

**Town of Boone
Public Hearing
6:00 PM, Sep. 24, 2018
Council Chambers, 1500 Blowing Rock Road**

The appearance times contained within this agenda are approximate and are subject to change at any time. No agenda item will be started after 10:30 p.m. Remaining items will be addressed at a continuation meeting or will be tabled until the next available meeting.

I. Call to Order - Town Council

II. Call to Order - Planning Commission

III. Approval of Public Hearing Minutes by Town Council and Planning Commission

July 23, 2018 Public Hearing Minutes

IV. Case PL01806-082218 Brownfields Agreement Disclosure - UDO Text Amendment

Case PL01806-082218 Brownfields Agreement Disclosure - Application Information

Case PL01806-082218 Brownfields Agreement Disclosure - Staff Report

Case PL1806-082218 Brownfields Agreement Disclosure - NC Brownfields Toolbox

V. Case PL01808-082218 Town Council Selection of Chair and Vice Chair - UDO Text Amendment

Case PL01808-082218 Selection of BOA/PC Chair and Vice-Chair - Application Information

Case PL01808-082218 Selection of BOA/PC Chair and Vice Chair - Staff Report

VI. Case PL01809-082218 Board/Commission Meeting Schedules - UDO Text Amendment

Case PL01809-082218 Board/Commission Meeting Schedules - Application Information

Case PL01809-082218 Board/Commission Meeting Schedules - Staff Report

VII. Case PL01810-082218 Reduction of Penalties by Board of Adjustment

Case PL01810-082218 Reduction of Penalties by Board of Adjustment -
Application Information

Case PL01810-082218 Reduction of Penalties by Board of Adjustment -
Staff Report

VIII. Other Matters

IX. Adjournment of Town Council

X. Approval of Planning Commission Meeting Minutes

August 27, 2018 Planning Commission Meeting Minutes

XI. Consideration of Cases Heard at the Public Hearing

XII. Transitional Zone Discussion

Transitional Zone Current UDO Language and Past Case Research

XIII. Other Matters by Board Members or Staff

XIV. Adjournment

**PUBLIC HEARING MINUTES
MONDAY, JULY 23, 2018 AT 6:00 P.M.**

COUNCIL MEMBERS: Mayor Rennie Brantz, Mayor Pro-Tem Loretta Clawson, Marshall Ashcraft, Sam Furguele, Connie Ulmer, and Lynne Mason (arrived at 6:02 p.m.)

PLANNING COMMISSION MEMBERS: Eric Plaag, Frank Veno, Michael Sanchez, and James Hedrick

PLANNING STAFF PRESENT: Jane Shook-Director of Planning and Inspections, Marty Little-Planner, and Brenda Henson-Board Secretary

OTHERS PRESENT: John Ward-Town Manager, Allison Meade-Town Attorney, and Serena Wilson-Intern

CALL TO ORDER

Mayor Brantz called the Town Council to order at 6:00 p.m.

In Chairperson Shay's absence, Commission Member Sanchez made a motion to elect Eric Plaag to act as Chairman for this meeting. The motion was seconded by Commission Member Hedrick.

Vote: Aye – All
Nay – None
The motion passed.

Acting Chairman Plaag called the Planning Commission to order at 6:01 p.m.

APPROVAL OF MINUTES

Mayor Pro-Tem Clawson made a motion, seconded by Council Member Furguele for Town Council to approve the April 23, 2018 Public Hearing minutes as written.

Vote: Aye – All
Nay – None
The motion passed.

Commission Member Hedrick made a motion, seconded by Commission Member Veno to approve the April 23, 2018 Public Hearing minutes as written.

Vote: Aye – All
Nay – None
The motion passed.

CASE PL01607-062918 COOPER – GENERAL USE ZONING MAP AMENDMENT

The Town of Boone has initiated a General Use Zoning Map Amendment to rezone the southern portion of property owned by John and Faye Cooper located on Grand Boulevard (Watauga County PIN: 29100899168000) from R3 Multiple-Family Residential to R1 Single-Family Residential. Currently, the property is split zoned R1 Single Family Residential and R3 Multiple Family Residential.

Ms. Shook presented the request as it was outlined in the packet. Ms. Shook explained that the bottom portion of John and Faye Cooper's property is zoned R3 while the top portion is zoned R1 and, under current UDO requirements, the Coopers would not be able to build a house on the R3 portion.

Council Member Furguele asked Ms. Shook to clarify the R1 and R3 columns in the Table of Principal Uses provided in the Board packet. Ms. Shook explained that the table showed the different uses that are allowed in R1 and R3 zoning districts. Council Member Furguele asked if the dimensions of the lot, if subdivided, would prohibit anything being built on the R3 portion. Ms. Shook replied that the lot would need to be at least 5,000 sq. ft. to build on it and though she wasn't positive she thought she had measured it for Council at their last meeting and believed the R3 portion of the lot to be less than 5,000 sq. ft. Council Member Furguele asked if it was correct that the rezoning of the property did not subdivide the property and Ms. Shook stated that was correct.

At 6:05 p.m. Mayor Brantz opened the floor for public comment.

Jim Marsh, owner of several of the Daniel Boone Condos and President of the Daniel Boone Condos POA, stated he was speaking on behalf of the interest of the Property Owner's Association. Mr. Marsh noted that the parking area for the condos was located right below the Cooper's property and he wanted to make sure that the parking lot would not be rezoned to R1 as well. Ms. Meade explained that the rezoning of the Daniel Boone Condos parking lot was not under consideration in this request. Mr. Marsh expressed concern that the parking lot property might be rezoned to R1 in the future. Ms. Meade assured Mr. Marsh that he would be notified in the event the rezoning of the Daniel Boone Condos parking lot was being considered.

The next speaker was John Cooper. Mr. Cooper stated that rezoning the property to R1 was the only way they could build on the lot. Commission Member Sanchez asked Mr. Cooper if he planned to combine the lots. Mr. Cooper replied that if he built a new house he would not have to combine the lots but if he wanted to expand his current residence he would have to combine the lots. Mr. Cooper added that he does not have any plans to build anything at this time.

With no further questions or public comment, Mayor Brantz closed the public hearing for this case at 6:10 p.m.

DISCUSSION OF BUILDING HEIGHT MITIGATION

Council Member Furguele stated he requested this item be put on the agenda for discussion of building height limitations in transitional zones. He stated there had been some interest expressed to him about the possibility of allowing projects located within a transitional zone to proceed with their project without having to seek a Special or Conditional Use Permit if they agreed to certain requirements.

Council Member Furguele asked Ms. Shook to explain transitional zones for the benefit of the new Planning Commission members. Ms. Shook stated that a transitional zone was an area of land measured from the edge of a developments disturbed area to the boundary of any R1, R1A, RR, R2 or RA zoned properties. Ms. Shook explained that projects whose development falls within a transitional zone are required to obtain either a Special Use Permit or a Conditional District rezoning and satisfactorily prove that noise, light, visual, traffic, and health impacts from the development will be mitigated.

Council Member Furguele stated he was not looking to make any resolutions to this topic tonight but would like to start the conversation. He suggested items such as limiting a building to 3 stories or allowing

no balconies on a transitional zone side of the building as possible concessions a developer could make in order to build their project by right instead of having to get Board approval.

Council Member Mason noted that a development could build by right if they chose not to encroach into the transitional zone with their limits of disturbance.

Mayor Pro-Tem Clawson expressed concern for single family neighborhoods.

Ms. Meade felt it would be a stretch for the Board of Adjustment to require a developer to limit their building height in the transitional zone if it met the height requirement allowed by the UDO. She stated that any requirements the Town wished to have that would allow development in a transitional zone by right be listed in the UDO.

Ms. Meade asked Ms. Shook if there were any smaller developments that had felt the transitional zone process was too onerous and it caused them to back away from the project. Ms. Shook stated she could not think of any but noted that Staff meets with a lot of developers with ideas for development that do not follow through nor do they contact the Town to say why they decided not to pursue the project.

Council Member Furguele stated the General Assembly made the Special Use Permit process more expensive by requiring more skilled or expert testimony, such as appraisers and traffic engineers. Ms. Shook noted that if the applicant for a Special Use Permit was a corporation they were required to have legal representation at the Board of Adjustment hearing which also added to the expense.

Council Member Furguele stated he would like to know what kind of conditions the Board of Adjustment has placed on projects in transitional zones in the past. He felt this might provide some ideas of possible issues with transitional zones that would help them develop specific criteria for applicants to meet in order to build their development by right.

James Milner with Appalachian Commercial Real Estate stated the Ordinance was a difficult document. He felt the reason the Town was seeing more 4-story buildings was because developers were utilizing UDO Section 15.11 that has a requirement for 100% ground floor commercial, which creates a limitation, and they try to maximize the value of the land. Mr. Milner noted that he served on the Board of Adjustment for a long time and he supports transitional zones. Mr. Milner stated that part of the transitional zone requirements talk about property values. He stated that at the last Board of Adjustment meeting Ms. Meade said the burden of proof is on the property owner to come to the hearing and say that they feel their property value is being harmed. Ms. Meade replied that she did not recall that coming up but suggested she would have said the burden of production would probably be on the applicant. Mr. Meade felt the UDO was unclear on that point. Council Member Furguele stated he thought the UDO was explicit that the burden was on the applicant. Mr. Milner stated in his history the burden had always been on the applicant. Mr. Milner went on to say that appearing before the Board of Adjustment was cumbersome and the applicant had to put together a lot of experts such as attorneys, traffic engineers, architects, appraisers, and engineers. Mr. Milner noted that an appraiser came to the Board of Adjustment meeting but was not called to testify. Mr. Milner stated that the transitional zones as they are today are not perfect but felt the intent was there, was clear, and served good purpose but suggested looking at the language for transitional zones as well as height mitigation. Ms. Meade wished to clarify that the attorney decided not to call the appraiser to testify at the Board of Adjustment meeting. She stated she had discussed with Ms. Shook the possibility of presenting more clear language in the UDO regarding burdens of proof and burdens of production. Ms. Meade felt Mr. Milner had a valid point.

ADJOURNMENT OF TOWN COUNCIL

Mayor Pro-Tem Clawson made a motion to adjourn Town Council at 6:45 p.m. The motion was seconded by Council Member Ulmer.

Vote: Aye – All
Nay – None
The motion passed.

Rennie Brantz, Mayor

Brenda Henson, Board Secretary

Eric Plaag, Acting Planning Commission Chairman

Acting Chairman Plaag recessed the Planning Commission meeting at 7:45 p.m. reconvened the meeting at 7:56 p.m.

APPROVAL OF PLANNING COMMISSION MEETING MINUTES

Commission Member Sanchez made a motion, seconded by Commission Member Hedrick to approve the April 23, 2018 Planning Commission meeting minutes as written.

Vote: Aye – All
Nay – None
The motion passed.

CASE PL01607-062918 COOPER – GENERAL USE ZONING MAP AMENDMENT

Acting Chairman Plaag wished to disclose that his wife is employed at Mast General Store and he serves on several committees with John Cooper. Commission Member Hedrick stated that his mother is also employed at Mast General Store. Neither Acting Chairman Plaag nor Commission Member Hedrick felt their opinions on this request would be biased and the Commission proceeded with discussion.

Commission Member Sanchez stated he was concerned about the possibility combining the property. Ms. Shook explained that this request was only for a general use rezoning and the Town has no ability to limit or place conditions on this type of request. Ms. Shook further explained that the property in question was one parcel of land that contained two different zoning classifications.

Commission Member Veno asked if the neighboring property had the ability to rezone their property as well. Ms. Shook replied that Town Council asked her to reach out to the adjacent property owner to see if they would like to include their property in this rezoning request but they were not interested in doing so at this time.

Ms. Shook advised Commission members to consider any applicable Comprehensive Plan policies and suggested they may want to take a few moments to compile their thoughts before making any motions.

First Motion and Vote: Commission Member Sanchez made a motion that the proposed amendment to the Town's zoning map is consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because of Comprehensive Plan policy 2.3.2(E) Community Character, *"New development, redevelopment and rehabilitation of structures and sites shall occur in a manner which is consistent with the neighborhood and architectural context of the immediate area, and supportive, whenever possible, of Boone's original community character as a High Country small town'.*

Acting Chairman Plaag wished to amend the motion to add Comprehensive Plan policy 2.3.3(A) Housing & Neighborhoods *"The protection and rehabilitation of viable neighborhoods shall be encouraged to insure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community".* Commission Member Sanchez accepted the amendment. The motion was seconded by Commission Member Venio.

Vote: Aye – All
Nay – None
The motion passed.

Second Motion and Vote: Commission Member Hedrick made a motion that the Planning Commission recommends approval of the proposed amendment to the Town's Zoning map and believes approval is reasonable and in the public interest because of Comprehensive Plan policy 2.3.2(E) Community Character *"New development, redevelopment and rehabilitation of structures and sites shall occur in a manner which is consistent with the neighborhood and architectural context of the immediate area, and supportive, whenever possible, of Boone's original community character as a High Country small town"* and Comprehensive Plan policy 2.3.3(A) Housing & Neighborhoods, *"The protection and rehabilitation of viable neighborhoods shall be encouraged to insure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community".* Commission Member Sanchez wished to amend the motion to add that the rezoning of this property to R1 would be more convenient for the Town of Boone because the R3 portion was too small for development. Commission Member Hedrick accepted the amendment. The motion was seconded by Commission Member Venio. Acting Chairman Plaag wished to amend the motion further to add that this rezoning would permit the property owner to make full use of his property. Commission Members Hedrick and Venio accepted the amendment.

Vote: Aye – All
Nay – None
The motion passed.

OTHER MATTERS

Ms. Shook informed Commission members that public hearings will now be held every other month so there will be no public hearing next month. However, there will be a regular Planning Commission meeting. Ms. Shook suggested that Commission members discuss the Building Height Mitigation topic that was raised at tonight's Public Hearing. She also suggested possibly having some training given the fact that there are several new Commission members.

Acting Chairman Plaag stated he would like to see examples of successful and/or unsuccessful projects located in a transitional zone.

ADJOURNMENT OF PLANNING COMMISSION

Acting Chairman Plaag made a motion to adjourn the meeting at 7:33 p.m. The motion was seconded by Commission Member Venno.

Vote: Aye – All
Nay – None
The motion passed.

Eric Plaag, Acting Planning Commission Chairman

Brenda Henson, Board Secretary

DRAFT

Planning Application - UDO Text Amendment

Town of Boone Planning & Inspections Department
680 W. King Street, Suite C ♦ Boone, North Carolina 28607
Phone (828) 268-6960 ♦ Fax (828) 268-6961 ♦ www.townofboone.net

Official Use Only

Case Number:
PL01806-082218
Case Name:
Brownfields Agreement Disclosure

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: 567 West King Street
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): Appendix A
Section(s): _____

Brief Description of Amendment (Attach Proposed Text):

Amend UDO for applications to allow for an applicant to disclose whether they have or intend to enter into a Brownfields Agreement and if so the anticipated first year of partial exclusion of property taxes.

C. APPLICANT SIGNATURE: By signing this form you are certifying that this application and any attached information is accurate. Failure to provide accurate information or failure to provide any requested information may result in delays to permit processing.

Jane Shook
Applicant (Print)

/s/ Jane Shook
Applicant Signature

August 22, 2018
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
NA	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting
Date: September 24, 2018

PC Meeting
Date: September 24, 2018

TC Meeting
Date: October 16th or October 18th

Text Approved: ☐ Yes ☐ No

Notes:

S:\FORMS\Current Forms\Planning\UDOTextAmendment_PlanningApplication_09252017.doc

Communication: Case PL01806-082218 Brownfields Agreement Disclosure - Application Information (Case PL01806-082218 Brownfields



STAFF REPORT

PUBLIC HEARING-SEPTEMBER 24, 2018

CASE PL01806-082218 BROWNFIELDS AGREEMENT DISCLOSURE - UDO TEXT AMENDMENT

Request

Amend UDO Appendix A to require an applicant to disclose whether they have or intend to enter into a Brownfields Agreement and if so the anticipated first year of partial exclusion of property taxes in order for the Town to be able to plan appropriately based upon the exclusion of property taxes associated with such an agreement.

The North Carolina Brownfields Program, provides a mechanism to treat prospective developers of brownfield sites differently than the parties responsible for contaminating them. Prospective developers negotiate a brownfields agreement with the program that defines activities needed to make the site suitable for reuse, rather than cleaning up the site to regulatory standards (which responsible parties are required to do).

According to the Brownfields Programs Guidelines and Issue Resolutions, the program is intended to encourage and facilitate the redevelopment of abandoned, idled, or underused properties that have actual or perceived environmental contamination by removing barriers to redevelopment posed by the prospective developer's (PD's) potential liability clean-up costs. The Act is not intended to circumvent practical or necessary remediation of properties under any state or federal cleanup program. The Act is clearly intended for sites at which legitimate redevelopment is both planned and possible. Brownfields agreements are only appropriate when a PD commits to a redevelopment project which the Department believes will have public benefit and will leave public health and the environment protected

A "brownfields site" is an abandoned, idled or underused property where the threat of environmental contamination has hindered its redevelopment.

Pursuant to NC State Statute 105-277.13, qualifying improvements on brownfields properties are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be appraised, assessed, and taxed in accordance with this section. An owner of land is entitled to the partial exclusion provided by this section for the first five taxable years beginning after completion of qualifying improvements made after the later of July 1, 2000, or the date of the brownfields agreement. After property has qualified for the exclusion provided by this section, the assessor for the county in which the property is located shall annually appraise the improvements made to the property during the period of time that the owner is entitled to the exclusion.

The following table establishes the percentage of the appraised value of the qualified improvements that is excluded based on the taxable year:

Year	Percent of Appraised Value Excluded
Year 1	90%
Year 2	75%
Year 3	50%
Year 4	30%
Year 5	10%.

Please see the attached North Carolina Brownfields Redevelopment Toolbox for more information on the Brownfields Program.

ANALYSIS

The text in blue underline on the next page is the new text for consideration and the text in ~~red-strikethrough~~ is text proposed to be deleted.

Appendix A Application Information

§ A2 WRITTEN APPLICATION.

...

A2.01 Every applicant shall complete a written application containing at least the following information:

- A. The name, address, and phone number of the property owner; and
- B. If the applicant is not the property owner in question, the name, address and phone number of the applicant.
 - 1. Pursuant to Subsection 4.03.01(B), when a person other than the owner of the property applies for a permit or approval including a lessee or a person who has contracted to purchase the property, the application must be accompanied by the written approval of the property owner or other proof of authority; and
- C. The date of the application; and
- D. A succinct statement of the nature of the development proposed under the permit or the nature of the variance; and
- E. Identification of the lot in question by street address and Watauga County Parcel Identification Number; and
- F. The zoning district in which the lot is located; and
- G. The cost of the development project; and
- H. The number of square feet or acres of the lot in question; and
- I. The number of square feet or acres of land disturbing activity; and
- J. The gross floor area of all existing or proposed buildings located on the lot where the development is to take place; and
- K. Existing land uses; and
- L. Proposed land uses, including their locations, within the development; and
- ~~L.M.~~ Whether the applicant or property owner(s) has obtained, applied for or is intending to seek a Brownfields Agreement with the NC Brownfields Program administered by the North Carolina Department of Environmental Quality and if so, the anticipated date for the first year of partial exclusion of property taxes.

CONFORMITY TO ADOPTED PLANS

COMPREHENSIVE PLAN UPDATE

1.1 Overall Objectives for the Boone Comprehensive Plan (p. 15): The following objectives, which have not been listed in any particular order of importance, are deliberately broad in scope and less specific than either a policy statement or an implementation action.

Economic Development: Acknowledge the area's natural beauty, university, and medical center presence as the Town's greatest assets for economic development and jobs creation. Treat them accordingly.

Community Appearance and Community Character: Blend the built environment with the natural, scenic, and historic character of a High Country small town. Especially discourage commercial strip development, cluttered signage, and "cheap" apartment buildings.

Open Space: Integrate open space and greenways into the urban fabric of the Town. Preserve the countryside by discouraging suburban sprawl. Avoid development in floodplains, on ridgetops, and on steep slopes.

Environmental Quality: Address and monitor growth factors and activities that contribute to water, air, light, and noise pollution.

Trees: Conserve existing trees and plant new trees, especially hardwoods.

Automobile Transportation: Maximize the efficiency of existing facilities, but not at the expense town and neighborhood character and livability. Build or expand transportation facilities and parking areas as needed, but with care. Work to reduce auto dependency, use, and congestion.

Bikeways: Implement the planned system of bikeways as a legitimate transportation alternative. Unify with greenways and other pedestrian facilities where possible.

Mass Transit: Enhance and support the mass transit system as an effective alternative to the congestion created by the individual automobile.

Pedestrian Movement: Encourage a system of sidewalks, paths, crosswalks and compact development patterns which make it easy to get around Boone on foot.

Infrastructure: Engage in long range planning for water and sewer systems, stormwater runoff, natural gas, and other utility systems. Place overhead utilities underground whenever feasible.

Public Safety: Maintain a high level of policing and fire protection and plan the expansion of public safety services to coincide with projected population increases and identified needs.

Energy and Waste: Reduce waste generation, and the consumption of energy and water. Develop area recycling programs to the fullest. Encourage an anti-litter consciousness among residents and visitors.

University: Emphasize cooperative planning among the Town, County, and University.

Downtown: Support and enhance the cultural and historic significance of downtown Boone, and affirm its appealing, pedestrian orientation.

Recreation: Strive for additional public recreation facilities, especially sports fields, greenways and indoor recreation centers.

Neighborhoods: Ensure the livability of neighborhoods, especially through land use and traffic planning.

Public Involvement: Encourage active public involvement and volunteerism to expand the effectiveness of community planning and action.

Comprehensive Plan Policies: Staff has reviewed land use and comprehensive plan policies, and listed those policies which in staff's opinion have a bearing on the request. The Commission and Council should review these policies carefully. Each member may make his or her own interpretation as to the relevance of each and which carry the most weight thereby shaping their overall recommendation.

COMPREHENSIVE PLAN POLICIES

2.1 THE ECONOMY

2.1.1 Economic Development

- A. The Town shall protect and enhance a high quality of life, image, cultural amenities, and natural beauty as the most effective, long term component of an economic development strategy. *****
- B. New and expanding industries and businesses shall be encouraged which: 1) diversify the local economy, 2) train and use a skilled labor force and 3) increase area residents' incomes.
- C. The Town shall encourage the development of a well-balanced tourism trade as a primary element of the area's economic future. Investments in services, facilities, and proper growth management shall be employed in furtherance of this objective.
- D. Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas.
- E. The Town shall encourage a public service and regulatory environment conducive to business recruitment and expansion, while at the same time enhancing the area's physical and human resources.
- F. New firms and expanding businesses that complement the natural resources and beauty of the region shall be especially recruited and encouraged.
- G. The Town shall support the development of new business parks.
- H. The Town shall promote coordination of economic development resources with the appropriate institutions and agencies. Regional coordination and interaction among areas with a shared economic interest shall be encouraged.
- I. Small business start-ups, expansions and spin-offs shall be encouraged. The presence of ASU and Caldwell Community College and Technical Institute shall be recognized as a necessary and important resource for area businesses.
- J. Appropriate educational and training programs shall be encouraged to help local residents, especially those unemployed and underemployed, take advantage of business expansion and to develop new skills.
- K. Boone shall identify and provide services consistent with the needs of the area's growing retiree population.

2.1.2 Commercial Development

- A. Uncontrolled strip development along the areas through streets shall be prohibited. The undesirable effects of existing strip development shall be reduced and/or reconfigured when redevelopment opportunities permit. New strip development on isolated single lots along through streets shall be discouraged. *****
- B. Commercial and Office Development shall be encouraged to locate in planned shopping centers, office parks and mixed use developments to stop the proliferation of strip development.

- C. Community/Commercial Centers shall be located adjacent to a major street and contain or be adjacent to other appropriate community facilities.
- D. Automobile Orientated Neighborhood and Convenience Commercial Centers shall be encouraged to locate on a collector street or secondary street at its intersection with a major street.
- E. Residentially scaled and designed neighborhood businesses may be a planned element of newly developed or redeveloped neighborhoods. They should be near other compatible facilities such as elementary schools and neighborhood parks.
- F. Commercial uses may be encouraged to develop by consolidation and expansion of existing commercially zoned property, only when such consolidation and expansion does not encroach upon a viable residential area.
- G. Effective buffering and/or landscaping shall be provided where a large scale or automobile-orientated commercial or office use adjoins an existing or planned residential use.
- H. Encroachment of incompatibly scaled and designed commercial or office uses into viable existing or planned residential areas shall be prohibited.
- I. Office and institutional development may be encouraged as a transitional land use between residential areas and higher intensity commercial activities.
- J. Highway Oriented Commercial uses shall be clustered along segments of major streets and contain land uses which are mutually compatible and reinforcing in use and design. Businesses shall be encouraged to coordinate their site designs with other nearby businesses. Design factors shall include, at a minimum, shared parking and street access, convenient pedestrian and vehicular movement, and consistent sign standards.

...

