Town of Montreat
Planning & Zoning Commission (P&Z)
Meeting Agenda
April 25, 2024, 10:30 a.m.
Montreat Town Hall, 1210 Montreat Rd., Black Mountain, NC 28711
And via Zoom: https://us02web.zoom.us/j/86933563365

I. CALL TO ORDER

- Welcome
- Moment of Silence

II. ADOPTION OF AGENDA

III. ADOPTION OF JANUARY 18, 2024, MEETING MINUTES

IV. ADOPTION OF FEBRUARY 14, 2024, SPECIAL MEETING MINUTES

V. SUBCOMMITTEE UPDATES

- Hillside Development Subcommittee
    i. Appointments
- Montreat Sign Ordinance Subcommittee
    i. Appointments
    ii. 04/25/24 adopted amendments discussion*
- Zoning Ordinance Amendments Research Subcommittee

* The Sign Ordinance Subcommittee will meet on 4/25 before the Planning and Zoning Commission meeting to adopt the most recent set of amendments to the Sign Ordinance. These amendments will be reviewed with the full Planning and Zoning Commission on 4/25, but no vote will be taken.

VI. COMPREHENSIVE PLAN IMPLEMENTATION

- Environment Objective #6 (Bill Tucker)
- Environment Objective #12 (Sally Stansill)

  Summary: Board Member Stansill worked with the Town's Zoning Administrator to review the current status of each of the goals for the Town of Montreat in the Buncombe-Madison Regional Hazard Mitigation Plan. Stansill and the Zoning Administrator request guidance from the full Planning and Zoning Commission on this review.

  Suggested Motion(s): The Planning and Zoning Commission votes to [take no action/*insert suggested action**] on Action # [*insert Action Number*].

  * Suggested actions for each Action # are in the "Implementation" column

- Development Objective #5 (Bill Scheu)

- Transportation Objective #1 (Sally Stansill)

  Summary: Board Member Stansill worked with the Town's Zoning Administrator to prepare a memo to the Board of Commissioners requesting that Transportation Objective #1 be elevated to a "high" priority and be allocated funding in the upcoming fiscal year.

  Suggested Motion: Planning and Zoning Commission [approves/approves with revision/does not approve] the memorandum and [requests/does not request] that the memorandum be placed on the May Board of Commissioners agenda.

VII. OLD BUSINESS

VIII. NEW BUSINESS

- 2023 Planning and Zoning Legislative Bulletin – School of Government

IX. NEXT MEETING

- July 18, 2024, at 10:30 am

X. PUBLIC COMMENT

XI. ADJOURNMENT

Planning & Zoning Commission
Meeting Minutes
January 18, 2024

Board members: Dan Dean
Liz Johnson
Bill Scheu, Chair
John Hinkle
Julie Schell
Bill Tucker
Sally Stansill, Alternate Representative (present but non-voting)
Daniel Hewitt, Alternate Representative (present but non-voting)

Board members absent: Allen Crawford – ETJ Representative

Town staff present: Kayla DiCristina, Zoning Administrator
Angie Murphy, Town Clerk

There was one member of the public present. Mr. Scheu called the meeting to order at 10:30 a.m. and led the group in a moment of silence after a brief welcome.

Agenda Approval

Bill Tucker moved to amend the agenda to add "Oath of Office" for the swearing in of Julie Schell who was recently reappointed as a regular member by the Board of Commissioners. Liz Johnson seconded and the motion carried 6/0.

Oath of Office – Julie Schell

Town Clerk Angie Murphy administered the Oath of Office to Regular Member Julis Schell.

Meeting Minutes Adoption – October 19, 2023

Liz Johnson moved to amend the October 19, 2023 Meeting Minutes to add on page 2 the word "appointed" after Allen Crawford's name. Julie Schell seconded and the motion carried 6/0.

Organization of Planning and Zoning Commission – Election of Officers

Dan Dean moved to re-elect Bill Scheu as Chair, John Hinkle as Vice-Chair and Town Clerk Angie Murphy as Secretary as Officers of the Planning & Zoning Commission for 2024. Julie Schell seconded and the motion carried 6/0.

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Subcommittee Updates

- Hillside Development Subcommittee: Kayla DiCristina reported that there was a vacant chair position for Hillside Development Subcommittee. Liz Johnson holds the position of Secretary with Bill Scheu and Allen Crawford as members. Ms. DiCristina stated that she plans to email the members later today with potential meeting dates.
- Montreat Sign Ordinance Subcommittee: John Hinkle serves as Chair with members Dan Dean and Julie Schell as Secretary. Chair John Hinkle advised his group will be meeting again on February 8th at 10:30 a.m.
- Zoning Ordinance Amendments Research Subcommittee: Dan Dean serves as Chair with members Julie Schell (Secretary), Bill Scheu, Allen Crawford, John Hinkle and liaison Mayor Pro Tem Mason Blake. Dan Dean stated that his group is still in a holding pattern as they await the results of the Montreat Lodge controversy. Mr. Dean advised that he has prepared a tentative list of discussion topics for this Subcommittee when they are ready to meet. Mr. Dean stated that if anyone had any other discussion points to let him know. Mrs. Peggy Scheu via Bill Scheu wanted to add a discussion of Short-Term Rentals (STRs) to the list.

Old Business

Comprehensive Plan Implementation: Ms. DiCristina reminded those in attendance that at the last meeting members looked at each objective and assigned them a general implementation area. It was mentioned that at this meeting members would look at objectives assigned to the full P&Z Commission to discuss how to move forward with implementation.

Ms. DiCristina advised that there were 5 objectives assigned to P&Z as a whole board under Environment but only 3 were within a short-term time frame. Ms. DiCristina mentioned that each member could pick an area that interests them, and she can assist them with moving forward as a point person. Sally Stansill will work on objective 12, Julie Schell worked on objective 10 and Bill Tucker is interested in objective 6. Ms. DiCristina made note that once the short-term objectives have been looked at then the group can move to more long-term objectives.

There were 2 short-term objectives under Development. Dan Dean stated that he felt like his Zoning Ordinance Amendment Research Subcommittee should look at objective 2. Ms. DiCristina suggested that Chair Scheu take objective 5 since it is about short-term rentals which has wife expressed some concerns about earlier. Ms. DiCristina stated that at the April meeting they will have a Comprehensive Plan Check-In and then there will be a presentation/review of one of these topics because she does not want to have a ton of information thrown at the members at one time. It was decided that short-term rentals will be addressed in April. Sally Stansill mentioned that when talk of the Comprehensive Plan first came about there was talk of a traffic study which she was excited about. Ms. Stansill mentioned that she's interested in speed/noise/parking and has

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spoken in front of Town Council several times with no real headway. She recently learned that Town Council was approached about a grant for a traffic study in December of 2022 which Town Council turned down. Ms. Stansill shared her thoughts that the three entities that make up the Town (the College, the MRA, and the Town) should share the costs of a traffic study since to reach anything in Town you have to access Assembly Drive. Ms. Stansill does not feel they can do any long-range planning without a traffic study. Chair Scheu suggested recommending to Town Council via the Mayor that this would be an important consideration. Commissioner Jane Alexander, who was in attendance, advised that the reason the traffic study grant was turned was because the $20,000 cost seemed out of line with the short amount of road on Assembly Drive to study. Ms. DiCristina suggested including a mention a traffic study in with the hazard mitigation plan discussion could be effective. She suggested doing this prior to June.

Viewshed Regulation Presentation: Ms. DiCristina prepared a PowerPoint presentation on Viewshed Regulation (objective 10 under Environment) which she presented to the Commission. A general succinct definition for viewshed is all points visible from a single site or fixed vantage point. The impacts of viewshed are as follows: maintains context for a site or community, reinforces preeminence of symbols or institutions, defines resident and visitor experiences in the community, and generally prioritizes natural and symbolic elements within a viewer's line of sight. Potential impacts to viewsheds (location specific) are vegetation clearing, topographical changes, structure development, road construction, and large-scale signage. Ms. DiCristina shared two examples: Castle Rock in Colorado and Santa Clara Valley in California. Each of the examples have regulations in place to protect the viewshed. Another example would be the Alamo. Ms. DiCristina shared that when you stand at the entrance to the Alamo all you should see is what you would have seen 200 years ago. That is part of the experience and significance of that structure. Ms. DiCristina advised that there are not a lot of places in North Carolina that regulate viewshed but she did find examples in Jackson County and Banner Elk. Montreat already has some things in place that protect viewshed such as: building height limits per Zoning District, setbacks per Zoning District, sign regulations, ridge protection and conservation overlay districts, and hillside development ordinance. In Ms. DiCristina's opinion, the strongest tool is the hillside development ordinance which can include grading, structure height, structure LRV, and vegetation removal limits. The impact of these depends on your vantage point. There was a lengthy conversation about regulating paint colors which Ms. DiCristina's stated was not an option. Ms. DiCristina also advised that she does not have the capacity to handle viewshed regulation in her 24 hours allotted to the Town each week. Ms. DiCristina briefly discussed the steps to be taken in order to address viewshed regulation in Montreat. Ms. DiCristina stated that the Commission should determine how important viewshed regulation is compared to other priorities. Julie Schell suggested waiting on this topic because it is a medium-level priority. Julie Schell moved to recommend that the Planning and Zoning Commission defer further action at this time and reconsider viewshed protection in January 2025, but that appropriate information be supplied to the community in order to inform them of viewshed protection. Bill Tucker seconded and the motion carried 6/0. Ms. DiCristina advised that at subsequent meetings she will provide updates to the Comprehensive Plan Tracker Items as well as the Subcommittees.

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New Business

Adoption of 2024 Meeting Schedule: Liz Johnson moved to adopt the 2024 Meeting Schedule to include 4/25, 7/18, and 10/17. Julie Schell seconded and the motion carried 6/0.

