



Agenda

Town Council Meeting – April 9, 2026

Business Meeting

CALL TO ORDER

Mayor

BUSINESS MEETING AGENDA

- A. Discussion on the [Hazard Prevention Ordinance](#)
Presented by Michael Malecek
- B. Potential Future Agenda items

ADJOURN

Vision

The Town of Mills River preserves, sustains, and cultivates community

Mission

To foster community well-being

Values

Respect • Service • Integrity

STAFF REPORT

Town Council, Thursday, April 9, 2026

Title: **Flood Hazard Prevention Ordinance Discussion**

Speaker: Michael Malecek, Planning Director

Background

Town Council worked with Planning staff and State floodplain officials throughout 2025 to discuss and draft an ordinance regulating 100-year floodplain and floodway areas within the Town of Mills River. Town Council held a public hearing on October 2, 2025 to consider adoption of the ordinance.

At the October 2 meeting, Council directed staff to draft three floodplain ordinance versions for Council to consider at a continued public hearing on October 6. These three ordinances included: Option 1, limited (essential service) public and governmental land uses in floodplains; Option 2, general public and governmental land uses in floodplains; Option 3, blanket agricultural exemption in addition to general public and governmental land uses in floodplains. Council adopted ordinance option 2 on October 6, 2025.

Discussion & Policy Analysis

At the March 26, 2026 Town Council meeting, members requested discussion of the flood hazard prevention ordinance at the April 9, 2026 meeting to potentially make changes to the ordinance. Due to the State down-zoning prohibition law, and the Town's limited exemption from that law for the UDO project, now is the best time to make changes to the floodplain ordinance which can be directly incorporated into the revised draft UDO.

Recommendation

None. For informational and discussion purposes. Provide direction to staff on potential ordinance changes.

Strategic Plan Alignment

Goal 3: Encourage and cultivate thoughtful use of land.

Goal 6: Uphold excellence in community safety.

Attachments

- A. **Ordinance Option 1** – Allows Limited (Essential Service Only) Govt. Uses & Some Agricultural Regulation (Tanks, Floodways, Fill)
- B. **Ordinance Option 2** – Allows General Govt. Uses & Some Agricultural Regulation (Tanks, Floodways, Fill)
- C. **Ordinance Option 3** – Blanket Agricultural Exemption & Allows General Govt. Uses
- D. **UDO Excerpts** – Special Flood Hazard Area Regulations
- E. **Flood Hazard Prevention Agriculture FAQ Document**

Option 1 – Limited Government

ORDINANCE NO. 2025-23

**HAZARD PREVENTION ORDINANCE
OF THE
TOWN OF MILLS RIVER,
NORTH CAROLINA**

Adopted: October 6, 2025

TITLE XVII: HAZARD PREVENTION

ARTICLE 1.

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION A. STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in Article 8 of Chapter 160A, and Section 215.61 Part 6 Article 21 of Chapter 143 of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations, including those regulating the use of land, designed to promote the public health, safety, and general welfare.

Therefore, the Town Council of the Town of Mills River, North Carolina does ordain as follows:

SECTION B. FINDINGS OF FACT.

(1) The flood prone areas within the jurisdiction of the Town of Mills River are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

SECTION C. STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to minimize hazards within flood prone areas.

SECTION D. OBJECTIVES.

The objectives of this ordinance are to:

- (1) Protect human life, safety, and health;
- (2) Help maintain a stable tax base by providing for the sound use and development of property in all flood prone areas of the Town;
- (3) Secure safety from the dangers posed by water and flooding;
- (4) Promote public health, safety and general welfare.

ARTICLE 2. DEFINITIONS.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Administrator” is the individual appointed to administer and enforce the hazard prevention regulations contained herein.

“Agriculture / Bona-fide Farm” means the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1 and G.S. 160D-903, however this does not include the use of a farm property for nonfarm purposes, [or the preparation of a bona-fide farm property for future non-farm development.](#)

“Agriculture / Bona-fide Farm Land Maintenance” means the filling, grading, and excavation of agricultural land actively used for farm purposes within flood prone areas where the land maintenance activities directly related to the farm use do not cause a significant change in the topography of the property nor a significant change in the elevation of the farm land.

“Appeal” means a request for a review of the Administrator's interpretation of any provision of this ordinance.

“Area of Special Flood Hazard” see “Flood Prone Area”.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a flood prone area, it may be obtained from engineering studies available from a Federal, State, or other source.

“Building” see “Structure”.

“Chemical & Petroleum Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products or petroleum products.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, except development does not include agriculture / bona-fide farm land maintenance activities directly related to the farm use, nor does the definition of development include the removal of storm debris from a property due to the impacts from a declared natural disaster as long as the property is returned to its pre-storm condition only.

“Development Activity” means any activity defined as Development which will necessitate a Hazard Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures, except development activity does not include agriculture / bona-fide farm land maintenance activity, nor does it include the removal of storm debris from a property due to a declared natural disaster.

“Disposal” means, as defined in NCGS §130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a flood prone area, which may impede or alter the flow capacity of that area.

“Essential public service” means the basic functions that are strictly necessary for the operation of any governmental unit, excluding recreational purposes.

“Existing building and existing structure” means any building and/or structure for which the “start of construction” commenced before the effective date of the hazard prevention regulations adopted by the community, dated 10/06/2025.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the hazard prevention regulations adopted by the community dated 10/06/2025.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland waters; and/or
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of the community, issued by the federal government, on which the flood prone areas and the floodways are delineated.

“Flood Hazard Boundary Map (FHBM)” means an official map of the community, issued by the federal government, where the boundaries of the flood prone areas have been defined as Zone A.

“Flood Prone Area” means any land area susceptible to being inundated by water from any source.

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map that reflects the severity or type of flooding in the area.

“Floodplain” see “Flood Prone Area”

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water.

“Hazard Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Hazardous Waste Management Facility” means, as defined in NCGS §130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“Light Duty Truck” means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or
- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (c) Available with special features enabling off-street or off-highway operation and use.

“Lowest Adjacent Grade (LAG)” means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Mean Sea Level” means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the flood prone area, to which Base Flood Elevations (BFEs) shown on a federal flood map are referenced.

“New Construction” means structures for which the “start of construction” commenced on or after the

effective date of the initial hazard prevention regulations and includes any subsequent improvements to such structures.

“No-rise Certification Analysis” means an engineering analysis of the impact that a proposed development in a flood prone area is expected to have on the flood prone area boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting minimum federal requirements.

“Non-Conversion Agreement” means a document stating that the owner and subsequent owners, including future owners of subdivided parcels from the parent tract subject to the fill activity, will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk’s or recorder’s stamps and/or notations that the filing has been completed

“Non-Encroachment Area” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in federal flood maps and studies.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (e) is fully licensed and ready for highway use.

For the purposes of this ordinance, “Tiny Homes/Houses” and “Park Models” that do not meet the items listed above are not considered Recreational Vehicles and should meet the standards of and be permitted as Residential Structures.

“Reference Level” is the bottom of the lowest horizontal structural member of the lowest floor for structures within all flood prone areas.

“Remedy a Violation” means to bring the structure or other development into compliance with the community hazard prevention regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Salvage Yard” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS §130A-290(a)(35).

“Solid Waste Disposal Site” means, as defined in NCGS §130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Hazard Area (SHA)” means the land in a flood prone area subject to a one percent (1%) or greater chance of being flooded in any given year.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas or chemical storage tank that is principally above ground.

“Temperature Controlled” means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

“Variance” is a grant of relief from the requirements of this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with the community's hazard prevention regulations. A structure or other development without evidence of compliance is presumed to be in violation until such time as the necessary documentation is provided.

“Water Surface Elevation (WSE)” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the flood prone areas of a riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

ARTICLE 3. GENERAL PROVISIONS.

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all Special Hazard Areas within the jurisdiction of the Town of Mills River.

SECTION B. PROHIBITION OF DEVELOPMENT IN SPECIAL HAZARD AREAS.

Development in a Special Hazard Area is prohibited except where:

- (1) the application is for a residential accessory structure with no dwellings, temperature control, or utilities in the structure; or
- (2) the application is for bona-fide farm and/or agricultural land uses, land maintenance activities, or structures, as defined and regulated in this ordinance; or
- (3) the application is for a functionally dependent facility; or

- (4) the application is for a governmental or public utility use in the furtherance of an essential public service; or
- (5) the application is for a stream restoration, natural lands restoration, or floodplain restoration project that will help improve water quality and the functioning of streams, wetlands, and floodplains; or
- (6) the application is for a private residential road through a special hazard area to access a residential single-family dwelling that is not located within a special hazard area.

All other applications for development are expressly prohibited, including but not limited to nonresidential uses and structures, commercial uses and structures, industrial uses and structures, residential structures containing a single-family dwelling, and residential structures containing multifamily dwellings.

SECTION C. BASIS FOR ESTABLISHING THE SPECIAL HAZARD AREAS.

The Special Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Henderson County dated October 2, 2008 which are adopted by reference and declared to be a part of this ordinance, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto.

SECTION D. ESTABLISHMENT OF HAZARD DEVELOPMENT PERMIT.

A Hazard Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Hazard Areas determined in accordance with the provisions of Article 3, Section C of this ordinance.

SECTION E. COMPLIANCE.

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

SECTION F. ABROGATION AND GREATER RESTRICTIONS.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION G. INTERPRETATION.

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

- (1) considered as minimum requirements;
- (2) liberally construed in favor of the Mills River Town Council; and
- (3) deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION H. WARNING AND DISCLAIMER OF LIABILITY.

This ordinance is not intended to provide any flood protection but is considered reasonable for regulatory purposes and is based on scientific and engineering considerations to limit hazards to the community in flood prone areas. This ordinance does not imply that land outside the Special Hazard Areas or uses permitted within such areas will be free from damage or hazards. This ordinance shall not create liability on the part of the Town of Mills River or by any officer or employee thereof for any damages or hazards that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

SECTION I. PENALTIES FOR VIOLATION.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 3 misdemeanor pursuant to NC G.S. §14-4, NC G.S. 143-215.61, Article 8 of Chapter 160A, and Chapter 160D. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00. Each day such violation continues shall be considered a separate finable offense. Nothing herein contained shall prevent the Town of Mills River from taking such other lawful action as is necessary to prevent or remedy any violation.

**ARTICLE 4.
ADMINISTRATION.****SECTION A. DESIGNATION OF ADMINISTRATOR.**

The Town Planning Director, or her/his designee, hereinafter referred to as the “Administrator”, is hereby appointed to administer and implement the provisions of this hazard prevention ordinance.

SECTION B. HAZARD DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.

- (1) **Application Requirements.** Application for a Hazard Development Permit shall be made to the Administrator prior to any development activities located within Special Hazard Areas. The following items shall be presented to the Administrator to apply for a hazard development permit:
 - (a) A site plan prepared by a licensed professional, drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - (i) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - (ii) the boundary of the Special Hazard Area as delineated on a federal flood map as determined in Article 3, Section C, or a statement that the entire lot is within the Special Hazard Area;
 - (iii) the boundary of the floodway(s) or non-encroachment area(s);
 - (iv) the Base Flood Elevation (BFE) where provided;

- (v) the certification of the site plan by a registered land surveyor or professional engineer.
 - (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
 - (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - (ii) Elevation in relation to mean sea level to which any non-residential structure in a flood prone area will be flood proofed; and
 - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or flood proofed.
 - (c) Usage details of any enclosed areas below the lowest floor.
 - (d) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
 - (e) Certification that all other Local, State and Federal permits required prior to hazard development permit issuance have been received.
 - (f) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Article 5, Section B, subsections (6) and (7) of this ordinance are met.
 - (g) A no-rise certification prepared by a licensed professional engineer, for development activities that involve the placement of fill within Special Hazard Areas that makes significant changes to the elevation of the subject land proposed for development, excepting agricultural land maintenance activities anywhere in the SHA or fill for the elevation of an agricultural structure in the SHA, but outside the floodway.
- (2) **Permit Requirements.** The Hazard Development Permit shall include, but not be limited to:
- (a) A description of the development to be permitted under the hazard development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials, etc.).
 - (b) The Special Hazard Area determination for the proposed development in accordance with available data specified in Article 3, Section C.
 - (c) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable, excepting agricultural land maintenance activities.
- (3) **Permit Exemptions.** The following types of development, land uses, and structures are exempt from obtaining a hazard development permit, but must abide by the ordinance standards related to fill and

tanks in Special Hazard Areas.

- (a) Bona-fide farm and agricultural structures that are located outside the floodway / non-encroachment area. An agricultural structure elevated through the placement of fill must still abide by the fill limitations of this ordinance.
- (b) Bona-fide farm and agricultural land maintenance activities that do not cause a significant change in the topography of the land nor a significant change in the elevation of the land anywhere in the SHA.

SECTION C. DUTIES AND RESPONSIBILITIES OF THE ADMINISTRATOR.

The Administrator shall perform, but not be limited to, the following duties:

- (1) Review all hazard development applications and issue permits for all proposed development within Special Hazard Areas to assure that the requirements of this hazard prevention ordinance have been satisfied.
- (2) Review all proposed development within Special Hazard Areas to assure that all necessary Local, State and Federal permits have been received.
- (3) Prevent encroachments into floodways and non-encroachment areas due to the high flood hazards in these areas.
- (4) Obtain actual elevation (in relation to NAVD 1988 mean sea level) of the new level of ground elevation after completion of a fill operation, in accordance with the provisions of this ordinance.
- (5) Where interpretation is needed as to the exact location of boundaries of the Special Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (6) When Base Flood Elevation (BFE) data have not been provided in accordance with the provisions of Article 3, Section C, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section C(2)(b), in order to administer the provisions of this ordinance.
- (7) When Base Flood Elevation (BFE) data are provided but no floodway or non-encroachment area data have been provided in accordance with the provisions of Article 3, Section C, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (8) Permanently maintain all records that pertain to the administration of this hazard prevention ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (9) Make on-site inspections of work in progress. As the work pursuant to a hazard development permit

progresses, the Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local hazard prevention ordinance and the terms of the permit. In exercising this power, the Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the Town of Mills River at any reasonable hour for the purposes of inspection or other enforcement action.

