greater weight of the evidence.

E. All evidence presented to the Board of Adjustment shall be sworn.

F. The person acting as Chairman of the Board of Adjustment is authorized to administer oaths to any witnesses in any matter coming before the Board.

G. The Board of Adjustment may impose reasonable conditions upon the granting of any variance in order to protect the public interest or neighboring property owners. Violation of any such conditions shall be a violation of this Ordinance and subject the offender to the penalties set forth in Article VI below.

Section 6. Application of Interpretation Power. An appeal from an order, requirement, decision, or determination of the Planning Department shall be decided by the Board of Adjustment duly supported by competent evidence. In exercising this power, the Board of Adjustment shall act in a prudent manner so that the purpose and intent of the Ordinance shall be served. No decision shall have the effect of varying the terms of the Ordinance or permitting as a matter of right any use otherwise limited or prohibited hereunder.

Section 7. Appeal Stays Further Proceedings. An appeal to the Board of Adjustment from a decision or determination of the Planning Department stays all proceedings in furtherance of the

decision or determination appealed from, except as provided in Section 8, during the pendency of the appeal.

Section 8. Exceptions to Stay of Action. An appeal to the Board of Adjustment of a decision or determination of the Planning Department shall not stay proceedings in furtherance of the decision or determination appealed from, if the Planning Director certifies to the Board of Adjustment, and the Board of Adjustment finds, either:

- A. That a stay would cause imminent peril to life or property; or
- B. That the situation subject to the appeal is transitory in nature, and therefore an appeal would seriously interfere with enforcement of this Ordinance.

In each instance, the Planning Department shall set forth in the certificate facts to support its conclusion, and the Board of Adjustment shall set forth findings of fact sufficient to support its determination.

Section 9. Appeals of Board Actions. Every decision of the Board of Adjustment shall be subject to review at the instance of any aggrieved party in the Superior Court by proceedings in the nature of a petition for writ of certiorari. Such proceedings in the Superior Court shall be initiated within thirty (30) days of the filing of the decision in the office of the Planning Department or the delivery of the notice required in Article VI, Section 3, whichever is later. Appeals not received within this thirty (30) day period are not timely. The Superior Court is authorized to stay enforcement of this Ordinance during the pendency of an appeal from the decision of the Board of Adjustment upon a hearing and the posting of a bond sufficient to the Court which will adequately protect the interests of the County.

ARTICLE VI

ENFORCEMENT, VIOLATIONS, AND PENALTIES

Section 1. Administration and Enforcement. The Planning Department shall be responsible for the administration and enforcement of this Ordinance. If the Planning Department shall determine that any of the provisions of this Ordinance are being violated, it shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the violation to be corrected within thirty (30) days. It may order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; the discontinuance of any illegal work being done; and may take any other action authorized by this Ordinance to insure compliance with, or to prevent violations of, the provisions hereof.

Section 2. Interference. It shall be unlawful for any person to interfere with, hinder, or harass the employees, agents, or authorized representatives of the County in the performance of their duties under this Ordinance.

Section 3. Violations; Penalties.

A. The violation of any provision of this Ordinance shall be a Class 3 misdemeanor.

B. Each day's continuing violation of this Ordinance, where applicable, shall constitute a separate and distinct offense.

Section 4. Equitable Enforcement; Order of Abatement. This Ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction, or by an order of abatement, as provided under G. S. § 153A- 123(d) and (e).

Section 5. Cumulative Remedies. The remedies and penalties for violation of this Ordinance shall be cumulative, and the election of a remedy or enforcement of a penalty by the County hereunder shall not preclude the election of any other remedy or enforcement of any other penalty by the County which may be provided under this Ordinance or by law.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Conflict with Other Laws. Wherever the provisions or application of this Ordinance impose higher standards than are required in any other local ordinance or regulation, the provisions or application of this Ordinance shall govern. Wherever the provisions of any other statute or local ordinance or regulation impose higher standards than are required by the provisions of this Ordinance, the provisions of such other statute or local ordinance or regulation shall govern.

Section 2. Severability Clause. Should any section or provisions of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part hereof other than the part so declared to be unconstitutional or invalid.

Section 3. Amendment Procedure. This Ordinance may be amended from time to time by the Board of Commissioners as herein specified.

A. Planning Board Review.

No amendment shall become effective unless it shall have been either proposed by the Planning Board or submitted to the Planning Board by the Board of Commissioners for review and recommendation. The Planning Board shall have forty-five (45) days from the date an amendment is first submitted to it for review to make a recommendation to the Board of Commissioners. Said recommendation, or a proposal for an amendment by the Planning Board, as the case may be, shall be made by action of the Planning Board undertaken at a duly called meeting and recorded in the minutes of the meeting. The failure of the Planning Board to so act on the amendment within said forty-five (45) day period shall constitute a recommendation of

approval; provided, however, that said forty-five (45) day period shall not apply where an amendment is proposed by the Planning Board.