Special Meeting for February 2024: Ms. DiCristina advised that there is a text amendment to the Montreat General Ordinance (MGO) to the Stormwater Ordinance that was filed by a property owner. Ms. DiCristina also advised that amendments to the MGO go to the Board of Commissioners (BOC) and then if the BOC wants to refer it to the Planning & Zoning Commission they have that right and then the case would go back to BOC for a final decision. The text amendment in question will go before the BOC on February 8th and the property owner is hoping to move things along rather quickly. Ms. DiCristina would like to schedule a Special Meeting in February just in case the BOC refers it back to Planning & Zoning which would allow it to go back to BOC in March. Ms. DiCristina advised that she will send the packet information to the Commission next week once the advertisements run in the Black Mountain News. It was decided to schedule a tentative Special Meeting for Wednesday, February 14th at 10:30 a.m.

Next Meeting

Tentative Special Meeting Wednesday, February 14th, 2024 at 10:30 a.m.

Public Comment

There was no Public Comment at this time.

Adjournment

John Hinkle moved to adjourn the meeting. Liz Johnson seconded and the meeting was adjourned at 11:36 a.m.

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Bill Scheu, Chair Angie Murphy, Town Clerk

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Planning & Zoning Commission
Special Meeting Minutes
February 14, 2024

Board members: Dan Dean
Liz Johnson
Bill Scheu, Chair
Julie Schell
Bill Tucker
Allen Crawford – ETJ Representative
Daniel Hewitt, Alternate Representative

Board members absent: Sally Stansill, Alternate Representative
John Hinkle

Town staff present: Kayla DiCristina, Zoning Administrator
Angie Murphy, Town Clerk

There were five members of the public present. Mr. Scheu called the meeting to order at 10:30 a.m. and led the group in a moment of silence after a brief welcome.

Agenda Approval

Dan Dean moved to adopt the meeting agenda as presented. Bill Tucker seconded, and the motion carried 7/0.

Legislative Hearing

Text Amendment, TA-2024-01 – Amendment to the Town of Montreat General Ordinance

Summary: A Text Amendment request (TA-2024-01), submitted by Wyatt Edsel (on behalf of Gary Higgins, Property Owner) to amend Chapter K Article III Section 305(1) of the Montreat General Ordinance to permit an exception to the built-upon area buffer requirement for impervious driveway or walkway access to residential development when there is a lack of practical alternatives for a road crossing, bridge, or utility crossing.

Zoning Administrator Kayla DiCristina advised that the Planning & Zoning Commission will be making a recommendation on proposed text amendment language to the Board of Commissioners who will then amend/accept the language and then approve/deny it in open session. Ms. DiCristina advised that PZC had three options before them this morning: the applicant's version, the Town

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Attorney's version, and a version drafted by Dan Dean and Mayor Pro Tem Mason Blake.

Allen Crawford moved to open the discussion. Liz Johnson seconded, and the motion carried 7/0.

Ms. DiCristina began her staff report and presentation. The Board of Commissioners granted the property owner an access easement across Little Piney Branch on February 9, 2023. The built-upon restriction in Section 305(1) applies to Little Piney Branch and prevents the Property Owner from installing the needed driveway or bridge across the stream to access the Subject Property. Variances are not permitted in the Stormwater Ordinance. The Applicant submitted this Text Amendment to allow exceptions to the built-upon area restriction to be granted by the Stormwater Administrator for impervious driveway or walkway access to residential development when there is a lack of practical alternatives for a road crossing, bridge, or utility crossing. The Applicant's proposed Text Amendment would not permit structures associated with residential development or any structures or access for non-residential development to utilize this exception.

Liz Johnson moved to put before the commission for discussion the third version as drafted by Dan Dean and Mayor Pro Tem Mason Blake. Julie Schell seconded, and the motion carried 7/0.

Dan Dean briefly discussed each of the alternatives. Mr. Dean stated that while he felt for Mr. Higgins' predicament the first text amendment, as given by the applicant, was too vague. The second alternative by Town Attorney Susan Taylor Rash tightened up a lot of the vagueness. The third alternative by Dean & Blake included parameters to protect Montreat.

Ms. DiCristina advised that she will be administering the Stormwater Ordinance so the applicant will have to obtain a Stormwater Control Permit and will have to provide substantial plans with a level of detail that will allow Ms. DiCristina to verify that the applicant is complying with the ordinance. At the end of the project the applicant will also have to submit a survey or plans to prove that they built what they were supposed to build. There also must be an Operations and Maintenance Agreement, recorded with the Register of Deeds and a copy given to Ms. DiCristina, which is written in the ordinance, and quite possibly a site inspection.

Mayor Pro Tem Mason Blake gave a brief review of the version he drafted with Mr. Dean, but he failed to use a microphone so most of it was unintelligible.

There was some editing of the version the commission members preferred but again microphones were used too sporadically to allow for accurate minutes.

Julie Schell moved to consider recommending the third text amendment as amended in today's discussion. Allen Crawford seconded the motion. For a complete review of the changes visit www.youtube.com/watch?v=J70-kKellA4 and listen to Ms. DiCristina as she reads them aloud to the Commission. The motion carried 6/0

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Public Comment

Jean Norris of 197 Mississippi Road made a comment but did not turn on the microphone.

Dr. Mary Standaert of 118 Shenandoah Terrace made a comment but did not turn on the microphone.

Next Meeting

Thursday, April 25, 2024, at 10:30 a.m.

Adjournment

Ms. DiCristina advised that the topic discussed will be on the Board of Commissioners March14th Agenda for their review.

Dan Dean moved to adjourn the meeting. Liz Johnson seconded and the meeting was adjourned at 12:36 p.m.

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Bill Scheu, Chair Angie Murphy, Town Clerk

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04.25.24 Comprehensive Plan Implementation Tracker

VISION STATEMENT: ENVIRONMENT					
Montreat will value and protect its tree canopy, streams, land, and natural beauty.					
#	**OBJECTIVE**	**TIME FRAME**	**PRIORITY**	**ENTITY**	**IMPLEMENTATION**
3	Create a local erosion and sediment control ordinance for grading permits and requirements for projects that currently are not covered by Buncombe County's Erosion and Sediment Control Ordinances.	Short-Term	High	PZ	10/18/23 Assigned to Zoning Ordinance Subcommittee for review; 01/18/24 No action; 04/25/24 No action
4	Explore the adoption of additional stream protection ordinances.	Long-Term	Medium	PZ	10/18/23 Assigned to full Planning and Zoning Commission for review; 01/18/24 No action; 04/25/24 No action
6	Explore conservation easements as an avenue for land protection.	Short-Term	Medium	PZ & OSC	10/18/23 Assigned to full Planning and Zoning Commission for review; 01/18/24 Assigned to Bill Tucker to pursue with staff assistance; 04/25/24 ZA & BT provided update to full PZC. Will present information at July meeting.
7	Implement the stormwater management plan as required and approved by Small MS4 NPDES Permit.	Long-Term	Medium	Town-wide	10/18/23 Revisit and assign once stormwater management plan is approved by state; 01/18/24 No action; 04/25/24 No action
9	Create a voluntary stormwater control measure and flood risk mitigation program with established goals that includes educational opportunities and outreach efforts.	Long-Term	Medium	PZ	10/18/23 Revisit and assign stormwater portion of objective once stormwater management plan is approved by state. Flood risk mitigation portion of objective assigned to full Planning and Zoning Commission for review; 01/18/24 No action; 04/25/24 No action
10	Investigate implementing viewshed protection regulations in Montreat.	Short-Term	Medium	PZ	10/18/23 Assigned to full Planning and Zoning Commission for review; 01/18/24 Assigned to Julie Schell to pursue with staff assistance, ZA gave presentation on viewsheds, full PZC voted to not make a recommendation on pursuing objective to the BOC at this time and to revisit this objective in January 2025.
11	Examine the existing Hillside Development Ordinance and ensure that it is enforceable, practical, and sufficient for its purpose, with consideration to the responsibility placed on those building on property in Montreat.	Short-Term	High	PZ	10/18/23 Assigned to Hillside Development Ordinance Subcommittee for reivew; 02/07/24 HDO met (see minutes); 03/07/24 HDO met (see minutes); 04/24/24 HDO met (see minutes)
12	Support and implement the goals and recommendations for the Town of Montreat in the Buncombe and Madison County Regional Hazard Mitigation Plan.	Short-Term	Medium	Town-wide	10/18/23 Assigned to full Planning and Zoning Commission for review; 01/18/24 Assigned to Sally Stansill to pursue with staff assistance; 04/25/24 ZA & SS shared current tracker status with PZC.

PZ = Planning & Zoning | OSC = Open Space Committee

VISION STATEMENT: DEVELOPMENT

Montreat will be a community that respects buildings with historic value, encourages new development to consider the surrounding architecture, and strives for resilience in the face of a changing climate.