2.3 THE COMMUNITY

- A. Urban type development within the Urban Growth Area shall meet appropriate Town standards.
- B. Properly planned, mixed use developments that promote efficient provision of public services shall be encouraged within the Urban Growth Area.
- C. Funding for outside agencies and organizations serving the citizens of Boone shall continue to receive support consistent with area service needs and Town budget constraints.
- D. Coordinated inter-governmental and university-town planning for urban area land use and development, transportation, utilities, recycling, environmental management, law enforcement, education, recreation, tourism and economic development shall be encouraged.

...

PLANNING BOARD REPORT/RECOMMENDATIONS

Per NCGS 160A-387, all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the Town Council within 30 days of referral of the amendment to the Planning Board, or the Town Council may proceed in its consideration of the amendment without the Planning Board report. Furthermore, in no case is the Town Council bound by the recommendations, if any, of the Planning Board.

Per NCGS 160A-383, the Planning Board shall advise and comment on whether the proposed zoning amendment is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because *[describe elements of controlling land use plans and how the amendment is or is not consistent]*:

Second Motion and Vote: The Planning Commission recommends ☐approval OR ☐denial of the proposed amendment to the Town's Zoning ordinance and believes ☐approval OR ☐denial is reasonable and in the public interest because *[Briefly explain why. Factors may include public health and safety, character of the area, relationship of uses, applicable plans, or balancing benefits and detriments]* :

Third Motion and Vote – Required only if the Commission recommends approval despite inconsistency with the comprehensive plan and/or any other applicable plan: The Planning Commission recommends approval of the amendment despite inconsistency with the comprehensive plan and/or other applicable adopted plans because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

TOWN COUNCIL ACTION

Per NCGS 160A-383, zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that is applicable because *[describe elements of controlling land use plan(s) and how the amendment is or is not consistent]*:

Second Motion and Vote: The Town Council ☐approves OR ☐denies the proposed amendment to the Town's zoning ordinance and believes ☐approval OR ☐denial is reasonable and the public interest because *[Briefly explain why. Factors may include public health and safety, character of the area, relationship of uses, applicable plans, or balancing benefits and detriments]* :

Third Motion and Vote – Required only if the proposed amendment is approved despite inconsistency with the comprehensive plan and/or any other applicable adopted plan(s): The Town Council approves the amendment and declares that this approval also amends the Unified Development Ordinance (and/or other approved and applicable plan) because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

North Carolina Brownfields Redevelopment Toolbox



**North Carolina Department
of Environment and Natural Resources
Division of Waste Management
Brownfields Program
August 2008**

TABLE OF CONTENTS

INTRODUCTION	1
A Message from the North Carolina Brownfields Program	1
Purpose of this Toolbox	1
How to Use this Document	2
THE FOUR STEP BROWNFIELDS REDEVELOPMENT PROCESS	4
Step 1: Get Started - Property Identification, Project Planning, and Marketing.....	4
Forming a Property Redevelopment Team.....	7
Understanding Environmental Liability	8
Financial Assistance for Community-Lead Assessment and Cleanup Activities	10
Developing an Inventory of Contaminated Properties	10
Determining Your Next Step	11
Step 2: Determine If You Have Contamination on Your Property.....	13
Activities and Available Tools.....	15
Determining Your Next Step	16
Step 3: Cleaning Up Your Property	18
Activities and Available Tools.....	20
Determining Your Next Step	23
Step 4: The Finish Line – Redevelopment of Your Property!.....	24
TIPS FOR SUCCESS	27

List of Appendices

- Appendix A - Frequently Asked Questions North Carolina Brownfields Program and Process Flow Chart**
- Appendix B – Federal, Nationwide, & Regional Resources**
- Appendix C - North Carolina Resources**
- Appendix D - Other Financial Mechanisms & Incentives for Assessment, Cleanup and Redevelopment of Contaminated Property**
- Appendix E – List of Acronyms**



A Message from the North Carolina Brownfields Program



The Program's mission is to facilitate the safe redevelopment of abandoned idled or underused environmentally impacted properties known as brownfields. It is our goal to redevelop these brownfields sites with you as a team, to bring them back to productive use while protecting public health and the environment. Whether you are the local government official attempting to jump start economic development and environmental protection in your jurisdiction, or whether you are a developer who has a redevelopment concept for a property, but can't get to first base with lenders because of environmental liability concerns, we have the means and the expertise to identify stumbling blocks and aspire to help you surmount them. As you peruse this document, please keep in mind that our Program's staff are available to assist you. We can answer questions, provide guidance from initial queries to technical expertise, and offer advice based on extensive experience with all types of projects. All of our contact information and a host of other resources about the program is on our web site at www.ncbrownfields.org. Give it a look and see why we invite you to come clean up with us.

But in addition to us there are more resources at your disposal. Chief among these is the U.S. EPA. Not only do they support us in our efforts to serve you, but the EPA also can provide various brownfields grants and other financial tools that it can award directly to local governments. We hope this document helps you to understand how to navigate the brownfields process with all of these partners.

Purpose of this Toolbox

The purpose of this Toolbox is to explain the process of cleanup and redevelopment of contaminated properties in straightforward terms, and provide North Carolina communities, interested coalitions, and Prospective Developers (PDs) with a systematic, start-to-finish guide to cleanup and redevelopment of Brownfields in the State. This Toolbox can be used for a range of property types that have redevelopment potential, but are stymied in the marketplace due to suspected or known environmental contamination. The NC DENR DWM Brownfield Program (NCBP) derives its authority from the state

statute known as the Brownfields Property Reuse Act of 1997. Additional information about the NCBP is provided in Appendix A and online at www.ncbrownfields.org.

How to Use this Document

The Toolbox identifies four steps in the Brownfield redevelopment process. This document provides a brief summary of each step, answers a series of Frequently Asked Questions (FAQs) presented in each section in text boxes, and summarizes available state and federal tools and incentives that local governments, redevelopment coalitions, and PDs may want to consider in pursuing redevelopment of contaminated properties in their community. A list of questions is presented at the end of Steps 1 through 3; based on the answers, the reader/user is directed to the appropriate next step for that project.

This Toolbox provides a user-friendly framework for successful Brownfield Redevelopment implementation. Use this Toolbox as a starting point in the initial stages of Brownfield redevelopment, familiarize yourself with the issues and resources provided, and refer to it throughout the various stages of your project.

The following is a guide to navigating the Toolbox for effective completion of your project.

1. For a general overview of the process for assessment, cleanup, or redevelopment, review the narrative summary provided at the beginning of each relevant section. Keep in mind that Brownfield redevelopment can be an iterative process and you may have to revisit certain steps during the course of a project. For example, conceptual design of property use and marketing of the property can and should whenever possible be conducted contemporaneously with assessment and cleanup.
2. Be aware that each project is different; treat this Toolbox as a guide that must be adapted to meet the site-specific needs of your project, not as a one-size-fits-all approach. For example, if you are working to address a specific property where a current and acceptable Environmental Assessment has already been completed, you will begin the process at Step 3: "Cleaning Up Your Property".
3. Follow this approach until environmental issues are resolved or until you reach Step 4, Redevelopment of your Property. This section provides information that can assist you in addressing the issues inherent in marketing and developing a formerly contaminated property (or one where contamination has been properly and safely addressed, but has not been completely eliminated.)

4. More specific nuts and bolts questions about the NCBP will come up as you read through the four steps. The most common questions and answers are presented in Appendix A. Refer to Appendix A as you read through the 4 steps for additional information that is specific to the NCBP.



Catch the Wave

Supported by the U.S. EPA, the North Carolina Brownfields Program has facilitated redevelopment of more than 120 properties with more than 150 in the pipeline. This represents a private redevelopment investment of more than \$3.8 billion. That's a pretty big wave.

THE FOUR STEP BROWNFIELDS REDEVELOPMENT PROCESS

In this section the Toolbox breaks the redevelopment process into four steps:

Step 1: Get Started - Property Identification, Project Planning, and Marketing

Step 2: How to Determine if You Have Contamination on Your Property

Step 3: Cleaning Up Your Property

Step 4: The Finish Line – Redevelopment of Your Property!



Incorporated within each section is a summary of available state and federal tools that can assist with that step in the process. Refer to Appendix B for additional information on federal tools and nation-wide resources. Refer to Appendix C for additional information on state tools and resources. Resources will vary from state to state so it is important for entities unfamiliar

with redevelopment in North Carolina to consult current resources prior to embarking on a redevelopment project within the State.

Step 1: Get Started-Property Identification, Project Planning, and Marketing

This section provides guidance on how to initiate the redevelopment process. These tasks include identifying marketable contaminated properties with redevelopment potential in your community, how to develop a revitalization plan to address those properties, and how to address project planning.

Contaminated site redevelopment comes in many forms with each community having its own unique opportunities and revitalization goals. Regardless of a community's size, history, and number of contaminated properties, planning ahead is extremely important.

Our experience has shown that the most successful brownfields approaches in North Carolina start with getting private development interests involved in the process from the beginning. This involvement usually comes in the form of participation by leading business and property

developers in a locally formed brownfields property redevelopment team. The reason their involvement is so important is that they will provide perspective on those sites that might hold redevelopment interest. Without their involvement in site selection, many sites could end up being assessed without viable end prospects for actual brick-and-mortar redevelopment. Brownfields assessments are a key to unlocking a brownfield property's otherwise natural economic potential. Therefore, successful Brownfield redevelopment projects offer other economic fundamentals that attract developers once environmental liabilities are addressed.



Whether your community's goal is to develop a comprehensive revitalization plan for multiple properties, or if you plan to redevelop just one contaminated property, successful project planning must consider multiple factors. Three key inter-related considerations are 1) the land use contemplated for the redevelopment area, 2) the level of resources available for environmental investigation and cleanup of the property(ies), and 3) how will the property(ies) be marketed for redevelopment. Early consideration of these issues will pave a more efficient path to successfully meeting community redevelopment goals.

Activities and Available Tools

If you have identified contaminated properties, or properties that are perceived to be contaminated in your community that you would like to do something about, you've taken the first step. So what are the next steps? This depends on what your community's plans or desires are for future development. Some questions you should consider are:

- Does your community want to clean up these properties and market them to potential commercial, industrial or residential buyers or developers?
- Does your community want to retain some of these properties for its own use, perhaps for municipal or open-space purposes, or for affordable housing?
- Has your community been approached by potential buyers or developers who have been subsequently "turned off" because the property is contaminated or perceived as contaminated?
- Does your community have (or want to prepare) a comprehensive plan for redeveloping its abandoned or underutilized properties that are known or suspected to be contaminated.

FAQs for Step 1

What would be the advantage of having a redevelopment plan for contaminated properties in my community?

Establishing a community-led redevelopment plan aids in removing environmental hazards from communities, eliminates the need to develop pristine open space and farmland, revitalizes communities by creating jobs, and returns property to productive use and to local tax rolls. An additional advantage of a community-based approach is that community members, who may be the most knowledgeable about a property's history and have a vested interest in its redevelopment, provide a direct role in determining how their impacted properties can be cleaned up and redeveloped to best facilitate the community's future development plans. Having a redevelopment plan for contaminated properties increases the chances of securing Federal funding to assist with brownfields assessment and cleanup.

What are the types of properties for which this Toolbox may be used?

The Toolbox is meant to address abandoned or underutilized properties, including, but not limited to, industrial and commercial facilities, where redevelopment or expansion may be complicated by actual or suspected environmental contamination. These types of properties are commonly referred to as brownfields, which are officially defined by the federal government in [The Small Business Liability Relief and Brownfields Revitalization Act of January 11, 2002](#), ("Federal Brownfields Law") as any "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." Specific examples of sites which could qualify include: abandoned gas stations, old factory and mill complexes, foundries, junkyards, mine-scarred lands, old solid waste landfills, and other under-utilized or abandoned properties.

Why is redevelopment of these properties important?

These properties are often abandoned or underutilized, with owners no longer maintaining the property or paying taxes. Abandoned properties can quickly become eyesores, and may attract vandalism and illegal dumping, which degrade the environment, depress our communities, and potentially put our health at risk. Productively reusing such properties reduces urban sprawl, increases the tax base, cleans up the environment, encourages urban revitalization and creates jobs for the community and surrounding communities. Redeveloping these properties links economic vitality with environmental protection.

Forming a Property Redevelopment Team



If the answer to any or all of the above questions is yes, your community may want to consider forming a property redevelopment team. Such a team is typically comprised of a mix of public and private parties from your community who have an interest in fostering well-planned, successful cleanup and redevelopment. The team can be large or small or as formal or informal as the community needs. It can be tailored to the size and complexity of one specific project, or it can guide an entire redevelopment vision. It can be made up of elected officials, planners, attorneys, environmental professionals, economic development officials, and members of environmental and citizen interest groups. The team can bring valuable perspectives from each member's area of expertise to help develop a mission and determine long-term and short-term goals based on the community's redevelopment needs and desires.

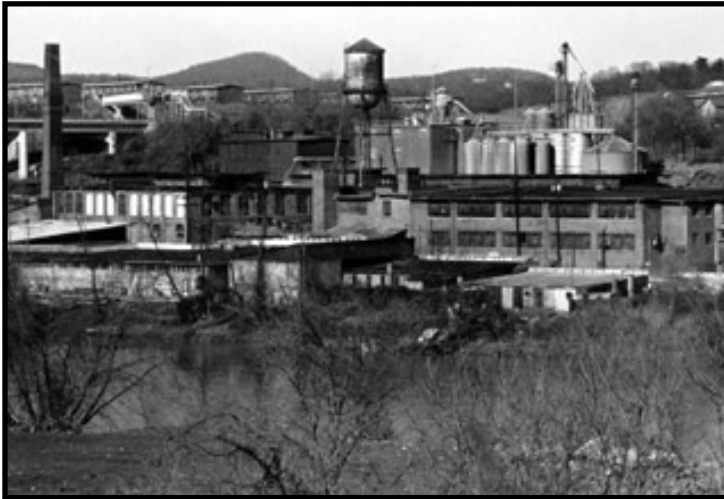
In addition to forming a team, it can be quite helpful to contact other local communities, private entities or environmental legal and consulting professionals with previous experience addressing these types of properties. The EPA maintains a list of current and former Brownfield grant recipients who are experienced in the issues and solutions encountered at these sites. The list can be found at

http://cfpub.epa.gov/bf_factsheets/index.cfm. EPA also holds seminars for recent grant recipients, which provides a forum where grantees and other knowledgeable state, federal and private entities can share their expertise regarding Brownfield redevelopment. Additional information on these training seminars can be found at "The Training Exchange Website" (TRAINEX) at <https://www.trainex.org/offeringlist.cfm?courseid=794&all=yes>.



The North Carolina Brownfields Program also maintains a list of former grant recipients on its web site at http://portal.ncdenr.org/web/wm/bf/epa_grants and provides information and advice to communities interested in seeking federal brownfields grant opportunities, as well as periodic grant workshops in conjunction with the U.S. EPA.

Understanding Environmental Liability



A Prospective Developer (PD) in North Carolina must pass certain eligibility tests to be entitled to enter the NC Brownfield Program. Once deemed eligible, the PD negotiates a Brownfield Agreement (BFA) with the State of NC Brownfield Program, administered through the DENR Division of Waste Management. The BFA covers the parameters of

the agreement between the two parties, including specifying the scope of work to be performed at the site, liability protection if the scope of work and other requirements of the agreement are performed in accordance with the agreement, and the conditions on which the liability protection for a PD may be withdrawn. Liability protection passes from PD to successive owners of the property as long as the conditions of the BFA are not violated.

Determining the Intended Use for the Property



The intended reuse of a property plays an important role in the redevelopment process. If contamination is identified, the nature and extent of the contamination will have to be assessed sufficiently to understand the risk of exposure, if any, to site contaminants based on the planned reuse. Depending upon the planned reuse, areas of elevated contaminant concentration may be removed

or can be allowed to remain at the site under the conditions of the BFA. In North Carolina, areas of a Brownfield property that exceed unrestricted land use standards for contaminants in soil, soil vapor, or groundwater are identified in BFA documents and on a survey plat. Land use restrictions (LURs) in the BFA prevent uncontrolled access to these areas and to contaminated groundwater.

For example, if the redevelopment plan calls for the construction of a light industrial facility, it may be appropriate to apply industrial investigation and

cleanup standards that are less stringent than those that would be applicable to a property that is to be redeveloped for residential use. Therefore, it is important to consider potential redevelopment plans at the outset of any project.

If the intended use is not known at the beginning of the project, the community representatives or property redevelopment team should make every attempt to identify the general type of desired development, whether industrial, commercial, residential, or a mixed-use development. In the absence of that information, the most conservative cleanup assumptions would likely have to be made at every stage of the project. While this approach preserves the greatest number of options for development, this may significantly increase the time and expense of the project. These factors are discussed in greater detail in Step 3 – Cleaning Up Your Property.

Marketing Your Property [photo from wireworld.com]



It is important to remember that success in the final marketing of the property can be made much easier through the involvement of the business and development community from the start. When steps toward marketing of the Brownfield property are left to the end of the cleanup phase, the process can yield disappointing results. So, hopefully, Brownfield property marketing efforts are occurring incrementally throughout the process. In the best scenarios, final marketing plans and intended uses are worked out with interested developers in the Property's conceptual stage.

Once you have an idea of what you want the site to be, you can turn your attention to identifying possible developers for the site if they have not already been identified. You may be marketing your Brownfield property, working to ensure a good return on your investment, and attracting the right developer with a vision that matches the community's needs and interests. You will be facing the challenges inherent in any development project, such as providing appropriate infrastructure, but you also need to convince future buyers and occupants that the site will be or is safe for their intended use. In the State of North Carolina, a negotiated BFA between the PD and the State will assist in meeting this end by defining the work to be performed, determining land use restrictions associated with the site, and providing liability protection and tax incentives to the PD.

Financial Assistance for Community-Lead Assessment and Cleanup Activities



Forming a team, or coalition, and determining the best use of your community's contaminated properties are important first steps that require resources. U.S. EPA offers Brownfields grants on a periodic basis (usually once a year, with grant application rounds normally beginning in the fall) to assist communities with various activities related to contaminated property redevelopment. One of the

grants U.S. EPA makes available to communities is the Brownfields Assessment Grant. This grant provides funding for property assessment, planning activities, and community outreach activities related to qualifying sites. This grant can also provide funding for conducting contaminated property inventories as part of the planning process. EPA also awards Cleanup Grants and Revolving Loan Funds on a competitive basis for cleanup activities on eligible properties. More information about the Brownfields Assessment Grant process can be found on U.S. EPA's Brownfields web page

at: www.epa.gov/brownfields/assessment_grants.htm. More information about the EPA Cleanup Grants and the Revolving Loan Funds can be found at http://www.epa.gov/swerosps/bf/cleanup_grants.htm and <http://www.epa.gov/brownfields/rlfst.htm>, respectively.

At the present time, there are no funding sources for assessment or cleanup through the State of North Carolina Brownfield Program. However, the NCBP provides certain tax benefits to Brownfield properties in the State. In addition the Brownfields staff provide technical guidance and support throughout the brownfields process. Other sources of funding may be available to assist with infrastructure development on qualified sites. Information on additional resources is provided in Appendices B and C of this document.

Developing an Inventory of Contaminated Properties



Historical industrial or commercial property use often resulted in environmental contamination. If your community has an industrial past and now has abandoned or underutilized industrial or commercial properties, an inventory can help you identify the number and location of such properties. Then you can begin to consider an action

plan for these sites to benefit the economic health and vibrancy of the community, and select priorities based on community needs and interests, and site marketability.

Communities are often in the best position to create such inventories and determine the most marketable sites for redevelopment. Local governments often have direct knowledge of underutilized properties, through tax rolls and historical documents, and the planning expertise to select properties that have the greatest redevelopment benefit to its citizens. Evaluating a property's marketability is a crucial initial step in prioritizing assessment, cleanup and redevelopment efforts.

Municipal planning and economic development staff are often a good choice to lead the Brownfield redevelopment efforts at the local level. Staff contacts at various municipal departments can assist in gathering property information for use in Brownfield site decision making. Such information, such as current property owner, parcel identification number, parcel maps, historical and current uses, chemical storage, violations of building codes, and permitting issues, is obtained from the tax collector's office, Register of Deeds, local geographic information system databases, building and health departments, local fire departments, and the local library and historical societies. You may want to enlist the help of local citizens or a local volunteer service organization during community outreach activities to maximize your inventory efforts.



Information maintained by State and Federal agencies may also be helpful in the early stages of inventory development. The State of North Carolina Department of Commerce provides a list of marketable properties that may or may not be contaminated. Many of these sites may be eligible for the NCBP (**ACCESSNC** at <http://www.thrivenc.com/accessnc/search>). Refer to Appendices B and C for additional planning resources.

Determining Your Next Step

The following series of questions will help you determine the next step in the redevelopment process, and remember using the word **“community”** here ideally includes input from stakeholders beyond the local government alone and includes property developers, business leaders, lenders, and other parties interested in economic development of your community:

- Has your community identified a marketable property(ies) where redevelopment is complicated by real or suspected environmental contamination, and the nature and extent of that contamination is not known?

- o *If "yes", go to **Step 2 "Determine If You have Contamination on Your Property"**.*
- Has your community identified a property(ies) where contamination exists and the nature and extent of that contamination has been documented?
 - o *Go to **Step 3 "Cleaning Up Your Site"**.*
- Has your community identified a property(ies) where contamination exists, documented the nature and extent of contamination, and analyzed the risks posed by that contamination?
 - o *Go to **Step 1 "Developing an Inventory of Contaminated Properties" and Step 3 "Cleaning Up Your Property"**.*
- Has your community evaluated cleanup options for a contaminated property project and selected a remedial action?
 - o *Go to **Step 4 "The Finish Line – Redevelopment of Your Property!"**.*

Step 2: Determine If You Have Contamination on Your Property

Once you have identified a Brownfield property that your community would like to redevelop, the next step is to determine whether there are environmental conditions present that may affect future use and redevelopment. This will assist you in determining what liability the community may have and possibly the cost it might bear if it chooses to take ownership and begin a cleanup.

Making a determination of whether a property is contaminated or not is accomplished by conducting an environmental site assessment, which includes a review of historical records, an inspection of the site and, quite often, collecting and analyzing soil and groundwater samples.

FAQs for Step 2

What is an environmental site assessment?

Environmental site assessments are typically conducted in phases, and are used to determine whether a site is contaminated or not. A Phase I environmental assessment is a review of available documentation and knowledge associated with the property's historical record to see if there is known recognized environmental conditions (RECs) or the potential for environmental conditions (PECs) at the property. The scope of work for a Phase I Environmental Site Assessment (ESA) should be based on EPA's AAI, which is defined below. If the Phase I results indicate that there is known or potential contamination, the assessment of the site proceeds to the next phase. A Phase II ESA involves sampling of the site, evaluation of site data, and sometimes a preliminary screening level risk evaluation. The Phase II scope of work should be designed to provide results that will determine: the extent of contamination, the types and probable sources of contamination, the level of risk to humans and the environment associated with the contamination, and whether the contamination needs to be cleaned up based on a particular property's planned reuse.

Phase I ESAs performed under EPA Brownfield grants are required to satisfy EPA's All Appropriate Inquiry (AAI) rule that was developed as part of the 2002 amendments to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). AAI is a process of evaluating a property's environmental conditions, and must be done in order to obtain certain liability protections under federal Superfund Law. If a property can be assessed through federal grant funding, it makes the site all that more attractive to a potential developer.

What is meant by "All Appropriate Inquiry" (AAI)?

All Appropriate Inquiry, or AAI as it is commonly known, is an environmental site assessment that meets the requirements of U.S. EPA's All Appropriate Inquiry rule (40 CFR 312). Following the requirements of AAI in a pre-purchase environmental site assessment gives a prospective purchaser liability protection from CERCLA (a.k.a., Superfund) for those environmental issues that are identified by the AAI assessment.

Prospective property owners who were never involved in any practices that might have contaminated the property may be eligible for liability protection from CERCLA, if AAI is conducted prior to purchasing a property. In addition, to maintain protection from CERCLA liability, property owners must comply with certain "continuing obligations" provided in the statute. For more information on the AAI rule, access the U.S. EPA web site at <http://www.epa.gov/brownfields/aa/>. Most of, but not all, of these obligations will be met when you enter the NC Brownfields Program and perform the work necessary to obtain a brownfields agreement.

FAQs for Step 2, cont.

Will an environmental assessment performed several years ago meet the new AAI requirements?

No. Information from older Phase I reports may be used as a resource, but the 2002 Federal Brownfields Act requires that a Phase I assessment used to meet the requirements of AAI must be completed within a year prior to taking ownership of the property. This is to ensure that the current environmental status of the property is known at the time the property is transferred. In addition, certain aspects of the AAI assessment must be completed within 180 days prior to the property transfer (i.e., the on-site investigation, the records search, the interviews, and the search for environmental cleanup liens). This protects the buyer from inadvertently accepting liability for contamination that may have occurred between the time the initial assessment was conducted and when the property actually transfers. However, the point may become moot once a brownfields agreement is reached with the NC Brownfields Program as the agreement is a liability protection and assurance of due care vehicle for the property.

Who pays for the assessment?