- (10) Issue stop-work orders as required. Whenever a building, land, or part thereof is being developed, constructed, reconstructed, altered, filled, or repaired in violation of this ordinance, the Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (11) Revoke hazard development permits as required. The Administrator may revoke and require the return of the hazard development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any hazard development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (12) Make periodic inspections throughout the Special Hazard Areas within the jurisdiction of the Town of Mills River. The Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (13) Follow through with corrective procedures of this ordinance.
- (14) Review, provide input, and make recommendations for variance requests.

SECTION D. CORRECTIVE PROCEDURES.

- (1) Notices of Violation: When the Administrator determines work or activity has been undertaken in violation of applicable local or State law, or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405
- (2) Stop Work Orders: Whenever any work or activity subject to local or State law is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity,

and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the local government that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

- (3) Remedies: Subject to the provisions of local law, this hazard prevention ordinance may be enforced by any remedy provided by G.S. 160A-175 or G.S. 153A-123. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of this ordinance, the Town of Mills River, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.
- (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the Mills River Board of Adjustment (The Hazard Review Board) by giving notice of appeal in writing to the Administrator and the Town Clerk within thirty (30) days following issuance of the final order. The notice of appeal shall state the grounds for the appeal. In the absence of an appeal, the order of the Administrator shall be final. The Board of Adjustment / Hazard Review Board shall hear an appeal in accordance with §154.179 of the Mills River Zoning Ordinance within a reasonable time and may affirm, modify and affirm, or revoke the order. Any person who has standing under G.S. 160D-1402(c) or the Mills River Town Council may appeal an administrative decision to the board. The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. An appeal of a notice of violation or other enforcement order to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal or during the pendency of any civil proceeding authorized by law or related appeal. If, however, the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the hazard prevention ordinance, then enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed. Notwithstanding any other provision of this section, appeals of decisions granting a hazard development approval or otherwise affirming that a proposed use of property is consistent with the hazard prevention ordinance does not stay the further review of an application for hazard development approvals to use the property; in these situations, the appellant or Town of Mills River may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the

issue being appealed. The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution.

- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with a decision or an order of the Board of Adjustment / Hazard Review Board following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to Article 8 of Chapter 160A, NC G.S. 14-4, NC G.S. §143-215.61, and Chapter 160D and shall be punished at the discretion of the court.

SECTION E. VARIANCE PROCEDURES.

- (1) The Board of Adjustment as established by the Town of Mills River, hereinafter referred to as the “Hazard Review Board”, shall hear and decide requests for variances from the requirements of this hazard prevention ordinance.
- (2) Any person aggrieved by a decision of the Hazard Review Board may appeal such decision to the Court, as provided in Article 14 of Chapter 160D and Chapter 7A of the North Carolina General Statutes.
- (3) The Administrator shall mail a notice of the hearing by USPS certified mail, no return receipt service, to the person or entity whose application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by this ordinance. In the absence of evidence to the contrary, the Town may rely on the Henderson County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the Administrator shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- (4) Variances may be issued for:
 - (a) the amount of fill placed in the SHA for the following development types, provided the fill is at an elevation no more than 2 feet above the base flood elevation and the fill covers a maximum of fifteen percent (15%) of the SHA: bona-fide farm and agricultural land uses and structures; a governmental or public utility use in the furtherance of an essential public service; a stream restoration, natural lands restoration, or floodplain restoration project; a private road through the SHA to access a residential single-family dwelling that is not located in the SHA.
 - (b) functionally dependent facilities if determined to meet the definition as stated in Article 2 of this hazard prevention ordinance, provided provisions of Article 4, Section E (9 & 10) have been satisfied, and such facilities are protected by methods that minimize flood hazards during the base flood and create no additional threats to public safety.
- (5) In considering variances, the Hazard Review Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - (a) the danger that materials may be swept onto other lands to the injury of others;

- (b) the danger to life and property due to flooding or erosion hazards;
 - (c) the susceptibility of the proposed facility and its contents to flood hazards and the effect of such hazards on the individual owner and the public;
 - (d) the importance of the services provided by the proposed facility to the community;
 - (e) the necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependent facility, where applicable;
 - (f) the availability of alternative locations, not subject to flooding or erosion hazards, for the proposed use;
 - (g) the compatibility of the proposed use with existing and anticipated development;
 - (h) the relationship of the proposed use to the comprehensive plan and any applicable hazard prevention program;
 - (i) the safety of access to the property in times of natural disasters for ordinary and emergency vehicles;
- (6) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (7) Upon consideration of the factors listed above and the purposes of this ordinance, the Hazard Review Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this hazard prevention ordinance.
- (8) The Administrator shall maintain the records of all appeal actions.
- (9) Conditions for Variances:
- (a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 - (b) Variances shall not be issued for development or fill within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering all hazards, to afford relief.
 - (d) Variances shall only be issued prior to development permit approval.
 - (e) Variances shall only be issued upon:
 - (i) a showing of good and sufficient cause;
 - (ii) a determination that failure to grant the variance would result in exceptional hardship;

and

- (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(10) Limitations on Variances:

- (a) Variances shall not be issued to allow for a land use or structure that is prohibited by this ordinance.
- (b) Variances shall not be issued to allow for structures or accessory structures in a floodway / non-encroachment area.
- (c) Variances shall not be issued to allow for fill in a flood prone area that results in the elevation of the subject property, specifically the land area proposed for development, being more than two (2) feet above the base flood elevation (BFE).
- (d) Variances shall not be issued to allow for fill that covers more than fifteen percent (15%) of the SHA.

SECTION F. FEE SCHEDULE.

The Town Council may establish, and modify from time to time, a fee schedule for the administration and enforcement of this hazard prevention ordinance. Fees may include expenses for technical advisors and certified professional experts when needed to properly evaluate an application. In order to be deemed complete, all applications and appeals filed under this hazard prevention ordinance shall be accompanied by payment of all applicable fees.

SECTION G. AMENDMENTS.

The Town Council may from time to time amend the terms of this ordinance. No amendment shall be adopted by the Town Council until a public hearing has been held on such amendment. Notice of the hearing shall be published in a newspaper of general circulation in the Town at least once a week for two successive weeks prior to the hearing. The initial notice shall appear not more than twenty-five (25) days or less than ten (10) days prior to the hearing date. In computing the ten and twenty-five day periods, the date of publication is not to be counted, but the date of the hearing may be counted.

**ARTICLE 5.
PROVISIONS FOR HAZARD REDUCTION.**

SECTION A. SPECIFIC STANDARDS.

In all Special Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in this ordinance, the following provisions are required:

- (1) Residential Construction. New construction of residential structures is prohibited in any Special Hazard Area, unless the application is for the development of a residential accessory structure with

no dwellings or utilities in the structure that must be located outside the floodway / non-encroachment area.

- (2) Non-Residential Construction. New construction of any commercial, industrial, or other non-residential structure is prohibited in any Special Hazard Area, unless the application is for a functionally dependent facility, a governmental or public utility use in the furtherance of an essential public service, or bona-fide farm use or agricultural structure located outside the floodway / non-encroachment area.
- (3) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Hazard Area, the following criteria shall be met:
 - (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas). In order to facilitate this, accessory structures in SHAs will not be permitted with water and wastewater utility connections.
 - (b) Accessory structures shall not be temperature-controlled;
 - (c) Accessory structures shall be designed to have low flood hazard potential;
 - (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - (e) Accessory structures shall be firmly anchored;
- (7) Tanks. When gas, petroleum product, chemicals, and other liquid storage tanks are to be placed within a Special Hazard Area, including for bona-fide farm / agricultural uses, the following criteria shall be met to reduce hazards to the public:
 - (a) Underground tanks. Underground tanks in Special Hazard Areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
 - (b) Above-ground tanks, elevated. Above-ground tanks in Special Hazard Areas shall be elevated to or above the BFE on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable Special Hazard Area;
 - (c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of this ordinance shall be permitted in Special Hazard Areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood

forces acting on an empty tank during design flood conditions.

- (d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:
- (i) At or above the BFE or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
 - (ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

SECTION B. FLOODWAYS AND NON-ENCROACHMENT AREAS.

Areas designated as floodways or non-encroachment areas are located within the Special Hazard Areas established in Article 3, Section C. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, and other developments shall be permitted, unless the work is an agriculture / bona-fide farm land maintenance activity or work related to the removal of storm debris from a property, or repair of existing structures and infrastructure on a governmental or public utility property due to the impacts from a declared natural disaster, as long as the work results in the property being returned to its pre-storm condition only.

SECTION C. STANDARDS FOR FILL.

- (1) Fill is prohibited in the Special Hazard Areas, except for the following specific development activities:
- (a) Bona-fide farm and agricultural development, redevelopment, and land maintenance, including but not limited to fill for the elevation of agricultural structures outside the floodway and non-encroachment area; fill for the installation or replacement of culverts, pipes, drainage infrastructure, utilities, farm roads, and other activities related to a bona-fide farm use of the subject property anywhere within the SHA, and agricultural land maintenance related to repairing the banks of a surface water body (stream, creek, river, etc.) that was damaged due to severe erosion or a streambank blowout due to a natural storm event, which shall not change the elevation or topography of the streambank area beyond its condition prior to the storm event. Agricultural land maintenance activities shall not cause a significant change in the topography of the property nor a significant change in the elevation of the farm land.
 - (b) Governmental and public utility development, redevelopment, and land maintenance done by a unit of government in the furtherance of an essential public service, including but not limited to fill for public utilities; public roads and transportation improvement projects; public infrastructure; ~~active and passive recreation;~~ land and environmental remediation, stabilization, restoration, and conservation; and other activities reasonably related to providing an essential government service to the public.
 - (c) A functionally dependent facility.

- (d) A stream restoration, natural lands restoration, or floodplain restoration project that will help improve water quality and the functioning of streams, wetlands, or floodplains.
 - (e) A private residential road through a SHA to access a residential single-family dwelling that is located outside the SHA, when there are no other reasonable options for access.
- (2) Fill requirements and limitations on amount of fill in SHAs.
- (a) Fill shall only be placed in the SHA when absolutely necessary, and reasonable justification for the placement of fill shall be provided with the hazard development permit application. The proposed amount of fill shall represent the minimum amount of SHA fill intrusion necessary for the proposed development.
 - (b) Fill for bona-fide farm and agricultural land maintenance activities shall not cause any significant change in the topography or elevation of land in the SHA, and does not require a no-rise certification by a licensed engineer. This includes agricultural land maintenance activities in a floodway / non-encroachment area, which can include but is not limited to land maintenance occurring to repair the banks of a surface water body (stream, creek, river, etc.) that was damaged due to severe erosion or a streambank blowout due to a natural storm event.
 - (c) Amount of fill. A property owner may fill up to five percent (5%) of the SHA for the allowed development types listed in Article 5, Section C(1) of this ordinance. Any deviation from this standard requires a fill variance from the hazard review board. This limitation also applies to the placement of fill for the elevation of agricultural structures in the SHA.
 - (d) Maximum land elevation through fill. A property owner may place fill that raises the elevation of the property no more than the base flood elevation. Any deviation from this standard requires a fill variance from the hazard review board, which must be accompanied by a no-rise certification analysis. This limitation also applies to the placement of fill for the elevation of agricultural structures in the SHA.
 - (e) Non-conversion agreement required for fill. Any placement of fill in the SHA requires a non-conversion agreement with the Town of Mills River to be recorded in the Henderson County Register of Deeds Office, which shall run with the land in perpetuity and bind future property owners, including the owners of future subdivided parcels from the main tract of land subject to the fill activity. The purpose of the non-conversion fill agreement is to ensure that subsequent fill operations that may be done by future property owners over longer periods of time do not violate the provisions of this ordinance. Non-conversion agreements are not required for agricultural land maintenance activities, as defined in this ordinance.
 - (f) Prohibitions on fill. Fill in the SHA is prohibited for the following development types and activities:
 - i. Fill for nonresidential, nonagricultural development.
 - ii. Fill for any type of residential dwelling.
 - iii. Fill for the purpose of raising the elevation of land for future unallowed development

types.

**ARTICLE 6.
LEGAL STATUS PROVISIONS.**

SECTION A. EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOODPLAIN HAZARD PREVENTION ORDINANCE.

The enactment of this ordinance shall not effect any action, suit or proceeding instituted or pending. All provisions of the Hazard Prevention Ordinance of the Town of Mills River enacted on October 6, 2025, as amended, which are not reenacted herein are repealed.

SECTION B. EFFECT UPON OUTSTANDING HAZARD DEVELOPMENT PERMITS.

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

SECTION C. SEVERABILITY

If any section, clause, sentence or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

SECTION D. EFFECTIVE DATE.

This ordinance shall take effect and be in force on and after October 6, 2025.

Patty Brown
Town Clerk

Shannon Gonce
Mayor

Option 2 – General Government

ORDINANCE NO. 2025-23

**HAZARD PREVENTION ORDINANCE
OF THE
TOWN OF MILLS RIVER,
NORTH CAROLINA**

Adopted: October 6, 2025

TITLE XVII: HAZARD PREVENTION

ARTICLE 1.