#	OBJECTIVE	TIME FRAME	PRIORITY	ENTITY	IMPLEMENTATION
2	Investigate implementing a maximum lot coverage standard in the Montreat Zoning Ordinance to cap the percentage of a lot that can be developed	Short-Term	High	PZ	10/18/23 Assigned to full Planning and Zoning Commission for review; 01/18/24 Revised to assign to Zoning Ordinance Subcommittee for review; 04/25/24 No action
3	In cooperation with the Town, Montreat College, the Mountain Retreat Association, and local organizations, work to update and implement a wayfinding plan including educational signage.	Long-Term	High	PZ	10/18/23 Assigned to Sign Ordinance Subcommittee for review; 02/08/24 SSC met (see minutes); 03/06/24 SSC met (see minutes); 04/11/24 SSC met (see minutes); 04/25/24 SSC met (see minutes)
4	Preserve, protect, and enhance the character of Montreat by evaluating and improving existing allowable uses, densities, and dimensional regulations in each Zoning District	Short-Term	High	PZ	10/18/23 Assigned to Zoning Ordinance Subcommittee for review; 01/18/24 No action; 04/25/24 No action
5	Investigate development regulations per Zoning District for short-term rentals with consideration for existing short-term rentals and potential funding sources.	Short-Term	High	PZ	10/18/23 Assigned to full Planning and Zoning Commission for review; 01/18/24 Assigned to Bill Scheu to pursue with staff assistance; 04/25/24
6	Support current and new activities with local, regional, and state partners to educate the public about the value of historic properties and landmarks.	Long-Term	Medium	PZ	10/18/23 No action by Planning and Zoning Commission needed at this time. PZC will serve as a resource as needed for entities (like PHC) who work with historic preservation.
7	In the spirit of the long-term success of the Town of Montreat, and guided by the above vision statements and objectives, work collaboratively with citizens and the institutions of the Town, including, but not limited to, Montreat College and the Mountain Retreat Association, on any future development plans to support the vitality and future of the institutions and the Town.	Long-Term	High	PZ	10/18/23 No action by Planning and Zoning Commission needed at this time. PZC will discuss more details of how to proceed with this objective at the next regular meeting. Current strategy is to invite MRA & Montreat College representatives to present plans to PZC; 01/18/24 No action; 04/25/24 No action

PZ = Planning & Zoning | OSC = Open Space Committee

VISION STATEMENT: TRANSPORTATION

Montreat will be accessible for people as they age, safe for children and families, and calm for those driving, biking, and walking.

#	OBJECTIVE	TIME FRAME	PRIORITY	ENTITY	IMPLEMENTATION
1	Calm traffic and lower speeds by partnering with regional transportation agencies to conduct a study of feasible options. This may include, but is not limited to, investigating posting advanced warning signs near the Montreat Gate, seasonal speed tables, or additional stop signs.	Short-Term	Medium	Town-wide	10/18/23 No action by Planning and Zoning Commission needed at this time. PZC will serve as a resource as needed work conducted under this objective; 01/18/24 Staff prepare a memo to BOC requesting higher priority of this objective, Sally Stansill to assist, draft letter for regular April PZC meeting; 04/25/24 Full PZC reviewed letter.
2	Periodically examine the availability and demand for parking in the Town of Montreat. Develop strategies as needed to address parking issues. Special consideration to seasonal parking needs should be included.	Long-Term	High	Town-wide	10/18/23 No action by Planning and Zoning Commission needed at this time. PZC will serve as a resource as needed work conducted under this objective; 01/18/24 No action; 04/25/24 No action
3	Investigate developing a freight plan in partnership with local and regional partners. This plan may include, but is not limited to, designated truck routes, drop/off/delivery zones, and a permit system for overweight vehicles to be charged a fee.	Long-Term	Medium	Town-wide	10/18/23 No action by Planning and Zoning Commission needed at this time. PZC will serve as a resource as needed work conducted under this objective; 01/18/24 No action; 04/25/24 No action
4	Update and implement the Town's Bicycle, Pedestrian, and Greenways Master Plan.	Long-Term	Medium	Town-wide	10/18/23 No action by Planning and Zoning Commission needed at this time. PZC will serve as a resource as needed work conducted under this objective; 01/18/24 No action; 04/25/24 No action

PZ = Planning & Zoning | OSC = Open Space Committee

04/04/24 Hazard Mitigation Plan Tracker

Action #	Description	Hazard Addressed	Relative Priority	Funding Source	Responsible Party	Target Completion Date	2021 Status	Implementation
				Prevention				
P-1	Appoint a representative to the Hazard Mitigation Plan Evaluation and Revision Committee. Continue to meet as needed.	All	High	Local	Town Administrator /Public Works Director	2025, Annual Review	The town has appointed a representative to the Hazard Mitigation Plan Committee and that representative participated in the plan update process. The town will continue to provide a representative to HMP Committee going forward.	03.14 Emailed Town Manager (SP); 04.04 F/u SP, no history. ZA reached out to Buncombe Co. Asst. Manager; 04.08 Per Buncombe Co. this is the same as the planning committee. Town Manager is representative. Updated contact info with County and will wait for needed meetings. No additional actions needed at this time.
P-2	Review resources discussing hazard mitigation concepts	All	High	Local	Town Administrator /Public Works Director	2025, Annual Review	The town has annually reviewed all resources discussing hazard mitigation concepts. The town will continue to review these resources and integrate new resources as necessary.	03.14 Ask BOC for clarification as part of action for objective.
P-4	Develop a checklist in our zoning and building inspections department to ensure consistency in zoning enforcement and to prevent omissions in the evaluation of projects.	All	High	Local	Building Inspector/ Code Administrator	2025, Annual Review	The town has developed a building/zoning checklist to ensure consistency in zoning enforcement. This checklist will need to be reviewed and updated annually to ensure applicability of checklist.	03.14 ZA will work on this following PZC OK of action for objective
P-6	Report results of inspection/enforcement measures to the Project Impact Coordinator/Emergency Management Planner on a semi-annual basis.	All	High	Local	Town Administrator	2025, Semi-annual review	On a semi-annual basis, the town has reported the results of inspection/enforcement measures to the PIC or EM Planner. In the future, this reporting process will continue to take place semi-annually.	03.14 Emailed Town Manager (SP); 04.04 F/u SP, no history. ZA reached out to Buncombe Co. Asst. Manager; 04.08 Per Buncombe Co. Angie Ledford was Emergency Planner and is current contact. Asked if any action was needed by the town. Town continue tracking floodplain related items. No additional actions needed at this time.
P-8	Continue to update the Town of Montreat Emergency Response Ordinance on an annual basis including relevant positions and contact information changes.	All	High	Local	Building Inspector/ Code Administrator	2025, Annual review	The town has worked on updating its ERO an annual basis and will continue to make updates and changes to the ordinance during an annual review period.	03.14 Emailed Town Manager (SP); 04.04 F/u SP, no history. SP will handle.
P-14	Purchase a complete GPS setup and provide training on said setup to all pertinent town personnel.	All	High	General Fund Revenue/Grant	Town	2025	Although some GPS technology is available, the town would like to look into additional components. The town will continue to work to train all pertinent town staff in the latest updates in GPS technology.	03.14 Emailed Town Manager (SP); 04.04 F/u SP, no history. SP will handle.
				Property Protection				
PP-1	Update the zoning ordinance to reflect mitigation planning and safety factors.	All	High	Local	Town Administrator	2025	The zoning ordinance has been updated in many ways to reflect mitigation planning, however there are additional measures that could be added to improve mitigation so the town will work to include those going forward.	03.14 Ask BOC for clarification as part of action for objective.
PP-5	Investigate participation in the National Flood Insurance Programs Community Ratings System.	Flood	High	Local	Town	2025	The town has not joined the CRS, but it will continue to look into the program and work towards developing the necessary programs to join. There has not been sufficient staff availability to pursue this action.	03.14 Town participates in NFIP (09/19/2005). ZA will work on gathering CRS information followng PZC OK of action for objective.
PP-7	Develop a database that identifies each property that has received damage due to hazards identified within this mitigation plan. The database should also include a tax identification number of the property, a description of the property damage, the value of the damage, and links to photographs of the damage.	All	High	Local	Town	2025	The town has not fully developed a database that identifies properties that have been damaged by past events, in large part because there have not been enough historic events to gain a full perspective of risk. The town will work to continue to develop this database over the next several years.	03.14 Emailed Town Manager (SP); 04.04 F/u SP. No history. ZA will handle.
				Public Education and Awareness Activities				
PEA-1	Educate contractors, developers and designers on code changes and new development issues.	All	High	Local	Planning and Inspections Department	2025, Annually	The town has worked to ensure developers and contractors are well- educated on code changes (by providing in-office information and by making information available online) and will continue to keep these interests up to date as new information is developed.	03.14 Ask BOC for clarification as part of action for objective.
PEA-2	Provide new homebuilders with information on quality redevelopment and safe housing development.	All	High	Local	Planning and Inspections Department	2025, Annual review	The town has provided information on quality redevelopment and safe housing to homebuilders over the past several years (through both in-office education and online resources) and will continue to provide this information. Updates to information will be integrated as well.	03.14 Ask BOC for clarification as part of action for objective.
PEA-3	Manually disperse and have a website posting which provides information about relevant emergency response and preparedness actions the public can take.	All	High	Local	Planning and Inspections Department	2025, Annual review and update	The town has developed a number or resources for the public to utilize to help with preparedness and these have been dispersed both manually and through the website. The town will work to reach out in new ways going forward, such as through social media, and will also maintain current outreach strategies.	03.14 ZA & SS will work on this following PZC OK of action for objective
PEA-4	Manually disperse and have a website posting which provides information on Buncombe County's Project Impact and the County's HMP and relevant mitigation measures the public can take.	All	High	Local	Planning and Inspections Department	2025, Annual review and update	The town has developed a number or resources for the public to utilize to help with understanding Project Impact and mitigation and these have been dispersed both manually and through the website. The town will work to reach out in new ways going forward, such as through social media, and will also maintain current outreach strategies.	03.14 ZA & SS will work on this following PZC OK of action for objective

TOWN OF MONTREAT
NORTH CAROLINA

TOWN OF MONTREAT
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MEMORANDUM

TO: The Town of Montreat Board of Commissioners

CC: Savannah Parrish (Town Manager), Angela Murphy (Town Clerk)

FROM: [APPLICABLE PZC MEMBERS], Kayla DiCristina (Zoning Administrator)

SUBJECT: *Montreat Tomorrow* Transportation Objective 1

DATE: [DATE]

On August 14, 2023, the Town of Montreat adopted *Montreat Tomorrow* as the Town's Comprehensive Plan. The plan contained a set of objectives for the Town to accomplish to achieve a set of vision statements. The Town's Planning and Zoning Commission began its process of implementing the objectives of *Montreat Tomorrow* at the beginning of 2024. To accomplish this work, individual Commission Members graciously offered their time to pursue specific objectives that they held an interest in. The first set of objectives the Commission focused on for implementation were those designated as "high priority" in the plan. However, one "medium priority" objective stood out as needing to be addressed with the "high priority" objectives.