Assessment costs are typically paid for by the prospective developer as part of their due diligence process. Municipalities or other local government coalitions may be able to conduct these environmental site assessments through a competitively awarded EPA Brownfield Assessment Grant if the site meets certain eligibility criteria. The EPA Region 4 Targeted Brownfield Assessment Program can provide municipalities with additional assessment services through federal contractors. The State of North Carolina does not provide staffing support or funds to conduct Phase I or Phase II ESAs; however, the NCBP Project Managers can assist in reviewing and guiding ESAs for sites that have been accepted into the Brownfield program.

Who performs the environmental site assessment?

Environmental site assessments are typically conducted by environmental consultants trained and experienced in the areas of environmental investigation and cleanup. Federal regulations require that AAI investigations be carried out by qualified environmental professionals who meet certain minimum requirements.

When hiring an environmental consultant, be sure to check their qualifications and references just as you would with any contractor. There are consultants in the State of North Carolina that have experience specific to State and/or Federal Brownfields sites, and therefore are familiar with the specific document requirements and processes related to the North Carolina and EPA Brownfield programs.

For more information on hiring an environmental consultant, access the U.S. EPA web site at http://www.epa.gov/brownfields/aai/HiringEP_Addendum_factsheet.pdf.

Can I have an environmental site assessment before I own the property?

Yes, if you have permission and access rights from the owner of the property. Municipalities and developers often include access rights and permission to conduct an environmental assessment as part of their pre-purchase agreement with property owners.

Activities and Available Tools

Phase I Environmental Assessments

A Phase I environmental site assessment requires that an appropriately qualified environmental professional review existing records concerning the site, research the operational history of the site, and conduct a site visit and interviews to determine if the potential exists for contamination at the site.

Phase I site assessments are used to identify existing or past signs of potential contamination at a property. Contamination can consist of hazardous substances and petroleum products as well as asbestos, lead-based paints, mold, and radon. If the Phase I assessment does not indicate a significant potential for environmental risk due to contamination at the site, then further investigation or cleanup may not be needed.

If the assessment is inconclusive or identifies potential contamination that poses environmental risk, further environmental assessment may be needed to ascertain if a particular reuse plan is safe for a given site. This is addressed through the development and implementation of a Phase II ESA scope of work. Soil, sediment, soil vapor, indoor air, surface water and/or groundwater sampling may be required to determine whether the property is contaminated, if it is safe for its planned reuse, or if it needs to be cleaned up before it can be redeveloped.

Phase II Assessments: Sampling and Risk Assessment

A Phase II environmental site assessment is an evaluation of environmental conditions at a property. This evaluation relies on the collection and analysis of soil, sediment, soil vapor, surface water, and/or groundwater samples, and other measurements taken at the site to confirm and quantify the presence of environmental contamination at the property.

If contamination is confirmed and the levels of contaminants are known, an assessment of risks to human health and the environment may be conducted to determine how people and/or the environment could be affected based on the planned reuse for the site. Once a risk assessment has been conducted or a comparison is made to state or federal cleanup standards, a decision can be made as to whether or not the property poses an unacceptable environmental or health risk for the planned reuse. If unacceptable risk is determined to exist at the site, a plan can be developed to clean up the property and reduce risks to humans and the environment.

The Phase II site assessment is designed to evaluate the degree of contamination and health or environmental risk posed by exposure to such contamination. It may not provide sufficient information to estimate the quantity of wastes to be addressed or the costs of cleanup. Additional work may be needed which is discussed in Step 3 of this document, "Cleaning Up Your Site".

The scope of the Phase II ESA, should be based on an evaluation of historical use and potential source areas of contaminants, and to some extent, the planned use of the property. For example, properties that are planned as residential, may be required to generate more data during the Phase II ESA process to demonstrate that the site is safe for this use, or to define areas of elevated concentrations for removal to make the site safe for residential use. Alternatively, if commercial or light industrial use is planned, depending on site-specific factors, it may be acceptable to conduct risk-based decision making with less data than that necessary for planned residential sites.

North Carolina Brownfields Program Assessment Guidance

The NCBP staff can assist you with understanding the type and amount of environmental data that are needed to be collected on your site based on historical information and plans for reuse. Entering the NCBP before a Phase II ESA has been completed enables discussions between the State and the PD that will provide focus on the tasks that the PD will need to complete during a Phase II ESA in order to negotiate a meaningful brownfields agreement.

U.S. EPA Assessment Grants

Grants of up to \$200,000 are available to local government entities that bear no responsibility for causing the contamination at a site. These competitive grants are available on an annual basis for planning, and assessing, and performing community outreach for sites contaminated with petroleum or hazardous substances. See

www.epa.gov/brownfields/assessment_grants.htm for more information.

Targeted Brownfields Assessments

Under certain circumstances, the U.S. EPA regional offices or your state program may be able to assess sites under a program called *Targeted Brownfields Assessment*. At the request of a municipality or non-profit organizations, the U.S. EPA can perform an assessment and assist in the planning process for redevelopment of qualifying sites. These assessments are done at no cost to the requesting community at sites where there is a clear public benefit, and the community did not cause the contamination. See http://www.epa.gov/brownfields/grant_info/tba.htm for more information or check with your state program.

For more information on tools and resources to assist you with project planning and site identification, refer to Appendices B and C of this document.

Determining Your Next Step

The following questions were developed to help determine your next step in the contaminated property redevelopment process:

- Did my environmental site assessment reveal potential contamination or other recognized environmental conditions on this property?
 - o *If no, go to **Step 4, "The Finish Line – Redevelopment of Your Property!"**.*
 - o *If yes, and you want to clean up the property before marketing it for redevelopment, go to **Step 3, "Cleaning Up Your Site"**.*
 - o *If yes, but you do not want to clean up the property prior to marketing it for redevelopment, go to **Step 4, "The Finish Line – Redevelopment of Your Property!"**.*
- Does the contamination pose a risk to human health or the environment?
 - o *If yes, then cleanup will likely be necessary, so proceed to **Step 3 "Cleaning Up Your Property"**.*
 - o *If no, and it does not affect the future use of the property, then proceed to **Step 4, "The Finish Line – Redevelopment of Your Property!"**.*
- Does the contamination require cleanup or other corrective measures in order to protect human health or the environment, or can the contamination be addressed through a deed notice or other similar mechanism?
 - o *Go to **Step 3, "Cleaning Up Your Property"**.*

Step 3: Cleaning Up Your Property



The results of your Phase II assessment may indicate that contamination on the property exceeds state and/or federal screening or cleanup standards. Cleanup may be necessary to either prevent exposure to contamination by future users of the site or to stop a release of contamination into the environment. This step is intended to provide general information on cleanup and its role in the Brownfields redevelopment process.

In North Carolina, NCBP BFAs contain land use restrictions (LURs) such as prohibitions against groundwater and surface water use, residential use, day care centers or use by other sensitive populations, and restrictions against uncontrolled exposure of on-site. The NCBP requires that LURs are certified annually by the owner of the site as a requirement of the BFA. If active or passive remediation methods are in use at a site, the annual certification is to include performance data or other measures that the remediation method is continuing to perform in an acceptable manner.

The LURs are specified in the BFA and the Notice of Brownfield Property, which is recorded in the county Register of Deeds office where the site is located. The BFA therefore runs with the property and subsequent owners of the site are required to abide by the provisions in the BFA, while also receiving its benefits.

FAQs for Step 3

Who do I need to consult to get help with cleaning up the site?

If you haven't done so already, you should hire an environmental consultant to work with you to develop and implement a plan to address the contamination at your site. Additionally, it may be necessary to hire an environmental attorney who is familiar with state and federal laws to assist you in dealing with the legal issues relative to the cleanup process. Finally, you should also contact the appropriate NC DENR and/or other applicable local governmental agency(ies) to ensure that any cleanup work you are planning to conduct will fulfill state and local requirements.

For information on the NCBP, refer to Appendix A and <http://www.ncbrownfields.org/>. For information on the NC DENR IHS or UST section, refer to the appropriate section at the Division of Waste Management website at <http://portal.ncdenr.org/web/wm/>. Refer to your specific county or municipal level environmental regulatory agency for local requirements.

FAQs for Step 3, cont.

How do you know when a property needs to be cleaned up?

If, after conducting an environmental assessment as described in Step 2, your sampling results exceed the NC unrestricted use standards as defined by the Soil Remediation Goals Table (<http://portal.ncdenr.org/web/wm/sf/ihs/ihsguide>), the NC Groundwater Quality Standards (2L standards), or the risk evaluation indicates that a potential risk to human health or the environment exists, it is likely that some form of cleanup is necessary. For the Brownfields program, under certain instances, land use restrictions (LURs) can also be used alone or in combination with active remedial options to mitigate and manage potential exposures to contaminants, making the site safe for the planned reuse.

What types of cleanup might be necessary at contaminated sites?

Soil, sediment, surface water, groundwater or indoor air that is impacted above unrestricted use standards may need to be cleaned up at a contaminated site in North Carolina. Techniques have been developed to address contamination in each of these media. In many cases, site risks can be controlled through the use of institutional controls like land use restrictions (examples include prohibiting groundwater use or limiting the site to industrial use).

Other times more active cleanup may be needed. The type of cleanup and institutional controls selected is based on situation-specific considerations such as type of contamination, amount of contamination, depth to groundwater, intended use of the property, and extent of risk to human health or the environment. Additional actions might be necessary during a building demolition phase to address issues such as asbestos or lead-based paint.

In North Carolina asbestos and lead-based paint are regulated by the North Carolina Division of Public Health and Human Services. Asbestos information can be found here: <http://epi.publichealth.nc.gov/asbestos/ahmp.html>. Lead-based paint information can be found at: <http://epi.publichealth.nc.gov/lead/lhmp.html>.

How much will the cleanup cost?

The more reliable site-specific information you have about the soil type, groundwater conditions, and the nature and extent of contamination on your property, the easier it will be to evaluate the potential cleanup options and estimate the cost of these options, with less uncertainty. Under the NCBP, determining future intended use for the property may allow you to tailor the cleanup to the specific site use, and reduce the costs using risk-based decision making.

Incorporating cleanup activities into the general construction process or using innovative architectural designs can help reduce costs. For example, it may be possible to reduce the volume of contaminated soil for excavation and disposal by constructing buildings over less-contaminated areas, and/or paving areas of higher contamination to reduce exposure pathways. In addition cost-effective remediation techniques designed to address contamination under buildings and in groundwater have been developed, and may be appropriate for your project. A wealth of information about remedial technologies and their use are readily available, such as <http://www.clu-in.org/remediation/> and <http://www.itrcweb.org/>. In addition, reputable environmental consultants working with experienced NCBP Project Managers can assist in developing options that are appropriate for your Brownfield site.

FAQs for Step 3, cont.

What are institutional controls?

In cases where the cleanup does not remove or address all of the contamination at the property to the most stringent of standards (e.g., for residential or unrestricted use), Institutional Controls (ICs) may be required as part of the cleanup. ICs are legally enforceable restrictions, conditions, or controls that run with the land to limit or prevent the use of the property, ground water, or surface water so that future exposure to contamination can be prevented or minimized.

ICs are intended to reside in the property chain of title records and to be discovered when property ownership changes. By making future owners and others aware of the location of contamination, a less stringent cleanup option may be implemented that is just as protective of humans and the environment as a more "complete" cleanup. Some examples of ICs include easements, activity and use limitations, restrictive covenants, well drilling prohibitions, deed restrictions, zoning restrictions, and special building permit requirements.

Activities and Available Tools

Types of Cleanups for Contaminated Sites

The type of cleanup required at a property depends on a number of factors. These factors include location, type and amount of contaminant(s) present, how widespread and deep the contamination is and the intended future use of the property. An evaluation of available Phase II data should be conducted to identify whether data gaps exist that could hinder development of a sound cleanup plan. A supplemental focused investigation designed to fill these data gaps may make sense in this instance. When a site participates in the NC Brownfields Program, NCBP staff can provide guidance on just what focused assessment is necessary for that site.

The most common types of cleanups include removal or treatment of contaminated soil, capping and/or covering the contaminated area, and cleaning up groundwater. However, additional methods for mitigating risks at contaminated properties include the use of ICs (see FAQ above) and engineering controls. U.S. EPA has published a compendium on cleanup options that can be found at <http://www.epa.gov/tio/download/misc/roadmap3edition.pdf>. Additional information can be found at <http://www.clu-in.org/remediation/> and <http://www.itrcweb.org/>.

Engineering controls are constructed parts of a cleanup that act to cover (i.e., "cap") or limit exposure to residual contamination at the property. Engineering controls include soil, asphalt or concrete cover systems over residual

contamination, and the use of fences. In some cases, contamination at depth can be “capped” by a newly constructed building, roadway, or parking areas, with provisions for cap maintenance.

Cleanup work can be incorporated into the general design and construction schedule to increase efficiency and lower costs. For example, if a building is planned over an area of contaminated groundwater that could pose an indoor air contamination problem, a sub-slab depressurization system can be easily and inexpensively installed during construction of the building foundation.

Because the amount of cleanup needed can be highly dependent on future use, it is very important to plan your assessment scope of work early on with the intended site reuse in mind. The assessment information should be gathered in a manner to allow you to design appropriate but cost-effective cleanup options that can be incorporated into the redevelopment process. The North Carolina Brownfields Program is ready to customize the assessment and cleanup processes to the end uses planned.

Importance of Determining Future Use of the Property

The redevelopment of a contaminated property is essentially a real estate transaction, and any real estate transaction is affected by location, location, location. A key question that must be answered for every property redevelopment project is, “Will a return on my investment be realized?”



Knowing the options for cleanup and a range of potential cleanup costs in advance will aid in addressing this question.

What constitutes a successful and protective cleanup has evolved over the past several decades from an expensive “remove it all” approach, to a more measured, risk-based approach where residual contamination is allowed to remain onsite, if properly controlled. The risk-based approach recognizes that any cleanup must be protective of human health and the environment, but cleanup need only go as far as necessary to make the property safe for its intended use. For example, cleaning up a site to single family residential use exposure levels is unnecessary if the property is to be used as a warehouse or convenience store. The reverse is also true. You wouldn’t want a less stringent cleanup that is appropriate for an industrial use to occur where homes were to be built.



So, the intended future use of a site can determine the extent of cleanup that will be required. It is just as true that the extent of cleanup can determine the future use of a site. Sometimes the intended use of a site is known from the beginning and the cleanup is tailored for that use. In other cases, available funding limits the extent of cleanup, which may then dictate more limited options for future use.



Knowing the intended future use can significantly affect the cleanup both in scope and cost.

Liability Protection Available for Prospective Developer

One of the benefits of conducting a cleanup under the NCBP is the liability protection offered in the form of a covenant-not-to-sue contained in the brownfields agreement. Once the "safe-making" actions specified in the brownfields agreement are completed, liability protection is automatically in force that protects the Prospective Developer (PD) from enforcement action by the NC DENR DWM for remaining contamination known to exist at the site prior to its redevelopment.

It is important to note that the agreement does not provide liability protection concerning future site contamination for which the PD or other party may be responsible. Because the brownfields agreement defines the PD's cleanup liability at the property, and limits that liability to those actions specified in the agreement, it removes the uncertainty regarding site cleanup costs. In this way, the agreement functions to provide comfort to lenders or other entities that would not otherwise be willing to offer project funding. The brownfields agreement, then, is the chief mechanism for breaking this common barrier to obtaining redevelopment financing.

In their Brownfield Applications, PDs must make the case that the liability protection provided by a brownfield agreement is necessary to break such a barrier or is otherwise required for the redevelopment project to proceed. These may be used to demonstrate to prospective purchasers, future users of the site, lenders, the local community, and other interested parties that contamination issues have been resolved, or are being mitigated, and the site is safe for reuse.

Loans and Grants Available for Funding Cleanup

One of the biggest barriers to cleanup of contaminated properties is financial resources. U.S. EPA Brownfields cleanup grants are an excellent source of funding for cleanups of qualifying properties (see Step 1, "Site Identification, Project Planning and Marketing") by municipalities and other qualifying entities. Since the grants are highly competitive and applications are only accepted once a year, your project schedule and budgeting should have some flexibility built in for these constraints. EPA also provides the impetus for municipalities to apply for Revolving Loan Funds. EPA hosts grant application writing seminars through the clu-in website at

<http://www.trainex.org/offeringlist.cfm?courseid=571&all=yes>

More information about the Brownfields Cleanup Grants and Revolving Loan Funds can be found on U.S. EPA's Brownfields web page at:

http://www.epa.gov/brownfields/cleanup_grants.htm. For more information on tools and financial resources to assist you with project planning and site identification, refer to Appendices B and C of this document.

Determining Your Next Step

- Have you completed cleanup prior to redevelopment?
 - Go to **Step 4, “The Finish Line – Redevelopment of Your Property!”** for assistance in marketing or developing your site.
- Have you identified but not addressed all environmental concerns at the property, and do not intend to clean up the property prior to selling it?
 - Go to **Step 4, “The Finish Line – Redevelopment of Your Property!”** for assistance in marketing your site.
- Do your cleanup activities require institutional controls and have they been appropriately filed and recorded according to applicable statute and regulation?
 - Refer to **Appendix C**, which provides contacts and information specific to the requirements of your state.
- If you know who the purchaser of the property will be, have you conveyed the content and responsibilities of the institutional controls to them?
 - Go to **Step 4, “The Finish Line – Redevelopment of Your Property!”** for assistance in marketing your site.
- If your site requires long-term maintenance, have you made plans to fund and carry out those obligations or made arrangements for others to do it on your behalf?
 - Refer to **Appendix C**, which provides contacts and information specific to the requirements of North Carolina.

Step 4: The Finish Line – Redevelopment of Your Property!

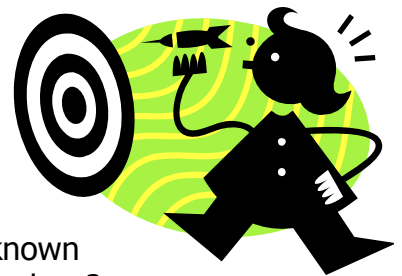


By working through Steps 1 through 3, you have quantified the environmental concerns at your property. You have either addressed those environmental concerns through cleanup or institutional controls, or you have documented them for a future developer to address as part of redevelopment. Assessment activities were completed to the satisfaction of applicable regulatory agencies and actions were taken, or plans were developed for resolving unacceptable environmental risks. The property is ready for redevelopment.

You may be redeveloping the property yourself instead of seeking to sell it to a developer. In this case, return on investment is not necessarily a primary driver, but you will still need to address infrastructure. As previously stated you will also need to convince future occupants or users that the site is safe for their reuse. On the other hand, you may have decided not to clean up the property yourself, but instead to market it for simultaneous cleanup and redevelopment. This is most likely to be successful when contamination at the property has been quantified and final cleanup costs can be determined with some degree of certainty. Although with maturation in redevelopment thinking, there are a number of savvy developers whose goals may match your redevelopment vision that look specifically for brownfield sites.

Depending on your plans for redeveloping the property, a variety of federal and state resources may be available to you. With answers in mind to the questions below, consider the FAQs listed below and the resources described in Appendices B and C.

- Do you plan to redevelop the site, or to sell/market the site once clean up has been completed, and allow the buyer to redevelop the site?
- Will a public or private entity redevelop the site?
- Is the intended use a public or private use?
- Did you start this entire process with a planned, known reuse for the site, or are you still developing your reuse plans?
- Is your site in the heart of a bustling urban center or in a rural setting?
- What infrastructure exists at the site?
- Will the reuse be residential, commercial, industrial or open space?



Local, regional, and state economic development staff can help you market your property. Coordinating with these representatives will help ensure use of the most efficient tools in your particular area. In North Carolina, various resources as identified in Appendix C are available to assist with these efforts.

FAQS For Step 4

What information generated during assessment and cleanup work will developers, lenders, and potential occupants request during the development stage, and how should the information be presented?

At a minimum, most developers, lenders and potential occupants will want to be assured that the site has been appropriately cleaned up and closed out of the state and/or federal programs. Copies of available Phase I ESA report, Phase II ESA reports, and clean up reports, and documents that provide a comparison of cleanup options and costs would be appropriate to provide. Interested parties may also wish to conduct a regulatory agency file review of public environmental records pertaining to the site. Contact the relevant division of NC DENR <http://www.ncdenr.gov/web/quest> to arrange for a review of site files at the appropriate NC DENR office(s) in the State. As part of the NCBP Brownfields public notification process, a public information repository is established during the public comment period at a location(s) affording reasonable proximity to site information, such as the local library or municipal planning office.

What role, if any, will local, state or federal environmental staff have during the redevelopment phase?

The answer is highly dependent on site specifics and the type of resources that will be used to assist in redevelopment. But generally, the NC Brownfields Program may be involved in any assurances needed as to work performed to make the site safe for the intended reuse, including periodic certifications that land use restrictions remain in force. EPA Region 4 and the NCBP staff are available to address issues related to eligibility, funding, and liability issues pertaining to Brownfield sites in the State of North Carolina, and to help navigate the redevelopment process.

How should I market this property?

The involvement of local developers and lenders in your redevelopment team as mentioned in Step 1 will often have by this point generated leads or at least have determined that this site has significant market potential. Local commercial real estate agencies are also a frequent partner in this effort. However, there are some other tools available that can allow you to market your property to the right audience at little or no cost. One example of an effective marketing tool is a State or local property inventory. The State of North Carolina Department of Commerce provides a list of marketable properties that may or may not be contaminated. Many of these sites may be eligible for the NCBP. Refer to the website <http://www.thrivenc.com/accessnc/search> for more information.

FAQs for Step 4, Cont.

If my property has a deed restriction/institutional control/environmental covenant incorporated into the site plan or requires long-term operation and maintenance of remedial systems, how will this impact the marketing and redevelopment of the site?

If your property is safe for reuse but has a deed restriction, or other institutional control, potential site developers and occupants will need to be made aware that in certain areas some uses are either prohibited (installing wells for using groundwater is not permitted) or restricted (e.g., excavation below 6 feet requires a soil management plan). Potential developers and owner/occupants need this information so that they can safely use the property and so that they can fulfill any ongoing obligations associated with the deed restriction. These obligations are property-specific and are addressed in the NCBP BFA. They include periodic review and reporting of site conditions and performance measures of operating remediation systems.



No. 1 – Establish and maintain a well-rounded Brownfields property redevelopment team

Make it a priority to get private sector participation of local lenders, developers, and businesses that have employment or expansion potential onto your local Brownfields Redevelopment Team. This can be of great benefit in site selection and in gathering redevelopment leads that greatly increase your chances of ultimate success. Also if your Team does not already include local, state or federal economic development agency staff, look to the resources described in Appendices B and C, and contact the agencies best suited to help with your particular project.

No. 2 – Establish clear goals that gain stakeholder buy-in to your process

With many varied stakeholders come many varied goals. Work with your Team to develop its own appropriate locally supported redevelopment goals for your property(ies) and make them known, both interim and final. Interim goals could surround applying for and obtaining EPA grant funds if your team decides to pursue that option. The final goal should always include a brick-and-mortar reuse of the property. Other goals can include the public benefits of economic development measures, sustainable development, set asides for green space, greenway linkages, or smart growth concepts. The team's success in developing local support for a project will likely improve if local officials, citizens groups or individual citizens are on the team, or are afforded an opportunity to weigh in with their vision and ideas for redevelopment in the area.

No. 3 – Identify and use available tools



Identify and use your redevelopment goals to identify and utilize appropriate tools throughout the redevelopment process. Tools available at the federal and state level are located in Appendices B and C. Develop contacts within the brownfields practitioners in other local governments across the state to gain their insights and learn from their experiences.

No. 4 – Make sure the site is marketable before you make it “shovel ready”

Assessing and cleaning up a property that has no market potential can severely hamper chances of success in achieving the final goal. However, once a site that has redevelopment potential is chosen, work to make your site 'shovel-ready' for development. A shovel-ready site is one where as many obstacles as

possible have been resolved in advance of redevelopment. This is a critical step if you plan to market the property for sale prior to redevelopment because you will minimize regulatory hurdles for potential developers, reducing the efforts on their end and making your site more appealing. This may even include a local government or non-profit development corporation obtaining a brownfields agreement on the property under the NC Brownfields Program or at a minimum educating the developer on how they can do this.

No. 5– Market your site from the beginning

Market your redevelopment project by coordinating with local and state economic development staff who are particularly well-versed in strategies and available avenues for marketing brownfield properties. This may provide the most benefit on the front end of your project, a site that is cleaned up first with the thought that developers will be “knocking at your door” is typically a fallacy. This is known as the “clean it up and they will come” principle, however a developer on board at the beginning of your project will likely result in a successful redevelopment. Understanding and educating developers on how the principles of the NC Brownfields Program can alleviate environmental liability and provide tax incentives is also helpful.

Appendix A

Frequently Asked Questions

North Carolina Brownfields Program

The following frequently asked questions (FAQs) are also provided on the NCBP website at www.ncbrownfields.org. Please see the website for additional information.

1. What is a brownfield site?

A brownfields site is any real property that is abandoned, idled or underutilized where environmental contamination, or perceived environmental contamination, hinders redevelopment. The hindrance comes from the fact that it is very difficult to obtain loans for redevelopment on these properties because they come with potential environmental cleanup liability. The NC Brownfields Program is designed to alleviate that liability for prospective developers of these properties at reasonable cost so as to facilitate the redevelopment of the property.