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION A. STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in Article 8 of Chapter 160A, and Section 215.61 Part 6 Article 21 of Chapter 143 of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations, including those regulating the use of land, designed to promote the public health, safety, and general welfare.

Therefore, the Town Council of the Town of Mills River, North Carolina does ordain as follows:

SECTION B. FINDINGS OF FACT.

(1) The flood prone areas within the jurisdiction of the Town of Mills River are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

SECTION C. STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to minimize hazards within flood prone areas.

SECTION D. OBJECTIVES.

The objectives of this ordinance are to:

- (1) Protect human life, safety, and health;
- (2) Help maintain a stable tax base by providing for the sound use and development of property in all flood prone areas of the Town;
- (3) Secure safety from the dangers posed by water and flooding;
- (4) Promote public health, safety and general welfare.

ARTICLE 2. DEFINITIONS.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Administrator” is the individual appointed to administer and enforce the hazard prevention regulations contained herein.

“Agriculture / Bona-fide Farm” means the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1 and G.S. 160D-903, however this does not include the use of a farm property for nonfarm purposes, [or the preparation of a bona-fide farm property for future non-farm development.](#)

“Agriculture / Bona-fide Farm Land Maintenance” means the filling, grading, and excavation of agricultural land actively used for farm purposes within flood prone areas where the land maintenance activities directly related to the farm use do not cause a significant change in the topography of the property nor a significant change in the elevation of the farm land.

“Appeal” means a request for a review of the Administrator's interpretation of any provision of this ordinance.

“Area of Special Flood Hazard” see “Flood Prone Area”.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a flood prone area, it may be obtained from engineering studies available from a Federal, State, or other source.

“Building” see “Structure”.

“Chemical & Petroleum Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products or petroleum products.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, except development does not include agriculture / bona-fide farm land maintenance activities directly related to the farm use, nor does the definition of development include the removal of storm debris from a property due to the impacts from a declared natural disaster, as long as the property is returned to its pre-storm condition only.

“Development Activity” means any activity defined as Development which will necessitate a Hazard Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures, except development activity does not include agriculture / bona-fide farm land maintenance activity, nor does it include the removal of storm debris from a property due to a declared natural disaster.

“Disposal” means, as defined in NCGS §130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a flood prone area, which may impede or alter the flow capacity of that area.

“Existing building and existing structure” means any building and/or structure for which the “start of construction” commenced before the effective date of the hazard prevention regulations adopted by the community, dated 10/06/2025.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the hazard prevention regulations adopted by the community dated 10/06/2025.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland waters; and/or
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of the community, issued by the federal government, on which the flood prone areas and the floodways are delineated.

“Flood Hazard Boundary Map (FHBM)” means an official map of the community, issued by the federal government, where the boundaries of the flood prone areas have been defined as Zone A.

“Flood Prone Area” means any land area susceptible to being inundated by water from any source.

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map that reflects the severity or type of flooding in the area.

“Floodplain” see “Flood Prone Area”

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water.

“Hazard Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Hazardous Waste Management Facility” means, as defined in NCGS §130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“Light Duty Truck” means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or
- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (c) Available with special features enabling off-street or off-highway operation and use.

“Lowest Adjacent Grade (LAG)” means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Mean Sea Level” means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the flood prone area, to which Base Flood Elevations (BFEs) shown on a federal flood map are referenced.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the initial hazard prevention regulations and includes any subsequent improvements to such structures.

“No-rise Certification Analysis” means an engineering analysis of the impact that a proposed development in a flood prone area is expected to have on the flood prone area boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting minimum federal requirements.

“Non-Conversion Agreement” means a document stating that the owner and subsequent owners, including future owners of subdivided parcels from the parent tract subject to the fill activity, will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk’s or recorder’s stamps and/or notations that the filing has been completed

“Non-Encroachment Area” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in federal flood maps and studies.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (e) is fully licensed and ready for highway use.

For the purposes of this ordinance, “Tiny Homes/Houses” and “Park Models” that do not meet the items listed above are not considered Recreational Vehicles and should meet the standards of and be permitted as Residential Structures.

“Reference Level” is the bottom of the lowest horizontal structural member of the lowest floor for structures within all flood prone areas.

“Remedy a Violation” means to bring the structure or other development into compliance with the community hazard prevention regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Salvage Yard” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS §130A-290(a)(35).

“Solid Waste Disposal Site” means, as defined in NCGS §130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Hazard Area (SHA)” means the land in a flood prone area subject to a one percent (1%) or greater chance of being flooded in any given year.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas or chemical storage tank that is principally above ground.

“Temperature Controlled” means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

“Variance” is a grant of relief from the requirements of this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with the community's hazard prevention regulations. A structure or other development without evidence of compliance is presumed to be in violation until such time as the necessary documentation is provided.

“Water Surface Elevation (WSE)” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the flood prone areas of a riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

ARTICLE 3. GENERAL PROVISIONS.

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all Special Hazard Areas within the jurisdiction of the Town of Mills River.

SECTION B. PROHIBITION OF DEVELOPMENT IN SPECIAL HAZARD AREAS.

Development in a Special Hazard Area is prohibited except where:

- (1) the application is for a residential accessory structure with no dwellings, temperature control, or utilities in the structure; or
- (2) the application is for bona-fide farm and/or agricultural land uses, land maintenance activities, or structures, as defined and regulated in this ordinance; or
- (3) the application is for a functionally dependent facility; or
- (4) the application is for a governmental or public utility use ~~in the furtherance of an essential public service;~~ or

- (5) the application is for a stream restoration, natural lands restoration, or floodplain restoration project that will help improve water quality and the functioning of streams, wetlands, and floodplains; or
- (6) the application is for a private residential road through a special hazard area to access a residential single-family dwelling that is not located within a special hazard area.

All other applications for development are expressly prohibited, including but not limited to nonresidential uses and structures, commercial uses and structures, industrial uses and structures, residential structures containing a single-family dwelling, and residential structures containing multifamily dwellings.

SECTION C. BASIS FOR ESTABLISHING THE SPECIAL HAZARD AREAS.

The Special Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Henderson County dated October 2, 2008 which are adopted by reference and declared to be a part of this ordinance, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto.

SECTION D. ESTABLISHMENT OF HAZARD DEVELOPMENT PERMIT.

A Hazard Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Hazard Areas determined in accordance with the provisions of Article 3, Section C of this ordinance.

SECTION E. COMPLIANCE.

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

SECTION F. ABROGATION AND GREATER RESTRICTIONS.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION G. INTERPRETATION.

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

- (1) considered as minimum requirements;
- (2) liberally construed in favor of the Mills River Town Council; and
- (3) deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION H. WARNING AND DISCLAIMER OF LIABILITY.

This ordinance is not intended to provide any flood protection but is considered reasonable for regulatory purposes and is based on scientific and engineering considerations to limit hazards to the community in

flood prone areas. This ordinance does not imply that land outside the Special Hazard Areas or uses permitted within such areas will be free from damage or hazards. This ordinance shall not create liability on the part of the Town of Mills River or by any officer or employee thereof for any damages or hazards that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

SECTION I. PENALTIES FOR VIOLATION.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 3 misdemeanor pursuant to NC G.S. §14-4, NC G.S. 143-215.61, Article 8 of Chapter 160A, and Chapter 160D. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00. Each day such violation continues shall be considered a separate finable offense. Nothing herein contained shall prevent the Town of Mills River from taking such other lawful action as is necessary to prevent or remedy any violation.

ARTICLE 4. ADMINISTRATION.

SECTION A. DESIGNATION OF ADMINISTRATOR.

The Town Planning Director, or her/his designee, hereinafter referred to as the “Administrator”, is hereby appointed to administer and implement the provisions of this hazard prevention ordinance.

SECTION B. HAZARD DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.

- (1) **Application Requirements.** Application for a Hazard Development Permit shall be made to the Administrator prior to any development activities located within Special Hazard Areas. The following items shall be presented to the Administrator to apply for a hazard development permit:
 - (a) A site plan prepared by a licensed professional, drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - (i) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - (ii) the boundary of the Special Hazard Area as delineated on a federal flood map as determined in Article 3, Section C, or a statement that the entire lot is within the Special Hazard Area;
 - (iii) the boundary of the floodway(s) or non-encroachment area(s);
 - (iv) the Base Flood Elevation (BFE) where provided;
 - (v) the certification of the site plan by a registered land surveyor or professional engineer.
 - (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard

Area including but not limited to:

- (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - (ii) Elevation in relation to mean sea level to which any non-residential structure in a flood prone area will be flood proofed; and
 - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or flood proofed.
- (c) Usage details of any enclosed areas below the lowest floor.
 - (d) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
 - (e) Certification that all other Local, State and Federal permits required prior to hazard development permit issuance have been received.
 - (f) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Article 5, Section B, subsections (6) and (7) of this ordinance are met.
 - (g) A no-rise certification prepared by a licensed professional engineer, for development activities that involve the placement of fill within Special Hazard Areas that makes significant changes to the elevation of the subject land proposed for development, excepting agricultural land maintenance activities anywhere in the SHA or fill for the elevation of an agricultural structure in the SHA, but outside the floodway.

(2) **Permit Requirements.** The Hazard Development Permit shall include, but not be limited to:

- (a) A description of the development to be permitted under the hazard development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials, etc.).
- (b) The Special Hazard Area determination for the proposed development in accordance with available data specified in Article 3, Section C.
- (c) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable, excepting agricultural land maintenance activities.

(3) **Permit Exemptions.** The following types of development, land uses, and structures are exempt from obtaining a hazard development permit, but must abide by the ordinance standards related to fill and tanks in Special Hazard Areas.

- (a) Bona-fide farm and agricultural structures that are located outside the floodway / non-encroachment area. An agricultural structure elevated through the placement of fill must still

abide by the fill limitations of this ordinance.

- (b) Bona-fide farm and agricultural land maintenance activities that do not cause a significant change in the topography of the land nor a significant change in the elevation of the land anywhere in the SHA.

SECTION C. DUTIES AND RESPONSIBILITIES OF THE ADMINISTRATOR.

The Administrator shall perform, but not be limited to, the following duties:

- (1) Review all hazard development applications and issue permits for all proposed development within Special Hazard Areas to assure that the requirements of this hazard prevention ordinance have been satisfied.
- (2) Review all proposed development within Special Hazard Areas to assure that all necessary Local, State and Federal permits have been received.
- (3) Prevent encroachments into floodways and non-encroachment areas due to the high flood hazards in these areas.
- (4) Obtain actual elevation (in relation to NAVD 1988 mean sea level) of the new level of ground elevation after completion of a fill operation, in accordance with the provisions of this ordinance.
- (5) Where interpretation is needed as to the exact location of boundaries of the Special Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (6) When Base Flood Elevation (BFE) data have not been provided in accordance with the provisions of Article 3, Section C, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section C(2)(b), in order to administer the provisions of this ordinance.
- (7) When Base Flood Elevation (BFE) data are provided but no floodway or non-encroachment area data have been provided in accordance with the provisions of Article 3, Section C, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (8) Permanently maintain all records that pertain to the administration of this hazard prevention ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (9) Make on-site inspections of work in progress. As the work pursuant to a hazard development permit progresses, the Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local hazard prevention ordinance and the terms of the permit. In exercising this power, the Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the Town of

Mills River at any reasonable hour for the purposes of inspection or other enforcement action.

- (10) Issue stop-work orders as required. Whenever a building, land, or part thereof is being developed, constructed, reconstructed, altered, filled, or repaired in violation of this ordinance, the Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (11) Revoke hazard development permits as required. The Administrator may revoke and require the return of the hazard development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any hazard development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (12) Make periodic inspections throughout the Special Hazard Areas within the jurisdiction of the Town of Mills River. The Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (13) Follow through with corrective procedures of this ordinance.
- (14) Review, provide input, and make recommendations for variance requests.

SECTION D. CORRECTIVE PROCEDURES.

- (1) Notices of Violation: When the Administrator determines work or activity has been undertaken in violation of applicable local or State law, or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405
- (2) Stop Work Orders: Whenever any work or activity subject to local or State law is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail.

The person or persons delivering the stop work order shall certify to the local government that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

- (3) Remedies: Subject to the provisions of local law, this hazard prevention ordinance may be enforced by any remedy provided by G.S. 160A-175 or G.S. 153A-123. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of this ordinance, the Town of Mills River, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.
- (4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the Mills River Board of Adjustment (The Hazard Review Board) by giving notice of appeal in writing to the Administrator and the Town Clerk within thirty (30) days following issuance of the final order. The notice of appeal shall state the grounds for the appeal. In the absence of an appeal, the order of the Administrator shall be final. The Board of Adjustment / Hazard Review Board shall hear an appeal in accordance with §154.179 of the Mills River Zoning Ordinance within a reasonable time and may affirm, modify and affirm, or revoke the order. Any person who has standing under G.S. 160D-1402(c) or the Mills River Town Council may appeal an administrative decision to the board. The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. An appeal of a notice of violation or other enforcement order to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal or during the pendency of any civil proceeding authorized by law or related appeal. If, however, the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the hazard prevention ordinance, then enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed. Notwithstanding any other provision of this section, appeals of decisions granting a hazard development approval or otherwise affirming that a proposed use of property is consistent with the hazard prevention ordinance does not stay the further review of an application for hazard development approvals to use the property; in these situations, the appellant or Town of Mills River may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed. The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution.
- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order

to take corrective action for which no appeal has been made or fails to comply with a decision or an order of the Board of Adjustment / Hazard Review Board following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to Article 8 of Chapter 160A, NC G.S. 14-4, NC G.S. §143-215.61, and Chapter 160D and shall be punished at the discretion of the court.