The objectives in *Montreat Tomorrow* were broken into three categories each with its own vision statement: environment, development, and transportation. The vision for transportation in Montreat is that the Town be accessible for people as they age, safe for children and families, and calm for those driving, biking, and walking. Under this vision statement are five objectives. The first objective, which is the subject of this memo, directs the Town to calm traffic and lower speeds by conducting appropriate studies of the Town's transportation network. To accomplish this recommendation, partnerships with regional transportation agencies should be considered. While Transportation Objective 1 was identified as a "medium priority", this objective was of interest to the Commission Members. The Commission recommends that this objective be elevated to a "high priority" and pursued during the upcoming fiscal year.

At the end of 2022, the Town's Zoning Administrator provided a memo to the Board of Commissioners about a grant opportunity through the French Broad River Metropolitan Planning Organization (FBRMPO), of which Montreat is a part of, for the Unified Planning Work Program (UPWP). This program provides funding for short-range planning activities, including smaller-scale traffic studies, within the FBRMPO's region. The Zoning Administrator recommended that the Town apply to the program for a traffic study limited to Assembly Drive for a total project cost of $25,000 with a cost match to the Town of $5,000. At the time, the Town declined to apply.

During the preparation for the 2022 recommendation, the Zoning Administrator met with the Chief of Police to discuss the current state of speeding and safety concerns on NC-9/Assembly Drive. The Chief of Police shared anecdotal observations with the Zoning Administrator and stated that the purchase of a new flashing speed sign in 2022 could have indicated an increase in speeding and a reduction of pedestrian safety on Assembly Drive, particularly at the Town's entrance gate. In preparation for this memo, Commission Member Stansill spoke with several town residents about traffic in the Town. One resident stated that they believed the management of traffic increase has been "lax".

Based on this information, the Commission recommends that the Board of Commissioners elevate Transportation Objective 1 to become a "high priority" and pursue action related to this objective during the upcoming fiscal year. Should the Board of Commissioners agree to pursue this objective, the Commission recommends either:

a) The Town pursue a traffic study, with a focus on Assembly Drive, utilizing grant funding and partnerships with local entities. Based on the previous estimate for a traffic study for Assembly Drive, the Commission recommends that the Town commit to providing 5 percent of the total project cost or $5,000, whichever is less, towards the funding of this study.

   OR

b) Should the Commission choose not to pursue a formal traffic study, include the following actions in the upcoming fiscal year budget. These actions were gathered by Commission Member Stansill from residents.
   a. Increased police presence throughout Town and consider increasing traffic ticket costs.

b. Repaint the traffic and bicycle lane lines on Assembly Drive.
c. Install new speed bumps in known speeding areas, such as Kanawha Drive.
d. Reduce speed limits Town-wide.
e. Repaint and install reflectors and flashing lights at pedestrian crossings.
f. Relocate the flashing light sign currently at the Post Office to an area closer to the Montreat Gate.

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PLANNING AND ZONING LAW BULLETIN NO. 33 | FEBRUARY 2024

2023 North Carolina Legislation Related to Planning and Development Regulation

Jim Joyce and Adam Lovelady

CONTENTS

I. Checklist for Local Government Action ... *2*

II. Zoning and Land Subdivision ... *3*
- A. Limit on Residential Design Standards ... *3*
- B. Fire Access Roads in Residential Development ... *3*
- C. Size of Parking Spaces ... *4*
- D. Private-Driveway Design Standards ... *4*

III. Development-Related Local Government Authority ... *4*
- A. Limit Local Regulation of Online Marketplaces ... *4*
- B. Transient Occupancy ... *4*
- C. Electric Fences ... *5*

IV. Fees and Exactions ... *5*
- A. System-Development Fees ... *5*

V. Infrastructure ... *5*
- A. Required Connections ... *5*
- B. Water Capacity for Charter Schools ... *6*
- C. Wastewater Calculations ... *6*

VI. Local Environmental Regulation ... *6*
- A. Wetlands ... *6*
- B. Choice of Fee for Erosion and Sedimentation Control ... *7*
- C. Transfer of Stormwater Permits ... *7*
- D. Funds for Maintenance of Stormwater Facilities ... *7*
- E. Redevelopment and Stormwater Rules ... *7*
- F. Exclusion of Rights-of-Way from Impervious Surface ... *8*
- G. Various Stormwater Changes ... *8*
- H. Various Water-Quality Changes ... *9*
- I. Additional Environmental Changes ... *9*

VII. Agricultural Uses ... *10*

VIII. Local Bills ... *10*
- A. Maggie Valley Extraterritorial Jurisdiction and Moratoria ... *11*
- B. Leland Annexation Authority ... *11*
- C. Capitol-Area Zoning ... *11*
- D. Dare County Affordable Housing ... *11*

IX. Building Code ... *11*
- A. Changes to the Residential Code ... *11*
- B. Commercial and Multifamily Building Projects, Expedited and Third-Party Permitting ... *13*
- C. Other Building Code Changes ... *15*

X. Code Enforcement ... *16*
- A. City Authority to Remove Abandoned Vessels ... *16*

XI. Renewable Energy ... *16*
- A. Solar Decommissioning, S.L. 2023-58, H.B. 130 ... *16*
- B. Disposal of Photovoltaics ... *18*
- C. ~~Renewable~~ Clean Energy Portfolio Standards ... *18*

XII. Other Notable Legislation ... *18*
- A. Sports Wagering ... *18*
- B. Grants for Local Government Development Assets ... *20*
- C. Proposed Legislation ... *20*

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The 2023 "long session" was a long session indeed. The North Carolina General Assembly convened in January and notable work continued well into the fall, with the state budget adopted in September, election maps approved in October, and no-vote sessions scheduled through to spring of 2024, in case the General Assembly needs to take up additional matters.

Substantively, the session was notable. The legislature adopted Medicaid expansion and, with a veto-proof majority, the Republican-controlled General Assembly implemented many policy changes across a range of topics. With regard to planning and development regulations, notable changes included the creation of a new Residential Code Council and changes to building code standards and procedures, various changes to environmental standards and utility requirements, and more.

I. Checklist for Local Government Action

The following pages offer summaries of the notable bills from this session. This checklist is a quick-guide for the changes and action that may be needed at the local level.

- ~~Ensure that any local design regulations do not apply to three-family or four-family dwellings, which are now subject to the Residential Code and cannot be regulated for building design elements.~~

MGO
- Ensure that local development regulations do not require fire access roads beyond what is required by the fire code for structures built to the Residential Code.

✓
- Clarify size requirements for parking spaces to align with Chapter 160D, Section 702 of the North Carolina General Statutes (hereinafter G.S).

MGO
- Revise private-driveway standards, if necessary, to comply with North Carolina Department of Transportation (NCDOT) standards, and revise procedures to accept inadequate-pavement standards if sealed by a licensed engineer as required at 160D-804.

MGO
- Update water and sewer policies, including calculations of system-development fees, to align with S.L. 2023-55 (modeling and system development).
- ~~Confirm that the public health department is aware of updates to on-site-wastewater regulations in S.L. 2023-77 and 2023-90, as well as changes in Section 16 of S.L. 2023-63.~~

MGO
- Note the updated exemptions from water- and sewer-connection requirements in Section 10 of S.L. 2023-90, and update connection policies accordingly.
- ~~Review local wetlands protections for potential changes to come from reduction in state and federally protected wetlands.~~
- ~~Update rules for review of erosion and sedimentation plans when other environmental permits are involved to conform to S.L. 2023-134, Section 12.10(c).~~

MGO
- Update riparian-buffer enforcement to comply with S.L. 2023-63, Section 11.1 (civil penalties for timber removal in riparian buffers).

MGO
- Update building-permit administration, if needed, to align with the broadened scope of the Residential Code (to include three-family and four-family dwellings).

MGO
- Update building-permit administration to accommodate expedited and third-party permitting for commercial and multifamily building projects.

MGO
- Ensure that building inspections align with various changes, including single permits for residential building projects, repealed energy-conservation rules, updated monetary thresholds for permits, and more.

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- Recognize that the Department of Environmental Quality (DEQ) will now administer a solar-decommissioning requirement; local governments may still have their own decommissioning.
- Anticipate new off-track-betting establishments for horse-racing and sports-betting places of public accommodation near professional-sports facilities, as allowed by S.L. 2023-42.
- Consider opportunities that might be available through the Megasites Fund;[1] parks-and-trails programs;[2] and the Major Events, Games, and Attractions Fund.[3]
- For Dare County, the City of Raleigh, and Wake County, be mindful of new zoning exemptions.[4]
- For Buncombe, Cumberland, Durham, Forsyth, Guilford, Mecklenburg, and Wake Counties, and possibly Union County, anticipate the possibility that airports will seek to select a local sedimentation-and-erosion-control program.

II. Zoning and Land Subdivision

A. Limit on Residential Design Standards

The North Carolina zoning statutes already prevented local governments from regulating "building design elements" for structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings. As discussed below, Section 9 of S.L. 2023-108 (H.B. 488) expands the scope of the Residential Code to include three-family (triplex) and four-family (quadplex) dwellings. Section 1.(d) of S.L. 2023-108 (H.B. 488) incorporates that change into G.S. 160D-702 and the limits on design standards. With this change, local governments may not impose restrictions on building-design elements on residential structures with up to four units (structures subject to the Residential Code).