2. What is a brownfields agreement?

The department will enter into an agreement with the developer that is in effect a covenant not-to-sue contingent on the developer making the site suitable for the reuse proposed. The term "suitable" includes the concept of safety from a public health standpoint for the intended reuse. The brownfields agreement provides both the site-specific actions necessary to make the site suitable for reuse and the covenant not-to-sue once these actions are complete. A brownfields agreement is designed to break environmental liability barriers that hinder a developer's ability to obtain project financing. The agreement specifies actions to be conducted by the developer that are based on making the site suitable for the use intended. These actions can be costed, and then a business decision can be made by the developer and lenders without uncertain liability. By and large, these actions include a wider array of options to choose from and are more cost effective than those afforded to a polluter of the property. See [question 6](#) for more details on the benefits of a brownfields agreement.

3. I hear about the U.S. EPA Brownfields Program (federal level) and the North Carolina Brownfields Program (state level). What's the difference?

The U.S. EPA began the Brownfields Initiative in 1995 and since that time the states have been heavily involved in supporting these actions through passage of supportive state statutes. The federal and state roles in brownfields differ, but they are all designed to encourage the cleanup and reuse of abandoned contaminated properties referred to as brownfields.

The federal program functions to provide funding to states to develop and operate programs such as this. It also provides grants to local governments, on a competitive basis, for assessment and cleanup of brownfields sites. The federal brownfields statute ([Small Business Liability Relief and Brownfields Revitalization Act](#)) became effective in 2002. It outlines environmental liability and under what circumstances it is deferred to the state and under what circumstances it remains with the federal government.

The state Brownfields Program operates under state statute ([Brownfields Property Reuse Act of 1997](#)) to offer liability protection to noncausative parties in return for actions on the site that make the site suitable for the reuse proposed and for the public benefit of the redevelopment project.

4. Is there any brownfields funding available and from whom?

This is one of the central differences between the federal and state brownfields programs.

Although the state brownfields program has no upfront funding available to private party prospective developers, a brownfields agreement obtained from the program entitles the developer to a property tax exclusion on the improvements made to the property for a period of five years. This exclusion can more than pay for assessment and cleanup activities on many projects. See our Tax Incentive FAQ for more information on how it is applied.

The U.S. Environmental Protection Agency does have competitive brownfields grants for the assessment and cleanup of brownfields properties as well as grants for setting up local revolving loan funds. Limited funds are also available for job training grants, also on a competitive basis. Under this brownfields grants program, North Carolina local government entities have been awarded millions of dollars for brownfields activities. This list includes Charlotte,

Winston-Salem, Fayetteville, Raleigh, Greensboro, Winston-Salem, High Point, Concord, Farmville, Wilmington, Rocky Mount, Hickory, the Land-of-Sky Regional Council of Governments, the Piedmont Triad Council of Governments and others. Deadline for submittal of proposals is generally in the fall of each year. For more information on how to apply please see our [Federal Brownfields Program Links](#). However, it's important to note that the awarding of such a grant is not required to participate in the North Carolina Brownfields Program.

5. What's the difference between the state's Voluntary Cleanup Program, the Inactive Hazardous Sites Program and the Brownfields Program?

The "Voluntary Cleanup Program" is the shorter name for the [North Carolina Inactive Hazardous Sites Program](#). It has existed since 1987 and is designed to encourage cleanups of contaminated properties. Any party may conduct cleanup activities under this program. Most of the parties who do so are responsible parties who caused or contributed to the contamination at the site. The Voluntary Cleanup Program is separate and apart from the state's Brownfields Program, which was authorized by a different statute in 1997. The major differences are that the Brownfields Program, and its associated benefits, are only available to parties who did not cause or contribute to the contamination at the site and who desire to redevelop the property. See the next question to review what those benefits are. Also, a brownfields site by necessity is one that is abandoned, idled or underutilized, and where there is an interest in redevelopment. That may or may not be the case with a Voluntary Cleanup Program Site.

6. For a developer of brownfields properties, what are the benefits of obtaining a brownfields agreement?

In short, a brownfield agreement is designed to provide a tool for developers to handle environmental liability such that they can begin to look at a brownfields property as an opportunity instead of immediately walking away from it. The following are specific benefits:

1) The agreement provides strong liability protection that can be shown to a lender in order to obtain project financing; 2) The site remedies under the program are designed to prevent exposure and make the site suitable for reuse, not to meet environmental standards required of the site polluter in traditional cleanup programs. Thus they are less costly, particularly with respect to groundwater remedies; 3) since remedies are put in the agreement up-front

and therefore represent known costs, a more reliable business decision can be made without much of the uncertainty surrounding environmental liabilities; 4) closure for the prospective developer can be obtained in a matter of six to twelve months, which is typically much less time than for most other cleanup programs; 5) The liability protection passes on to all new owners so long as they adhere to land use restrictions (e.g. don't use the groundwater). This can be a selling point; and 6) The brownfields property tax incentive significantly reduces property taxes for five years after completion of improvements to the property. This benefit typically pays for or at least offsets site environmental assessment or cleanup activities that the developer must conduct in the program.

7. Okay, so if I want a brownfields agreement, what's the process like, how long does it take and how much does it cost?

The timeline varies but is typically less than the time to closure in traditional cleanup programs designed for responsible parties. Site-specific factors (such as site complexity, the developer's responsiveness to data requests, their need for negotiation, and others) and program capacity at the time of application affect the length of time to obtain an agreement. In 2011 the average time from eligibility to completion was approximately 18 months (check with the Program Manager for the present average length of time from eligibility to completion). The time involved is largely due to the set number of project managers funded through the U.S. EPA grant, the popularity of the program, and the queue of sites each project manager has on their plate. While this timeline is fine for most, for those developers who must go even faster, the program has instituted an optional "zero-queue" approach called the Redevelopment Now Program Option, whereby the developer may opt to pay a significantly higher fee for a nearly dedicated project manager which therefore bypasses any normal queue of sites. Again, ask the Brownfields project manager for the current average time to completion in this program option (in 2011 it was 5 months).

The process is outlined on our [flowchart](#) at the end of this FAQ section. It begins with the application by the prospective developer who needs the program's services submitting a [Brownfields Property Application \(BPA\)](#) with the data that is necessary for the program to determine if the site and the developer are eligible under the [Brownfields Property Reuse Act](#). The flexibility the Act allows makes for a different process than most other programs as DENR and the prospective developer work in partnership toward the brownfields agreement. The process is less adversarial and more of a partnership since

there is common interest for DENR and the prospective developer to reach a brownfields agreement that protects public health and the environment and encourages the reuse of the property.

Obviously the process also is dependent on the conditions at each site, as well as the end use proposed by the developer. For example, residential uses generally require more sampling to assure public health protection than does industrial use. At some sites sufficient environmental data already exists and no further assessment data is necessary. This saves time and expense. Some sites require more assessment than others. Many sites have motivated developers who respond to our technical guidance and sample sites without delay. Others respond less quickly and are in a slower development mode. Also, each brownfields agreement has a 30-day public comment period that needs to be factored into project scheduling. Even with this, a motivated developer on a site that is not technically complex can generally obtain a brownfields agreement in six to eight months. When compared to other cleanup programs and the liability protection provided, most developers who have had environmental issues to deal with on other sites outside the Brownfields Program will say this is exceedingly fast.

The ultimate costs are again specific to the site conditions, the existing site data, and the proposed land use. But the built-in advantages of the Brownfields Property Reuse Act are designed to make costs for noncausative parties both reasonable and well defined before the brownfields agreement is signed. Costs include assessment (often), remediation (if any), and transactional costs (attorney, if necessary, although we have had prospective developers receive brownfields agreements with little or no attorney involvement).

8. What's the operational history of the program?

The program has provided more than 120 brownfields agreements to date and has 150 in the pipeline, resulting in an estimated \$3.8 billion invested redevelopment capital across the State. The projects range in size from a \$100,000 small business expansion on a neighboring lot to projects valued at more than \$500 million in private investment. In addition to the private investment facilitated, these projects had given the state thousands of jobs and returned abandoned eyesores into new tax performers for local governments. An [inventory of brownfields projects](#) is available on our web site.

9. Can you give me a list of available brownfields properties?

Not per se. The list would be tens of thousands of properties long and take resources to create beyond the scope or purpose of the program. Perhaps more importantly, the creation of a list of properties would probably have a stigmatizing effect. The misuse of the list of properties that had or might have had contaminant releases for the Superfund Program to investigate, known as the CERCLIS list, was probably one factor why these properties would not transact in the marketplace to begin with. Therefore, we have little interest in repeating such a list. However, some existing lists might have some relevance and use in such a search. There is a list of sites known as the [Inactive Hazardous Sites Inventory](#) created under the [Inactive Hazardous Sites Program](#) (Voluntary Cleanup Program). It is a list of sites where there have been releases in the state. Though not all the sites on it are brownfields sites (some are very much operating facilities), some of the tens of thousands of potential brownfields are on the list. There is also a [list of old landfills](#) that existed prior to the advent of solid waste regulations. Projects have entered into the Brownfields Program that are landfill redevelopments into recreational and/or greenspace. Finally, although not a listing specific to environmentally impacted properties, you may wish to look at the [Department of Commerce's Certified Site Listings](#). Some buildings or properties on this list may fit the definition of a brownfields property, though it is definitely not a list that is specific to brownfields.

10. What if I redevelop the property and want to sell it afterwards; does the new owner get the liability protection and the tax incentive?

Yes. So long as they did not cause or contribute to the contamination at the site, they get the benefits of liability protection of the agreement just as the prospective developer did. A brownfields agreement should continue to facilitate the transferability of the property into the future. Also note that future owners do have the same responsibility to adhere to any land use restrictions in the agreement (for a hypothetical example, not to use the groundwater). Land use restriction violations are the responsibility of the owner at the time of the violation, so such land use restrictions violations do not come back onto past owners/developers.

And if the new owner wants or needs to change or modify the land use they may to apply to the Brownfields Program to change the land use restrictions on the property. Of course, if contamination is still present, they may need to

establish the change of use as suitable and safe through additional work under the Program as necessary.

11. Do I need a brownfields agreement from the U.S. EPA if I get one from the state?

No. The liability protection at the federal level comes via statute and not via contractual agreement. The [federal brownfields statute](#) defers jurisdiction of such sites to the state so that, in effect, the brownfields agreement is the agreement that governs the liability from the state and federal level. Should a site be of interest to the federal government (e.g., they have spent emergency response funds at the site in the past) the program would consult with the U.S. EPA on the site's eligibility for the brownfields program. Unless the site is headed for the [National Priorities list](#), it is a likely candidate for the state brownfields program.

12. How can my local government apply for a brownfields grant?

This grant program is administered by the U.S. EPA and information is passed through the [EPA brownfields web page](#). The NC Brownfields Program has links and announcements as well. Interested North Carolina local governments or councils of government can [talk to us](#) or to Michael Norman at the U.S. EPA Region 4 office in Atlanta (404-562-8792, Norman.Michael@epamail.epa.gov) for additional information.

13. Can individual developers apply for federal brownfields grants?

Only local governments, councils of governments, certain coalitions, and in some cases community development corporations can apply for grants. For the criteria please refer to the U.S. EPA's Brownfields Grant Application Guidance which can be found on [EPA's brownfields web site](#).

14. I caused or contributed to the contamination at a brownfields site. How can I take part in this process?

If you caused or contributed, you cannot obtain a brownfields agreement. But the program stands ready to help a prospective developer who desires to buy your brownfields site so that the property can transfer and the asset can be sold (so long as the property is abandoned, idled or underused and the transfer is not a real estate transfer for the purposes of continued operation of an already operating facility). Also, while this might facilitate the sale of this asset, it does not legally alleviate your past or future site liability. The brownfields

program is not the program who will be making that determination of future liability and/or enforcement for responsible parties. The program of cleanup jurisdiction will remain in that role regarding any responsible parties.

Of course, the North Carolina Inactive Hazardous Sites Program (IHSP) is always available to parties who caused or contributed to site contamination and who wish to cleanup prior to or during sale of the property. In fact, we have some projects in the Brownfields Program in which a responsible party for contamination on the property is working to complete a cleanup under the IHSP while the Brownfields Program works with a developer on a brownfields agreement for suitable safe reuse.

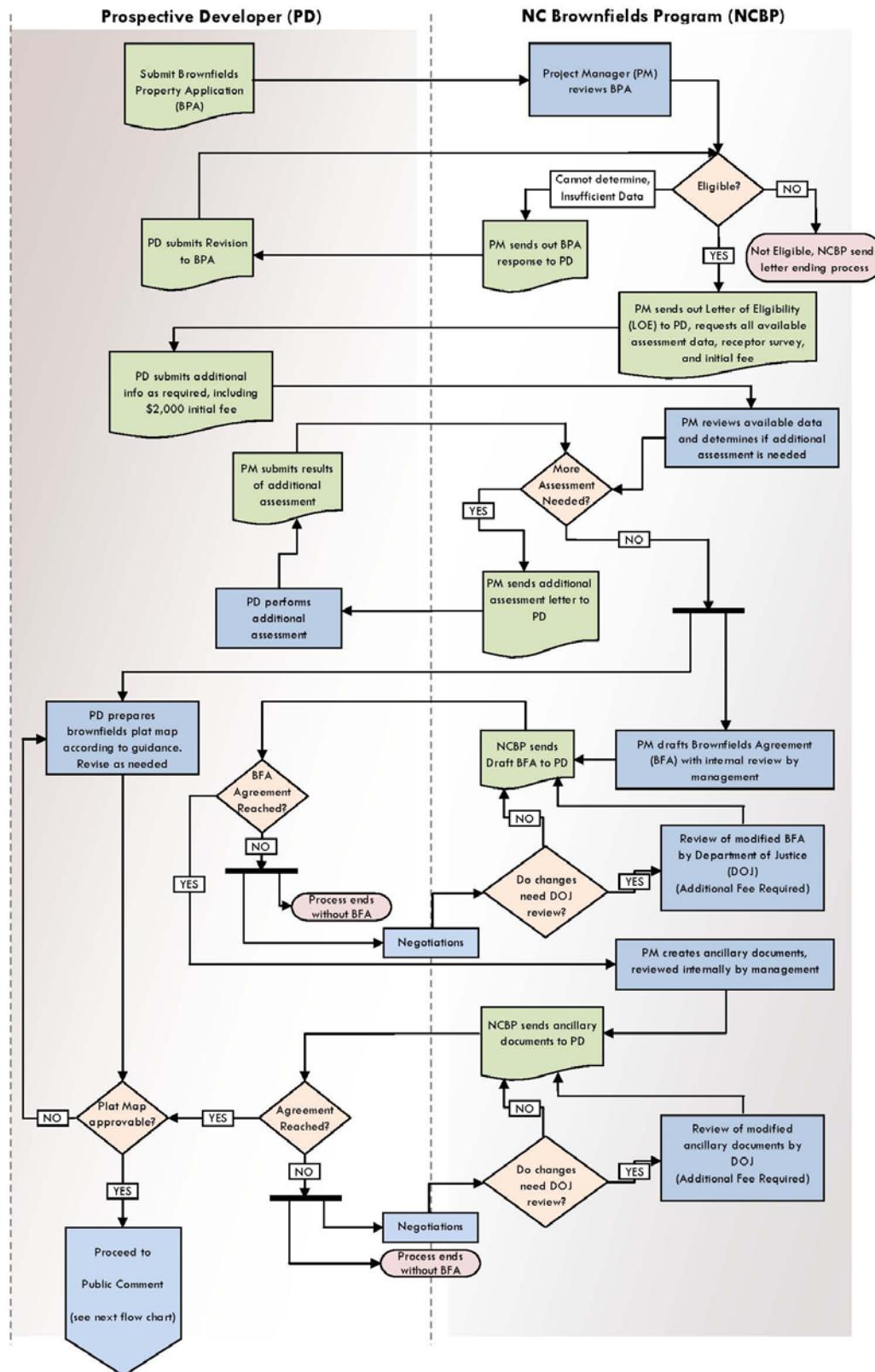
15. I already own the site but did not operate it or cause or contribute to the contamination. I may wish to redevelop the site or sell to someone who wants to redevelop. How can I take part in this process?

A prospective developer is defined in the statute as an entity who desires to buy or sell for the purposes of redeveloping the property and did not cause or contribute to the contamination. Note that this takes into account sellers as well as buyers. Policy on this is covered under Issue 1 of the Program's Guidance entitled [Brownfields Program Guidelines and Issue Resolutions](#).

16. Are there any sites that are excluded by their nature from getting a brownfields agreement?

The only site category prohibited from entering the brownfields program by statute are those on the National Priorities List (NPL). These sites are subject to remediation by the U.S. Environmental Protection Agency under the federal CERCLA program and are excluded from obtaining a brownfields agreement under the Brownfields property Reuse Act. There are only about [50 NPL sites in North Carolina](#). Sites that are not yet on the NPL but are known to be of "NPL-caliber" at the time of application may or may not be administratively on the path to listing on the NPL. Such sites are not automatically prohibited from eligibility, but the program may need to consult with EPA Region 4 regarding an eligibility decision.

Brownfields Agreement Process



APPENDIX B

Federal, Nationwide, & Regional Resources

Please note that the resources referenced below are often implemented at the regional, state and local levels, so it is important to include regional, state and local economic development specialists on your redevelopment team.

U. S. Environmental Protection Agency Brownfields Program (U.S. EPA)

<http://www.epa.gov/brownfields/>

U.S. EPA provides grants to fund assessments and cleanups of Brownfield sites. Grants are also made to capitalize revolving loan funds to clean up Brownfield sites or fund job training programs.

THINK ABOUT...after identifying sites and evaluating their marketability, using assessment grants to quantify the degree of cleanup needed to get the site "business ready". Speak to your state brownfields program as to the best way to accomplish this. Cleanup grants often need to be pooled with other cleanup funds unless the cleanup is minor. Municipalities and non-profits, such as urban renewal authorities, that have not contributed to contamination at the subject sites are eligible recipients of Brownfield assessment and cleanup grants.

U. S. Environmental Protection Agency CARE Program

<http://www.epa.gov/care/>

Community Action for a Renewed Environment (CARE) is a competitive grant program that offers an innovative way for a community to organize and take action to reduce toxic pollution in its local environment. Through CARE, a community creates a partnership that implements solutions to reduce releases of toxic pollutants and minimize people's exposure to them. By providing financial and technical assistance, EPA helps CARE communities get on the path to a renewed environment.

THINK ABOUT...using a CARE Grant to help organize a community organization to identify and prioritize environmental issues in your community and to develop a strategy to address them.

U.S. Department of Agriculture (USDA)

Forest Service

<http://www.fs.fed.us>

The Forest Service provides financial, technical and related assistance in urban and community forestry.

THINK ABOUT...the Forest Service if you would like to include woods as part of the end use of the property.

USDA Rural Development Agency (RDA)

<http://www.rurdev.usda.gov>

USDA provides grant, loan, and loan guarantee assistance for a variety of business, commercial, and industrial projects in small towns and rural areas, supports the installation and improvement of critical infrastructure needed to support economic development, and helps finance the construction of key public facilities, e.g., sewer systems, firehouses, etc., that can support property revitalization efforts.

THINK ABOUT...using USDA/RDA resources to meet various project needs within the context of small town or rural needs --real estate acquisition, cleanup, demolition, working capital, water and sewer system improvements, supportive community facilities.

U.S. Department of Commerce Economic Development Administration (EDA)

<http://www.eda.gov/>

EDA funds infrastructure enhancements in designated redevelopment areas or economic development centers that serve industry and commerce, provides planning grants, offers revolving loan funds and loan guarantees to stimulate private investments.

THINK ABOUT...using EDA to address cleanup and site preparation needs at reviving industrial areas...street, utility, port, and other infrastructure needs at project sites...site revitalization planning and site marketing.

U.S. Department of Defense Army Corps of Engineers (USACE)
<http://www.brownfieldstsc.org/>

USACE executes projects emphasizing ecosystem restoration, inland and coastal navigation, and flood and storm damage reduction that may be contaminated property-related, and provides technical support on a cost-reimbursable basis to federal agencies for assessment and cleanup activities.

THINK ABOUT...requesting assistance from the Corps for project planning in waterfront situations...defining Corps-eligible projects like riverbank restoration can enhance property revitalization efforts.

U. S. Department of Defense (DOD)
Office of Economic Adjustment
<http://www.oea.gov/>

DOD provides extensive information on redevelopment of closed military base properties. Models developed may be useful to other types of contaminated property and community stakeholders.

Office of Energy Efficiency and Renewable Energy/Center of Excellence for Sustainable Development
<http://www.smartcommunities.ncat.org/>

This DOE office serves as a resource center on sustainable development, including land use planning, transportation, municipal energy, green building, and sustainable businesses.

U.S. Department of Housing and Urban Development (HUD)
<http://portal.hud.gov/hudportal/HUD?src=/hudprograms/bedi>

HUD provides block grants and competitive awards (targeted to state and local governments) for revitalizing entitlement communities, offers federally-guaranteed loans for large economic development and revitalization projects, typically in entitlement communities, provides priority status for certain federal programs and grants for HUD-designated Empowerment Zone or Enterprise Communities (targeted to 80 local governments with low-income or distressed areas), and provides options for meeting safe and affordable housing needs in developed areas.

The six applicable HUD programs listed below provide resources for the renewal of economically distressed areas sites.

- Community Development Block Grant Program;
- Section 108 Loan Guarantee Program;
- Brownfield Economic Development Initiative;
- HOME Investment Partnership Program;
- Empowerment Zones and Enterprise Communities Initiative; and
- Lead-Based Paint Hazard Control Grant Program.

U.S. Department of the Interior National Park Service (DOI)

<http://www.nature.nps.gov/environmentalquality/>

DOI provides technical assistance for planning, assessment, and conservation in urban areas, assists in acquisition of surplus federal lands, and offers technical assistance for community revitalization.

THINK ABOUT...enhancing redevelopment projects with parks and open space amenities.

U.S. Department of Labor (DOL)

<http://www.doleta.gov>

DOL offers technical assistance linked to job training and workforce development in Brownfields Showcase Communities.

THINK ABOUT...using training and workforce development services as a cash flow offset incentive to companies locating at Brownfields sites.

US Small Business Administration (SBA)

<http://www.sba.gov>

SBA provides information and other non-financial technical assistance for redevelopment efforts, offers loan guarantees to support small businesses, and assists in developing management and marketing skills.

THINK ABOUT...using loan guarantees to attract capital to small businesses once sites are clean...using CDCs to help underwrite and finance building expansions or renovations...using informational resources available to help with loan documentation and packaging.

U.S. Department of Transportation Federal Transit Administration (DOT)

<http://www.fta.dot.gov/grants.html>

DOT provides grants for transit capital and maintenance projects, offers discretionary capital grants for new fixed guideway transit lines, bus-related facilities, and new buses and rail vehicles, funds transportation and land-use planning, and promotes delivery of safe and effective public and private transportation in non-urban areas.

THINK ABOUT...enhancing site marketability with transit access...planning for and cleaning up sites used for transportation purposes...identifying contaminated sites for stations, lots, and other transit purposes.

U.S. Department of Transportation Federal Highway Administration (FHWA)

http://www.fhwa.dot.gov/environment/bf_disc.htm

FHWA provides funds that can be used to support eligible roadway and transit enhancement projects related to property redevelopment, targeted to state and local governments and metropolitan planning organizations.

THINK ABOUT...using FHWA resources to cover some cleanup, planning and/or development costs, freeing up resources for other purposes...reconfiguring or modernizing roads or other transportation infrastructure to make them more complementary to site reuse opportunities, or to provide transportation related access or amenities that enhance site value.

U.S. Department of Treasury Oversight - various tax incentives

http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5

The Department of Treasury offers tax incentives including the New Markets Tax Credit Program to leverage private investment in contaminated property cleanup and redevelopment targeted to private sector entities.

THINK ABOUT...promoting the cash flow advantages of tax incentives...promoting the financial and public relations advantages of participating in contaminated property redevelopment to lenders...tapping into programs to expand capital access for small businesses that could locate at a redevelopment site.

Federal Housing Finance Board (FHFB)

<http://www.fhfb.gov/Default.aspx?Page=44&Top=3>

FHFB funds community-oriented mortgage lending for targeted economic development funding. Funds are targeted towards a variety of site users and can be accessed through banks. FHFB subsidizes interest rates and loans to increase the supply of affordable housing and funds the purchase of taxable and tax-exempt bonds to support redevelopment.

THINK ABOUT...using FHFB to attract more lenders to specific cleanup and redevelopment projects.

General Services Administration (GSA)

<http://www.gsa.gov/realpropertydisposal>

GSA works with communities to determine how underused or surplus federal properties can support revitalization.

THINK ABOUT...incorporating former federal facilities into larger projects, to take advantage of site assessment resources.

National Oceanic and Atmospheric Administration (NOAA)

<http://coastalmanagement.noaa.gov/programs/czm.html>

NOAA provides technical and financial assistance for coastal resource protection and management, funds workshops in Showcase Communities on contaminated property redevelopment-related coastal management issues, and coordinates a new "Portfields" initiative (initially targeted to port areas in New Bedford, MA, Tampa, FL, and Bellingham, WA).

THINK ABOUT...planning for a revitalized waterfront and restoring coastal resource...linking port revitalization needs with broader economic development purposes...linking site design needs at contaminated waterfront properties to end use planning.