B. Public Hearing.

No amendment shall be adopted until the Board of Commissioners has held a public hearing on the same. Notice of the hearing shall be published in a newspaper of general circulation in the Wilkes County area at least once a week for two (2) successive calendar weeks prior to the hearing. The initial notice shall appear not more than twenty-five (25) nor less than ten (10) days prior to the hearing date. In computing the ten (10) and twenty-five (25) day periods, the date of publication is not to be counted, but the date of the hearing is. Nothing herein shall be construed to prohibit the Planning Board from calling for and holding its own public hearing on the amendment prior to making a recommendation or proposal to the Board of Commissioners, which public hearing, if called for by the Planning Board, shall be held upon the same notice requirements as set forth above, except that publication of the notice shall be required only once.

C. Effect of Amendments.

A duly adopted amendment to this Ordinance shall apply only to those high impact land uses, or alterations, additions to, expansions, or enlargements thereof, for which an Intent-to-Construct HILU Permit application is filed after the effective date of the amendment.

Section 4. Repeal of Moratorium. As of the effective date of this Ordinance, any moratorium then in effect which has been enacted by the County with respect to the subject matter hereof, including any extensions of such moratorium, shall be deemed repealed and of no further force or effect.

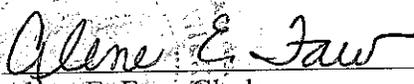
Section 5. Repeal in Event of County-Wide Zoning. This Ordinance shall be automatically repealed in the event of adoption by the County of a Zoning Ordinance or Official Zoning Map which has the effect of zoning the entire County.

Section 6. Effective Date. The effective date of this Ordinance shall be the date of its adoption by the Board of Commissioners.

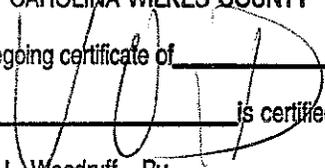
ON MOTION OF ~~COMMISSIONER~~ Vice Chairman Arnold Lakey _____,
SECONDED BY COMMISSIONER Luther Parks _____, THE
FOREGOING ORDINANCE WAS READ, APPROVED, AND ADOPTED BY THE
BOARD OF COMMISSIONERS OF WILKES COUNTY, IN REGULAR SESSION
ASSEMBLED ON THE 16th DAY OF August, 2004, BY UNANIMOUS
VOTE.

WILKES COUNTY BOARD OF COMMISSIONERS

By: 
Charles Sink, Chairman
Wilkes County Board of Commissioners


ATTEST:
1221

Alene E. Faw, Clerk

NORTH CAROLINA WILKES COUNTY

The foregoing certificate of 
_____ is certified to be correct
Richard L. Woodruff By _____
Register of Deeds Deputy/Ass't Register of Deeds

APPENDIX "A"

NORTH CAROLINA

WILKES COUNTY

**EASEMENT AND WAIVER UNDER
WILKES COUNTY HIGH IMPACT
LAND USE ORDINANCE**

THIS EASEMENT AND WAIVER UNDER WILKES COUNTY HIGH IMPACT LAND USE ORDINANCE (hereinafter "Easement") is made and entered into this _____ day of _____, 20____, pursuant to the provisions of Article II, Section 3, subsection F of the Wilkes County High Impact Land Use Ordinance as recorded at Book _____, Page _____, Wilkes County Registry, as the same may be amended from time to time, by and between the following parties:

Protected Facility:

(referred to in this Easement as the "Protected Facility")

Name(s) of Owner(s) _____

Mailing Address _____

Property Address [if different] _____

Wilkes County PIN No. _____ Deed Book _____, Page _____, WCR.

Nature of Protected Facility, as defined under Article II of the Wilkes County High Impact Land Use Ordinance [*check applicable block*]:

- Educational Facility
- North Carolina Licensed Child Care Facility
- North Carolina Licensed Assisted Living Facility
- Public or Privately Owned Hospital
- Rural Medical Center
- Church
- Occupied Dwelling Unit

Name(s) of Tenant(s) [if applicable] _____

Mailing Address _____

Starting Date of Lease _____ Expiration Date of Lease _____

Lease Recorded in Book _____, Page _____, WCR [if applicable]

High Impact Land Use:
(referred to in this Easement as the "High Impact Land Use")

Name _____

Owner (if different) _____

Address _____

Site of Operations _____

Wilkes County PIN No. _____ Deed Book _____, Page _____, WCR.