B. Fire Access Roads in Residential Development

Over the last couple of legislative sessions, the General Assembly limited the extent to which fire access roads could be required under the state Fire Code. There was an open question of whether the same requirement could be imposed through local zoning and subdivision. Section 26 of S.L. 2023-137 (H.B. 600) makes clear that local development regulations must match to the building code requirements. The session law added the following language to G.S. 160D-702(c): Local development regulations may not "[r]equire additional fire apparatus access roads into developments of one- or two-family dwellings that are not in compliance with the required number of fire apparatus access roads into developments of one- or two-family dwellings set forth in the Fire Code of the North Carolina Residential Code for One- and Two-Family Dwellings."

1. S.L. 2023-134, § 11.11.
2. *Id.*, § 14.4, 14.6.
3. S.L. 2023-42.
4. S.L. 2023-134 (H.B. 259), § 24.8 (Dare County), 20.5 (Wake County and Raleigh).

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C. Size of Parking Spaces

Section 26 of S.L. 2023-137 (H.B. 600) cleans up G.S. 160D-702(c) to clarify that zoning ordinances may not require parking spaces larger than nine feet wide and twenty feet long, except for handicap, parallel, or diagonal parking.

D. Private-Driveway Design Standards

Local government authority to regulate private-driveway standards is limited. Section 3 of S.L. 2023-108 (H.B. 488) adds a new subsection (j) to G.S. 160D-804. The new language provides as follows.

Local government pavement design standards for new private driveways must not be more stringent than NCDOT's minimum pavement design standards. Even if a local government has adopted driveway standards consistent with NCDOT, the local government must accept engineered-pavement design standards that do not meet minimum standards if the design is signed and sealed by a licensed engineer and meets vehicular traffic and fire apparatus access requirements. In the case of such driveways that do not meet minimum standards, the developer must provide disclosures to prospective buyers and the local government is discharged from liability.

This provision applies to "new privately owned driveways, parking lots, and driving areas associated with parking lots within a new development or subdivision that the developer designates as private and that are intended to remain privately owned after construction." The new section does not limit local government or NCDOT authority "to regulate private roads, driveways, or street connections to a public system, or to regulate transportation and utilities."[5] The provision was effective October 1, 2023.

III. Development-Related Local Government Authority

A. Limit Local Regulation of Online Marketplaces

Section 27 of S.L. 2023-137 (H.B. 600) adds statutes to the municipal and county chapters (G.S. 160A-499.7 and G.S. 153A-461, respectively) to prevent local governments from regulating the operation of an online marketplace or from requiring an online marketplace to provide a user's personally identifiable information (except by court order). An online marketplace is defined to be a person or entity that (1) provides a web-based platform through which a service is advertised or offered and (2) provides a payment system between users, communicates offers and acceptance between users, or provides the electronic infrastructure to bring users together. This legislation concerns regulating the operation of an online marketplace (the software platform); the legislation does not appear to limit local authority to regulate land uses that happen to use a software platform.

B. Transient Occupancy

Chapter 42 of the North Carolina General Statutes sets forth the landlord and tenant laws for the state. Among other things, that chapter provides standards for residential rental agreements, procedures for eviction, and procedures for summary ejectment. S.L. 2023-5 (S.B. 53) adds

5. S.L. 2023-108, sec. 3.(a), § 160D-804(j).

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language to G.S. 42-14.6 to clarify that Chapter 42 does not apply to transient occupancies and that transient-occupancy agreements do not create tenancy or residential tenancy unless expressly stated in the agreement.

S.L. 2023-5 (S.B. 53) also adds to G.S. 72-1 a definition of *transient occupancy*: "For the purposes of this section, a 'transient occupancy' is the rental of an accommodation by an inn, hotel, motel, recreational vehicle park, campground, or similar lodging to the same guest or occupant for fewer than 90 consecutive days."

The legislative change clarifies the nature of agreements between property owners and transient occupants. It does not appear to directly address local government authority to regulate related to inns, hotels, short-term rentals, or other transient occupancies.

C. Electric Fences

Section 44 of S.L. 2023-137 (H.B. 600) adds new statutes, G.S. 160A-194.1 and G.S. 153A-134.1, to limit local government authority to regulate battery-charged security fences, especially on nonresidential property.

IV. Fees and Exactions

A. System-Development Fees

In 2017 the North Carolina General Assembly authorized local government utility providers to charge system-development fees (impact fees) for water and sewer. The law, outlined in Article 8 of G.S. 162A, sets forth specific procedures and calculations for establishing system-development fees, as well as substantive limits on the authority. There has been some ambiguity around the scope of authority for system-development fees, and the General Assembly has tweaked the statutes several times since 2017. And again this year, the General Assembly amended the authority.

S.L. 2023-55 (S.B. 673) amends the statutes authorizing system-development fees to address issues related to reserved capacity agreements and interlocal utility agreements. In particular, the new law grants clear authority for local governments to enter reserved capacity agreements and for local governments to recoup the costs of those agreements through system-development fees paid by new development.

For more details on the changes, see Kara Millonzi's blog post, *2023 Updates to System Development Fee Law*.[6]

V. Infrastructure

A. Required Connections

North Carolina municipalities and counties have authority, with limited exceptions, to require developed property to connect to public water and sewer under G.S. 160A-317(a) and

6. Kara Millonzi, *2023 Updates to System Development Fee Law*, Coates' Canons NC Loc. Gov't L. (Oct. 25, 2023), https://canons.sog.unc.edu/2023/10/2023-updates-to-system-development-fee-law/.

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153A-284(a). Section 10 of S.L. 2023-90 (H.B. 628) and Section 12 of S.L. 2023-108 (H.B. 488) alter that authority in the following notable ways:

Counties may require a property owner to connect to a sewer line only "if the county has adequate capacity to transport and treat the proposed new wastewater from the premises at the time of connection."[7]

Cities likewise may not require a property owner to connect to the city sewer system unless the system has adequate capacity.[8]

In addition, a city may not require sewer connection if the cost to connect to the system is greater than the cost to install an on-site wastewater system (as determined by a licensed soil scientist, on-site wastewater contractor, or licensed plumbing contractor).[9]

Finally, the city cannot require the property owner to connect to the water system if the system will not generate water pressure that is equal to the average of connected customers within a quarter-mile radius of the owner's point of connection (as determined by a licensed professional engineer). The city also may not require the owner to install a larger meter and piping connection or impose an increased fee to achieve the required water pressure.[10]

B. Water Capacity for Charter Schools

Section 40 of S.L. 2023-137 (H.B. 600) adds a new statute, G.S. 115C-218.36, to give rules for reserving water and sewer capacity for charter schools.

C. Wastewater Calculations

Section 18 of S.L. 2023-137 (H.B. 600) modifies the calculations for wastewater design flow rates for dwelling units. Among other changes, wastewater flows will be calculated at 75 gallons per day per bedroom.

VI. Local Environmental Regulation

A. Wetlands

Potentially one of the most significant provisions of the 2023 farm bill, S.L. 2023-63 (S.B. 582), is Section 15, which limits wetlands that are waters of the state (and thus subject to state water-quality laws) to those that are defined as waters of the United States. Previously, there was a small range of coastal wetlands that were not covered by federal regulations but were covered under state law. Those wetlands will no longer be covered under state law.

A contemporaneous decision by the United States Supreme Court in *Sackett v. Environmental Protection Agency* further limits the scope of regulated wetlands under both state and federal law. The federal Clean Water Act gives federal regulatory agencies jurisdiction over "waters of the United States." This term includes certain wetlands, but the text of the Clean Water Act does not make clear *which* wetlands are covered. Regulators had been applying federal protections to wetlands that related to or affected surface-water bodies that qualified as "waters of the United

7. S.L. 2023-90, § 10.(b); S.L. 2023-108, § 12(b).
8. S.L. 2023-90, § 10(a); S.L. 2023-108, § 12(a) (slightly different language with similar effect).
9. S.L. 2023-90, § 10(a).
10. *Id.*

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States." In the *Sackett* decision, the U.S. Supreme Court limited the scope of regulated wetlands to those that have a "continuous surface connection" with a body of water that is considered a water of the United States, such that it is difficult to determine where the "water" ends and the "wetland" begins.[11]

The combination of the farm bill and the *Sackett* decision means that the only wetlands likely covered by federal and state regulations are those that are at the immediate fringe of a water body. Use of many other wetlands will now be unregulated.

B. Choice of Fee for Erosion and Sedimentation Control

Section 10 of S.L. 2023-108 (H.B. 488) permits applicants for erosion-and-sedimentation-control approval to choose how their review fee is calculated. Specifically, the law amends G.S. 113A-60 to state that the applicant gets to choose whether the fee will be based on the number of acres disturbed or a flat fee of $100 per lot. Additionally, Section 11 of the law directs DEQ to propose to the United States Environmental Protection Agency a plan to streamline sedimentation regulations for construction activities.

C. Transfer of Stormwater Permits

G.S. 143-214.7 sets out the procedure for DEQ to transfer stormwater permits from developers to owners' associations under certain circumstances. Section 13.1 of S.L. 2023-108 (H.B. 488) makes clear that the same transfer rules apply to local governments.

D. Funds for Maintenance of Stormwater Facilities

Local governments have had authority to require financial guarantees for maintenance of private stormwater as outlined at G.S. 160D-925. Section 13 of S.L. 2023-108 (H.B. 488) sets new limits on that authority.