Office of Energy Efficiency and Renewable Energy (EERE)

<http://www.eere.energy.gov/>

The EERE accelerates development and facilitates deployment of energy efficiency and renewable energy technologies and market-based solutions that strengthen US energy security, environmental quality, and economic vitality. The resources available through EERE can help ensure that contaminated

property cleanups are connected to energy efficiency and sustainable redevelopment.

Grants.Gov

<http://www.grants.gov>

This website is the source to find and apply for federal government grants. Grants.gov is a central storehouse for information on over 1,000 grant programs and provides access to approximately \$400 billion in annual awards.

THINK ABOUT...using this site as you start searching for funding sources for various aspects of your program.

Appalachian Regional Commission (ARC)

<http://www.arc.gov>

ARC provides grants for roads and highways (targeted to state and local governments in the 13 Appalachian states), and offers planning and technical assistance to attract private investment to distressed areas to support new uses (targeted to local governments and development districts/non-profit entities in some cases). The State of North Carolina has 29 counties in the ARC: Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Davie, Forsyth, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Stokes, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin, and Yancey.

Contact Olivia Collier, ARC Project Manager
Division Of Community Assistance
100 East Six Forks Road, Second Floor
Raleigh, NC 27609
(919) 571-4965
ocollier@nccommerce.com

THINK ABOUT...tapping ARC funding to meet site access road and similar infrastructure support needs of projects, including mine scarred lands, or for help in covering planning costs at sites being reused.

International City/County Management Association (ICMA)

http://icma.org/en/icma/knowledge_network/topics/kn/Topic/23/Brownfields

Since 1914, ICMA has offered a wide range of services to its members and the local government community. The organization is a recognized publisher of information resources ranging from textbooks and survey data to topical newsletters and e-publications. ICMA provides publications, data, information, technical assistance, and training and professional development to thousands of city, town, and county experts and other individuals on a variety of issues including redevelopment of contaminated properties.

THINK ABOUT...using ICMA resource documents to gain additional knowledge on addressing and redeveloping contaminated properties.

National Association of Development Organizations (NADO)

<http://www.nado.org>

Since 2001, NADO has been dedicated to assisting regional development organizations across the country. Through their Research Foundation they have sought to raise awareness and examine issues related to contaminated property revitalization and redevelopment in small metropolitan areas and rural America. They have released a series of documents, all of which are available on their website, that specifically address reclaiming such properties in rural America.

THINK ABOUT...using NADO to identify potential resources specifically targeted to smaller municipalities and rural communities.

National Association of Local Government Environmental Professional (NALGEP)

<http://www.nalgep.org/nalgep-projects/brownfield-communities-network.html>

NALGEP represents local government personnel responsible for ensuring environmental compliance and developing and implementing environmental policies and programs. Their Brownfields Community Network frequently sponsors webcasts aimed at empowering localities to revitalize their communities through the exchange of strategies, tools, and best practices for brownfields cleanup and reuse.

THINK ABOUT...using NALGEP resources as a forum for exchanging lessons learned and expanding a communities knowledge base on a variety of redevelopment issues.

Housing Assistance Council

<http://www.ruralhome.org>

A nonprofit corporation headquartered in Washington, D.C., the Housing Assistance Council has been helping local public, nonprofit, and private organizations build affordable homes in rural America since 1971. It offers loans, technical assistance, research and information and training.

THINK ABOUT...HAC if your community has a need for affordable housing and if the brownfield could supply it.

National Brownfield Association

<http://www.brownfieldassociation.org>

The National Brownfield Association (NBA) was established in 1999 as a non-profit, educational organization dedicated to stimulating the responsible redevelopment of brownfields. The NBA represents wide array of brownfield stakeholders – property owners, developers, investors, service professionals and government representatives.

NBA's mission is carried out through three primary conduits – information, education, and events. Through their Web site, email updates and *Brownfield News* magazine, they strive to keep their members well informed of changing market conditions, policy and legislation.

THINK ABOUT...NBA if you want to keep abreast of changes in brownfield redevelopment and to get in touch with other brownfield practitioners.

NewCities Institute

<http://www.newcities.org>

The NewCities Institute seeks to define and promote the economic and social vitality of what we call the "New City," regardless of its size or location. A "New City" is simply tomorrow's city, including changes in the social and physical environment, the economy, and the children who will become its leaders. The Institute's programs are offered to strengthen local leadership, promote citizenship, and engage citizens in their communities to build civic capacity.

THINK ABOUT...The NewCities Institute for assistance with developing a community vision.

Smart Communities Network

<http://www.smartcommunities.ncat.org/>

This organization serves as a resource center on sustainable development, including land use planning, transportation, municipal energy, green building, and sustainable businesses. It offers a host of useful information to help you understand the concept of sustainable development. You'll find overview articles, slide shows, links to other sources of information, recommended books and videos, and educational materials and programs.

THINK ABOUT...using this resource to incorporate sustainability features in your redevelopment project.

Sustainable Management Approaches and Revitalization Tools electronic (SMARTe)

<http://www.smarte.org>

SMARTe is a joint effort of the U.S.-German Bilateral Working Group, the U.S. Environmental Protection Agency, and the Interstate Technology Regulatory Council (ITRC) Brownfields Team. The tool is intended to be used by brownfield project stakeholders for assessing both market and non-market costs and benefits of redevelopment options, clarifying both private and public financing options, evaluating and communicating environmental risks, and easing access to pertinent state-specific information related to specific projects. SMARTe will provide the analytical tools needed to implement and integrate each component of the decision process.

THINK ABOUT...using SMARTe to identify resources and analysis tools for all aspects of the revitalization process including planning, environmental, economic, and social concerns.

The Trust for Public Land

<http://www.tpl.org>

TPL offers services to communities that wish to revitalize Brownfield sites and transform them into greenspace. TPL assembles park and greenspace funding and provides real estate and technical expertise to secure and clean up these sites on behalf of the public.

APPENDIX C

North Carolina Resources

Brownfield redevelopment in the State of North Carolina falls under the jurisdiction of the North Carolina Department of Environment and Natural Resources (NC DENR) Division of Waste Management (DWM) Brownfields Program. The North Carolina Brownfields Program (NCBP) was established in 1997 by passage of the **Brownfields Property Reuse Act** (http://portal.ncdenr.org/c/document_library/get_file?uuid=996a5ea5-73a0-41f9-b6fc-1edcdeef0d9f&groupId=38361).

Interagency Partnerships

Coordination between the North Carolina and EPA Brownfields programs has been instrumental in the success of brownfield redevelopment in North Carolina. EPA funding to North Carolina for brownfields redevelopment has been used to develop the NCBP and leverage private funds and governmental grants to effectively redevelop properties throughout the state.

Partnerships and close working relationships with other key development stakeholder groups within the state, such as the regional councils of governments and The North Carolina Rural Economic Development Center (see below) , have also been beneficial in conducting community outreach and providing municipalities and other community groups with the information necessary to succeed in their brownfield redevelopment efforts.

North Carolina Brownfields Program

<http://www.ncbrownfields.org/>

The NCBP provides technical resources and regulatory oversight to developers and other parties interested in developing contaminated sites under the NC Brownfield Program. It provides a mechanism to treat prospective developers of brownfield sites differently than the parties responsible for contaminating them. Prospective developers negotiate a brownfields agreement with the NCBP staff that defines activities needed to make the site suitable for reuse, rather than cleaning up the site to unrestricted use standards (which responsible parties are required to do).

The benefits of the NCBP program include: 1) strong liability protection that can be shown to a lender in order to obtain project financing; 2) the site remedies under the program are designed to prevent exposure and make the site suitable for reuse, not to meet environmental standards required of the site polluter in traditional cleanup programs, and therefore are less costly, particularly with respect to groundwater remedies; 3) more confident business decision due to reduced uncertainty of site costs; 4) shortened closure time for the prospective developer; 5) liability protection passes on to all new owners so long as they adhere to land use restrictions; and 6) The brownfields property tax incentive significantly reduces property taxes for five years after completion of improvements to the property. This benefit typically pays for or at least offsets site environmental assessment or cleanup activities that the developer must conduct in the program.

NCBP staff resources are located across the state, with the principal location at the NC DENR DWM Central Office in Raleigh, North Carolina, and additional staff resources in Wilmington, Charlotte, and Asheville, North Carolina. Brownfield contact information is provided online at <http://portal.ncdenr.org/web/wm/bf/contacts>.

North Carolina Inactive Hazardous Sites Program

<http://portal.ncdenr.org/web/wm/sf/ihome>

Sometimes brownfields redevelopments are more driven by the actions of a responsible party desiring to sell properties than developers who seek to buy them. If the property or developer involved is not eligible for a brownfields agreement (either because they caused or contributed to the contamination at the property, or the property does not meet the statutory definition of a brownfields property), this program is one alternative to achieve cleanup that will facilitate project transactions and redevelopment. Attractive alternatives available to most sites under this program include an option for privatized oversight by a registered environmental consultant. In this way a responsible party can clean up the property on their own timetable with minimal state involvement.

North Carolina Clean Water Management Trust Fund

<http://www.cwmtf.net/>

North Carolina's Clean Water Management Trust Fund (CWMTF) was established by the General Assembly in 1996 (Article 18; Chapter 113A of the

North Carolina General Statutes). It is operated under the auspices of the NC DENR. CWMTF receives a direct appropriation from the General Assembly in order to issue grants to local governments, state agencies and conservation non-profits to help finance projects that specifically address water pollution problems. The 21-member, independent, CWMTF Board of Trustees has full responsibility over the allocation of moneys from the Fund.

CWMTF will fund projects that (1) enhance or restore degraded waters, (2) protect unpolluted waters, and/or (3) contribute toward a network of riparian buffers and greenways for environmental, educational, and recreational benefits. These grants could be used in conjunction with Brownfields redevelopment projects based on demonstrated public and resource protection benefits.

North Carolina DENR, Division of Coastal Management
<http://dcm2.enr.state.nc.us/Planning/grants.htm>

DCM carries out the state's Coastal Area Management Act (CAMA), the Dredge and Fill Law and the federal Coastal Zone Management Act of 1972 in the 20 coastal counties, using rules and policies of the N.C. Coastal Resources Commission, known as the CRC. The division serves as staff to the CRC.

The NC DENR Division of Coastal Management helps local governments in the 20 coastal counties (Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, & Washington Counties) fund local land-use planning and management projects through the CAMA Local Planning and Management Grants Program.

NC DENR UST Program
<http://portal.ncdenr.org/web/wm/ust>

The NC DENR UST trust funds provide reimbursement for costs incurred during the cleanup of soil and groundwater contamination resulting from a release of petroleum from an underground storage tank. Two funds, the Commercial Trust Fund and the Noncommercial Trust Fund, have been established to reimburse tank owners, operators, and landowners for costs associated with cleanups. Commercial underground storage tanks include USTs containing petroleum

products for resale, farm or residential motor fuel tanks with a capacity greater than 1,100 gallons, heating oil tanks greater than 1,100 gallons (unless they serve four or fewer households). Noncommercial underground storage tanks include heating oil tanks with a capacity of 1,100 gallons or less, heating oil tanks with a capacity greater than 1,100 gallons that serve one to four households, farm or residential motor fuel tanks with a capacity of 1,100 gallons or less

NC DENR Drycleaning Solvent Cleanup Program

<http://www.ncdsca.org/>

The dry-cleaning solvent cleanup program (DSCA) is designed to provide a fund, administered by the Department of Environment and Natural Resources, to assess and clean contaminated dry-cleaning sites using state-lead contractors. The source for the cleanup fund is a tax on dry-cleaning and dry-cleaning solvents (both perchloroethylene and petroleum-based solvents).

Drycleaners, former drycleaners or dry-cleaning site property owners (current or past owners), wholesale dry-cleaning distribution companies may petition for entry into this program. Once in the program, petitioners are subject to co-payments. The program will manage the assessment and cleanup work. The liability protections provided under this program should facilitate project financing decisions by lenders in much the same way as the NC Brownfields Program.

North Carolina Division of Forest Resources

http://ncforestservice.gov/Managing_your_forest/managing_your_forest.htm

The NC Division of Forest Resources (DFR) has implemented financial incentive programs for woodlot owners, which could be used in association with a brownfield redevelopment under certain circumstances. Several of these programs offer cost-sharing payments that reimburse landowners for timber management activities. Other programs provide tax incentives, tax credits, and deductions for reforestation expenses.

The North Carolina Ecosystem Enhancement Program (EEP)

<http://portal.ncdenr.org/web/eeep>

Protecting North Carolina's ecosystems is critical to maintaining the state's quality of life, continuing its economic growth, and ensuring the health and well-being of its citizens. The mission of the Ecosystem Enhancement Program is to "restore, enhance, preserve and protect the functions associated with wetlands, streams and riparian areas, including but not limited to those necessary for the restoration, maintenance and protection of water quality and riparian habitats throughout North Carolina." EEP was created to collaborate with landowners to provide stream and wetland mitigation and restoration to improve water quality and protect wetlands in the state.

North Carolina Department of Commerce

<http://www.nccommerce.com>

The North Carolina Department of Commerce provides links to financial tools and available industrial site information related to locating and developing businesses in the State of North Carolina. These tools include tax credits, discretionary programs, and other cost-savings programs designed to reduce the cost of operating your business in the state. Detailed information on these available tools can be found at <http://www.thrivenc.com/incentives/financial>.

The Department's [AccessNC](http://www.thrivenc.com/accessnc) is particularly useful for those entities looking for industrial property for sale. It is not a list of brownfields properties, but clearly some of the properties on the listing could potentially be brownfields that could benefit from a brownfields redevelopment approach to cleanup. You can find it at <http://www.thrivenc.com/accessnc/search>.

ACCESSNC

<http://www.thrivenc.com/accessnc/search>

The North Carolina Department of Commerce maintains a list of available properties throughout the State of North Carolina. These properties are not necessarily brownfields sites and may or may not have environmental impact. Some of the sites are designated as Certified Sites, which indicates that Phase I and other information is available on the site.

North Carolina State Historic Preservation Office

<http://www.hpo.dcr.state.nc.us/tchome.htm>

Additional tax incentives provided for certain historic preservation projects have been additive to the brownfields tax incentives, making these projects extremely attractive. The North Carolina State Historic Preservation Office (SHPO) provides a summary of income tax incentives for the rehabilitation of historic structures, which are important tools for historic preservation and economic development in North Carolina. A federal income tax credit for the rehabilitation of historic structures first appeared in 1976 and today consists of a 20% credit for the qualifying rehabilitation of income-producing historic properties. Since 1998 North Carolina has provided a 20% credit for those taxpayers who receive the federal credit, providing investors with a combined 40% credit against eligible project costs. In addition, the state provides a 30% credit for the rehabilitation of non-income-producing historic properties, including private residences. New [State Mill Rehabilitation Tax Credits](#) provide even greater credit amounts for qualifying former industrial sites. Since 1976, over 2,000 completed "certified rehabilitation" projects have been reviewed by the N.C. State Historic Preservation Office, representing over one billion dollars of investment in historic properties. The spin-off from all this activity includes job creation, downtown and neighborhood revitalization, improved community appearance, and greater community pride. Historic preservation is smart growth, and smart investment.

North Carolina Housing Finance Agency

<http://www.nchfa.com/>

For certain types of residential development in the State of North Carolina, the North Carolina Housing Finance Agency (NCHFA) provides financing through the sale of tax-exempt bonds and management of federal and state tax credit programs, the federal HOME Program, the state Housing Trust Fund, and other programs. NCHFA offers low-cost mortgages and down payment assistance for first-time home buyers; finances affordable homes and apartments developed by local governments, nonprofit organizations, and private owners; finances the development of housing for people with special needs; finances the rehabilitation of substandard owner-occupied homes; and administers HUD rent assistance contracts for 24,000 privately owned apartments statewide.

N.C. Rural Economic Development Center

<http://www.ncruralcenter.org/>

The North Carolina Rural Economic Development Center's mission is to develop, promote, and implement sound economic strategies to improve the quality of life of rural North Carolinians. The center serves the state's 85 rural counties, with a special focus on individuals with low to moderate incomes and communities with limited resources. As part of that mission, the Rural Center administers their Building Reuse and Restoration Program that assists communities in transforming the potential vacant and underutilized buildings represent into economic reality. Grants help local governments prepare the buildings for reuse by new and expanding businesses. The Rural Center oversees the program as part of the \$20 million North Carolina Economic Infrastructure Fund created by the N.C. General Assembly in July 2004.

Two types of grants were created. Predevelopment grants of \$25,000 help cover the cost of an initial study or other activity necessary to secure commitments from a business or investors. Development grants of up to \$400,000 are awarded to projects ready for renovation and must be matched by at least an equal amount of private and public funds. Awards are limited to local governments in rural counties or the most economically distressed urban areas, with priority given to towns with fewer than 5,000 people. Pre-development and Development grant applications are available at the Rural Center's website (see above.)

North Carolina Electric Cooperatives

<http://www.ncelectriccooperatives.com/>

NC Electric Cooperatives are heavily involved in overall regional economic development. Activities include small business assistance, establishing industrial parks, and direct funding of local and regional economic development projects. Reportedly, about 55% of cooperative direct community spending supports local industrial and business development, which provides employment and creates goods and services. Programs include low-interest loans and business opportunity grants, including the zero-interest Rural Economic Development loans available to us through the US Department of Agriculture. In the past 10 years, cooperatives' contributions have resulted in more than \$570 million in investments in local business and industrial development via these programs. Funding and service also go to county and municipal economic development commission projects, tourism authorities, water and sewer systems, shell buildings, small business incubators and activities such as

assisting existing business to expand through refitting buildings and direct assistance for expansion of facilities and workforce development.

Appendix D

Other Financial Mechanisms & Incentives for Assessment, Cleanup and Redevelopment of Contaminated Property

North Carolina Brownfield Tax Incentives

Qualifying improvements on brownfields properties are designated a special class of property law. An owner of land is entitled to a partial tax exclusion on qualifying improvements made after the date of the brownfields agreement for the first five taxable years after the improvements are completed. After the property has qualified for the brownfields tax exclusion, the assessor for the county in which the property is located shall annually appraise the improvements made to the property during the period of time that the owner is entitled to the exclusion.

The percentage of the appraised value of the qualified improvements that is excluded based on the taxable year:

<u>Excluded</u>	<u>Year</u>	<u>Percent of Appraised Value</u>
	Year 1	90%
	Year 2	75%
	Year 3	50%
	Year 4	30%
	Year 5	10%

Tax Increment Financing: A Brief Overview

One approach to financing the cleanup and redevelopment of contaminated properties is the creation of a tax increment financing (TIF) district. TIF is a financing technique wherein bonds are issued to fund redevelopment and the bondholders are repaid through the new or incremental tax revenues generated by the new construction and site reuse activities. Usually, urban renewal authorities and downtown development authorities have the ability to create a TIF district.

For example, suppose a municipality creates a TIF district to facilitate redevelopment of several adjacent properties, including aging and vacant

industrial buildings and former rail yards. Once the properties within the TIF district are redeveloped, property values will increase, which results in increased tax revenues. Property tax revenues from the TIF district are split into two revenue streams:

1. The first stream (base) is equal to the "As-Is" property tax revenues without redevelopment and goes to the same city, county, school district, and other taxing entities (the base is allowed to increase with the market over time).
2. The second stream (increment) is the net increase in property taxes resulting solely from new development. The increment can be used to fund the redevelopment through Tax Increment Financing, which diverts the increment revenues to pay for annual debt service on construction bonds.

Federal and State Historic Preservation Tax Credits

<http://www.hpo.dcr.state.nc.us/tchome.htm>

Income tax incentives for the rehabilitation of historic structures are important tools for historic preservation and economic development in North Carolina. A federal income tax credit for the rehabilitation of historic structures first appeared in 1976 and today consists of a **20% credit** for the qualifying rehabilitation of **income-producing** historic properties. Since 1998 North Carolina has provided a 20% credit for those taxpayers who receive the federal credit, providing investors with a **combined 40% credit** against eligible project costs. In addition, the state provides a **30% credit** for the rehabilitation of **nonincome-producing** historic properties, including private residences. New State Mill Rehabilitation Tax Credits provide even greater credit amounts for qualifying former industrial sites. Since 1976, over **2,000** completed "certified rehabilitation" projects have been reviewed by the N.C. State Historic Preservation Office, representing over **one billion dollars** of investment in historic properties. The spinoff from all this activity includes job creation, downtown and neighborhood revitalization, improved community appearance, and greater community pride. Historic preservation is smart growth, and smart investment.

Appendix E

Acronym List

ASTSWMO	Association of State and Territorial Solid Waste Management Officials
BFA	Brownfield Agreement
BPA	Brownfield Property Application
DWM	Division of Waste Management
ESA	Environmental Site Assessment
FAQs	Frequently Asked Questions
IC	Institutional Control
IHSP	Inactive Hazardous Sites Program
LUR	Land Use Restriction
NC DENR	North Carolina Department of Environment and Natural Resources
NCBP	North Carolina Brownfield Program
PD	Prospective Developer
RTI	Research Triangle Institute
US EPA	United States Environmental Protection Agency
UST	Underground Storage Tank

Acknowledgment

This document was based on a parent outline document prepared by the ASTSWMO State Response and Brownfields Program Operations (SRBPO) Task Force, with assistance from the U.S. Environmental Protection Agency under Cooperative Agreement X1-83117201. It is important to note that this document does not establish any official opinions, positions, preferences, or recommendations by ASTSWMO or by any individual ASTSWMO member or their respective State or Region.

The North Carolina Department of Natural Resources, Division of Waste Management would like to thank the ASTSWMO SRBPO Task Force members who contributed to the parent document:

Andy Shivas, TN (Chair)
Amy Yersavich, OH (Vice-Chair)
Janine Commerford, MA
Mike Ryan, NY
Luke Wisniewski, MD
Tamara Almand, AR
Tom Ezell, AR (former member)
Jim Belcher, MO
Mark Walker, CO
Amanda Stone and staff, AZ
Keith Donahue, ID (former member)
Jennifer Patterson, ASTSWMO staff

Planning Application - UDO Text Amendment

Town of Boone Planning & Inspections Department
680 W. King Street, Suite C ♦ Boone, North Carolina 28607
Phone (828) 268-6960 ♦ Fax (828) 268-6961 ♦ www.townofboone.net

Official Use Only

Case Number:
PL01808-08222018
Case Name:
Selection of BOA & PC Chair/Vice-Chair

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: 567 West King Street
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 2 Administrative Mechanisms

Section(s): 2.01 and 2.02

Brief Description of Amendment (Attach Proposed Text):

Amend the UDO to require Council to select the Chair and Vice-Chair of the Board of Adjustment and the Planning Commission

C. APPLICANT SIGNATURE: By signing this form you are certifying that this application and any attached information is accurate. Failure to provide accurate information or failure to provide any requested information may result in delays to permit processing.

Jane Shook
Applicant (Print)

/s/ Jane Shook
Applicant Signature

August 22, 2018
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
NA	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting
Date: September 24, 2018

PC Meeting
Date: September 24, 2018

TC Meeting
Date: October 16th or October 18th

Text Approved: ☐ Yes ☐ No

Notes:

S:\FORMS\Current Forms\Planning\UDOTextAmendment_PlanningApplication_09252017.doc

Communication: Case PL01808-0822218 Selection of BOA/PC Chair and Vice-Chair - Application Information (Case PL01808-0822218 Town



STAFF REPORT

PUBLIC HEARING-SEPTEMBER 24, 2018

CASE PL01808-082218 SELECTION OF BOA AND PC CHAIR AND VICE CHAIR - UDO TEXT AMENDMENT

Request

Council has requested an amendment to UDO Article 2 to require Town Council to select the Chair and Vice-Chair based upon the Council's recent review of all Town Boards and Commissions.

ANALYSIS

The text in blue underline on the next page is the new text for consideration and the text in ~~red strikethrough~~ is text proposed to be deleted.

Article 2 Administrative Mechanisms

...

2.01 Board of Adjustment

...

2.01.04 Board of Adjustment officers.

- A. ~~Unless the~~ Town Council shall designates the Chair and Vice-Chair of the Board. ~~it shall retain the power to choose its own Chair and Vice-Chair.~~ The people so designated shall serve in these capacities for terms of one year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled by Town Council for the unexpired terms ~~by the Town Council.~~

1. The Board shall designate the Chair and Vice-Chair of any subcommittee.

- B. If neither the Chair nor the Vice-Chair are present, the presiding officer shall be elected by majority vote.

- C. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

...

2.02 Planning Commissions

...

2.02.05 Planning Commission officers.

- A. ~~Unless the~~ Town Council shall designates the Chair and Vice-Chair of the Planning Commission. ~~it shall retain the power to choose its own Chair and Vice-Chair. The Planning Commission shall designate the Chair and Vice-Chair of any subcommittees.~~ The people so designated shall serve in these capacities for terms of one year, ~~with eligibility for unlimited re-appointment.~~ These designations may be renewed for additional one year-terms so long as no one person serves in either the Chair or Vice-Chair position for more than four consecutive years. A member may be re-designated as either Chair or Vice-Chair following a one-year period as a regular member. Vacancies in these offices shall be filled by Town Council for the unexpired terms ~~only.~~

~~Title 11.~~ The Planning Commission shall may designate the Chair and Vice-Chair of any subcommittee authorized by Town Council unless Council has designated these positions.