SECTION E. VARIANCE PROCEDURES.

- (1) The Board of Adjustment as established by the Town of Mills River, hereinafter referred to as the "Hazard Review Board", shall hear and decide requests for variances from the requirements of this hazard prevention ordinance.
- (2) Any person aggrieved by a decision of the Hazard Review Board may appeal such decision to the Court, as provided in Article 14 of Chapter 160D and Chapter 7A of the North Carolina General Statutes.
- (3) The Administrator shall mail a notice of the hearing by USPS certified mail, no return receipt service, to the person or entity whose application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by this ordinance. In the absence of evidence to the contrary, the Town may rely on the Henderson County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the Administrator shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- (4) Variances may be issued for:
 - (a) the amount of fill placed in the SHA for the following development types, provided the fill is at an elevation no more than 2 feet above the base flood elevation and the fill covers a maximum of fifteen percent (15%) of the SHA: bona-fide farm and agricultural land uses and structures; a governmental or public utility use ~~in the furtherance of an essential public service~~; a stream restoration, natural lands restoration, or floodplain restoration project; a private road through the SHA to access a residential single-family dwelling that is not located in the SHA.
 - (b) functionally dependent facilities if determined to meet the definition as stated in Article 2 of this hazard prevention ordinance, provided provisions of Article 4, Section E (9 & 10) have been satisfied, and such facilities are protected by methods that minimize flood hazards during the base flood and create no additional threats to public safety.
- (5) In considering variances, the Hazard Review Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - (a) the danger that materials may be swept onto other lands to the injury of others;
 - (b) the danger to life and property due to flooding or erosion hazards;
 - (c) the susceptibility of the proposed facility and its contents to flood hazards and the effect of

such hazards on the individual owner and the public;

- (d) the importance of the services provided by the proposed facility to the community;
 - (e) the necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependent facility, where applicable;
 - (f) the availability of alternative locations, not subject to flooding or erosion hazards, for the proposed use;
 - (g) the compatibility of the proposed use with existing and anticipated development;
 - (h) the relationship of the proposed use to the comprehensive plan and any applicable hazard prevention program;
 - (i) the safety of access to the property in times of natural disasters for ordinary and emergency vehicles;
- (6) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (7) Upon consideration of the factors listed above and the purposes of this ordinance, the Hazard Review Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this hazard prevention ordinance.
- (8) The Administrator shall maintain the records of all appeal actions.
- (9) Conditions for Variances:
- (a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 - (b) Variances shall not be issued for development or fill within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering all hazards, to afford relief.
 - (d) Variances shall only be issued prior to development permit approval.
 - (e) Variances shall only be issued upon:
 - (i) a showing of good and sufficient cause;
 - (ii) a determination that failure to grant the variance would result in exceptional hardship; and
 - (iii) a determination that the granting of a variance will not result in increased flood heights,

additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(10) Limitations on Variances:

- (a) Variances shall not be issued to allow for a land use or structure that is prohibited by this ordinance.
- (b) Variances shall not be issued to allow for structures or accessory structures in a floodway / non-encroachment area.
- (c) Variances shall not be issued to allow for fill in a flood prone area that results in the elevation of the subject property, specifically the land area proposed for development, being more than two (2) feet above the base flood elevation (BFE).
- (d) Variances shall not be issued to allow for fill that covers more than fifteen percent (15%) of the SHA.

SECTION F. FEE SCHEDULE.

The Town Council may establish, and modify from time to time, a fee schedule for the administration and enforcement of this hazard prevention ordinance. Fees may include expenses for technical advisors and certified professional experts when needed to properly evaluate an application. In order to be deemed complete, all applications and appeals filed under this hazard prevention ordinance shall be accompanied by payment of all applicable fees.

SECTION G. AMENDMENTS.

The Town Council may from time to time amend the terms of this ordinance. No amendment shall be adopted by the Town Council until a public hearing has been held on such amendment. Notice of the hearing shall be published in a newspaper of general circulation in the Town at least once a week for two successive weeks prior to the hearing. The initial notice shall appear not more than twenty-five (25) days or less than ten (10) days prior to the hearing date. In computing the ten and twenty-five day periods, the date of publication is not to be counted, but the date of the hearing may be counted.

**ARTICLE 5.
PROVISIONS FOR HAZARD REDUCTION.**

SECTION A. SPECIFIC STANDARDS.

In all Special Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in this ordinance, the following provisions are required:

- (1) Residential Construction. New construction of residential structures is prohibited in any Special Hazard Area, unless the application is for the development of a residential accessory structure with no dwellings or utilities in the structure that must be located outside the floodway / non-encroachment area.

- (2) Non-Residential Construction. New construction of any commercial, industrial, or other non-residential structure is prohibited in any Special Hazard Area, unless the application is for a functionally dependent facility, a governmental or public utility use ~~in the furtherance of an essential public service~~, or bona-fide farm use or agricultural structure located outside the floodway / non-encroachment area.
- (3) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Hazard Area, the following criteria shall be met:
- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas). In order to facilitate this, accessory structures in SHAs will not be permitted with water and wastewater utility connections.
 - (b) Accessory structures shall not be temperature-controlled;
 - (c) Accessory structures shall be designed to have low flood hazard potential;
 - (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - (e) Accessory structures shall be firmly anchored;
- (7) Tanks. When gas, petroleum product, chemicals, and other liquid storage tanks are to be placed within a Special Hazard Area, including for bona-fide farm / agricultural uses, the following criteria shall be met to reduce hazards to the public:
- (a) Underground tanks. Underground tanks in Special Hazard Areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
 - (b) Above-ground tanks, elevated. Above-ground tanks in Special Hazard Areas shall be elevated to or above the BFE on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable Special Hazard Area;
 - (c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of this ordinance shall be permitted in Special Hazard Areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.
 - (d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:
 - (i) At or above the BFE or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

- (ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

SECTION B. FLOODWAYS AND NON-ENCROACHMENT AREAS.

Areas designated as floodways or non-encroachment areas are located within the Special Hazard Areas established in Article 3, Section C. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, and other developments shall be permitted, unless the work is an agriculture / bona-fide farm land maintenance activity, or work related to the removal of storm debris from a property, or repair of existing structures and infrastructure on a governmental or public utility property due to the impacts from a declared natural disaster, as long as the work results in the property being returned to its pre-storm condition only.

SECTION C. STANDARDS FOR FILL.

- (1) Fill is prohibited in the Special Hazard Areas, except for the following specific development activities:
 - (a) Bona-fide farm and agricultural development, redevelopment, and land maintenance, including but not limited to fill for the elevation of agricultural structures outside the floodway and non-encroachment area; fill for the installation or replacement of culverts, pipes, drainage infrastructure, utilities, farm roads, and other activities related to a bona-fide farm use of the subject property anywhere within the SHA, and agricultural land maintenance related to repairing the banks of a surface water body (stream, creek, river, etc.) that was damaged due to severe erosion or a streambank blowout due to a natural storm event, which shall not change the elevation or topography of the streambank area beyond its condition prior to the storm event. Agricultural land maintenance activities shall not cause a significant change in the topography of the property nor a significant change in the elevation of the farm land.
 - (b) Governmental and public utility development, redevelopment, and land maintenance done by a unit of government ~~in the furtherance of an essential public service~~, including but not limited to fill for public utilities; public roads and transportation improvement projects; public infrastructure; active and passive recreation projects; land and environmental remediation, stabilization, restoration, and conservation; and other activities reasonably related to providing ~~an essential~~ governmental service to the public.
 - (c) A functionally dependent facility.
 - (d) A stream restoration, natural lands restoration, or floodplain restoration project that will help improve water quality and the functioning of streams, wetlands, or floodplains.
 - (e) A private residential road through a SHA to access a residential single-family dwelling that is located outside the SHA, when there are no other reasonable options for access.

- (2) Fill requirements and limitations on amount of fill in SHAs.
- (a) Fill shall only be placed in the SHA when absolutely necessary, and reasonable justification for the placement of fill shall be provided with the hazard development permit application. The proposed amount of fill shall represent the minimum amount of SHA fill intrusion necessary for the proposed development.
 - (b) Fill for bona-fide farm and agricultural land maintenance activities shall not cause any significant change in the topography or elevation of land in the SHA, and does not require a no-rise certification by a licensed engineer. This includes agricultural land maintenance activities in a floodway / non-encroachment area, which can include but is not limited to land maintenance occurring to repair the banks of a surface water body (stream, creek, river, etc.) that was damaged due to severe erosion or a streambank blowout due to a natural storm event.
 - (c) Amount of fill. A property owner may fill up to five percent (5%) of the SHA for the allowed development types listed in Article 5, Section C(1) of this ordinance. Any deviation from this standard requires a fill variance from the hazard review board. This limitation also applies to the placement of fill for the elevation of agricultural structures in the SHA.
 - (d) Maximum land elevation through fill. A property owner may place fill that raises the elevation of the property no more than the base flood elevation. Any deviation from this standard requires a fill variance from the hazard review board, which must be accompanied by a no-rise certification analysis. This limitation also applies to the placement of fill for the elevation of agricultural structures in the SHA.
 - (e) Non-conversion agreement required for fill. Any placement of fill in the SHA requires a non-conversion agreement with the Town of Mills River to be recorded in the Henderson County Register of Deeds Office, which shall run with the land in perpetuity and bind future property owners, including the owners of future subdivided parcels from the main tract of land subject to the fill activity. The purpose of the non-conversion fill agreement is to ensure that subsequent fill operations that may be done by future property owners over longer periods of time do not violate the provisions of this ordinance. Non-conversion agreements are not required for agricultural land maintenance activities, as defined in this ordinance.
 - (f) Prohibitions on fill. Fill in the SHA is prohibited for the following development types and activities:
 - i. Fill for nonresidential, nonagricultural development.
 - ii. Fill for any type of residential dwelling.
 - iii. Fill for the purpose of raising the elevation of land for future unallowed development types.

**ARTICLE 6.
LEGAL STATUS PROVISIONS.**

SECTION A. EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING

FLOODPLAIN HAZARD PREVENTION ORDINANCE.

The enactment of this ordinance shall not effect any action, suit or proceeding instituted or pending. All provisions of the Hazard Prevention Ordinance of the Town of Mills River enacted on October 6, 2025, as amended, which are not reenacted herein are repealed.

SECTION B. EFFECT UPON OUTSTANDING HAZARD DEVELOPMENT PERMITS.

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

SECTION C. SEVERABILITY

If any section, clause, sentence or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

SECTION D. EFFECTIVE DATE.

This ordinance shall take effect and be in force on and after October 6, 2025.

Patty Brown
Town Clerk

Shannon Gonce
Mayor

Option 3 – Agricultural Exemption & General Government

ORDINANCE NO. 2025-23

**HAZARD PREVENTION ORDINANCE
OF THE
TOWN OF MILLS RIVER,
NORTH CAROLINA**

Adopted: October 6, 2025

TITLE XVII: HAZARD PREVENTION

ARTICLE 1.

STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION A. STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in Article 8 of Chapter 160A, and Section 215.61 Part 6 Article 21 of Chapter 143 of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations, including those regulating the use of land, designed to promote the public health, safety, and general welfare.

Therefore, the Town Council of the Town of Mills River, North Carolina does ordain as follows:

SECTION B. FINDINGS OF FACT.

(1) The flood prone areas within the jurisdiction of the Town of Mills River are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

SECTION C. STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to minimize hazards within flood prone areas.

SECTION D. OBJECTIVES.

The objectives of this ordinance are to:

- (1) Protect human life, safety, and health;
- (2) Help maintain a stable tax base by providing for the sound use and development of property in all flood prone areas of the Town;
- (3) Secure safety from the dangers posed by water and flooding;
- (4) Promote public health, safety and general welfare.

ARTICLE 2. DEFINITIONS.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Administrator” is the individual appointed to administer and enforce the hazard prevention regulations contained herein.

“Agriculture / Bona-fide Farm” means the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1 and G.S. 160D-903, however this does not include the use of a farm property for nonfarm purposes, [or the preparation of a bona-fide farm property for future non-farm development.](#)

~~“Agriculture / Bona-fide Farm Land Maintenance” means the filling, grading, and excavation of agricultural land actively used for farm purposes within flood-prone areas where the land maintenance activities directly related to the farm use do not cause a significant change in the topography of the property nor a significant change in the elevation of the farm land.~~

“Appeal” means a request for a review of the Administrator's interpretation of any provision of this ordinance.

“Area of Special Flood Hazard” see “Flood Prone Area”.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a flood prone area, it may be obtained from engineering studies available from a Federal, State, or other source.

“Building” see “Structure”.

“Chemical & Petroleum Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products or petroleum products.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, except development does not include ~~agriculture / bona-fide farm land maintenance activities directly related to the farm use, nor does the definition of development include~~ the removal of storm debris from a property due to the impacts from a declared natural disaster, as long as the property is returned to its pre-storm condition only.

“Development Activity” means any activity defined as Development which will necessitate a Hazard Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures, except development activity does not include ~~agriculture / bona-fide farm land maintenance activity, nor does it include~~ the removal of storm debris from a property due to the impacts from a declared natural disaster.

“Disposal” means, as defined in NCGS §130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a flood prone area, which may impede or alter the flow capacity of that area.

“Existing building and existing structure” means any building and/or structure for which the “start of construction” commenced before the effective date of the hazard prevention regulations adopted by the community, dated 10/06/2025.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the hazard prevention regulations adopted by the community dated 10/06/2025.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland waters; and/or
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of the community, issued by the federal government, on which the flood prone areas and the floodways are delineated.