With the new provisions, local governments may not require an owner of a private stormwater facility to make payments to the local government for the purpose of that facility's maintenance (including maintenance, repair, replacement, or reconstruction) or that of other stormwater facilities. A local government may require private owners to retain funds for maintenance of the private stormwater facility. Such funds may not exceed ten percent of the cost of construction. Owners get five years to collect and retain funds, starting at the time the stormwater facility is accepted by the local government as built to standard. The local government may require funds to be held in a segregated account for the sole purpose of maintaining the stormwater facility.

If a local government has previously required payments to itself to fund maintenance of private stormwater facilities, those funds must be made accessible to the owners to cover maintenance costs. Any such funds must be exhausted before the local government may assess costs against residential homeowners or homeowner associations.

E. Redevelopment and Stormwater Rules

Back in 2021, the General Assembly amended the statutes regulating development in water-supply watersheds to allow developers to exceed maximum allowable density for redevelopment projects in specific circumstances. S.L. 2021-164 (H.B. 218) added a new subsection (d3) to G.S. 143-214.5 to allow excess density if the property was developed prior to the local

11. Sackett v. Env't Prot. Agency, 598 U.S. 651 (2023).

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water-supply watershed, the property has not been combined with other lots after January 2021, the property has not been part of density averaging, the property's current use is nonresidential, the stormwater from the redevelopment will be treated to applicable standards, and the remaining vegetation will be preserved.

Section 1 of S.L. 2023-137 (H.B. 600) revised that language for redevelopment projects to specify that the stormwater treatment is only required for any net increase in built-upon area. The prior language required stormwater treatment for new *and* existing built-upon area.

G.S. 143-214.7(b3) already limited the extent to which stormwater rules applied to redevelopment of existing developed areas (stormwater rules apply only to the net increase in impervious surface). Section 2 of S.L. 2023-137 (H.B. 600) amends that statute to make clear that the preexisting development may be demolished or relocated during the development; stormwater controls still are required only for net increase in impervious surface.

F. Exclusion of Rights-of-Way from Impervious Surface

G.S. 143-214.7 sets forth the state law for stormwater-runoff rules and programs. Subsection (b2) of that statute defines *built-upon area* and has special provision to allow some development within an otherwise-protected vegetative buffer as long as the stormwater runoff from "the entire impervious area of the development" is properly treated and will pass through a segment of the vegetative buffer.[12]

Section 2 of S.L. 2023-137 (H.B. 600) amends that language at G.S. 143-214.7(b2)(2) to state that any portion of the development within the municipal or state right-of-way does not count toward "the entire impervious area of the development."

G. Various Stormwater Changes

1. Applicant's Choice of Jurisdiction Under Joint Stormwater-Permitting Programs

Section 2 of S.L. 2023-137 (H.B. 600) amends G.S. 143-214.7(b5) to address applications for permits under joint programs. When local governments establish a joint stormwater-permitting program, an applicant may apply to the local government with jurisdiction over the site or to the other local governments in the joint program.

2. Limit of Off-Site Stormwater Improvements

Section 2 of S.L. 2023-137 (H.B. 600) adds a new subsection (c7) to G.S. 143-214.7. The new statute prohibits DEQ from requiring an applicant to take action on an unaffiliated adjacent property or conditioning issuance of a permit on action to be taken on an unaffiliated adjacent property.

3. Stormwater Fees

Municipal and county stormwater fees are authorized by G.S. 160A-314(a1) and 153A-277(a1), respectively. Each of those statutes allows governments to vary fees based on the type of land use (residential, commercial, or industrial), size of property, amount of impervious surface, and other factors. Section 3 of S.L. 2023-137 (H.B. 600) adds a new factor to that list: "stormwater control measures in use by the property."

12. G.S. 143-217.7(b2)(2).

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4. Exemption from Stormwater Requirements for Certain Public Linear-Transportation Projects

Section 4 of S.L. 2023-137 (H.B. 600) requires the Environmental Management Commission to adopt and implement rules so that "[p]ublic linear transportation projects undertaken by an entity other than the North Carolina Department of Transportation or a unit of local government, which are part of a common plan of development, shall be exempt from the requirements of the Post-Construction Stormwater Rule."

5. Choice of Sedimentation-and-Erosion-Control Authority for Airport Authorities

For airports that are wholly or partly located in a county with a population greater than 250,000 (Buncombe, Cumberland, Durham, Forsyth, Guilford, Mecklenburg, Wake, and possibly Union), S.L. 2023-53 (S.B. 240) allows the airport authority to elect to be regulated by the local sedimentation-and-erosion-control program rather than the state Sedimentation Control Commission. To do so, the airport authority must provide the Sedimentation Control Commission with a certified copy of a local government resolution accepting jurisdiction and must specify a date on which the local government program will assume jurisdiction. This act became effective on October 1, 2023.

6. No Denying Erosion-and-Sedimentation-Control Approval for Lack of Other Permits

Section 12.10(c) of the Appropriations Act (S.L. 2023-134 / H.B. 259) prohibits local governments from basing denial of an erosion-and-sedimentation-control plan solely on the applicant's needing to obtain other environmental permits. At the same time, it *requires* local governments to condition approval of a plan on obtaining other environmental permits or authorizations.

H. Various Water-Quality Changes

1. Limit on Penalties for Removing Timber from Riparian Buffers

Section 11.1(a) of the farm bill, S.L. 2023-63 (S.B. 582), limits the amount of civil penalty that can be assessed for removing timber from riparian buffers. This rule, which became effective July 1, 2023, limits the amount of a civil penalty assessed by the state to the value of the timber removed from the buffer.

2. Aquaculture-Permit Rollback

Section 14.1 of the farm bill, S.L. 2023-63 (S.B. 582), directs DEQ to reopen and modify the aquaculture general permit for surface-water discharges. Specifically, it directs DEQ to replace the current version of General Permit NCG530000 (effective December 1, 2021) with a version "substantively identical" to the prior NCG530 permit, which expired March 20, 2021.

I. Additional Environmental Changes

1. Coastal Area Management Act Policy Must Be Written

Section 12 of S.L. 2023-137 (H.B. 600) amends G.S. 113A-107, requiring the state to make guidelines adopted under the Coastal Area Management Act publicly available and for each guideline to cite the law authorizing it. Additionally, the law amends G.S. 113A-110 to require that local land-use plans under the Coastal Area Management Act consist of *written* statements of objectives, policies, and standards. Furthermore, any denial of a permit must tie to those written state guidelines and local land-use plans.

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2. DEQ Must Cite Authority for Permit Conditions

Section 13 of S.L. 2023-137 (H.B. 600) adds a new G.S. 143B-279.4A to require that DEQ "shall include in any permit issued by the Department the statutory or regulatory authority for each permit condition required by the Department."

3. Nutrient-Offset Banks Owned by Local Governments

Section 16 of S.L. 2023-137 (H.B. 600) amends G.S. 143-214.26 so that, going forward, local governments cannot sell nutrient-offset credit to private entities; they may only sell to other government entities. This does not apply to instruments approved by DEQ prior to the effective date of this session law.

VII. Agricultural Uses

The 2023 farm bill, S.L. 2023-63 (S.B. 582), which was approved over a gubernatorial veto, makes a number of changes to agriculture, land-use, and water-quality laws. In addition to the provisions discussed below and elsewhere in this bulletin, the bill addresses many different subjects. Among them are promoting muscadine grape juice, modifying timber-larceny and prescribed-burning laws, establishing a state equine trail in south-central North Carolina, identifying the longleaf pine to represent the pine tree for purposes of North Carolina's state tree, exempting certain well contractors from certification, and replacing the scuppernong grape with the muscadine grape as the official state fruit. However, this review does not address those sections that do not relate directly to land use or environmental regulation.

Various portions of Section 1 broaden the scope of covered farm uses for certain purposes:

- Section 1 allows income from honey sales to be used to meet the income requirement for property to be considered agricultural land for purposes of present use tax valuation.
- Section 1.1 clarifies that recycling turkey-brooder litter is a bona fide farm use for purposes of the zoning exemption in G.S. 160D-903.
- Section 1.5 amends the definition of *agriculture* to include areas where pine needles are harvested and to include biofuel production for commercial sale.

Section 2 allows farm-related signs to be placed along state-highway rights-of-way. It does so by adding a subsection (b1) to G.S. 136-32 and modifying subsection (c), which permits and regulates the placement of commercial and political signs along state rights-of-way. Farm signs are now allowed along these rights-of-way if the sign advertises a bona fide farm, advertises a bona fide farm's products or services, or provides directions to a bona fide farm. Sign parameters are the same as those in the existing G.S. 136-32.

VIII. Local Bills

The General Assembly passed a variety of local bills altering the scope and substance of authority for specific local governments.

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A. Maggie Valley Extraterritorial Jurisdiction and Moratoria

S.L. 2023-99 (H.B. 184) suspends several areas of development regulatory authority for the Town of Maggie Valley. Section 1 removes all of the town's extraterritorial jurisdiction. Section 2 prohibits the town from enacting development moratoria, and Section 3 alters the definition of *down-zoning* as it applies to Maggie Valley. It adds to that definition zoning ordinances that include requirements or conditions that hinder development that would otherwise be allowed. The act became effective when it became law on July 13, and expires January 1, 2028.

B. Leland Annexation Authority

On the same day that the General Assembly ratified S.L. 2023-99, it ratified House Bill 267, which is now S.L. 2023-100. That bill, which initially was only a deannexation of a parcel on Avent Ferry Road from the Town of Holly Springs, also suspends all annexation authority for the Town of Leland, except for petitions executed on or before March 1, 2023.