- B. If neither the Chair nor the Vice-Chair are present, the presiding officer shall be elected by majority vote of those members present.

A.C. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

CONFORMITY TO ADOPTED PLANS

COMPREHENSIVE PLAN UPDATE

1.1 Overall Objectives for the Boone Comprehensive Plan (p. 15): The following objectives, which have not been listed in any particular order of importance, are deliberately broad in scope and less specific than either a policy statement or an implementation action.

Economic Development: Acknowledge the area's natural beauty, university, and medical center presence as the Town's greatest assets for economic development and jobs creation. Treat them accordingly.

Community Appearance and Community Character: Blend the built environment with the natural, scenic, and historic character of a High Country small town. Especially discourage commercial strip development, cluttered signage, and "cheap" apartment buildings.

Open Space: Integrate open space and greenways into the urban fabric of the Town. Preserve the countryside by discouraging suburban sprawl. Avoid development in floodplains, on ridgetops, and on steep slopes.

Environmental Quality: Address and monitor growth factors and activities that contribute to water, air, light, and noise pollution.

Trees: Conserve existing trees and plant new trees, especially hardwoods.

Automobile Transportation: Maximize the efficiency of existing facilities, but not at the expense town and neighborhood character and livability. Build or expand transportation facilities and parking areas as needed, but with care. Work to reduce auto dependency, use, and congestion.

Bikeways: Implement the planned system of bikeways as a legitimate transportation alternative. Unify with greenways and other pedestrian facilities where possible.

Mass Transit: Enhance and support the mass transit system as an effective alternative to the congestion created by the individual automobile.

Pedestrian Movement: Encourage a system of sidewalks, paths, crosswalks and compact development patterns which make it easy to get around Boone on foot.

Infrastructure: Engage in long range planning for water and sewer systems, stormwater runoff, natural gas, and other utility systems. Place overhead utilities underground whenever feasible.

Public Safety: Maintain a high level of policing and fire protection and plan the expansion of public safety services to coincide with projected population increases and identified needs.

Energy and Waste: Reduce waste generation, and the consumption of energy and water. Develop area recycling programs to the fullest. Encourage an anti-litter consciousness among residents and visitors.

University: Emphasize cooperative planning among the Town, County, and University.

Downtown: Support and enhance the cultural and historic significance of downtown Boone, and affirm its appealing, pedestrian orientation.

Recreation: Strive for additional public recreation facilities, especially sports fields, greenways and indoor recreation centers.

Neighborhoods: Ensure the livability of neighborhoods, especially through land use and traffic planning.

Public Involvement: Encourage active public involvement and volunteerism to expand the effectiveness of community planning and action.

Comprehensive Plan Policies: Staff has reviewed land use and comprehensive plan policies, and listed those policies which in staff's opinion have a bearing on the request. The Commission and Council should review these policies carefully. Each member may make his or her own interpretation as to the relevance of each and which carry the most weight thereby shaping their overall recommendation.

COMPREHENSIVE PLAN POLICIES

2.3 THE COMMUNITY

- A. Urban type development within the Urban Growth Area shall meet appropriate Town standards.
- B. Properly planned, mixed use developments that promote efficient provision of public services shall be encouraged within the Urban Growth Area.
- C. Funding for outside agencies and organizations serving the citizens of Boone shall continue to receive support consistent with area service needs and Town budget constraints.
- D. Coordinated inter-governmental and university-town planning for urban area land use and development, transportation, utilities, recycling, environmental management, law enforcement, education, recreation, tourism and economic development shall be encouraged.

...

2.3.4 Public Involvement

- A. Public involvement shall be encouraged in decisions concerning land use and development by making the public aware of proposed developments at the earliest opportunity, as well as fostering communication among developers, the Town, the County, the University, and the general public.
- B. Neighborhood and special area planning shall be encouraged to foster public involvement in the production of closely tailored, action oriented special area plans and programs.
- C. Specific functional plans and implementation tools shall be supported as part of the comprehensive planning program for the Town and County.
- D. Special committees, advisory panels, educational forums, public workshops, leadership seminars, town meetings and media contacts shall be encouraged and fostered to enhance the effectiveness of citizen involvement in community planning and action.

PLANNING BOARD REPORT/RECOMMENDATIONS

Per NCGS 160A-387, all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the Town Council within 30 days of referral of the amendment to the Planning Board, or the Town Council may proceed in its consideration of the amendment without the Planning Board report. Furthermore, in no case is the Town Council bound by the recommendations, if any, of the Planning Board.

Per NCGS 160A-383, the Planning Board shall advise and comment on whether the proposed zoning amendment is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because *[describe elements of controlling land use plans and how the amendment is or is not consistent]*:

Second Motion and Vote: The Planning Commission recommends ☐approval OR ☐denial of the proposed amendment to the Town's Zoning ordinance and believes ☐approval OR ☐denial is reasonable and in the public interest because *[Briefly explain why. Factors may include public health and safety, character of the area, relationship of uses, applicable plans, or balancing benefits and detriments]* :

Third Motion and Vote – Required only if the Commission recommends approval despite inconsistency with the comprehensive plan and/or any other applicable plan: The Planning Commission recommends approval of the amendment despite inconsistency with the comprehensive plan and/or other applicable adopted plans because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

TOWN COUNCIL ACTION

Per NCGS 160A-383, zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that is applicable because *[describe elements of controlling land use plan(s) and how the amendment is or is not consistent]*:

Second Motion and Vote: The Town Council ☐approves OR ☐denies the proposed amendment to the Town's zoning ordinance and believes ☐approval OR ☐denial is reasonable and the public interest because *[Briefly explain why. Factors may include public health and safety, character of the area, relationship of uses, applicable plans, or balancing benefits and detriments]* :

Third Motion and Vote – Required only if the proposed amendment is approved despite inconsistency with the comprehensive plan and/or any other applicable adopted plan(s): The Town Council approves the amendment and declares that this approval also amends the Unified Development Ordinance (and/or other approved and applicable plan) because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

Planning Application - UDO Text Amendment

Town of Boone Planning & Inspections Department
680 W. King Street, Suite C ♦ Boone, North Carolina 28607
Phone (828) 268-6960 ♦ Fax (828) 268-6961 ♦ www.townofboone.net

Official Use Only

Case Number:
PL01809-08222018
Case Name:
Board/Commission Meeting Schedule

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: 567 West King Street
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 2 Administrative Mechanisms , 9 Amendments

Section(s): 2.01, 2.02, 2.03, 2.04, 9.03

Brief Description of Amendment (Attach Proposed Text):

Amend UDO references to Board/Commission meeting schedule to reflect the schedule set forth by Town Council and to fix any inconsistencies in existing language.

C. APPLICANT SIGNATURE: By signing this form you are certifying that this application and any attached information is accurate. Failure to provide accurate information or failure to provide any requested information may result in delays to permit processing.

Jane Shook
Applicant (Print)

/s/ Jane Shook
Applicant Signature

August 22, 2018
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
NA	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting
Date: September 24, 2018

PC Meeting
Date: September 24, 2018

TC Meeting
Date: October 16th or October 18th

Text Approved: ☐ Yes ☐ No

Notes:

S:\FORMS\Current Forms\Planning\UDOTextAmendment_PlanningApplication_09252017.doc

Communication: Case PL01809-082218 Board/Commission Meeting Schedules - Application Information (Case PL01809-082218)



STAFF REPORT

PUBLIC HEARING-SEPTEMBER 24, 2018

CASE PL01808-082218 BOARD/COMMISSION MEETING SCHEDULES - UDO TEXT AMENDMENT

Request

Upon review of Town Boards/Commission, Town Council has requested an amendment to UDO Article 2 to amend references to Board/Commission meeting schedules to reflect the schedule set forth by Town Council and to fix any inconsistencies in existing language.

ANALYSIS

The text in blue underline on the next page is the new text for consideration and the text in ~~red strikethrough~~ is text proposed to be deleted.

Article 2 Administrative Mechanisms

2.01 Board of Adjustment

...

2.01.03 Meetings of the Board of Adjustment.

- A. **Schedule.** ~~At a time which it establishes, t~~The Board shall conduct ~~a monthly meeting to be held~~meetings in accordance with the meeting schedule adopted by Council, so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings") as necessary, so long as all notice requirements are met. Regardless of whether or not a quorum of the Board is present, any duly advertised regular or special meeting may be continued to a later date ("continuation meeting") without additional notice and advertising if the date, time, and location of the continuation meeting is adopted and announced by a majority of the members present.

...

2.02 Planning Commission

...

2.02.03 Meetings of the Planning Commission.

- A. **Schedule.** The Planning Commission shall conduct ~~a meeting no less than quarterly, or more often as it shall determine or require, to be held~~meetings in accordance with the meeting schedule adopted by Council, so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Regardless of whether or not a quorum of the Planning Commission is present, any duly advertised regular or special meeting may be continued to a later date ("continuation meeting") without additional notice and advertising if the date, time, and location of the continuation meeting is adopted and announced by a majority of the members present.

1. The Planning Commission shall also attend any public hearings on proposed ordinance amendments scheduled by Town Council.

...

2.03 Community Appearance Commission

...

2.03.03 Meetings of the Community Appearance Commission.

- A. **Schedule.** The Community Appearance Commission shall conduct ~~a meeting no less than quarterly, or more often as it shall determine or require, to be held~~ meetings in accordance with the meeting schedule adopted by Council, so long as there are items for its consideration, and it may schedule additional meetings (“continuation meetings” and “special meetings”), as necessary, so long as all notice requirements are met. Continuation meetings may be scheduled without additional advertising if the date, time, and location of the meeting is adopted and announced by the Community Appearance Commission at a duly advertised meeting.

...

2.04 Historic Preservation Commission

...

2.04.03 Meetings of the Historic Preservation Commission.

- A. **Schedule.** The Historic Preservation Commission shall conduct ~~a meeting no less than quarterly, or more often as it shall determine or require, to be held~~ meetings in accordance with the meeting schedule adopted by Council, -so long as there are items for its consideration, and it may schedule additional meetings (“continuation meetings” and “special meetings”), as necessary, so long as all notice requirements are met. Continuation meetings may be scheduled without additional advertising if the date, time, and location of the meeting is adopted and announced by the Historic Preservation Commission at a duly advertised meeting.

...

Article 9 Amendments

...

9.03 Hearing Required: Conduct of Hearing; Notice of Hearing

...

9.03.02 Conduct of hearing.

- A. The Council and Planning Commission shall meet in joint session to hold the public hearing, and a quorum of each body must be present.
- B. Public hearings on proposed ~~ordinance~~ amendments ~~will be scheduled no less frequently than on a quarterly basis in February, May, August and November~~ shall be conducted in accordance with the meeting schedule adopted by Council, so long as there are items for consideration.
- C. A record of the public hearing will be prepared by staff and minutes of the hearing submitted to the Planning Commission and Council as soon as practical following the public hearing.
- D. Public hearings shall be conducted in accordance with rules for the hearing adopted by the Council.
- E. The Mayor or other presiding officer may, at a minimum:
1. Limit the length of time for each speaker; and

2. Require the designation of a spokesperson for groups of persons supporting or opposing the proposed amendment for the same reasons; and
3. Provide for the maintenance of order and order the removal from the hearing room of any person attempting to disrupt the hearing or to intimidate or belittle other speakers; and
4. Limit the number of persons in the hearing room at any one time, insofar as the number of persons wishing to attend the hearing exceeds the safe capacity of the hearing room.

CONFORMITY TO ADOPTED PLANS

COMPREHENSIVE PLAN UPDATE

1.1 Overall Objectives for the Boone Comprehensive Plan (p. 15): The following objectives, which have not been listed in any particular order of importance, are deliberately broad in scope and less specific than either a policy statement or an implementation action.

Economic Development: Acknowledge the area's natural beauty, university, and medical center presence as the Town's greatest assets for economic development and jobs creation. Treat them accordingly.

Community Appearance and Community Character: Blend the built environment with the natural, scenic, and historic character of a High Country small town. Especially discourage commercial strip development, cluttered signage, and "cheap" apartment buildings.

Open Space: Integrate open space and greenways into the urban fabric of the Town. Preserve the countryside by discouraging suburban sprawl. Avoid development in floodplains, on ridgetops, and on steep slopes.

Environmental Quality: Address and monitor growth factors and activities that contribute to water, air, light, and noise pollution.

Trees: Conserve existing trees and plant new trees, especially hardwoods.

Automobile Transportation: Maximize the efficiency of existing facilities, but not at the expense town and neighborhood character and livability. Build or expand transportation facilities and parking areas as needed, but with care. Work to reduce auto dependency, use, and congestion.

Bikeways: Implement the planned system of bikeways as a legitimate transportation alternative. Unify with greenways and other pedestrian facilities where possible.

Mass Transit: Enhance and support the mass transit system as an effective alternative to the congestion created by the individual automobile.

Pedestrian Movement: Encourage a system of sidewalks, paths, crosswalks and compact development patterns which make it easy to get around Boone on foot.

Infrastructure: Engage in long range planning for water and sewer systems, stormwater runoff, natural gas, and other utility systems. Place overhead utilities underground whenever feasible.

Public Safety: Maintain a high level of policing and fire protection and plan the expansion of public safety services to coincide with projected population increases and identified needs.

Energy and Waste: Reduce waste generation, and the consumption of energy and water. Develop area recycling programs to the fullest. Encourage an anti-litter consciousness among residents and visitors.

University: Emphasize cooperative planning among the Town, County, and University.

Downtown: Support and enhance the cultural and historic significance of downtown Boone, and affirm its appealing, pedestrian orientation.

Recreation: Strive for additional public recreation facilities, especially sports fields, greenways and indoor recreation centers.

Neighborhoods: Ensure the livability of neighborhoods, especially through land use and traffic planning.

Public Involvement: Encourage active public involvement and volunteerism to expand the effectiveness of community planning and action.

Comprehensive Plan Policies: Staff has reviewed land use and comprehensive plan policies, and listed those policies which in staff's opinion have a bearing on the request. The Commission and Council should review these policies carefully. Each member may make his or her own interpretation as to the relevance of each and which carry the most weight thereby shaping their overall recommendation.

COMPREHENSIVE PLAN POLICIES

2.3 THE COMMUNITY

- A. Urban type development within the Urban Growth Area shall meet appropriate Town standards.
- B. Properly planned, mixed use developments that promote efficient provision of public services shall be encouraged within the Urban Growth Area.
- C. Funding for outside agencies and organizations serving the citizens of Boone shall continue to receive support consistent with area service needs and Town budget constraints.
- D. Coordinated inter-governmental and university-town planning for urban area land use and development, transportation, utilities, recycling, environmental management, law enforcement, education, recreation, tourism and economic development shall be encouraged.

...

2.3.4 Public Involvement

- A. Public involvement shall be encouraged in decisions concerning land use and development by making the public aware of proposed developments at the earliest opportunity, as well as fostering communication among developers, the Town, the County, the University, and the general public.
- B. Neighborhood and special area planning shall be encouraged to foster public involvement in the production of closely tailored, action oriented special area plans and programs.
- C. Specific functional plans and implementation tools shall be supported as part of the comprehensive planning program for the Town and County.
- D. Special committees, advisory panels, educational forums, public workshops, leadership seminars, town meetings and media contacts shall be encouraged and fostered to enhance the effectiveness of citizen involvement in community planning and action.

PLANNING BOARD REPORT/RECOMMENDATIONS

Per NCGS 160A-387, all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the Town Council within 30 days of referral of the amendment to the Planning Board, or the Town Council may proceed in its consideration of the amendment without the Planning Board report. Furthermore, in no case is the Town Council bound by the recommendations, if any, of the Planning Board.

Per NCGS 160A-383, the Planning Board shall advise and comment on whether the proposed zoning amendment is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because *[describe elements of controlling land use plans and how the amendment is or is not consistent]*:

Second Motion and Vote: The Planning Commission recommends ☐approval OR ☐denial of the proposed amendment to the Town's Zoning ordinance and believes ☐approval OR ☐denial is reasonable and in the public interest because *[Briefly explain why. Factors may include public health and safety, character of the area, relationship of uses, applicable plans, or balancing benefits and detriments]* :

Third Motion and Vote – Required only if the Commission recommends approval despite inconsistency with the comprehensive plan and/or any other applicable plan: The Planning Commission recommends approval of the amendment despite inconsistency with the comprehensive plan and/or other applicable adopted plans because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

TOWN COUNCIL ACTION

Per NCGS 160A-383, zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that is applicable because *[describe elements of controlling land use plan(s) and how the amendment is or is not consistent]*:

Second Motion and Vote: The Town Council ☐approves OR ☐denies the proposed amendment to the Town's zoning ordinance and believes ☐approval OR ☐denial is reasonable and the public interest because *[Briefly explain why. Factors may include public health and safety, character of the area, relationship of uses, applicable plans, or balancing benefits and detriments]* :

Third Motion and Vote – Required only if the proposed amendment is approved despite inconsistency with the comprehensive plan and/or any other applicable adopted plan(s): The Town Council approves the amendment and declares that this approval also amends the Unified Development Ordinance (and/or other approved and applicable plan) because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

Planning Application - UDO Text Amendment

Town of Boone Planning & Inspections Department
680 W. King Street, Suite C ♦ Boone, North Carolina 28607
Phone (828) 268-6960 ♦ Fax (828) 268-6961 ♦ www.townofboone.net

Official Use Only

Case Number:
PL01810-08222018
Case Name:
BOA – Reduction of Penalties

A. CONTACT INFORMATION

Applicant: Town of Boone Company: _____
Address: 567 West King Street
Phone Number: 828-268-6200 Email Address: planning@townofboone.net

B. TEXT INFORMATION

Amendment is to:

Article(s): 6 Board of Adjustment Hearings

Section(s): 6.04

Brief Description of Amendment (Attach Proposed Text):

Amend UDO to set standards to allow the BOA to reduce penalties due to the delays in BOA meeting schedule.

C. APPLICANT SIGNATURE: By signing this form you are certifying that this application and any attached information is accurate. Failure to provide accurate information or failure to provide any requested information may result in delays to permit processing.

Jane Shook
Applicant (Print)

/s/ Jane Shook
Applicant Signature

August 22, 2018
Date

Official Use Only

Date:	Fee:	Receipt Number:	Method of Payment:	Paid By:
NA	NA	NA	NA	NA

Hearing/Decision Information

Public Hearing Meeting
Date: September 24, 2018

PC Meeting
Date: September 24, 2018

TC Meeting
Date: October 16th or October 18th

Text Approved: ☐ Yes ☐ No

Notes:

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Communication: Case PL01810-082218 Reduction of Penalties by Board of Adjustment - Application Information (Case PL01810-082218)



STAFF REPORT

PUBLIC HEARING-SEPTEMBER 24, 2018

CASE PL01808-082218 REDUCTION OF PENALTIES BY BOARD OF ADJUSTMENT - UDO TEXT AMENDMENT

Request

Town Council has requested an amendment to UDO Article 6 to set standards to allow the Board of Adjustment to reduce penalties due to the delays in the Board of Adjustment meeting schedule which has been changed from a monthly meeting to a meeting every other month.

ANALYSIS

The text in blue underline on the next page is the new text for consideration and the text in ~~red strikethrough~~ is text proposed to be deleted.

Article 6 Board of Adjustment Hearings

...

6.04 Appeal of Administrative Decision

...

6.04.08 Decision.

A. The Board may reverse or affirm, wholly or in part, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Administrator who made the decision.

B. When hearing an appeal regarding the amount of a civil penalty, the Board shall consider the following, to the extent relevant, in addition to such other circumstances as the Board deems relevant:

1. The gravity of the violation;
2. The timing and effectiveness of any action taken by the appellant to remedy the situation;
3. The cost of the action required to remedy the violation;
4. The timeframe of any previous violation and the similarity of the previous violation to the current violation committed by the appellant; and
5. Penalties incurred as a result of delay in the appellant's obtaining a determination with respect to the violation as a result of the Board's meeting schedule.

~~B.C.~~ The Board may reduce the penalty imposed if it determines:

1. That the appellant has acted in good faith; and
2. That the failure of the appellant to correct a violation is the result of circumstances beyond the appellant's control; or
3. ~~The Board makes other findings~~ That there are other circumstances which make the amount of the presumptive civil penalty unfair ~~under the circumstances of the~~ in that particular case.

CONFORMITY TO ADOPTED PLANS

COMPREHENSIVE PLAN UPDATE

1.1 Overall Objectives for the Boone Comprehensive Plan (p. 15): The following objectives, which have not been listed in any particular order of importance, are deliberately broad in scope and less specific than either a policy statement or an implementation action.

Economic Development: Acknowledge the area's natural beauty, university, and medical center presence as the Town's greatest assets for economic development and jobs creation. Treat them accordingly.

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Environmental Quality: Address and monitor growth factors and activities that contribute to water, air, light, and noise pollution.

Trees: Conserve existing trees and plant new trees, especially hardwoods.

Automobile Transportation: Maximize the efficiency of existing facilities, but not at the expense town and neighborhood character and livability. Build or expand transportation facilities and parking areas as needed, but with care. Work to reduce auto dependency, use, and congestion.

Bikeways: Implement the planned system of bikeways as a legitimate transportation alternative. Unify with greenways and other pedestrian facilities where possible.

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Pedestrian Movement: Encourage a system of sidewalks, paths, crosswalks and compact development patterns which make it easy to get around Boone on foot.

Infrastructure: Engage in long range planning for water and sewer systems, stormwater runoff, natural gas, and other utility systems. Place overhead utilities underground whenever feasible.

Public Safety: Maintain a high level of policing and fire protection and plan the expansion of public safety services to coincide with projected population increases and identified needs.

Energy and Waste: Reduce waste generation, and the consumption of energy and water. Develop area recycling programs to the fullest. Encourage an anti-litter consciousness among residents and visitors.

University: Emphasize cooperative planning among the Town, County, and University.

Downtown: Support and enhance the cultural and historic significance of downtown Boone, and affirm its appealing, pedestrian orientation.

Recreation: Strive for additional public recreation facilities, especially sports fields, greenways and indoor recreation centers.

Neighborhoods: Ensure the livability of neighborhoods, especially through land use and traffic planning.

Public Involvement: Encourage active public involvement and volunteerism to expand the effectiveness of community planning and action.

Comprehensive Plan Policies: Staff has reviewed land use and comprehensive plan policies, and listed those policies which in staff's opinion have a bearing on the request. The Commission and Council should review these policies carefully. Each member may make his or her own interpretation as to the relevance of each and which carry the most weight thereby shaping their overall recommendation.

COMPREHENSIVE PLAN POLICIES

2.3 THE COMMUNITY

- A. Urban type development within the Urban Growth Area shall meet appropriate Town standards.
- B. Properly planned, mixed use developments that promote efficient provision of public services shall be encouraged within the Urban Growth Area.
- C. Funding for outside agencies and organizations serving the citizens of Boone shall continue to receive support consistent with area service needs and Town budget constraints.
- D. Coordinated inter-governmental and university-town planning for urban area land use and development, transportation, utilities, recycling, environmental management, law enforcement, education, recreation, tourism and economic development shall be encouraged.

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2.3.4 Public Involvement

- A. Public involvement shall be encouraged in decisions concerning land use and development by making the public aware of proposed developments at the earliest opportunity, as well as fostering communication among developers, the Town, the County, the University, and the general public.
- B. Neighborhood and special area planning shall be encouraged to foster public involvement in the production of closely tailored, action oriented special area plans and programs.
- C. Specific functional plans and implementation tools shall be supported as part of the comprehensive planning program for the Town and County.
- D. Special committees, advisory panels, educational forums, public workshops, leadership seminars, town meetings and media contacts shall be encouraged and fostered to enhance the effectiveness of citizen involvement in community planning and action.

PLANNING BOARD REPORT/RECOMMENDATIONS

Per NCGS 160A-387, all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the Town Council within 30 days of referral of the amendment to the Planning Board, or the Town Council may proceed in its consideration of the amendment without the Planning Board report. Furthermore, in no case is the Town Council bound by the recommendations, if any, of the Planning Board.

Per NCGS 160A-383, the Planning Board shall advise and comment on whether the proposed zoning amendment is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that are applicable because *[describe elements of controlling land use plans and how the amendment is or is not consistent]*:

Second Motion and Vote: The Planning Commission recommends ☐approval OR ☐denial of the proposed amendment to the Town's Zoning ordinance and believes ☐approval OR ☐denial is reasonable and in the public interest because *[Briefly explain why. Factors may include public health and safety, character of the area, relationship of uses, applicable plans, or balancing benefits and detriments]* :

Third Motion and Vote – Required only if the Commission recommends approval despite inconsistency with the comprehensive plan and/or any other applicable plan: The Planning Commission recommends approval of the amendment despite inconsistency with the comprehensive plan and/or other applicable adopted plans because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

TOWN COUNCIL ACTION

Per NCGS 160A-383, zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest.