“Flood Hazard Boundary Map (FHBM)” means an official map of the community, issued by the federal government, where the boundaries of the flood prone areas have been defined as Zone A.

“Flood Prone Area” means any land area susceptible to being inundated by water from any source.

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map that reflects the severity

or type of flooding in the area.

“Floodplain” see “Flood Prone Area”

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water.

“Hazard Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Hazardous Waste Management Facility” means, as defined in NCGS §130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“Light Duty Truck” means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or
- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (c) Available with special features enabling off-street or off-highway operation and use.

“Lowest Adjacent Grade (LAG)” means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Mean Sea Level” means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the flood prone area, to which Base Flood Elevations (BFEs) shown on a federal flood map are referenced.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the initial hazard prevention regulations and includes any subsequent improvements to such structures.

“No-rise Certification Analysis” means an engineering analysis of the impact that a proposed development in a flood prone area is expected to have on the flood prone area boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting minimum federal requirements.

“Non-Conversion Agreement” means a document stating that the owner and subsequent owners, including future owners of subdivided parcels from the parent tract subject to the fill activity, will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk’s or recorder’s stamps and/or notations that the filing has been completed

“Non-Encroachment Area” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in federal flood maps and studies.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (e) is fully licensed and ready for highway use.

For the purposes of this ordinance, “Tiny Homes/Houses” and “Park Models” that do not meet the items listed above are not considered Recreational Vehicles and should meet the standards of and be permitted as Residential Structures.

“Reference Level” is the bottom of the lowest horizontal structural member of the lowest floor for structures within all flood prone areas.

“Remedy a Violation” means to bring the structure or other development into compliance with the community hazard prevention regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Salvage Yard” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in

NCGS §130A-290(a)(35).

“Solid Waste Disposal Site” means, as defined in NCGS §130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Hazard Area (SHA)” means the land in a flood prone area subject to a one percent (1%) or greater chance of being flooded in any given year.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas or chemical storage tank that is principally above ground.

“Temperature Controlled” means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

“Variance” is a grant of relief from the requirements of this ordinance.

“Violation” means the failure of a structure or other development to be fully compliant with the community's hazard prevention regulations. A structure or other development without evidence of compliance is presumed to be in violation until such time as the necessary documentation is provided.

“Water Surface Elevation (WSE)” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the flood prone areas of a riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

ARTICLE 3. GENERAL PROVISIONS.

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all Special Hazard Areas within the jurisdiction of the Town of Mills River, [except those uses described in Article 3, Section B of this ordinance.](#)

SECTION B. EXEMPTION FOR BONA-FIDE FARMS

[This hazard prevention ordinance shall not apply to or regulate bona-fide farms, as defined in this ordinance. However, any use of a bona-fide farm property for non-farm purposes or preparation of a bona-fide farm property for future non-farm development shall be subject to the provisions of this ordinance.](#)

SECTION CB. PROHIBITION OF DEVELOPMENT IN SPECIAL HAZARD AREAS.

Development in a Special Hazard Area is prohibited except where:

- (1) the application is for a residential accessory structure with no dwellings, temperature control, or utilities in the structure; or

~~(2) — the application is for bona fide farm and/or agricultural land uses, land maintenance activities, or structures, as defined and regulated in this ordinance; or~~

(23) the application is for a functionally dependent facility; or

(34) the application is for a governmental or public utility use ~~in the furtherance of an essential public service;~~ or

(45) the application is for a stream restoration, natural lands restoration, or floodplain restoration project that will help improve water quality and the functioning of streams, wetlands, and floodplains; or

(56) the application is for a private residential road through a special hazard area to access a residential single-family dwelling that is not located within a special hazard area.

All other applications for development are expressly prohibited, including but not limited to nonresidential uses and structures, commercial uses and structures, industrial uses and structures, residential structures containing a single-family dwelling, and residential structures containing multifamily dwellings.

SECTION ~~D~~C. BASIS FOR ESTABLISHING THE SPECIAL HAZARD AREAS.

The Special Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Henderson County dated October 2, 2008 which are adopted by reference and declared to be a part of this ordinance, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto.

SECTION ~~E~~D. ESTABLISHMENT OF HAZARD DEVELOPMENT PERMIT.

A Hazard Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Hazard Areas determined in accordance with the provisions of Article 3, Section C of this ordinance.

SECTION ~~F~~E. COMPLIANCE.

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

SECTION ~~G~~F. ABROGATION AND GREATER RESTRICTIONS.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION ~~H~~G. INTERPRETATION.

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

- (1) considered as minimum requirements;
- (2) liberally construed in favor of the Mills River Town Council; and
- (3) deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION I.H. WARNING AND DISCLAIMER OF LIABILITY.

This ordinance is not intended to provide any flood protection but is considered reasonable for regulatory purposes and is based on scientific and engineering considerations to limit hazards to the community in flood prone areas. This ordinance does not imply that land outside the Special Hazard Areas or uses permitted within such areas will be free from damage or hazards. This ordinance shall not create liability on the part of the Town of Mills River or by any officer or employee thereof for any damages or hazards that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

SECTION J. PENALTIES FOR VIOLATION.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 3 misdemeanor pursuant to NC G.S. §14-4, NC G.S. 143-215.61, Article 8 of Chapter 160A, and Chapter 160D. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00. Each day such violation continues shall be considered a separate finable offense. Nothing herein contained shall prevent the Town of Mills River from taking such other lawful action as is necessary to prevent or remedy any violation.

**ARTICLE 4.
ADMINISTRATION.**

SECTION A. DESIGNATION OF ADMINISTRATOR.

The Town Planning Director, or her/his designee, hereinafter referred to as the “Administrator”, is hereby appointed to administer and implement the provisions of this hazard prevention ordinance.

SECTION B. HAZARD DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.

- (1) **Application Requirements.** Application for a Hazard Development Permit shall be made to the Administrator prior to any development activities located within Special Hazard Areas. The following items shall be presented to the Administrator to apply for a hazard development permit:
 - (a) A site plan prepared by a licensed professional, drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - (i) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - (ii) the boundary of the Special Hazard Area as delineated on a federal flood map as

determined in Article 3, Section C, or a statement that the entire lot is within the Special Hazard Area;

- (iii) the boundary of the floodway(s) or non-encroachment area(s);
 - (iv) the Base Flood Elevation (BFE) where provided;
 - (v) the certification of the site plan by a registered land surveyor or professional engineer.
- (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
- (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - (ii) Elevation in relation to mean sea level to which any non-residential structure in a flood prone area will be flood proofed; and
 - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or flood proofed.
- (c) Usage details of any enclosed areas below the lowest floor.
- (d) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- (e) Certification that all other Local, State and Federal permits required prior to hazard development permit issuance have been received.
- (f) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Article 5, Section B, subsections (6) and (7) of this ordinance are met.
- (g) A no-rise certification prepared by a licensed professional engineer, for development activities that involve the placement of fill within Special Hazard Areas that makes significant changes to the elevation of the subject land proposed for development, excepting agricultural land maintenance activities anywhere in the SHA or fill for the elevation of an agricultural structure in the SHA, but outside the floodway.

(2) **Permit Requirements.** The Hazard Development Permit shall include, but not be limited to:

- (a) A description of the development to be permitted under the hazard development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials, etc.).
- (b) The Special Hazard Area determination for the proposed development in accordance with available data specified in Article 3, Section C.
- (c) A statement that no fill material or other development shall encroach into the floodway or non-

encroachment area of any watercourse, as applicable, excepting agricultural land maintenance activities.

~~(3) **Permit Exemptions.** The following types of development, land uses, and structures are exempt from obtaining a hazard development permit, but must abide by the ordinance standards related to fill and tanks in Special Hazard Areas.~~

~~(a) Bona fide farm and agricultural structures that are located outside the floodway / non-encroachment area. An agricultural structure elevated through the placement of fill must still abide by the fill limitations of this ordinance.~~

~~(b) Bona fide farm and agricultural land maintenance activities that do not cause a significant change in the topography of the land nor a significant change in the elevation of the land anywhere in the SHA.~~

SECTION C. DUTIES AND RESPONSIBILITIES OF THE ADMINISTRATOR.

The Administrator shall perform, but not be limited to, the following duties:

- (1) Review all hazard development applications and issue permits for all proposed development within Special Hazard Areas to assure that the requirements of this hazard prevention ordinance have been satisfied.
- (2) Review all proposed development within Special Hazard Areas to assure that all necessary Local, State and Federal permits have been received.
- (3) Prevent encroachments into floodways and non-encroachment areas due to the high flood hazards in these areas.
- (4) Obtain actual elevation (in relation to NAVD 1988 mean sea level) of the new level of ground elevation after completion of a fill operation, in accordance with the provisions of this ordinance.
- (5) Where interpretation is needed as to the exact location of boundaries of the Special Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (6) When Base Flood Elevation (BFE) data have not been provided in accordance with the provisions of Article 3, Section C, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section C(2)(b), in order to administer the provisions of this ordinance.
- (7) When Base Flood Elevation (BFE) data are provided but no floodway or non-encroachment area data have been provided in accordance with the provisions of Article 3, Section C, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal,

State, or other source in order to administer the provisions of this ordinance.

- (8) Permanently maintain all records that pertain to the administration of this hazard prevention ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (9) Make on-site inspections of work in progress. As the work pursuant to a hazard development permit progresses, the Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local hazard prevention ordinance and the terms of the permit. In exercising this power, the Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the Town of Mills River at any reasonable hour for the purposes of inspection or other enforcement action.
- (10) Issue stop-work orders as required. Whenever a building, land, or part thereof is being developed, constructed, reconstructed, altered, filled, or repaired in violation of this ordinance, the Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (11) Revoke hazard development permits as required. The Administrator may revoke and require the return of the hazard development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any hazard development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (12) Make periodic inspections throughout the Special Hazard Areas within the jurisdiction of the Town of Mills River. The Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (13) Follow through with corrective procedures of this ordinance.
- (14) Review, provide input, and make recommendations for variance requests.

SECTION D. CORRECTIVE PROCEDURES.

- (1) Notices of Violation: When the Administrator determines work or activity has been undertaken in violation of applicable local or State law, or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-

1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405

- (2) **Stop Work Orders:** Whenever any work or activity subject to local or State law is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the local government that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.
- (3) **Remedies:** Subject to the provisions of local law, this hazard prevention ordinance may be enforced by any remedy provided by G.S. 160A-175 or G.S. 153A-123. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of this ordinance, the Town of Mills River, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.
- (4) **Appeal:** Any owner who has received an order to take corrective action may appeal the order to the Mills River Board of Adjustment (The Hazard Review Board) by giving notice of appeal in writing to the Administrator and the Town Clerk within thirty (30) days following issuance of the final order. The notice of appeal shall state the grounds for the appeal. In the absence of an appeal, the order of the Administrator shall be final. The Board of Adjustment / Hazard Review Board shall hear an appeal in accordance with §154.179 of the Mills River Zoning Ordinance within a reasonable time and may affirm, modify and affirm, or revoke the order. Any person who has standing under G.S. 160D-1402(c) or the Mills River Town Council may appeal an administrative decision to the board. The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. An appeal of a notice of violation or other enforcement order to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal or during the pendency of any civil proceeding authorized by law or related appeal. If, however, the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the hazard prevention ordinance, then enforcement proceedings are not stayed except

by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after the request is filed. Notwithstanding any other provision of this section, appeals of decisions granting a hazard development approval or otherwise affirming that a proposed use of property is consistent with the hazard prevention ordinance does not stay the further review of an application for hazard development approvals to use the property; in these situations, the appellant or Town of Mills River may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed. The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution.

- (5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with a decision or an order of the Board of Adjustment / Hazard Review Board following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to Article 8 of Chapter 160A, NC G.S. 14-4, NC G.S. §143-215.61, and Chapter 160D and shall be punished at the discretion of the court.

SECTION E. VARIANCE PROCEDURES.

- (1) The Board of Adjustment as established by the Town of Mills River, hereinafter referred to as the “Hazard Review Board”, shall hear and decide requests for variances from the requirements of this hazard prevention ordinance.
- (2) Any person aggrieved by a decision of the Hazard Review Board may appeal such decision to the Court, as provided in Article 14 of Chapter 160D and Chapter 7A of the North Carolina General Statutes.
- (3) The Administrator shall mail a notice of the hearing by USPS certified mail, no return receipt service, to the person or entity whose application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by this ordinance. In the absence of evidence to the contrary, the Town may rely on the Henderson County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the Administrator shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- (4) Variances may be issued for:
- (a) the amount of fill placed in the SHA for the following development types, provided the fill is at an elevation no more than 2 feet above the base flood elevation and the fill covers a maximum of fifteen percent (15%) of the SHA: ~~bona fide farm and agricultural land uses and structures;~~ a governmental or public utility use ~~in the furtherance of an essential public service;~~ a stream restoration, natural lands restoration, or floodplain restoration project; a private road through the SHA to access a residential single-family dwelling that is not located in the SHA.
 - (b) functionally dependent facilities if determined to meet the definition as stated in Article 2 of this hazard prevention ordinance, provided provisions of Article 4, Section E (9 & 10) have

been satisfied, and such facilities are protected by methods that minimize flood hazards during the base flood and create no additional threats to public safety.