C. Capitol-Area Zoning

Section 20.5(a) of the Appropriations Act, S.L. 2023-134 (H.B. 259), exempts from local development regulation all projects managed by the State Construction Office on state-owned and UNC-institution-owned property in Wake County, as well as all projects managed by the Legislative Services Commission. The State Construction Office or Legislative Services Commission still must consult with the appropriate jurisdiction with regard to infrastructure implications, traffic, landscaping, or local environmental regulations. The exemption does not apply to Capitol Square projects, which remain governed by G.S. 143-345.5.

D. Dare County Affordable Housing

Section 24.8 of the 2023 Appropriations Act, S.L. 2023-134 (H.B. 259), exempts certain Dare County affordable-housing projects from all zoning and subdivision regulations. Funds for these units were allocated to Dare County by last year's appropriations bill, S.L. 2022-74. The county and several municipalities disagreed regarding the siting of the proposed developments, and the municipalities denied various development approvals to the affordable-housing projects.

IX. Building Code

A. Changes to the Residential Code

1. Residential Code Council

In 1933 the North Carolina General Assembly created the Building Code Council with authority to prepare and adopt the State Building Code, in conjunction with the commissioner of insurance. For decades the Building Code Council oversaw the State Building Code, including the general building code, residential building code, and the codes for the specific trades such as electrical engineering, plumbing, and fire prevention.

In 2023, the North Carolina General Assembly took some responsibilities from the long-standing State Building Code Council and assigned them to a newly formed Residential Code Council. S.L. 2023-108 (H.B. 488) establishes the new council, describes its duties, and makes necessary edits to align the applicable statutes.

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The new council will have thirteen members, seven appointed by the governor and six appointed by the General Assembly (three at the recommendation of the speaker of the house and three at the recommendation of the president pro tempore of the senate). The statute specifies certain expertise and experience for the various appointees. Members will serve staggered six-year terms. The governor appoints the chair.

As for purposes and authority,

> [t]he Residential Code Council shall review and consider any proposal for revision or amendment to the North Carolina Residential Code, including applicable provisions from the North Carolina Energy Conservation Code, North Carolina Electrical Code, North Carolina Fuel Gas Code, North Carolina Plumbing Code, North Carolina Mechanical Code, North Carolina Existing Building Code, and any other code applicable to residential construction.[13]

Additionally, the Council will consider any appeals or interpretations pertaining to the North Carolina Residential Code.

2. Scope of Residential Code

As previously crafted, the Residential Code applied to one-family and two-family (duplex) homes. It was the North Carolina State Building Code: Residential Code for One- and Two-Family Dwellings. Section 9 of S.L. 2023-108 (H.B. 488) expands that to include three-family (triplex) and four-family (quadplex) dwellings. The new law instructs the Building Code Council to adopt rules accordingly.

3. Energy Conservation

Section 8 of S.L. 2023-108 (H.B. 488) prevents the Building Code Council from adopting rules to amend Chapter 11 (*Energy Conservation*) of the Residential Code and from adopting any new provisions relating to energy conservation or efficiency.

Additionally, as required by Section 1(a) of S.L. 2023-108 (H.B. 488), G.S. 143-138(d) states that

> [a]fter its appointment pursuant to G.S. 143-136.1, the Residential Code Council shall review the North Carolina Energy Conservation Code, the North Carolina Fuel Gas Code, and the North Carolina Mechanical Code and may amend the relevant chapters of the North Carolina Residential Code, affected by that review, by January 1, 2026.

4. Energy Sources and Appliances

S.L. 2023-58 (H.B. 130) limits local government authority to prohibit particular energy sources. The new G.S. 160A-203.3 and G.S. 153A-145.11 prevent municipalities and counties from prohibiting connection to an energy service based on the source of energy and from prohibiting the sale, purchase, or installation of appliances. In other words a North Carolina local government cannot prohibit natural-gas connections or natural-gas appliances. The new statutes clarify that a local government may still choose the energy sources used for local government properties, charge fees for reviewing and issuing permits, and manage and operate local-government-owned utilities.

13. S.L. 2023-108, sec. 1.(a), § 143-136.1(d).

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B. Commercial and Multifamily Building Projects, Expedited and Third-Party Permitting

1. Summary

S.L. 2023-142 (S.B. 677) creates a new statute, G.S. 160D-1110.1, governing commercial and multifamily building permits. The new rules apply to commercial and multifamily building permits with plans and specifications that are complete and sealed by a licensed engineer or architect. The new rules take effect July 1, 2024.

2. Presubmittal Meeting

Local government must provide the option for a presubmittal meeting "to discuss a building project and to determine whether the permit applicant possesses necessary plans and sufficient information the local government would require for building permit plan review." The presubmittal meeting must be scheduled within five business days of the request.

The applicant is eligible to request a presubmittal meeting under the following circumstances:

> (1) The project plans and specifications for a building project are complete and sealed for construction, as applicable, by a professional engineer licensed under Chapter 89C of the General Statutes or an architect licensed under Chapter 83A of the General Statutes.
>
> (2) The project plans and specifications for a building project are substantially identical to those that the permit applicant would submit with the building permit application.
>
> (3) The building permit applicant has made best efforts to compile and prepare documents required by a local government, and other State or federal agencies, for the building project.
>
> (4) The building permit applicant has determined whether an at-risk permit option will be utilized in accordance with subsection (h) of this section.[14]

3. Shot Clock for Permit Decision

For eligible applications, the local government must complete its review and issue a decision within forty-five days of submission, unless the applicant and local government agree to additional time. If the local government receives, at its request, additional information or a resubmitted plan, it then "has up to 10 additional days to issue a building permit decision."[15]

If the local government has issued an at-risk permit (discussed below), then the deadline for issuing the building permit is sixty days.

4. Third-Party Plan Review

S.L. 2023-142 (S.B. 677) provides that licensed engineers and registered architects who are certified under G.S. 143-151.13(f) may, in certain circumstances, provide independent third-party review of commercial and multifamily construction plans.

G.S. 143-151.13(f) already provided that the North Carolina Code Officials Qualification Board shall issue a standard certificate for building code enforcement to certain licensed professionals that complete a required short course on the State Building Code and code-enforcement administration. Those professionals include registered architects, registered professional engineers, and certain licensed contractors. S.L. 2023-142 (S.B. 677) adds a subsection (g) to G.S. 143-151.13 to state that architects and engineers certified under subsection (f) may provide third-party plan review for commercial and multifamily building projects.

14. S.L. 2023-142, sec. 2.(a), § 160D-1110.1(b)(4).
15. *Id.*, sec. 2.(a), § 160D-1110.1(c).

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Under the new G.S. 160D-1110.1, established by S.L. 2023-142 (S.B. 677), local governments may contract with a licensed engineer or architect certified under G.S. 143-151.13(f) to perform independent third-party plan review of commercial and multifamily development. The third-party review must still comply with applicable timelines for review.

If a local government begins plan review and fails to complete it within the time required (the deadline has passed or the local government has determined it cannot meet the timeline), a permit applicant may elect to contract for an independent third-party plan review by a licensed engineer or architect certified under G.S. 143-151.13(f).

The local government shall create a form for certification by a third-party reviewer, and when an applicant opts for third-party review, the applicant must submit to the local government a written certification signed by the reviewer.

Third-party plan reviewers must not have conflicts of interest in conducting reviews. Conflicts of interest include any financial interest or employment relationship with the project or any involvement in making the plans.

> [A] plan reviewer having any financial interest in, or being employed, other than as a plan reviewer under this section, by a business that has a financial interest in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of, or any involvement in the making of plans or specifications for, the project subject to plan review.[16]

5. At-Risk Permits

If an applicant completes a presubmittal meeting for an eligible development, the applicant may request certain permits as *at-risk building permits*.

An applicant may request an at-risk building foundation permit at the time of general-permit application. The local government *must* issue the at-risk building foundation permit if the applicant has (1) submitted all necessary plans and information, as discussed at the presubmittal meeting, and (2) received all approvals necessary to lay the foundation ("notwithstanding that other development approvals from the local government, or other State or federal agencies, for the project have not yet been obtained"). The "approvals necessary" include approval of an erosion and sedimentation control plan for land disturbing activity, but an applicant is not obligated to have obtained other development approvals that may be necessary for the overall development.[17]

An applicant may request an at-risk building structure permit once the applicant has obtained the at-risk foundation permit. A local government *may* issue an at-risk building structure permit if the applicant has (1) submitted all necessary plans and information and (2) received all approvals necessary to build the structure ("notwithstanding that other development approvals from the local government, or other State or federal agencies, for the project have not yet been obtained"). An at-risk building structure permit is for "the erection and installation of structural or framing members for exterior walls and roof assemblies."[18]

For at-risk permits, the applicant assumes all liability and the local government is released from liability for review, approval, and construction pursuant to the at-risk permit.

16. *Id.*, sec. 2.(a), § 160D-1110.1(g).
17. *Id.*, sec. 2.(a), § 160D-1110.1(h)(1).
18. *Id.*, sec. 2.(a), § 160D-1110.1(h)(2).

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An at-risk permit does not count as an "initial development permit" for purposes of vesting and multiple permits under G.S. 160D-108(e).

If a local government required manufacturer specifications or engineering information for an element, component, or fixture, the local government may not delay or deny the issuance of the building permits based on receipt of the requested specifications or engineering information.

6. Erosion and Sedimentation Control

Section 2 of S.L. 2023-142 (S.B. 677) adjusts the rules for erosion-and-sedimentation-control plans to align with the streamlined review of commercial and multifamily building projects. G.S. 113A-61 is amended to state that a local government shall "not deny a draft erosion and sedimentation control plan based solely upon the applicant's need to obtain other development approvals [as defined] for the project."[19] The local government may still condition approval upon compliance with applicable state and federal regulations.