Nature of High Impact Land Use, as defined under Article II of the Wilkes County High Impact Land Use Ordinance [*check applicable block*]:

- Asphalt Plant
- Cement Mixing Facility
- Chemical Manufacturing
- Electricity Generating Facility
- Fuel Bulk Storage Facility
- Radio or Television Broadcast Tower

**Owner(s) of Property on which High Impact Land Use
is Located (if different from above):**
(referred to in this Easement as the "Property Owners")

Name(s) and Address(es) _____

WITNESSETH:

THAT WHEREAS, Article II, Section 3, subsection E of the Wilkes County High Impact Land Use Ordinance (hereinafter "Ordinance") as enacted by the Wilkes County Board of Commissioners under date of _____, 2004, and as recorded in Book _____, Page _____, Wilkes County Registry, as the same may be amended from time to time, establishes certain spacing requirements between a protected facility (as defined in the Ordinance) and a high impact land use (as defined in the Ordinance); and

WHEREAS, Article II, Section 3, subsection F of the Ordinance, authorizes a protected facility (as defined in the Ordinance) to waive the spacing requirements between such protected facility and a high impact land use (as defined in the Ordinance), said waiver to be in the form of an easement executed by the protected facility, the owner of the high impact land use, and, if different, the owner(s) of the property on which the high impact land use is situated; and

WHEREAS, the provisions of said easement are to be as prescribed in the Ordinance; and

WHEREAS, this Easement, being in form the same as that prescribed by the provisions of the Ordinance and attached to the Ordinance as Appendix "A" thereto, is executed by the above named parties for the purpose of complying with said provisions; and

WHEREAS, the above named parties desire by this Easement to evidence their agreement that the spacing requirements under the Ordinance as between the Protected Facility and the High Impact Land Use be waived and modified as hereinafter set forth; and

WHEREAS, the Property Owners (if different from the High Impact Land Use) execute this instrument for the purposes of being bound thereby and of complying with the Ordinance;

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration in hand received by the Protected Facility, the sufficiency of which is hereby acknowledged, and in further consideration of the mutual promises and covenants hereinafter set forth, the parties do hereby agree as follows:

1. Recitals. The foregoing recitals shall constitute an integral part of this Easement and shall be incorporated herein and made a part hereof.

2. Waiver and Grant of Easement. Protected Facility waives the spacing requirements of the Ordinance as set forth under Article II, Section 3, subsection E thereof, as the same may be amended from time to time, and agrees that High Impact Land Use may be located within, but no closer than, _____ (_____) feet from Protected Facility. For purposes of establishing and enforcing the foregoing, measurement shall be made as prescribed under Article II, Section 3, subsection E of the Ordinance. In order to effectuate said waiver, Protected Facility doe hereby grant, bargain, sell and convey unto High Impact Land Use and Property Owners, their heirs, successors and assigns, a perpetual, non-exclusive, and irrevocable right and easement to

locate said High Impact Land Use within, but no closer than, that distance from Protected Facility as set forth in this paragraph 2 and measured in accordance with the terms of the Ordinance, said right and easement to be appurtenant to and run with the land now owned by High Impact Land Use and Property Owners; provided, however, that said right and easement, and the waiver granted hereunder, shall be subject to termination as set forth in paragraph 3 below.

3. Termination. The right and easement granted hereunder, and waiver effectuated thereby, shall terminate at such time as High Impact Land Use ceases to have a valid Operational HILU Permit under the provisions of Article IV, Section 1, subsection C of the Ordinance, as the same may be amended from time to time, for the operations and/or facility which is/are the subject of this Easement as set forth hereinabove.

4. Binding Effect. This Easement and all of the terms and provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, successors and assigns.

TO HAVE AND TO HOLD the aforesaid right and easement herein conveyed to High Impact Land Use and Property Owners, their heirs, successors and assigns forever, subject only to the termination provisions of paragraph 3 above.

IN WITNESS WHEREOF, all the parties hereto have hereunto set their hands and seals, the date and year first above written.

PROTECTED FACILITY

[required signatures]

HIGH IMPACT LAND USE

[required signatures]

PROPERTY OWNERS

[required signatures]

[NOTARIES]

THE UNDERSIGNED, County Attorney for Wilkes County, North Carolina, does hereby certify pursuant to Article II, Section 3, subsection F of the Ordinance, as the same may be amended from time to time, that the form and execution of this Easement comply with the requirements of said Ordinance.

County Attorney

NORTH CAROLINA

WILKES COUNTY

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged the execution of the foregoing instrument in his capacity as County Attorney for Wilkes County, North Carolina. Witness my hand and official stamp or seal, this the _____ day of _____, 20_____.

Notary Public

My commission expires: _____

The foregoing certificate(s) of _____, is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

RICHARD L. WOODRUFF REGISTER OF DEEDS FOR WILKES COUNTY

By _____ Deputy/Assistant-Register of Deeds.