- (5) In considering variances, the Hazard Review Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - (a) the danger that materials may be swept onto other lands to the injury of others;
 - (b) the danger to life and property due to flooding or erosion hazards;
 - (c) the susceptibility of the proposed facility and its contents to flood hazards and the effect of such hazards on the individual owner and the public;
 - (d) the importance of the services provided by the proposed facility to the community;
 - (e) the necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependent facility, where applicable;
 - (f) the availability of alternative locations, not subject to flooding or erosion hazards, for the proposed use;
 - (g) the compatibility of the proposed use with existing and anticipated development;
 - (h) the relationship of the proposed use to the comprehensive plan and any applicable hazard prevention program;
 - (i) the safety of access to the property in times of natural disasters for ordinary and emergency vehicles;
- (6) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (7) Upon consideration of the factors listed above and the purposes of this ordinance, the Hazard Review Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this hazard prevention ordinance.
- (8) The Administrator shall maintain the records of all appeal actions.
- (9) Conditions for Variances:
 - (a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 - (b) Variances shall not be issued for development or fill within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (c) Variances shall only be issued upon a determination that the variance is the minimum

necessary, considering all hazards, to afford relief.

- (d) Variances shall only be issued prior to development permit approval.
- (e) Variances shall only be issued upon:
 - (i) a showing of good and sufficient cause;
 - (ii) a determination that failure to grant the variance would result in exceptional hardship; and
 - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(10) Limitations on Variances:

- (a) Variances shall not be issued to allow for a land use or structure that is prohibited by this ordinance.
- (b) Variances shall not be issued to allow for structures or accessory structures in a floodway / non-encroachment area.
- (c) Variances shall not be issued to allow for fill in a flood prone area that results in the elevation of the subject property, specifically the land area proposed for development, being more than two (2) feet above the base flood elevation (BFE).
- (d) Variances shall not be issued to allow for fill that covers more than fifteen percent (15%) of the SHA.

SECTION F. FEE SCHEDULE.

The Town Council may establish, and modify from time to time, a fee schedule for the administration and enforcement of this hazard prevention ordinance. Fees may include expenses for technical advisors and certified professional experts when needed to properly evaluate an application. In order to be deemed complete, all applications and appeals filed under this hazard prevention ordinance shall be accompanied by payment of all applicable fees.

SECTION G. AMENDMENTS.

The Town Council may from time to time amend the terms of this ordinance. No amendment shall be adopted by the Town Council until a public hearing has been held on such amendment. Notice of the hearing shall be published in a newspaper of general circulation in the Town at least once a week for two successive weeks prior to the hearing. The initial notice shall appear not more than twenty-five (25) days or less than ten (10) days prior to the hearing date. In computing the ten and twenty-five day periods, the date of publication is not to be counted, but the date of the hearing may be counted.

ARTICLE 5.
PROVISIONS FOR HAZARD REDUCTION.

SECTION A. SPECIFIC STANDARDS.

In all Special Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in this ordinance, the following provisions are required:

- (1) Residential Construction. New construction of residential structures is prohibited in any Special Hazard Area, unless the application is for the development of a residential accessory structure with no dwellings or utilities in the structure that must be located outside the floodway / non-encroachment area.
- (2) Non-Residential Construction. New construction of any commercial, industrial, or other non-residential structure is prohibited in any Special Hazard Area, unless the application is for a functionally dependent facility, a governmental or public utility use ~~in the furtherance of an essential public service~~, or bona-fide farm use or agricultural structure located outside the floodway / non-encroachment area.
- (3) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Hazard Area, the following criteria shall be met:
 - (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas). In order to facilitate this, accessory structures in SHAs will not be permitted with water and wastewater utility connections.
 - (b) Accessory structures shall not be temperature-controlled;
 - (c) Accessory structures shall be designed to have low flood hazard potential;
 - (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - (e) Accessory structures shall be firmly anchored;
- (7) Tanks. When gas, petroleum product, chemicals, and other liquid storage tanks are to be placed within a Special Hazard Area, ~~including for bona-fide farm / agricultural uses~~, the following criteria shall be met to reduce hazards to the public:
 - (a) Underground tanks. Underground tanks in Special Hazard Areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
 - (b) Above-ground tanks, elevated. Above-ground tanks in Special Hazard Areas shall be elevated to or above the BFE on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet

the foundation requirements of the applicable Special Hazard Area;

- (c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of this ordinance shall be permitted in Special Hazard Areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.
- (d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:
 - (i) At or above the BFE or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
 - (ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

SECTION B. FLOODWAYS AND NON-ENCROACHMENT AREAS.

Areas designated as floodways or non-encroachment areas are located within the Special Hazard Areas established in Article 3, Section C. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, and other developments shall be permitted, unless the work is ~~an agriculture / bona fide farm land maintenance activity or work~~ related to the removal of storm debris from a property, or repair of existing structures and infrastructure on a governmental or public utility property due to the impacts from a declared natural disaster, as long as the work results in the property being returned to its pre-storm condition only.

SECTION C. STANDARDS FOR FILL.

- (1) Fill is prohibited in the Special Hazard Areas, except for the following specific development activities:

- ~~(a) Bona fide farm and agricultural development, redevelopment, and land maintenance, including but not limited to fill for the elevation of agricultural structures outside the floodway and non-encroachment area; fill for the installation or replacement of culverts, pipes, drainage infrastructure, utilities, farm roads, and other activities related to a bona fide farm use of the subject property anywhere within the SHA, and agricultural land maintenance related to repairing the banks of a surface water body (stream, creek, river, etc.) that was damaged due to severe erosion or a streambank blowout due to a natural storm event, which shall not change the elevation or topography of the streambank area beyond its condition prior to the storm event. Agricultural land maintenance activities shall not cause a significant change in the topography of the property nor a significant change in the elevation of the farm land.~~

- ~~(b)~~(a) Governmental and public utility development, redevelopment, and land maintenance done by

a unit of government ~~in the furtherance of an essential public service~~, including but not limited to fill for public utilities; public roads and transportation improvement projects; public infrastructure; active and passive recreation projects; land and environmental remediation, stabilization, restoration, and conservation; and other activities reasonably related to providing ~~an essential~~ governmental service to the public.

~~(e)~~(b)A functionally dependent facility.

~~(d)~~(c)A stream restoration, natural lands restoration, or floodplain restoration project that will help improve water quality and the functioning of streams, wetlands, or floodplains.

~~(e)~~(d)A private residential road through a SHA to access a residential single-family dwelling that is located outside the SHA, when there are no other reasonable options for access.

(2) Fill requirements and limitations on amount of fill in SHAs.

(a) Fill shall only be placed in the SHA when absolutely necessary, and reasonable justification for the placement of fill shall be provided with the hazard development permit application. The proposed amount of fill shall represent the minimum amount of SHA fill intrusion necessary for the proposed development.

~~(b) Fill for bona fide farm and agricultural land maintenance activities shall not cause any significant change in the topography or elevation of land in the SHA, and does not require a no-rise certification by a licensed engineer. This includes agricultural land maintenance activities in a floodway / non-encroachment area, which can include but is not limited to land maintenance occurring to repair the banks of a surface water body (stream, creek, river, etc.) that was damaged due to severe erosion or a streambank blowout due to a natural storm event.~~

~~(e)~~(b)Amount of fill. A property owner may fill up to five percent (5%) of the SHA for the allowed development types listed in Article 5, Section C(1) of this ordinance. Any deviation from this standard requires a fill variance from the hazard review board. This limitation also applies to the placement of fill for the elevation of agricultural structures in the SHA.

~~(d)~~(c)Maximum land elevation through fill. A property owner may place fill that raises the elevation of the property no more than the base flood elevation. Any deviation from this standard requires a fill variance from the hazard review board, which must be accompanied by a no-rise certification analysis. This limitation also applies to the placement of fill for the elevation of agricultural structures in the SHA.

~~(e)~~(d)Non-conversion agreement required for fill. Any placement of fill in the SHA requires a non-conversion agreement with the Town of Mills River to be recorded in the Henderson County Register of Deeds Office, which shall run with the land in perpetuity and bind future property owners, including the owners of future subdivided parcels from the main tract of land subject to the fill activity. The purpose of the non-conversion fill agreement is to ensure that subsequent fill operations that may be done by future property owners over longer periods of time do not violate the provisions of this ordinance. Non-conversion agreements are not required for agricultural land maintenance activities, as defined in this ordinance.

(e) Prohibitions on fill. Fill in the SHA is prohibited for the following development types and activities:

- i. Fill for nonresidential, nonagricultural development.
- ii. Fill for any type of residential dwelling.
- iii. Fill for the purpose of raising the elevation of land for future unallowed development types.

**ARTICLE 6.
LEGAL STATUS PROVISIONS.**

SECTION A. EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOODPLAIN HAZARD PREVENTION ORDINANCE.

The enactment of this ordinance shall not effect any action, suit or proceeding instituted or pending. All provisions of the Hazard Prevention Ordinance of the Town of Mills River enacted on October 6, 2025, as amended, which are not reenacted herein are repealed.

SECTION B. EFFECT UPON OUTSTANDING HAZARD DEVELOPMENT PERMITS.

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

SECTION C. SEVERABILITY

If any section, clause, sentence or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

SECTION D. EFFECTIVE DATE.

This ordinance shall take effect and be in force on and after October 6, 2025.

Patty Brown
Town Clerk

Shannon Gonce
Mayor

§ 3.4 DISTRICTS: OVERLAY

3.4.1. GENERAL

A. PURPOSE

Overlay zoning districts are superimposed over either all or a portion of one or more underlying conventional or conditional zoning districts with the intent of supplementing generally applicable development regulations with additional development regulations that address special area-specific conditions, features, or plans while maintaining the character and purposes of the underlying zoning district.

B. ESTABLISHMENT

The overlay zoning districts are established in accordance with the summary table in [Section <>, Districts Established](#).

C. CLASSIFICATION

Land shall be classified or reclassified into an overlay zoning district only in accordance with the procedures and requirements set forth in [Section <>, Conventional Rezoning](#), and this section.

D. RELATIONSHIP TO UNDERLYING ZONING DISTRICTS

- 01.** Regulations governing development in an overlay zoning district shall apply in addition to the regulations governing development in the underlying conventional or conditional zoning district, unless otherwise expressly stated.
- 02.** In cases where the standards governing an overlay zoning district expressly conflict with those governing an underlying conventional or conditional zoning district, the provisions in [Section <>, Conflict](#), shall control.
- 03.** Where land is classified into multiple overlay zoning districts and the standards governing one overlay zoning district expressly conflict with those governing another overlay district, the provisions in [Section <>, Conflict](#), shall control.

3.4.2. SPECIAL FLOOD HAZARD AREA OVERLAY (SFHA) ⁶

A. INTRODUCTION

01. STATUTORY AUTHORIZATION

Authorization to adopt and administer these provisions is granted to the Town by the Legislature of the State of North Carolina in accordance with the standards in Article 8 of Chapter 160A and NCGS§143-215.61.

02. FINDINGS OF FACT

The Town Council of the Town of Mills River, North Carolina does ordain as follows:

- a.** The flood prone areas within the jurisdiction of the Town of Mills River are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- b.** These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

03. STATEMENT OF PURPOSE

It is the purpose of this section to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to minimize hazards within flood prone areas. These standards are adopted in pursuit of the following objectives:

- a.** To protect human life safety, and health;

⁶ This section is derived from the newly adopted Hazard Prevention Ordinance. Please note that items have been pulled from the original text and placed or absorbed by other Ordinance sections. Article 2. Definition has been added to Chapter 8, Word Usage. Compliant, Abrogation, and Interpretation are all absorbed by regulatory language in Chapter 1. Violations has been moved to Chapter 7. Administration, Permits, Variances, Fee schedule, and Amendments have been moved to Chapter 2.



- b. To help maintain a stable tax base by providing for the sound use and development of property in all flood prone areas of the Town;
- c. To secure safety from the dangers posed by water and flooding; and
- d. To promote public health, safety, and general welfare

04. APPLICABILITY

These standards shall apply to all Special Flood Hazard Areas within the jurisdiction of the Town of Mills River.

B. GENERAL STANDARDS

01. PROHIBITION OF DEVELOPMENT IN SPECIAL FLOOD HAZARD AREA

- a. Development in a Special Flood Hazard Area is prohibited except where:
 - i. The application is for a residential accessory structure with no dwellings, temperature control, or utilities in the structure; or
 - ii. The application is for bona-fide farm and/or agricultural land uses, land maintenance activities, or structures, as defined and regulated in this Ordinance; or
 - iii. The application is for a functionally dependent facility; or
 - iv. The application is for a governmental or public utility use; or
 - v. The application is for a stream restoration, natural lands restoration, or floodplain restoration project that will help improve water quality and the functioning of streams, wetlands, and floodplains; or
 - vi. The application is for a private residential road through a Special Flood Hazard Area to access a residential single-family dwelling that is not located within a Special Flood Hazard Area.
- b. All other forms of development in the Special Flood Hazard Area are expressly prohibited, including but not limited to non-residential uses and structures, commercial uses and structures, industrial uses and structures, residential structures containing a single-family dwelling, and residential structures containing multi-family dwellings.

02. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Henderson County dated October 2, 2008, which are adopted by reference and declared to be a part of this Ordinance, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this Ordinance, and all revisions thereto.

03. ESTABLISHMENT OF FLOOD HAZARD PERMIT

A Flood Hazard Permit, issued in accordance with Section <>, Flood Hazard Permit, shall be required prior to the commencement of any permitted development activities within the Special Flood Hazard Area.

04. WARNING AND DISCLAIMER OF LIABILITY

These standards are not intended to provide any flood protection but are considered reasonable for regulatory purposes and is based on scientific and engineering considerations to limit hazards to the community in flood prone areas. These standards do not imply that land outside the Special Flood Hazard Area or uses permitted within such areas will be free from damage or hazards. These standards shall not create liability on the part of the Town of Mills River or by any officer or employee thereof for any damages or hazards that result from reliance on these standards or any administrative decision lawfully made hereunder.