First motion and vote: The proposed amendment to the Town's zoning ordinance ☐is OR ☐is not consistent with the Town's comprehensive plan and any other adopted plan(s) of the Town that is applicable because *[describe elements of controlling land use plan(s) and how the amendment is or is not consistent]*:

Second Motion and Vote: The Town Council ☐approves OR ☐denies the proposed amendment to the Town's zoning ordinance and believes ☐approval OR ☐denial is reasonable and the public interest because *[Briefly explain why. Factors may include public health and safety, character of the area, relationship of uses, applicable plans, or balancing benefits and detriments]* :

Third Motion and Vote – Required only if the proposed amendment is approved despite inconsistency with the comprehensive plan and/or any other applicable adopted plan(s): The Town Council approves the amendment and declares that this approval also amends the Unified Development Ordinance (and/or other approved and applicable plan) because *[provide explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment]*:

**PLANNING COMMISSION MEETING MINUTES
MONDAY, AUGUST 27, 2018 AT 6:00 P.M.**

PLANNING COMMISSION MEMBERS PRESENT: Elizabeth Shay-Chairperson, Eric Plaag, Frank Veno, Michael Sanchez, James Hedrick, Chris Behrend, and Nancy LaPlaca

TOWN COUNCIL MEMBERS PRESENT: Rennie Brantz-Mayor, Sam Furguele, and Marshall Ashcraft

PLANNING STAFF PRESENT: Jane Shook-Director of Planning and Inspections and Brenda Henson-Board Secretary

CALL TO ORDER

Chairperson Shay called the meeting to order at 6:02 p.m.

ADOPTION OF AGENDA

Commission Member Plaag made a motion, seconded by Commission Member Veno to adopt the agenda as written.

Vote: Aye – All
Nay – None
The motion passed.

APPROVAL OF PLANNING COMMISSION MEETING MINUTES

Commission Member Veno made a motion, seconded by Commission Member Hedrick to approve the July 23, 2018 Planning Commission meeting minutes as written.

Vote: Aye – All
Nay – None
The motion passed.

Due to the fact that there were several new members of the Planning Commission, Chairperson Shay asked that each person introduce themselves.

BOARD TRAINING

Ms. Shook stated she would be showing two training videos. The first video was entitled “Introduction to Land Use Decisions”. It was noted in this video that the Governing Board (Town Council) is a legislative board, the Board of Adjustment is a Quasi-judicial board, the Planning Commission is an advisory board, and staff are administrative. Ms. Shook provided a brief summary. She stated that the Town’s UDO combines the subdivision and land use ordinances and Article 14 explains the zoning districts. Ms. Shook explained that the terms Special Use Permit and Conditional Use Permit are used interchangeably and are heard by the Board of Adjustment. She stated that Planning Commission considers subdivisions located within a Watershed and the Board of Adjustment considers major subdivisions.

The second video was entitled “Amending Local Development Regulations”. Ms. Shook provided a brief summary. She encouraged members to read UDO Article 9 Amendments as well as Article 14. Ms. Shook explained the requirement to give notice of public hearings at least 10 but not more than 25 days prior to the hearing. She stated the Town tried to send adjoining property owner notification letters and post the

property with a hearing notice sign closer to the 25 day limit in order to give the public more time to be aware of the hearing. Ms. Shook noted that protest petitions were eliminated 2 years ago statewide. She stated that the waiting period to resubmit a request for a Conditional District rezoning was 1 year after denial by the Council and 6 months if there are only minor modifications. Ms. Shook stated that Town Council was reviewing adopted plans of the Town and would be meeting in December to discuss the plans.

Council Member Furguele stated he would like to have the Comprehensive Plan policies prioritized.

BUILDING HEIGHT DISCUSSION

Ms. Shook stated she was working on a list of cases that triggered a transitional zone that had been heard since the adoption of transitional zone requirements but was unable to get everything prepared in time for tonight's meeting. She stated she would get the information out as quickly as she could.

Council Member Furguele felt that applicants might be exempt from seeking Board approval when transitional zones were triggered if the applicant were to agree to things such as lower building heights or no balconies. He also felt that cottage housing was a more natural transition from commercial uses to single family uses.

OTHER MATTERS

Election of Vice Chairperson

Chairperson Shay asked for nominations for Vice Chairperson. When no nominations were made, Commission Member Plaag volunteered to serve as Vice Chairperson. This was seconded by Commission Member Sanchez.

Vote: Aye – All
Nay – None
The motion passed.

ADJOURNMENT

Vice Chairman Plaag made a motion to adjourn the meeting at 7:49 p.m. The motion was seconded by Commission Member Sanchez.

Vote: Aye – All
Nay – None
The motion passed.

Elizabeth Shay, Planning Commission Chairperson

Brenda Henson, Board Secretary

Existing Text in Unified Development Ordinance (UDO)

Article 6 Board of Adjustment Hearings

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6.02.02 Transitional zones.

- A. Transitional zones are hereby established and may apply to the procedures and evidence required for development in any existing zoning districts. The land within a transitional zone may be used as permitted in the underlying district, but only pursuant to the procedures and standards applicable to these zones, as created under this section.
- B. Transitional zones attach to each R1, R1A, RR, R2, and RA district, (hereinafter, “the protected district”) without regard to the current uses in that district. They are established for the purpose of creating special protections for residents of protected districts from the potential adverse impacts of certain potentially incompatible nearby development, based upon the legislative finding that the general requirements of this ordinance have not been sufficient to protect the residents of such protected districts from the adverse consequences of such developments and that the variety of circumstances which may need to be ameliorated in the face of such development are not amenable to a “one size fits all” approach.
- C. The location of a transitional zone shall be determined as follows.
 - 1. For designated development in an adjacent zone, the transitional zone shall be measured from the closest point of the area used or disturbed for the development to the boundary of any protected district as measured from all points along that boundary, the nearest point controlling applicability of this subsection.
 - 2. For development subject to transitional zones within the protected districts, the transitional zone shall be measured from the closest point of the area used or disturbed for the development to the boundary of any protected lot, the nearest point controlling applicability of this subsection.
- D. The size of the transitional zone varies with the type of development proposed. The following are the transitional zones as shown in the Table of Principal Uses, Table of Accessory Uses, and Table of Temporary Uses:
 - 1. T50: transitional zone equal to 50 feet;
 - 2. T75: transitional zone equal to 75 feet;
 - 3. T125: transitional zone equal to 125 feet;
 - 4. T200: transitional zone equal to 200 feet; and
 - 5. T300: transitional zone equal to 300 feet.
- E. Whenever a permit is sought to authorize development within a transitional zone, and any area used or disturbed for the development will be located within the pertinent transitional zone, a special use permit is required. If any portion of the area used or disturbed for the development falls within the transitional zone the standards of this Section shall apply to the entire development. The Board may deny the application if the requirements of this section are not met, or it may place

reasonable conditions on the development, in addition to such conditions as may otherwise be reasonably imposed, specifically designed to mitigate the potential impacts identified herein.

1. Exemption. Development within an approved industrial park shall not be subject to the requirements of Subsection 6.02.02.
- F. In addition to all other requirements of this ordinance which pertain to the proposed development, including but not limited to those relating to the location and placement of structures, the type and quantity of landscape buffering, the type and location of lighting, and the size of setbacks, in order to meet the requirements of this section, the applicant must also show:
 1. That the planned development will effectively and to the greatest degree reasonably possible, mitigate the impacts of the proposed development upon the protected district, including but not limited to:
 - a. Noise impacts;
 - b. Light impacts; and
 - c. Any other predictable negative effect, including but not limited to:
 - i. Negative visual effects;
 - ii. Negative traffic effects; and
 - iii. Negative health effects.
- G. Because of the variable topography and characteristics of particular tracts of land within the town's zoning jurisdiction, the solutions incorporated into the development plan by the applicant must be tailored to specifically address the characteristics of the particular location in relation to the protected district. Only if an applicant can demonstrate by clear and convincing evidence that the normal requirements of the ordinance are themselves sufficient to protect the protected district may the application be approved without additional measures being incorporated into the site specific development plan.

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History

11-16-2010: Originally adopted November 16, 2010. Was limited on how the transitional zone was applied:

- [1] For a proposed large scale retail development, or a multi-family development containing ten units or more, the transitional zone is three hundred feet (300') from the boundary of the protected district as measured from all points along that boundary.
- [2] For a proposed small scale retail development within a B-1 district, or a multi-family development containing fewer than five units, the transitional zone is seventy-five feet (75') from the boundary of the protected district as measured from all points along that boundary.
- [3] For a proposed small scale retail development other than within a B-1 district, a multi-family development containing between five units and nine units, and any other commercial development, the transitional zone is one-hundred-and-fifty feet (150') from the boundary of the protected district as measured from all points along that boundary.

- 12-16-2013:** Modified with adoption of revised UDO, effective January 1, 2014. Additional transitional zones created and applied to uses based upon the use and the zoning district the use was allowed in. Same text that is followed today.
- 06-18-2015:** Transitional zone language modified to exempt development within an approved Industrial Park since the location of the park is vetted carefully before approval of location (only 1 within the Town of Boone).

Transitional Zone Cases – Board of Adjustment

- 04-07-2011 SU20110010 Dollar General – Special Use Permit:** Mr. Allen Brawley is requesting a Special Use Permit in accordance with Unified Development Ordinance Section 198 *Transitional Zones* for the construction of a Dollar General store (use 2.120) located at the corner of East King Street and Forest Hills Drive (Watauga County PIN 2910-48-1392-000). In addition, a Variance to UDO Section 290 [c][2] is requested for a buffer zone encroachment above the 10% allowed by the ordinance. This property is zoned B-3 General Business. Approved subject to the following conditions:
1. The applicant must hire an arborist to look after the safety of significant trees on the neighbors' property.
 2. Signs must be posted stating No Trespassing During Non-business Hours.
 3. The monument sign shall be architecturally consistent with the building using consistent building materials.
 4. Deliveries shall not be made before 8:00 a.m., between 2:00-4:00 p.m., and after 8:00 p.m.
 5. A good faith effort should be made by the applicant to arrange for dumpster pick-up at a time not before 8:00 a.m. or after 8:00 p.m.
 6. Regarding stormwater treatment and retention, bioretention in the form of rain gardens or rain ponds will be the first priority specifically around the rip rap area in the northeastern corner of the property. As a second alternative, a hybrid approach utilizing both bioretention and underground storage with the bioretention being the area of rip rap in the northwestern portion of the property.
 7. Where there is a conflict between the application information (bearing a received date January 7, 2011) and the plans (bearing the received date of March 24, 2011 by Henson Foley), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
 8. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
 9. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
 10. A Town of Boone driveway permit shall be obtained prior to final zoning approval.
 11. An executed encroachment agreement for all improvements within NCDOT right-of-way shall be submitted to the Planning & Inspections Department prior to final zoning approval.

12. All applicable permits required by the state shall be obtained prior to final zoning approval.

05-05-2011: SU20110142 Beacon Towers, LLC – Special Use Permit: Jason Gaston on behalf of Beacon Towers, LLC is requesting a Special Use Permit per Unified Development Ordinance Section 198 *Transitional Zones*, for the construction of an access road within the Town of Boone Extra Territorial Jurisdiction to a telecommunication tower site located in Watauga County’s planning jurisdiction off of 112 Nellis Townsend Road (PIN 2900-71-1703-000). Approved subject to the following conditions:

1. The road must be at least 12’ in width.
2. “No Trespassing” signs must be posted.

SU20110144 Temple of the High Country – Special Use Permit: Jason Gaston on behalf of the Temple of the High Country is requesting a Special Use Permit in accordance with Unified Development Ordinance Section 198 *Transitional Zones*, for the construction of the Temple of the High Country (use 5.200) located between West King Street and Poplar Grove Road (PIN 2900-69-3831-000). Approved subject to the following conditions:

1. Where there is a conflict between the application information (dated April 8, 2011) and the plans (bearing the received date of April 8, 2011 by Valor Engineering), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. NCDOT driveway permits shall be obtained prior to final zoning approval.
5. All applicable permits required by the state shall be obtained prior to final zoning approval.
6. The Poplar Grove Road entrance will be gated and a key or code will be provided to the Fire Department for access during emergencies.
7. The applicant will consult with Blake Brown to determine feasibility of sidewalk installation or payment of fee in-lieu. If sidewalk installation is determined to be feasible, NCDOT standards must be met.

06-02-2011: SU20110143 Greenway Cove – Special Use Permit: Faison Kuester on behalf of Kuester Greenway Cove, LLC is requesting a Special Use Permit per Unified Development Ordinance Section 166 *Use of the Designations Z and S in the Table of Permissible Uses* and Section 198 *Transitional Zones*, for the construction of a 28 unit apartment building (use 1.330) located at 176 & 152 Winklers Meadow Road (PINs 2910-12-6210-000 & 2910-12-7202-000). Approved subject to the following conditions:

1. Where there is a conflict between the application information (dated September 2, 2011) and the plans (bearing the received date of October 14, 2011 by Landworks Design Group, P.A.), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.

2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. A Town of Boone driveway permit shall be obtained prior to final zoning approval.
5. All necessary water and sewer service approvals must be obtained and associated water and sewer fees paid prior to final zoning approval.
6. Plan page L-101 shall be amended to show a termination of the hedge line at the trout buffer line or the tree buffer line, whichever is legally allowed.
7. The applicant shall make a good faith effort to secure a traffic control device to stop traffic at the crosswalk on Winkler's Creek Road. If NCDOT does not allow a stop device, alert lighting shall be installed. If NC DOT does not allow alert lighting, pedestrian crossing signage shall be installed.
8. The applicant shall be required to keep the Planning Staff informed of NCDOT conversations and requirements.

07-07-2011: **SU20110271 Temple of the High Country – Special Use Permit Modification:** Jason Gaston, on behalf of the Temple of the High Country, is requesting a Special Use Permit Modification to SU20110144 in accordance with Unified Development Ordinance Section 198 Transitional Zones for the construction of additional parking for the proposed Temple of the High Country (use 5.200) to be located between West King Street and Poplar Grove Road and further identified as Watauga County PIN 2900-69-3831-000. Approved subject to the following conditions:

1. Where there is a conflict between the application information (dated June 3, 2011) and the plans (bearing the date of June 20, 2011 by Valor Engineering), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. NCDOT driveway permits shall be obtained prior to final zoning approval.
5. All applicable permits required by the state shall be obtained prior to final zoning approval.
6. Lighting that is required for the additional parking area have a switch.
7. To the extent that prior features of the plan and original conditions are not specifically modified by the approval, those plan features and original conditions shall remain in full force and effect.

10-06-2011: **SU20110332 Boy Scout Troop 109 – Special Use Permit:** David R. Jones on behalf of Boone United Methodist Church is requesting a Special Use Permit in accordance with Unified Development Ordinance Section 166 Use of the Designations Z and S in the Table of Permissible Uses and Section 198 Transitional Zones for the purpose of developing the property with a Boy Scout assembly facility. The proposed project is

located off of Hidden Valley Circle on property zoned R3 Multiple-Family Residential and further identified as Watauga County PIN 2911-30-5956-000. Approved subject to the following conditions:

1. Where there is a conflict between the application information (dated July 8, 2011) and the plans (bearing the received date of July 8, 2011 and revised SP-1 dated September 26, 2011 as submitted and modified by additional written comments also dated September 26, 2011 by David R. Jones Architecture), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. A Town of Boone driveway permit must be obtained prior to final zoning approval.
5. The building shall be limited to Boy Scout activities only.
6. Place signage at the entrance on Hidden Valley Circle stating that access is for handicap parking or as deemed necessary by the applicant.
7. Provide screening along the handicap ramp.
8. Provide additional evergreen buffer on the Hidden Valley Circle side of the property.

12-01-2011: **SU20110481 Greenway Cove Apts.- Special Use Permit:** Faison Kuester on behalf of Kuester Greenway Cove, LLC is requesting a Special Use Permit in accordance with UDO Section 166 *Use of the Designations Z and S in the Table of Permissible Uses* and Section 198 *Transitional Zones*, for the construction of a 20 unit apartment complex (use 1.330) located at 176 & 152 Winklers Meadow Road (Watauga County PINs 2910-12-6210-000 & 2910-12-7202-000). Approved subject to the following conditions:

1. Where there is a conflict between the application information (dated September 2, 2011) and the plans (bearing the received date of October 14, 2011 by Landworks Design Group, P.A.), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. A Town of Boone driveway permit shall be obtained prior to final zoning approval.
5. All necessary water and sewer service approvals must be obtained and associated water and sewer fees paid prior to final zoning approval.
6. Plan page L-101 shall be amended to show a termination of the hedge line at the trout buffer line or the tree buffer line, whichever is legally allowed.
7. The applicant shall make a good faith effort to secure a traffic control device to stop traffic at the crosswalk on Winkler's Creek Road. If NCDOT does not allow a stop device, alert lighting shall be installed. If NC DOT does not allow alert lighting, pedestrian crossing signage shall be installed.

8. The applicant shall be required to keep the Planning Staff informed of NCDOT conversations and requirements.

03-01-2012: SU20110670 King Street Mixed Use Project-Special Use Permit: Mr. Jason Gaston is requesting a Special Use Permit in accordance with Unified Development Ordinance (UDO) Section 198 *Transitional Zones*, for the purpose of constructing a mixed use project (use 29.100) consisting of 30 apartments and a restaurant. In addition, variances to UDO Sections 205 [c] and 346[e] are being requested. The proposed project is to be located at 492 West King Street (Watauga County PIN 2900-88-9767-000). Approved subject to the following conditions:

1. Where there is a conflict between the application information (dated January 6, 2012) and the plans (bearing the received date of January 10, 2012 by Valor Engineering), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. A NCDOT driveway permit shall be obtained prior to final zoning approval.
5. All necessary water and sewer service approvals must be obtained and associated water and sewer fees paid prior to issuance of a certificate of occupancy.
6. A resolution must be made regarding the driveway access that will allow the applicant to develop as proposed, before a building permit is issued.
7. Lease agreements must have language that tenants have to provide proof that they have obtained a long term parking space if they have a car.
8. Signage regarding no on-site, tenant, or restaurant parking on adjoining property must be provided.
9. Leases must provide move in and move out times that are staggered by unit.
10. A good faith effort must be made to coordinate restaurant delivery times to best avoid peak traffic hours.

SU20120045 Blue Ridge Electric Addition-Special Use Permit: Mr. Glenn Grubb, on behalf of Blue Ridge EMC, is requesting a Special Use Permit Modification per Unified Development Ordinance (UDO) Section 81 *Amendments to and Modification of Permits* and UDO Section 166 [a] *Use of the Designations Z and S in the Table of Permissible Uses* for the purpose of constructing a warehouse addition (use 4.300) and a community room. The proposed project is to be located at 2431 US Highway 421 South (Watauga County PIN 2921-20-2861-000). Approved subject to the following conditions:

1. Where there is a conflict between the application information (dated February 2, 2012) and the plans (bearing the received date of February 2, 2012 by McGill Associates), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.

3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. All applicable water and/or sewer service approvals must be obtained and associated water and sewer fees paid prior to issuance of a certificate of occupancy.
5. Bicycle and motorcycle parking must be installed.

06-07-2012: **SU20120262 Blue Ridge Electric-Special Use Permit Modification:** Glenn Grubb, on behalf of Blue Ridge EMC, is requesting a Special Use Permit Modification per UDO Section 198 *Transitional Zones* for the purpose of constructing an equipment and vehicle storage yard (use 10.310). The proposed project is to be located at 2491 Old US Highway 421 South (Watauga County PIN 2921-20-2861-000). Approved subject to the following conditions:

1. Where there is a conflict between the application information (dated May 8, 2012) and the plans (bearing the received date of May 10, 2012 by McGill Associates), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. All applicable water and/or sewer service approvals must be obtained and associated water and sewer fees paid prior to issuance of a certificate of occupancy.
5. A preliminary tree survey must be submitted. If insignificant deviations from the plan are required, Staff may use discretion. If significant deviations from the plan are required, the applicant must petition the Board of Adjustment.
6. Stormwater detention requirements must be met.

07-05-2012: **SU20120335 Recess Skate & Snow-Special Use Permit:** John Paul Pardy is requesting a Special Use Permit per UDO Section 198 *Transitional Zones* for the purpose of establishing an accessory skateboarding ramp. In addition, a setback variance to UDO Section 207 [a] is being requested. The property is located at 1158 Highway 105 (Watauga County PIN 2910-13-3631-000). Approved subject to the following conditions:

1. Where there is a conflict between the application information (dated June 6, 2012) and the information packet (bearing the received date of June 8, 2012), the information packet shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. A 1 ½' Variance was granted and is applicable only for the skateboard ramp.
5. Vegetation at the rear of the property must be retained as a buffer unless it is verified by Staff as diseased.

6. The skateboard ramp will operate only during daylight hours.
7. The fence behind the property must be retained. If the fence is not on this property and it is removed, it must be replaced on this property in a similar size and opacity.
8. The ramp will be locked during non-daylight hours.

12-06-2012: **SU20120678**, Caldwell Community College and Technical Institute, 372 Community College Drive, Special Use Permit Modification, for construction of a building containing six classrooms. Approved subject to the following conditions:

1. The permit is approved subject to the Special Use Permit application dated November 9, 2012 and associated site plan prepared by Cort Architectural Group bearing the received date November 9, 2012.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a bases for a stop work order and/or permit revocation if violated.
3. Bicycle parking in accordance with UDO Section 355 shall be provided for the proposed project.
4. A lighting plan be approved by Staff.

02-07-2013: **SU20130022**, Jerry Butler, 302 Faculty Street (Watauga County PIN 2910-14-2972-000), Special Use Permit and Variance, for construction of a 5 unit 18 bedroom apartment complex. Approved subject to the following conditions:

1. Where there is a conflict between the application information (dated January 10, 2013) and the plans (bearing the received date of January 24, 2013 by Municipal Engineering Services Company P.A.), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the UDO and the Town Code.
4. A Town of Boone driveway permit shall be obtained prior to final zoning approval.
5. All necessary water and sewer service approvals must be obtained and associated water and sewer fees shall be paid in accordance with Town policies.
6. The vegetative buffer in the R-1 portion of the property must be enhanced with evergreens.
7. The vegetative buffer in the R-1 portion of the property must be continually monitored to maintain the integrity of the buffer for the Transitional Zone for sound and light pollution and deficiencies must be remediated.
8. Outside lighting in the patio area, if required, must be low wattage and directed downward to shield them from the neighboring property.
9. The outdoor recreation area must be buffered on sides facing other properties with some type of evergreen shrubs.
10. No trees can be removed on neighboring property without permission of the neighboring property owner.

04-04-2013: **SU20130086**, Mountaineer Village, LLC, Yosef Drive (Watauga County PINs 2911-81-8013-000, 2911-80-4475-000), Special Use Permit Modification to construct 2 additional multi-family apartments.

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans (bearing the received date of February 8, 2013 by Municipal Engineering), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
3. All necessary water and sewer service approvals must be obtained.
4. All associated water and sewer fees paid prior to issuance of a certificate of occupancy.
5. Any and all repairs, patches or replacement to Yosef Drive or adjacent sidewalk shall be done in accordance with Town of Boone standards.
6. The applicant in consultation with the Public Works Director will comply with Section 91 of the Town Code and/or UDO Section 363[e].
7. Prior to any construction activity the applicant shall hire a geotechnical engineer whom among other things will determine the impact of the proposed building additions on the existing retaining walls as well as evaluate the subsurface soil conditions. Applicant agrees to comply with an implement the recommendations of the geotechnical engineer.
8. Applicant will show on the submitted engineering plans the type and size of the proposed water and sewer service lines. Applicant understands that the Town of Boone will only accept ownership and maintenance of the water meters. Applicant will provided the necessary easements for the water meters and insure access rights to the Town for meter maintenance and repair. The proposed water and sewer service taps will be made at the owner's expense.
9. Applicant will incorporate into its final plans the recommendations and requirements of the Fire Marshal. Furthermore, if deemed necessary, the applicant will have the gym facility sprinkled.
10. Any commitments and/or representations concerning the proposed project made by the applicant or its representatives at the public hearing shall also become a condition of the permit.
11. The applicant will either pay fee in-lieu or build a sidewalk.
12. The applicant must provide staff with a traffic analysis in order to determine if a traffic impact analysis is necessary. If a traffic impact analysis is deemed necessary the applicant must provide one and comply with any changes to the plan the traffic impact analysis requires.
13. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.

05-02-2013: **SU20130160**, Walgreens, 114 and 166 West King Street (PIN: 2910088308000) Special Use Permit pursuant to UDO, Section 198 Transitional Zones. The applicant is also

requesting landscape buffer Variances to UDO Section 363 Buffer and Screen Requirements and Section 366 Screening Along Streets.

DENIED

10-03-2013: **SU20130563**, John Winkler is requesting a Special Use Permit Modification to the King St. Mixed Use Project Special Use Permit #20110670, 492 West King Street to modify the site specific development plan including modification of allowed commercial uses.

Approved subject to the following conditions:

1. Where there is a conflict between the application information (dated September 6, 2013) and the plans (bearing the received date of September 9, 2013 by Valor Engineering), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans and specifications shall be submitted that are in compliance with the provisions of the UDO, Building Code and other provisions of the Town Code.
4. All conditions of approval from the original special use permit (20110674) not modified, remain in effect.
5. A NCDOT driveway permit and stormwater encroachment agreement shall be obtained prior to final zoning approval.
6. A Town of Boone stormwater encroachment agreement shall be obtained prior to final zoning approval.
7. Signage regarding no on-site tenant, or office/retail parking on adjoining property must be provided. (restaurant removed and replaced by office/retail)
8. A good faith effort must be made to coordinate office/retail delivery times to best avoid peak traffic hours. (restaurant removed and replaced by office/retail)
9. HVAC equipment must be moved either to ground level or as close to the front of the building on the roof as possible with a screen structure behind the units.
10. Add landscaping on the sides and back of the building near the staircases to the extent reasonable possible.