C. PROVISIONS FOR HAZARD REDUCTION

01. SPECIFIC STANDARDS

The following requirements shall apply in all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided:

a. RESIDENTIAL CONSTRUCTION

New construction of residential structures is prohibited in any Special Flood Hazard Area, unless the application is for the development of a residential accessory structure with no dwellings or utilities in the structure that must be located outside the floodway / non-encroachment area.

b. NON-RESIDENTIAL CONSTRUCTION

New construction of any commercial, industrial, or other non-residential structure is prohibited in any Special Flood Hazard Area, unless the application is for a functionally dependent facility, a governmental or public utility use, or bona-fide farm use or agricultural structure located outside the floodway / non-encroachment area.



c. SECONDARY STRUCTURES

The following requirements apply to secondary structures (sheds, detached garages, etc.) when located within a Special Flood Hazard Area:

- i. Secondary structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas). In order to facilitate this, accessory structures in SFHAs will not be permitted with water and wastewater utility connections;
- ii. Secondary structures shall not be temperature-controlled;
- iii. Secondary structures shall be designed to have low flood hazard potential;
- iv. Secondary structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters; and
- v. Secondary structures shall be firmly anchored.

d. STORAGE TANKS

The following criteria apply to gas, petroleum products, chemicals, and other liquid storage tanks when located within a Special Flood Hazard Area (including storage tanks serving a bona-fide farm / agricultural uses):

i. Underground Tanks

Underground tanks in Special Flood Hazard Areas shall be anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy, assuming the tank is empty;

ii. Above-ground Tanks, Elevated

Above-ground tanks in Special Flood Hazard Areas shall be elevated to or above the BFE on a supporting structure that is designed to prevent flotation, collapse, or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable Special Flood Hazard Area;

iii. Above-Ground Tanks, not Elevated

Above-ground tanks that do not meet the elevation requirements of this Ordinance shall be permitted in Special Flood Hazard Areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

iv. Tank Inlets and Vents

Tank inlets, fill openings, outlets and vents shall be:

- 1. At or above the BFE or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
- 2. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

02. FLOODWAYS AND NON-ENCROACHMENT AREAS

Floodways or non-encroachment within the Special Flood Hazard Areas shall comply with the following:

- a. No encroachments, including fill, new construction, and other developments shall be permitted, unless the work is an agriculture / bona-fide farm land maintenance activity, or work related to the removal of storm debris from a property, or repair of existing structures and infrastructure on a governmental or public utility property due to the impacts from a declared natural disaster, as long as the work results in the property being returned to its pre-storm condition only.

03. STANDARDS FOR FILL

a. GENERALLY

Deposition of fill in the Special Flood Hazard Area is prohibited, except as part of the following specific activities:

- i. Bona-fide farm and agricultural development, redevelopment, and land maintenance, including but not limited to fill for the elevation of agricultural structures outside the floodway and non-encroachment area;
- ii. Fill for the installation or replacement of culverts, pipes, drainage infrastructure, utilities, farm roads, and other activities related to a bona-fide farm use of the subject property anywhere within the SFHA, and agricultural land maintenance related to repairing the banks of a surface water body (stream, creek, river, etc.) that was damaged due to severe erosion or a streambank blowout due to a natural storm event, which shall not change the elevation or topography of the streambank area beyond its condition prior to the storm event. Agricultural land maintenance activities shall not cause a significant change in the topography of the property nor a significant change in the elevation of the farm land.
- iii. Governmental and public utility development, redevelopment, and land maintenance done by a unit of government, including but not limited to fill for public utilities; public roads and transportation improvement projects; public infrastructure; active and passive recreation projects; land and environmental remediation, stabilization, restoration, and conservation; and other activities reasonably related to providing a governmental service to the public.
- iv. A functionally dependent facility.



- v. A stream restoration, natural lands restoration, or floodplain restoration project that will help improve water quality and the functioning of streams, wetlands, or floodplains.
- vi. A private residential road through a SFHA to access a residential single-family dwelling that is located outside the SFHA, when there are no other reasonable options for access.

b. FILL REQUIREMENTS AND LIMITATIONS ON AMOUNT OF FILL IN THE SPECIAL FLOOD HAZARD AREA

- i. Fill shall only be placed in the SFHA when absolutely necessary, and reasonable justification for the placement of fill shall be provided with the hazard development permit application. The proposed amount of fill shall represent the minimum amount of SFHA fill intrusion necessary for the proposed development.
- ii. Fill for bona-fide farm and agricultural land maintenance activities shall not cause any significant change in the topography or elevation of land in the SFHA, and does not require a no-rise certification by a licensed engineer. This includes agricultural land maintenance activities in a floodway / non-encroachment area, which can include but is not limited to land maintenance occurring to repair the banks of a surface water body (stream, creek, river, etc.) that was damaged due to severe erosion or a streambank blowout due to a natural storm event.
- iii. A property owner may fill up to five percent (5%) of the SFHA for the allowed development types listed in this section. Any deviation from this standard requires a Water-Related Variance from the BOA. This limitation also applies to the placement of fill for the elevation of agricultural structures in the SFHA.
- iv. A property owner may place fill that raises the elevation of the property no more than the base flood elevation. Any deviation from this standard requires a Water-Related Variance from the BOA, which must be accompanied by a no-rise certification analysis. This limitation also applies to the placement of fill for the elevation of agricultural structures in the SFHA.
- v. Any placement of fill in the SFHA requires a non-conversion agreement with the Town of Mills River to be recorded in the Henderson County Register of Deeds Office, which shall run with the land in perpetuity and bind future property owners, including the owners of future subdivided parcels from the main tract of land subject to the fill activity. The purpose of the non-conversion fill agreement is to ensure that subsequent fill operations that may be done by future property owners over longer periods of time do not violate the provisions of this Ordinance. Non-conversion agreements are not required for agricultural land maintenance activities, as defined in this Ordinance.

c. PROHIBITIONS ON FILL

Fill in the SFHA is prohibited for the following development types and activities:

- i. Fill for nonresidential, nonagricultural development.
- ii. Fill for any type of residential dwelling.
- iii. Fill for the purpose of raising the elevation of land for future unallowed development types.

3.4.3. WATER SUPPLY WATERSHED PROTECTION OVERLAY DISTRICT (WSPO)⁷

A. PURPOSE

The purpose of the Water Supply Watershed Protection Overlay District to mitigate negative impacts of land development and contaminated stormwater runoff on drinking water resources as required by the State of North Carolina.

B. AUTHORITY

The General Assembly has, in NCGS §§143-214.5, 160A-174, 160D-702, 160D-801 and 160D926, delegated the responsibility and directed the Town to establish water supply watershed protection programs, to regulate land use and development within water supply watersheds and to adopt regulations designed to promote the public health, safety and general welfare of its citizenry.

C. APPLICABILITY

- 01.** Except for development exempted in accordance with Section <>, Exemptions, nothing in these standards shall repeal, modify, or amend any Federal or State law or regulation.
- 02.** Subdivisions of land located within the WSPO shall be subject to the standards in this section.
- 03.** Lots located within divisions of land exempted from the subdivision provisions of this Ordinance shall continue to be subject to the standards in this section except that the lot need only comply with the minimum buffer requirements to the maximum extent practicable.

⁷ These standards have been updated for compliance with the most recent State model ordinance.



The Technical Review Committee shall adopt rules of procedure, which shall be available for inspection by members of the general public on the Town’s website and in the Town offices. The rules of procedure shall describe the Committee’s operating procedures, composition, leadership provisions, and other relevant information not already included in this Ordinance.

2.3.7. TOWN STAFF

A. PLANNING DIRECTOR

01. DELEGATION

The Town’s Planning Director shall serve as the Zoning Administrator, Subdivision Administrator, Flood Hazard Administrator, and Watershed Administrator, unless delegated to another staff member.

02. POWERS AND DUTIES

The Planning Director shall have the responsibilities for decision making, recommendations, and comments on applications in accordance with Section <>, Application Summary Table, as well as the following other powers and duties:

- a. Preside over the Technical Review Committee;
- b. Conduct pre-application conferences;
- c. Enforce the provisions of this Ordinance, including entering any building, structure, or premises, as provided by law, to perform any duty imposed by this Ordinance;
- d. Review and interpret Zoning Map boundaries;
- e. Apply remedies for violations of this Ordinance;
- f. Maintain the Official Zoning Map and related materials;
- g. Process development applications and prepare staff reports as indicated in this Ordinance;
- h. Maintain public records pertaining to this Ordinance and to make those records available to members of the public upon request;
- i. Maintain rules of procedures for each review authority in this Ordinance;
- j. Provide technical assistance to review authorities, upon request; and
- k. Carry out any other powers and duties delegated by the Town Council that are consistent with this Ordinance and State law.

B. FLOOD HAZARD ADMINISTRATOR

01. DESIGNATION

The Planning Director shall serve as the Flood Hazard Administrator and shall implement the provisions of the Special Flood Hazard Area.

02. POWERS AND DUTIES

The Flood Hazard Administrator shall have the following powers and duties:

- a. Review and decide all Flood Hazard Permit applications in accordance with the applicable standards in this Ordinance;
- b. Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, State, and federal permits have been received;
- c. Prevent encroachments into floodways and non-encroachment areas due to the high flood hazards in these areas;
- d. Obtain actual elevation (in relation to NAVD 1988 mean sea level) of the new level of ground elevation after completion of a fill operation, in accordance with the provisions of this Ordinance;
- e. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation;
- f. Obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a federal, state, or other allowable source, in order to administer the provisions of this Ordinance;
- g. When BFE data are provided but no floodway or non-encroachment area data have been provided,, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other allowable source in order to administer the provisions of this Ordinance;



- h.** Review, provide input, and make recommendations for Flood-Related Variance requests;
- i.** Maintain all records that pertain to the administration of the Special Flood Hazard Area provisions, and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended;
- j.** Make on-site inspections of work in progress, including the a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the Town of Mills River at any reasonable hour for the purposes of inspection;
- k.** Issue stop-work orders as required in accordance with Section <>, Violation of SFHA Controls, whenever a building, land, or part thereof is being developed, constructed, reconstructed, altered, filled, or repaired in violation of this Ordinance;
- l.** Revoke Flood Hazard Permits as required in accordance with Section <>, Violation of SFHA Controls; and
- m.** Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the Town of Mills River.



In accordance with NCGS§160D-405, and Section <>, Appeal.

2.5.19. FLOOD HAZARD PERMIT

A. PURPOSE AND INTENT

The Flood Hazard Permit is proposed to permit very limited forms of development within the Town’s designated Special Flood Hazard Area, while at the same time permitting maintenance of existing structures, restoration of streams, allowable water-dependent facilities, utilities, and access, where necessary. The requirements in this section are intended to:

- 01.** Promote public health, safety, and general welfare;
- 02.** Minimize public and private losses due to flood conditions within flood prone areas by provisions designed to minimize hazards within flood prone areas.
- 03.** Help maintain a stable tax base by providing for the sound use and development of property in all flood-prone areas of the Town; and
- 04.** Secure safety from the dangers posed by water and flooding.

B. APPLICABILITY

- 01.** A Flood Hazard Permit is required for any of the following forms of development when located within any designated Special Flood Hazard Area indicated on the Town’s Official Zoning Map:
 - a.** A secondary residential structure with no dwellings, temperature control, or utilities in the structure;
 - b.** Bona-fide farm and/or agricultural land uses, land maintenance activities, or structures, provided that no use shall consist of a dwelling, structure with temperature control, or habitable structure with utilities;
 - c.** Functionally-dependent facilities;
 - d.** A governmental or public utility use;
 - e.** Activity associated with a stream restoration, natural lands restoration, or floodplain restoration project that will help improve water quality and the functioning of streams, wetlands, and floodplains; or
 - f.** A driveway, shared driveway or private street used solely to access a single-family dwelling that is not located within a Special Flood Hazard Area.
- 02.** All other forms of new development in a Special Flood Hazard Area are expressly prohibited, including but not limited to: non-residential uses and structures, mixed-use uses and structures, and residential uses and structures.

C. APPLICATION FILING

- 01.** See Section <>, Application Filing.
- 02.** Applications for a Flood Hazard Permit shall include, at a minimum, the following items:
 - a.** A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - i.** The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - ii.** The boundary of the Special Flood Hazard Area as delineated on a Town-designated map, or a statement that the entire lot is within the Special Flood Hazard Area;
 - iii.** The boundary of the floodway(s) or non-encroachment area(s);
 - iv.** The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
 - v.** The certification of the plot plan by a registered land surveyor or professional engineer.
 - b.** Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
 - c.** Certification that all other local, State, and federal permits required prior to Flood Hazard Permit issuance have been received including copies of the issued approvals;

FIGURE <> FLOOD HAZARD PERMIT PROCEDURE	
STEP	ACTION
1	Pre-Application Conference
2	File Application may be filed alone or with another application
3	Completeness Determination
4	Staff Review
5	Decision by Planning Director
6	Written Notice of Decision
7	File for Other Associated Permits



- d. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

D. PROCEDURE

The review procedure for a Flood Hazard Permit shall be in accordance with Section <>, Application Summary Table, and Figure <>, Flood Hazard Permit Procedure.

E. DECISION

The Planning Director shall decide an application for a Flood Hazard Permit in accordance with the standards in Section <>, Staff Review and Action, Section <>, Review Criteria, and Section <>, Review Processes.

F. REVIEW CRITERIA

An application for a Flood Hazard Permit shall be reviewed in accordance with the following:

The permit is issued prior to the commencement of development; and

The development complies with all applicable standards in Section <>, Special Flood Hazard Area (SFHA).

G. SEQUENCE

Applications for Flood Hazard Permits may be submitted with any other application for development located within the SFHA, but a Flood Hazard Permit shall be reviewed and approved prior to any other application type.