02-06-2014: **SU20130721**, Jim Lambert, on behalf of Zaxby's, is requesting a Special Use Permit pursuant to UDO Section 198 Transitional Zones for use 8.400, Restaurant Use on property located on Hwy 105 Ext. (Watauga County PINs 2910-36-3013-000 & 2910-35-3919-000).

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans prepared by James J. Carter, P.E. with Carter Engineering Consultants, Inc. (bearing a received date of December 9, 2013 including Exhibit 13 & 14 entered into evidence on February 2, 2014), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.

3. If required, the Community Appearance Commission (CAC) may need to approve a redesign based upon conditions as listed in Section 393.
4. The entire existing stormwater pipe should be assessed for functionality.
5. Final plans shall be submitted that are in compliance with all provisions of the UDO and other provisions of the Town Code.
6. A Town of Boone Driveway Permit must be issued prior to the issuance of a Zoning Permit.
7. The applicant will be required to install sidewalks along the length of Beverly Heights Avenue or pay a fee in-lieu as required in UDO Section 243.
8. The applicant must resolve concerns from the Public Works Department regarding access onto Beverly Heights Drive.
9. Replace deciduous trees with all evergreen trees so that there is more continual buffering of the sound year round on the northeastern quadrant of the site where most of the landscape buffer is occurring.
10. Implement all of the traffic recommendations in the Traffic Impact Analysis.

01-08-2015: **SU20140616**, John Winkler is requesting a Special Use Permit for Use 1.11 Multi-Family Dwelling to construct an apartment building at 347 Oak Street containing 20 units; this development is subject to a transitional zone; the applicant is also requesting 2 variances from UDO Subsection 15.10.01(B)(2) to reduce roof top livability space and UDO Subsection 15.10.03(D) to reduce the amount of livability space designated for exclusive use of ground floor units.

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans (dated received August 8, 2014 with Sheet C-1 dated received August 27, 2014 and as amended by Exhibit 3 & 4), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Revised plans meeting the requirements of the Town Code, UDO and other applicable plans shall be submitted for review and approval.
4. A NCDOT driveway permit and stormwater encroachment agreement shall be obtained prior to final zoning approval.

SU20140671, Sean Spiegelman, on behalf of Boone Lumber Co., is requesting a modification of Special Use Permit SU2005-14 for the inclusion of Use 14.06 Winery at 275 Daniel Boone Drive. This development is also subject to a transitional zone.

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans (dated received November 7, 2014), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.

3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.

06-04-2015: **SU20150236**, Robert de Camara on behalf of MMI Land Trust, Patrick Herndon Land Trust and John R. Herndon has applied for a Special Use Permit at 340 Herndon Lane for Use 3.06 Vacation Rental. This development is subject to a transitional zone.

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans (dated received April 28, 2015), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. The applicant shall submit for a Zoning Permit demonstrating compliance with the Town of Boone Unified Development Ordinance.
4. Maintain and retain all existing vegetation on the property as it is with the exception of an allowance to maintain a sight line across the top of the trees towards their view of the Town of Boone.
5. Occupancy of the vacation rental is restricted to no more than 8 adults.

07-09-2015: **SU20150317**, Randy Dixon of RAB Partners, LLC is requesting a Special Use Permit with an extended 3 year vesting on property owned by Anna Greene at and near 141 Marich Lane and on property owned by Charles and Kathie Billing at 379 Perkinsville Drive for Use 1.13 Multi-Family Dwelling (> than 100 bedrooms) and use 11.19 Other Business or Professional Office. This project is proposed to be constructed in 4 phases and contains a clubhouse, and 9 multi-family buildings which contain 184 units (276 bedrooms). The development triggers Transitional Zone requirements pursuant to UDO Subsection 6.02.02.

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans (dated received June 4, 2015), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. The application shall submit the necessary applications, plans, details and specifications which meet the requirements of the Town Code, UDO, Building Code and any other applicable plans for review and approval necessary to issue Zoning and Building Permits.
4. The applicant is required to work with the Town of Boone Public Works Department to redesign the site access to minimize the safety concerns listed in the Special Use Permit Staff Report.
5. The applicant is required to work with the Town of Boone Fire Department to address all concerns listed in the Special Use Permit Staff Report.

6. The applicant is required to address all recommendations as listed in the Traffic Impact Analysis prepared by JM Teague Engineering, PLLC for this development (received date of June 2, 2015).
7. *If vesting is extended:* The project is approved with a 3 year vesting period.
8. The applicant is to work with and cooperate with Town staff to provide for a safe and healthy intersection for vehicles and pedestrians at the entrance to the development.
9. The applicant will work with and cooperate with Town staff to submit a revised traffic impact analysis to the Town's satisfaction.

01-20-2016: **20150885**, Jason Gaston is requesting a Special Use Permit on property owned by Anna Greene at 130 Green Street for Use 1.11 Multi-Family Dwelling (up to 30 bedrooms). This project contains 30 units. The development triggers Transitional Zone requirements pursuant to UDO Subsection 6.02.02.

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans (site plans and building elevations dated received January 8, 2016), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. The applicant shall submit the necessary applications, plans, details and specifications which meet the requirements of the Town Code, UDO, Building Code and any other applicable plans for review and approval necessary to issue Zoning and Building Permits.

02-04-2016: **20150792**, David Linzey is requesting a Special Use Permit to for properties located at 1600 & 1710 NC HWY 105 as well as the vacant intervening parcels identified as Watauga County PINs: 2900-83-7350-000, 2900-83-8357-000, and 2900-83-9229-000 for the Animal Emergency Clinic Site Expansion. The applicant is requesting to construct a new building between 1600 & 1710 NC HWY 105 for Use 11.02 Veterinary Office/Hospital with Outdoor Kennels and to be allowed to use the buildings at 1600 and 1710 NC HWY 105 for any of the following uses: 11.01 Kennel, 11.02 Veterinary Office/Hospital with Outdoor Kennels, 11.03 Veterinary Office/Hospital without Outdoor Kennels, 11.04 Financial Institution ≤ 5,000 ft², 11.12 Personal Service Establishment open to the public during 10 pm and 6 am, 11.13 Other Personal Service Establishments; 11.14 Retail Store up to 5,000 ft², 11.18 Business or Professional Office open to the public during 10 pm and 6 am, 11.19 Other Business or Professional Office, 11.21 Medical Office Category 2, 11.22 Medical Office Category 3, 11.23 Medical Office Category 4, 11.34 Seasonal Retail Activities and Amusements, 12.10 Recreation Facility Category 1, 14.01 Microbrewery, 14.02 Brewpub, 14.03 Brewery/Distillery, 14.06 Winery.

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans (Cover Sheet dated received on November 24, 2015, Sheets C-2 through C-6 dated received October 26, 2015), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.

2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. The applicant shall submit the necessary applications, plans, details and specifications which meet the requirements of the Town Code, UDO, Building Code and any other applicable plans for review and approval necessary to issue Zoning and Building Permits.
4. The applicant shall incorporate turnarounds within the vehicular surface areas to satisfy the requirements of the Town of Boone Fire Department.
5. The chain link fence surrounding the dog run and dog park must be earth tone in color.

01-05-2017: **20160825**, Raken Shah of Milan Real Estate, LLC is requesting a Special Use Permit for a hotel (TownePlace Suites by Marriott, Use 3.08), to be located at 2240 Blowing Rock Road on property owned by Waltson Assoc. Pursuant to UDO Subsection 6.02.02 this project has triggered compliance with transitional zones.

Approved subject to the following conditions:

06-07-2018: **201452-042618**, Jason Gaston, P.E., with Valor Engineering has applied for a Special Use Permit for a mixed-use development on property owned by Orange Avenue Auto Sales, Inc. located at 275 East King Street (Watauga County PIN 2910-18-9207-000). The applicant has requested Use 1.15 Multi-Family in Mixed Use (42 1-bedroom apartments) and 4,924 square feet of commercial uses containing Use 11.07 Other Restaurants ≤ 2,500 ft², Use 11.13 Other Personal Service Establishments and Use 11.14 Retail Store up to 5,000 ft² and Use 11.18 Other Business or Professional Office.

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans (site plan dated received May 30, 2018 and building elevations dated received April 26, 2018), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed development made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. The applicant shall submit the necessary applications, plans, details and specifications which meet the requirements of the Town Code, UDO, Building Code and any other applicable codes for review and approval necessary to issue Zoning and Building Permits.

Transitional Zone Cases – Town Council

05-02-2011: Watauga County has filed a Zoning Map Amendment Petition for Conditional District Zoning for property located 300 Go Pioneers Drive (2910-88-3456-000) to modify the existing site specific development plan for the Conditional District O/I Office Institutional

zoning to the existing High School site to include the addition of an Alpine Tower (to be located to the south of the soccer field) and an Indoor Training Facility (located to the north of the softball field). In addition, the proposed modification triggers the requirements for Transitional Zones in accordance with Unified Development Ordinance Section 198.

Approved subject to the following conditions:

1. Approval is subject to the site plan and supplemental information submitted bearing the received date of April 1, 2011 (Building Elevation received date April 18, 2011). Insignificant deviations may be permitted to comply with the requirements of the UDO or State Building Code.
2. Applications and final plans shall be submitted that are in compliance with the provisions of the UDO, Town Code and State Building Code.
3. All commitments in the letter bearing the received date of April 19, 2011 from John Turner shall be adhered to. (See Exhibit A)
4. The HVAC/mechanical equipment is to be oriented, as much as practical, away from the existing R1 neighbors to the NE of the indoor training facility.

08-01-2011: CASE 20110320 MOUNTAINEER CROSSING CONDITIONAL DISTRICT REZONING:
 Mountaineer Crossing LLC has filed a Zoning Map Amendment Petition for Conditional District Zoning for property owned by the Estate of Helen Yount (Watauga County PINs: 2900-91-4847-000 and 2900-92-5257-000) and Mountaineer Crossing LLC (140 High School Drive. Watauga County PIN: 2900-92-2628-000). This request is that the property be placed in Conditional District B-3 General Business, Conditional District R-3 Multiple-Family and Conditional District R-A Residential Agriculture. The site specific plan for the property indicates a single story commercial building (Use 2.0) and a four story mixed use-building in which the ground floor contains commercial uses and the upper floors contains multi-family (Combination Use 29.1000) within in the Conditional District B-3 General Business portion of the property. The project also contains two multi-family apartments (Use 1.330), one 3-story and one 4-story, within the Conditional District R-3 Multiple-Family portion of the project. The remaining undeveloped property has been requested to be placed in Conditional District R-A Residential Agriculture for passive recreation for the development along with a conservation easement. Portions of the property are located within the Viewshed. In addition, the proposed development triggers the requirements for Transitional Zones in accordance with Town of Boone Unified Development Ordinance Section 198.

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans and supplemental information (bearing a received date of August 5, 2011), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.

4. Based upon comments from the Fire Department, efforts shall be made to reduce the slope of the driveway while meeting all requirements of the UDO so long as the location of the driveway does not change.
5. That the Conditional District Map Amendment approval be conditioned on the zoning and annexation of the property outside corporate limits.

11-07-2011: **CASE 20110573:** Watauga County has filed a Zoning Map Amendment Petition for Conditional District Zoning for property located 300 Go Pioneers Drive (2910-88-3456-000). to modify the existing site specific development plan for the Conditional District O/I Office Institutional zoning to the existing High School site to include the addition of a wind turbine, which is proposed to be located between the football and soccer fields which also triggers the requirements for Transitional Zones in accordance with UDO Section 198.

Approved subject to the following conditions:

1. Approval is subject to the site plan and supplemental information submitted bearing the received date of October 24, 2011. Insignificant deviations may be permitted to comply with the requirements of the UDO or State Building Code.
2. Any commitments and representations concerning the proposed project made by the applicant or his representatives at the public hearing shall also become a condition of approval.
3. Applications and final plans shall be submitted that are in compliance with the provisions of the UDO, Town Code and State Building Code.

05-07-2012: **Case 20120200:** Watauga County has filed a Zoning Map Amendment Petition for Conditional District Zoning for 300 Go Pioneers Drive (Watauga County PIN: 2910-88-3456-000) to modify the existing site specific development plan for the Conditional District O/I Office Institutional zoning to the existing Watauga High School site to include the addition of a 20 foot x 40 foot picnic shelter (to be located next to the tennis courts). In addition, the modification triggers the requirements for transitional zones in accordance with UDO Section 198.

Approved subject to the following conditions:

1. Approval is subject to the site plan bearing the received date of April 20, 2012 and structure elevations bearing the received date of April 5, 2012 and project narrative bearing the received date of April 17, 2012. Insignificant deviations may be permitted to comply with the requirements of the UDO or State Building Code.
2. Any commitments and representations concerning the proposed project made by the applicant or his representatives at the public hearing shall also become a condition of approval.
3. Applications and final plans shall be submitted that are in compliance with the provisions of the UDO, Town Code and State Building Code.

08-06-2012: **Case 20120403:** Wayne Clawson, Joy Clawson, Dana Clawson, & Milton Greene (on behalf of Anna Greene) have filed a Conditional District Map amendment to rezone approximately 22.29 acres of property (which includes the Clawson Mobile Home Park) located at and near 170 Clawson Street, 140 and 141 Marich Lane (Watauga County PINs: 2911610160000, 2911603647000, 2911602100000, 2911608808000). The request is to rezone all/portions of the properties from R-3 Multiple Family Residential and MH Manufacture Home Park to Conditional District R-3 Multiple Family with a site specific

plan for a phased project for Use 1.330 Multi-family apartments (10 buildings with 266 units containing 546 bedrooms) with an extended vesting of five years.

Denied

12-10-2012: **CASE 20120683** United Developers, Conditional District Map Amendment, at and near 170 Clawson Street, Watauga Co. PINs: 2911610160000, 2911603647000, 2911602100-000, request to rezone all/portions of the properties owned by Wayne & Dana Clawson from R-3 Multiple Family Residential & MH Manufacture Home Park to Conditional District R-3 Multiple Family, for 72 apartments, containing 180 bedrooms. Applicants are requesting a 3 year vesting.

Approved subject to the following conditions:

1. Approval is subject to the following:
 - a. Zoning Map Amendment Petition Conditional District Zoning, dated received 11-13-2012 "Watauga Green-Preliminary Development Plans for Conditional Use Zoning Application" Sheets 1-4 prepared by Moore Rile Architects PA, dated received 11-13-2012 (portion of the applicants first submittal)
 - b. "Mitigation of Development in the Transitional Zone" narrative, prepared by Mercer Design Group, dated received 11-21-2012
 - c. "Transportation Impact Analysis (TIA) Prepared for United Developers, Inc.- Watauga Green" prepared by Davenport Transportation Consulting, dated received 11-26-2012
 - d. "Watauga Green-Preliminary Development Plans for Conditional Use Zoning Application" REVISED site plans, prepared by Mercer Design Group, dated received 11-27-2012
 - e. "Responses to comments on staff report for Watauga Green, Boone, NC" letter, prepared by Marvin Mercer, P.E, dated received 11-27-2012
 - f. "Re: Affordable Housing" letter, prepared by James Smith, dated received 11-27-2012
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. The applicant shall work with the Town of Boone to ensure that all recommendations from the submitted "Transportation Impact Analysis, Prepared for United Developers, Inc.: Watauga Green, Boone, NC" are completed prior to the issuance of a certificate of occupancy.
5. The vesting for the project be given 3 years.
6. The applicant shall install sidewalks along Clawson Street to the intersection of Perkinsville Drive.
7. All concerns as listed in the "Review Comments" in Case 20120683 Watauga Green/United Developers Conditional District Map Amendment Staff Report will be satisfied.

05-13-2013: United Developers have filed a Conditional District map modification for property owned by Wayne Clawson and Dana Clawson located at and near 170 Clawson Street

(Watauga County PINs: 2911610160000, 2911603647000, 2911602100000). The request is to modify the parking for the approved Watauga Green multi-family project.

Approved subject to the following conditions:

1. The applicant in the original public hearing for this matter said the target was one space to one and one-half space per unit. This alternative request does not go outside that original statement.
2. The applicant could have perused other parking strategies that would have resulted in many as 180 spaces in a project that is located very close to other amenities. This was a responsible and reasonable request.
3. It is the Town's responsibility to provide the reasonable assistance for the success of the project being grant funding from NCFHA and testimony presented at the public hearing indicates that this change will be viewed positively by the Finance authority.
4. Reference staff conditions 1, 2, 3 found on page eight of the staff report:
 - A. Approval is subject to the following:
 1. Zoning Map Amendment Petition Conditional District Zoning, dated 4-29-13.
 2. "Watauga Green-Preliminary Development Plans for Conditional Use Zoning Application" Sheet C-2, dated received 4-29-13.
 - B. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop-work order and/or permit revocation if violated.
 - C. All conditions of the original approval (Case 20120683) are still applicable.

06-02-2014: **CASE 20140049** Standard at Boone LLC is requesting Conditional District Map Amendment approval to zone property to Conditional District B3 General Business for a site specific development plan for a mixed-use project containing commercial and multi-family uses to be located at: 784, 862, 862-B Blowing Rock Road; 299, 311, 325, 339 Faculty Street, and 3 vacant parcels (Watauga County PINs: 2910146823000, 2910147495000 and 2910148386000).

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans (bearing a received date of April 17, 2014), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. The Town of Boone will be given the necessary easements for public sidewalks which leave existing street right of way.
5. All driveway permits shall be obtained prior to the issuance of a Zoning Permit.
6. The project must be in compliance with UDO Article 15, Subsection 15.10.02 (limits phasing for the single-use multi-family building.)
7. The applicant must submit appropriate documentation for the CLOMR for the relocation and opening of Boone Creek prior to the issuance of a Zoning Permit.

8. Along Blowing Rock Road the area between the road and the building shall consist of curb and gutter, five foot sidewalks next to the curb and gutter and pavers between sidewalk and building which also includes landscape area. Landscaping will be coordinated with planning staff.
9. The addition of educational signage describing improvements to Boone Creek along Faculty Street providing it does not affect the flood study.
10. The bike lane details provided by the Department of Transportation for Highway 321.
11. There will be no balconies located on the Faculty Street side of the Faculty Street building.

08-04-2014: **Case 20140372** The Church of Jesus Christ of Latter Day Saints, Conditional District Map Amendment, 604 Poplar Grove Rd, rezone property to R3 Multiple-Family Residential for a phased site specific plan to expand the building and parking lot, subject to a 125' transitional zone, and applicants are requesting 5 year vesting;

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans (Sheets CDR- 1 and CDR-2 bearing a received date of July 25, 2014, and Sheet SLP bearing a received date of July 2, 2014), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Vesting is extended for five years.
4. Revised plans meeting the requirements of the Town Code, UDO and other applicable plans shall be submitted for review and approval.

02-02-2015: **Case 20140748** Southern States Co-Operative Inc. and G& B Oil Company Inc. have requested to rezone 178 S. Water Street, 190 and 208 Poplar Grove Road from B1 Central Business to Conditional District B1 Central Business with a site specific development plan for a mixed-use project (River's Walk) containing approximately 16,647 square feet of commercial area and 145 apartments.

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans (bearing a received date of January 26, 2014), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. The Town of Boone will be given the necessary easements for public sidewalks which leave existing street right-of-way.
5. All driveway permits shall be obtained prior to the issuance of a Zoning Permit.

6. Applicant demonstrate adequate parking for the development.
7. Applicant build the courtyard as demonstrated on the drawing submitted by Bill Dixon on February 9, 2015, at the Planning Commission meeting.
8. The applicant provide an easement for an eight-foot minimum greenway along Boone Creek through the development property.

11-02-2015: **Case 20150700** - Hunter Coffey has filed a Conditional District Zoning Map Amendment Petition for property owned by Jazz Baby Holdings, LLC to rezone 280 Queen Street from O/I Office Institutional to B1 Central Business with a site specific development plan for Use 11.19 Professional Office.

Approved subject to the following conditions:

1. Where there is a conflict between the application information, the applicant's narrative and the plans (dated received Sept. 25, 2015), the plans and narrative shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. The applicant shall submit the necessary applications, plans, details and specifications which meet the requirements of the Town Code, UDO, Building Code and any other applicable plans for review and approval necessary to issue Zoning and Building Permits.

01-06-2015: **Case 20150697** Todd Rice has filed a Conditional District Zoning Map Amendment Petition for two properties owned by MET Holdings, LLC at 475 Blowing Rock Road to rezone from B2 Neighborhood Business to B3 General Business with a site specific development plan for a mixed-use building consisting of 24 efficiency apartments (Use 1.15 Multi-Family Dwelling in Mixed Use (31-100 bedrooms) and 2,658 square feet of retail (Use 11.15 Retail Store more than 5, 000 but less than 25, 000 ft2).

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans (dated received December 11, 2015), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. The applicant shall submit the necessary applications, plans, details and specifications which meet the requirements of the Town Code, UDO, Building Code and any other applicable plans for review and approval necessary to issue Zoning and Building Permits.
4. The applicant is required to work with the Public Works Department to reconfigure the meter system needed for the development.
5. A minimum of six commercial parking spaces is required and no minimum is set for the residential parking spaces.
6. Courtyard as designed and presented to the Planning Commission on January 11,

2016, contingent on NCDOT approval.

7. The applicant will provide the Black powdered coated fence as proposed by the applicant to the Planning Commission on January 11, 2016, because the proposed project will result in safer traffic patterns and the redevelopment of the currently outdated unattractive site.
8. The applicant will provide additional lighting to the side near the Parthenon and other commercial properties.

06-06-2016: Case 20160136 Rivers Walk Planned Development Zoning Map Amendment: Jeff Githens with McKinley Boone, LLC has filed a Zoning Map Amendment Petition for a planned development consisting of a mixed-use building containing both residential and commercial uses, including a parking deck for properties located at 178 South Water Street, 190 and 208 Poplar Grove Road. The residential portion will contain 119 dwelling units with 380 bedrooms; with the following uses proposed to be allowed for the commercial portion of the building :11.06 Restaurant $\leq 2,500$ ft² open to the public during 10 pm – 6 am, 11.07 Other Restaurants $\leq 2,500$ ft², 11.08 Restaurant $> 2,500$ ft² open to the public during 10 pm – 6 am, 11.09 Other Restaurants $> 2,500$ ft², 11.12 Personal Service Establishment open to the public during 10 pm – 6 am, 11.13 Other Personal Service Establishments, 11.14 Retail Store up to 5,000 ft², 11.15 Retail Store more than 5,000 but less than 25,000 ft², 11.18 Business or Profession Office open to the public during 10 pm – 6 am, 11.19 Other Business or Professional Office, 11.23 Medical Office, Category 4, 12.10 Recreation Facility, Category 1, and 14.02 Brewpub.

Denied

11-28-2016: Case 20160566: Hunter Coffey on behalf of Watauga County Farm Bureau Insurance has filed a Planning Permit Application for a Conditional District Zoning Map Amendment to rezone 135 and 169 State Farm Road from B3 General Business and R1 Single-Family Residential to Conditional District B3 General Business subject a site specific development plan for Use 11.19 Other Business or Professional Office.

Approved subject to the following conditions:

1. Where there is a conflict between the application information and the plans (site plans and architectural plans bearing a received date of Sept. 9), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans and permit applications shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. The applicant shall install a hedge row of evergreens along the eastern property line. This buffer shall be 10' to 12' tall at time of installation.
5. The applicant shall allow access to the Miller's lower driveway from the Farm Bureau parking lot as shown on the "as built" site plan.

01-23-2017: Case 20160796 King and College Mixed-Use Planned Development: Robert Flannigan has filed a Zoning Map Amendment Petition for a planned development consisting of a mixed-use building containing both residential (64 bedrooms), commercial uses and a parking

garage along with a separate a townhouse building for properties located at and near 302 W. King Street (Watauga County PINs: 2900988588000 and 2900988402000). The building will contain 60dwelling units with 60 bedrooms; with the following uses proposed to be allowed for the commercial portion of the building: Use 11.21 Medical Office Category 2. The Townhouse building will contain 2 dwelling units with 4 bedrooms.

Approved subject to the following conditions:

1. Where there is a conflict between the applicant information and the plans (site plans and architectural plans bearing a received date of Jan. 13, 2017), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of Town Code.
4. No more than two unrelated persons are allowed to live in the townhouse portion of the proposed development.
5. The applicant will work with the Town to implement the appropriate sidewalk material in accordance with the downtown sidewalk plans.
6. The applicant be provided flexibility to work with the Town and neighbors related to fencing locations and type.
7. The applicant will fund traffic calming speed humps along Wallace Circle as determined appropriate by Public Works prior to the CO being issued.
8. The applicant shall construct a guard rail along Campus Ridge Drive in accordance with the Traffic Analysis Report.
9. The applicant will agree that they will petition to join the MDS (Municipal Service District) to be effective two (2) years following the year in which the CO is issued.