H. EFFECT

Approval of a Flood Hazard Permit authorizes an applicant to proceed with development following issuance of a Building Permit.

I. AMENDMENT

A Flood Hazard Permit application may only be amended and considered in accordance with the procedures and standards established for its original approval and Section <>, Approved Application Amendment.

J. REVOCATION

A Flood Hazard Permit may be revoked by the Planning Director, following written notice to the violator, for any of the following reasons:

- 01.** Failure or refusal to comply with all applicable State laws or flood damage prevention requirements of this Ordinance;
- 02.** Conduct of development activities that represent a substantial departure from an approved permit, plan, or specification; and
- 03.** False or misrepresented information provided as part of the application.

K. EXPIRATION

A Flood Hazard Permit shall expire and become null and void if the development it authorizes is not substantially commenced within six months of permit issuance or if activity associated with the permit becomes inactive for a period of one year or longer.

L. VESTING

See Section <>, Statutory Vested Rights.

M. APPEAL

In accordance with NCGS§160D-405, and Section <>, Appeal.



2.5.30. VARIANCE, WATER-RELATED

A. PURPOSE AND INTENT

The purpose for this section is to establish a standardized and predictable procedure for consideration of requests to reduce or deviate from some water-related standards of this Ordinance when the landowner demonstrates that a literal application of the standards is not possible, feasible, or would result in undue and unique hardship to the landowner and that any potential negative impacts have been adequately mitigated.

B. APPLICABILITY

The standards in this section shall apply to Variance requests from any of the following provisions:

- 01.** The Special Flood Hazard Area standards in Section <>, Special Flood Hazard Area (SFHA);
- 02.** The setback standards in Section <>, Stream Setbacks; and
- 03.** The water supply watershed standards in Section <>, Water Supply Watershed Protection Overlay (WSPO) District.

C. VARIANCES DISTINGUISHED

- 01.** Water-related Variance applications shall take one of the following four forms:
 - a. A Variance of the Town’s flood hazard area provisions;
 - b. A Variance of the Town’s stream setbacks in Section <>, Stream Setbacks;
 - c. A Minor Variance of the applicable Water Supply Watershed standards; and
 - d. A Major Variance of the applicable Water Supply Watershed Standards.
- 02.** For the purposes of this section, a Minor Variance of the Water Supply Watershed standards includes:
 - a. The relaxation by a factor of five percent or less for required buffers, maximum density, or built-upon area maximum under the high-density development option; or
 - b. The relaxation, by a factor of up to 10 percent of any of the management requirements under the low-density option.
- 03.** For the purposes of this section, a Major Variance of the Water Supply Watershed standards includes:
 - a. The relaxation, by a factor greater than 10 percent, of any management requirement under the low-density option;
 - b. The relaxation, by a factor greater than five percent, of any buffer, density or built upon area requirement under the high-density option; or
 - c. Any variation in the design, maintenance or operation requirements of an approved stormwater control measure (SCM).

FIGURE <>: WATER-RELATED VARIANCE PROCEDURE

STEP	ACTION
1	Pre-Application Conference (optional)
2	File Application clarify type of Variance
3	Completeness Determination
4	Staff Review
5	Public Notification
6	Decision by Board of Adjustment The Board of Adjustment only provides a recommendation to the NC EMC for Major Variances to water supply watershed standards
7	Notification of Decision
8	Transmit to NC Environmental Management Commission (as appropriate)
9	Report Water Supply Watershed Variances to other local governments in the watershed

D. APPLICATION FILING

See Section <>, Application Filing.

E. PROCEDURE

The review procedure for a Water-Related variance shall be in accordance with Section <>, Application Summary Table, and Figure <>, Water-related Variance Procedure.

F. DECISION

- 01.** The Board of Adjustment shall decide Water-Related Variance applications pertaining to the SFHA, stream buffers, and Minor Variances to Water Supply Watershed standards. It shall recommendation (but not decide) applications for Major Variances to Water Supply Watershed standards.



02. Decisions and recommendations shall be based on the competent, material, and subsequent evidence in the record, as supplemented by the arguments presented at the quasi-judicial hearing, and the standards in Section <>, Water-Related Variance Review Standards, Section <>, Special Flood Hazard Area (SFHA), Section <>, Water Supply Watershed Protection Overlay (WSPO) District, Section <>, Stream Setbacks, as appropriate. The decision or recommendation shall be one of the following:
 - a. Approval of the Water-Related Variance as proposed;
 - b. Approval of the Water-Related Variance application with revisions; or
 - c. Denial of the Water-Related Variance.
03. Each decision or recommendation shall be made in writing and reflect the Board of Adjustment's determination of facts and their application to the standards in this Ordinance.
04. The written decision or recommendation shall be signed by the Chair or other duly authorized member of the Board of Adjustment.
05. In the case of Major Variance of Water Supply Watershed Standards applications, the application materials, along with the recommendation of the Board of Adjustment shall be forwarded to the North Carolina Division of Water Resources for consideration by the North Carolina Environmental Management Commission.
06. The final decision regarding a Major Variance of Water Supply Watershed Standards application pertaining to shall be made within 90 days of receipt by the North Carolina Environmental Management Commission (EMC) in accordance with all applicable State law. The decision by the Commission shall be one of the following:
 - a. Approval of the Major Variance of Water Supply Watershed Standards application;
 - b. Approval of the Major Variance of Water Supply Watershed Standards application with additional conditions; or
 - c. Denial of the Major Variance of Water Supply Watershed Standards application.
07. Any decision by the North Carolina Environmental Management Commission on a Major Variance of Water Supply Watershed Standards shall be subject to review by the Superior Court of Henderson County.
08. Denials of a Major Variance of Water Supply Watershed Standards application shall not be forwarded to the North Carolina Environmental Management Commission by the Board of Adjustment.

G. REVIEW CRITERIA

01. SPECIAL FLOOD HAZARD AREA VARIANCE

a. REQUIRED FINDINGS

A water-related variance pertaining to the Special Flood Hazard Area standards shall be approved on a finding the applicant demonstrates all of the following standards are met:

- i. There is a good and sufficient cause to grant the Water-Related Variance;
- ii. Failure to grant the Water-Related Variance would result in exceptional hardship to the landowner;
- iii. Granting the Water-Related Variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with this Ordinance;
- iv. The Water-Related Variance is the minimum necessary, considering the flood hazard, to afford relief;
- v. It does not allow for a land use or structure that is prohibited by this Ordinance or result in a violation of a State, federal, or local law;
- vi. It does not allow for structures or accessory structures in a floodway / non-encroachment area;
- vii. It does not allow for fill in a flood prone area that results in the elevation of the subject property more than two feet above the base flood elevation (BFE);
- viii. It does not result in any increase in flood levels during the base flood discharge; and
- ix. It does not authorize fill that covers more than fifteen percent of the SFHA.

b. ADDITIONAL CONSIDERATIONS

All of the following factors shall be considered by the Board of Adjustment if an application for a Water-Related Variance pertaining to the Special Flood Hazard Area standards is denied:

- i. The danger that materials may be swept onto other lands and injure others;
- ii. The danger to life and land due to flooding or erosion damage;
- iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual landowner;
- iv. The importance of the services provided by the proposed facility to the community;
- v. The necessity to the facility of a waterfront location as a functionally-dependent facility;



- vi. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- vii. The compatibility of the proposed use with existing and anticipated development;
- viii. The relationship of the proposed use to the Town's adopted policy guidance;
- ix. The safety of access to the use in times of flood for ordinary emergency vehicles;
- x. The expected height, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- xi. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

02. WATER SUPPLY WATERSHED VARIANCE

A Water-Related Variance pertaining to the water supply watershed standards shall be approved on a finding that there are practical difficulties or unnecessary hardships that prevent compliance with this Ordinance, and a finding of practical difficulties or unnecessary hardships requires that all of the following standards are met:

- a. The applicant can secure make no reasonable use of or return from their property if the provisions of the Ordinance are strictly adhered to;
- b. The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;
- c. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this ordinance would not allow reasonable use of the property;
- d. The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;
- e. The Water-Related Variance is in harmony with the general purpose and intent of the State's water supply watershed requirements and this Ordinance and preserves its spirit; and
- f. In granting the Water-Related Variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

03. STREAM SETBACKS

A Water-Related Variance pertaining to the stream setback standards shall be approved on a finding the applicant demonstrates all of the following standards are met:

- a. The applicant can secure no reasonable use of or return from their property if the provisions of the Ordinance are strictly adhered to;
- b. The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;
- c. The hardship is due to the physical nature of the applicant's property, such as its location, size, shape, or topography, and compliance with provisions of this Ordinance would not allow reasonable use of the property;
- d. The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;
- e. The Water-Related Variance is consistent with the general spirit, purpose, and intent of the State law and this Ordinance; and
- f. In granting the Water-Related Variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

H. CONDITIONS

In granting a Water-Related Variance, the Board of Adjustment may prescribe conditions of approval to assure that the use of the land to which the Water-Related Variance applies will be compatible with surrounding lands and will not alter the essential character of the community. Conditions of approval shall be in accordance with <>, Conditions of Approval, and the following:

- 01.** Conditions of approval must be reasonably related to the application.
- 02.** An application approval granted subject to a condition of approval shall be permitted as long as there is compliance with the condition.
- 03.** Violation of a condition of approval shall be deemed a violation of this Ordinance.
- 04.** If a violation or invalidation of a condition of approval occurs, the Planning Director, as appropriate, may revoke the authorization for the development subject to the approval.

I. SEQUENCE



A Water-Related Variance application may be filed with any other application except an appeal or rezoning, but the Water-Related Variance approval shall always be required prior to any other associated application.

J. EFFECT

01. GENERALLY

Approval of a Water-Related Variance authorizes only the particular regulatory relief approved by the Board of Adjustment. It does not exempt the applicant from the responsibility to obtain all other permits or development approvals required by this Ordinance or any other applicable laws, and does not indicate that the development for which the Variance is granted should receive other permits or development approvals unless and until the relevant and applicable portions of this Ordinance are met.

02. REPORTING

- a. Upon request, the Planning Director shall report all Special Flood Hazard Area Variances approved to the State or federal government.
- b. The Planning Director shall notify all local jurisdictions in the watershed of approval of a Water Supply Watershed Variance application.

K. APPEAL

- 01.** Appeal of a decision by the Board of Adjustment shall be In accordance with [Section <>, Decisions by Board of Adjustment](#).
- 02.** Appeal of applications decided by the North Carolina Environmental Management Commission shall be taken to the Superior Court for Henderson County in accordance with applicable State law.



Agriculture, Bona-Fide Farms, and the Mills River Hazard Prevention Ordinance

Where does the ordinance apply?

The hazard prevention ordinance applies to all flood-prone areas in the Town, including the 100-year floodplain and the floodway.

Does this change how I farm and maintain my agricultural land?

No, the intent of the ordinance is to not regulate agricultural land maintenance activities or farming activities, as long as they are directly related to the farming land use. However, any activity that creates a significant change in the topography or elevation of the farmland could be considered a fill activity, which is regulated by the ordinance. Any activity that is not related to the farm use is also regulated by the ordinance, including preparation of a farm property for future non-agricultural development through fill or drainage improvements.

What new regulations apply to agriculture?

- Permanent structures and chemical / petroleum tanks are no longer allowed in floodways, due to the hazard of regular flooding. Any existing structures and tanks can remain and are allowed to be repaired but not expanded.
- Agricultural structures located in 100-year floodplain areas are allowed and no permit is required for new structures or changes to existing structures.
- Agricultural structures that are elevated through the placement of fill, must follow the new fill standards of the ordinance. The landowner or farmer will need to coordinate with Town planning staff for fill limitations.
- New permanent tanks for gas, petroleum products, chemicals, or other hazardous materials storage tanks in floodplain areas must follow the new standards of the ordinance. New tanks must be either anchored, buried, elevated, floodproofed, or a combination of the above methods to reduce the hazard of the tank during a flood event. The landowner or farmer will need to coordinate with Town planning staff for requirements.
- If fill dirt is used to elevate an agricultural structure or tank, the fill limitations of the ordinance apply. No more than 5% of the flood prone area can have fill placed on it and can only elevate the land up to the base flood elevation. A property owner can apply for a variance from these standards.
- The ordinance allows for complaints, inspections, and enforcement of the hazard prevention standards. Staff are obligated to investigate complaints of potentially unpermitted activities on agricultural land.

Mills River Planning Department

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(828) 890-2901

Agriculture Summary Table – Hazard Prevention Ordinance

Allowed	Limited with Standards	Prohibited
New Ag structures outside floodway	New permanent Ag chemical / gas storage tanks outside floodway	New Ag structures in floodway
Repair of existing Ag structures, no matter the location	Elevation of an Ag structure with fill	Expansion of any existing Ag structure in floodway
Expansion of existing Ag structures outside floodway	Filling Ag land to prepare for non-farm development	New Ag hazardous liquid or gas storage tanks in floodway
Farming and agriculture related to the production of crops, grains, fruits, vegetables, ornamental plants, dairy, livestock, poultry, etc.	Use of Ag property in floodplain for non-farm purposes	Unlimited filling of Ag land
Removal of storm debris from floodplain and floodway caused by a declared natural disaster	Stream and floodplain restoration projects on Ag land	
Ag land maintenance activities that don't significantly raise the elevation of the floodplain land including work on ditches, culverts, irrigation pipes, utilities, repair of farm roads, tilling, grading, excavating, soil amendments, stream bank repair, minor filling for ag land repair, etc.	Any fill operation that will significantly raise the elevation of Ag land or change the topography	