G.S. 160D-922 is amended to state that once a local government approves an erosion-and-sedimentation-control plan, the plan holder is allowed to begin land-disturbing activity in accordance with G.S. 160D-1110.1(h) and the approved plan. The plan holder does not have to wait for other development approvals from the local government. The erosion-and-sedimentation-control plan does not count as an initial development permit under G.S. 160D-108(e).

C. Other Building Code Changes

Besides creating the Residential Building Code Council, S.L. 2023-108 (H.B. 488) and other legislation made broad and technical changes to the State Building Code, including insulation standards for unvented attics, implementation of the Appendix B Building Code Summary for All Commercial Projects, and others.

1. Threshold Amount for Building Permits and General Contractors

The threshold amount to require a general contractor and to require a building permit was increased to $40,000. Pursuant to Section 2 of S.L. 2023-108 (H.B. 488), relevant statutes are amended to increase the threshold to $40,000.

2. Single Residential Building Permit

Local governments must not "[r]equire more than one building permit for simultaneous projects at the time of the application located at the same address and subject to the North Carolina Residential Code."[20] G.S. 160D-1110(d) is amended by Section 2 of S.L. 2023-108 (H.B. 488) to add that limitation.

3. Routine Sheathing Inspections

Section 4 of S.L. 2023-108 (H.B. 488) adds language to G.S. 143-138(b23) and 160D-1102(d) stating that neither the building code nor local rules may require "routine exterior sheathing inspections for structures or dwellings . . . located in a region where the ultimate wind speed is less than 140 miles per hour."

19. S.L. 2023-142, sec. 2.(d), § 113A-61(b1).
20. S.L. 2023-108, sec. 2.(f), § 160D-1110(d)(2).

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4. Temporary Movie Sets

Temporary movie sets were already exempt from most building code requirements. S.L. 2023-91 (H.B. 782) expands and clarifies that exemption. Under the revised G.S. 143-138(b20), "[b]uildings used for temporary motion picture, television, and theater stage sets and scenery are exempt from use and occupancy classification under the North Carolina State Building Code." No building permit is required. Additionally, under prior law the fire inspector had to inspect such temporary movie sets. The new legislation strikes that inspection from the statute.

5. Elevators in Residential Rental Accommodations

S.L. 2023-68 (H.B. 608) makes technical changes to the specifications for elevators in residential rental accommodations outlined at G.S. 143-143.7, and calls for the Building Code Council to adopt rules accordingly.

6. Piers and Docks

Section 35 of S.L. 2023-137 (H.B. 600) reverts building code rules for piers and docks to 2009 standards.

X. Code Enforcement

A. City Authority to Remove Abandoned Vessels

Certain North Carolina counties already had authority at G.S. 153-132 to regulate abandonment of vessels in navigable waterways and to remove and dispose of abandoned vessels. S.L. 2023-27 (S.B. 465) extends that authority to cover all counties and adds a new statute, G.S. 160A-205.6, to grant the same authority to municipalities.

XI. Renewable Energy

A. Solar Decommissioning, S.L. 2023-58, H.B. 130

S.L. 2023-58 (H.B. 130) adds a new statute, G.S. 130A-309.240, requiring owners of utility-scale solar projects to decommission their project upon the end of operation. A utility-scale solar project is "a ground-mounted [photovoltaic (PV)], concentrating PV (CPV), or concentrating solar power (CSP or solar thermal) project capable of generating 2 megawatts AC (MW AC) or more."[21] Qualifying projects must be connected to the electrical grid. The term does not include facilities owned or leased by retail electric customers for their own use or for net metering.

1. Decommissioning Requirement

Upon cessation of operations, the owner of the project must decommission the project and restore the property. The owner must notify the DEQ within thirty days of cessation and describe the steps to be taken, including at a minimum

- disconnection from the power grid,
- removal of all equipment,

21. S.L. 2023-58, sec. 2.(a), § 130A-309.240(a)(6).

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- reuse or recycling of materials,
- disposal of materials that cannot be reused or recycled (i.e., removal of nonhazardous materials to an industrial or municipal landfill and disposal of hazardous materials in accordance with hazardous-waste requirements), and
- restoration of the property to the condition it was in before the project or an alternative condition agreed to in a contract or lease with the landowner.

2. Decommissioning Plan

Owners of utility-scale solar projects must submit a decommissioning plan to DEQ for approval. Such plans must be prepared, signed, and sealed by a professional engineer licensed in North Carolina and include the following: contact information for the project owner and landowner, a narrative description of decommission, information on material to be salvaged and estimated salvage value, a description of steps to restore the property after decommissioning, a cost estimate of decommissioning and restoration, the mechanism of financial assurance, and details for the financial assurance.

3. Financial Assurance

Owners of utility-scale solar projects must establish financial assurance in an amount acceptable to DEQ to ensure sufficient funds are available for decommissioning and restoration. The statute lists several options for financial instruments, including insurance, third-party guarantees, letters of credit, and surety bonds. The owner of the project must maintain financial assurance until decommissioning and restoration is complete. The owner of the project must document the financial assurance at the time of registration and at each five-year update. The statute requires DEQ to adopt rules with criteria for setting the amount of financial assurance, among other rules to implement that law.

4. Registration

Owners of utility-scale solar projects must register with DEQ and update the registration every five years. After the effective date of the law (November 1, 2025), registrations must be filed at least ninety days prior to commencing construction on a new or expanded project. Registration must include identification of the owner and any other legal entity responsible for decommission and financial assurance, summary of the project equipment subject to decommissioning (including identification of per- and poly-fluoroalkyl substances and hazardous materials), project timeline, estimated costs of decommissioning and restoration, proposed financial assurance, any decommissioning plan or financial assurance established pursuant to local requirements or agreement with the landowner prior to registration, and any other requirements by DEQ. DEQ must collect fees at the time of registration and of each periodic update, and it must apply those funds to the cost of administering the program. In addition to the registration requirement, the Utilities Commission must create and maintain a list of all utility-scale solar projects and provide an updated list annually to DEQ.

5. Local and Contract Requirements

The local government may establish more stringent requirements for decommissioning and financial assurance. Similarly, landowners may impose more stringent requirements.

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6. Financial Support

DEQ must identify existing incentive and grant programs to research module recycling and reuse and to support the module-recycling-and-reuse industry. Additionally, the law created the Utility-Scale Solar Management Fund, funded by fees imposed on project owners.

7. Effective Dates

The requirements for decommissioning and registration are effective November 1, 2025, and apply to all utility-scale solar projects constructed before or after that date. The requirements for decommissioning plans and financial assurance are effective November 1, 2025, but those requirements apply only to existing projects that are rebuilt or expanded, as defined, and new projects for which applications for certificates of public convenience and necessity are pending or submitted on or after June 26, 2023.

B. Disposal of Photovoltaics

Section 18 of S.L. 2023-137 (H.B. 600) amends G.S. 130A-309.1 to require that photovoltaic modules be disposed in industrial landfills or municipal solid-waste landfills. They must not be disposed in unlined landfills.

C. ~~Renewable~~ Clean Energy Portfolio Standards

S.L. 2023-138 (S.B. 678) changes utility regulations to allow nuclear energy to count toward required portfolio standards. What had been *renewable*-energy and energy-efficiency portfolio standards are now *clean*-energy and energy-efficiency portfolio standards, and nuclear energy is defined as a clean-energy resource.

In 2007, North Carolina became the first state in the Southeast to adopt renewable energy portfolio standards.[22] The law set requirements for energy utilities to meet a certain percentage of energy needs through renewable-energy or energy-efficiency measures. *Renewable energy resource* was defined to include a range of sources, including solar power, wind power, hydropower, biomass, waste heat, and more. The term specifically excluded peat, fossil-fuel, and nuclear energy. S.L. 2023-138 (S.B. 678) changes that. The new clean energy portfolio standards allow nuclear to count toward required portfolio standards.

XII. Other Notable Legislation

A. Sports Wagering

House Bill 347, now S.L. 2023-42, legalizes wagering on sports in North Carolina, but with significant restrictions on where and how that activity can occur. The core of this session law is a new Article 9 ("Sports Wagering") of Chapter 18C of the General Statutes. This new law allows individuals to place bets on sporting events, portions of sports events, and individual-participant statistics. It allows a variety of bets, including parlays, over-unders, in-game bets, moneyline bets, and beyond. These are described in more detail in the new G.S. 18C-901(19). The law also amends other gambling-related statutes in Chapters 14 and 16, as well as ABC statutes, to be consistent with the legalization of sports wagering in the state.

22. N.C. Util. Comm'n, *Renewable Energy and Energy Efficiency Standard (REPS)*, NCUPC.gov (last visited Jan. 7, 2024), https://www.ncuc.gov/Reps/reps.html.

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There are a number of exceptions to the sports-wagering system. It does not apply in any way to fantasy sports, and leaves open how those might be regulated (if at all) by other laws. It also explicitly prohibits wagering on youth sports, injury occurrence, penalty occurrence, and the outcomes of disciplinary proceedings or replay reviews.

The law creates an entire regulatory framework for sports wagering, including a licensing system, the use of revenues, who can be licensed, how wagering accounts must work, and similar topics. Those interested in the intricacies of those systems are encouraged to study the session law, as a complete analysis is beyond the scope of this publication.

This law will be effective January 8, 2024, but Section 11.8 of the appropriations act (S.L. 2023-134) gives the Lottery Commission permission to set a date between January 8 and June 15, 2024, for the actual beginning of authorized sports wagering.

Of most interest to land use regulation are the regulations around where betting can take place. The law limits betting to two types of location: "sports facilities" and "places of public accommodation."

1. Sports Facilities

New General Statute 18C-901(17), as revised by Section 11.18 of the appropriations act (S.L. 2023-134), defines *sports facility* to include NASCAR tracks, hosts of major golf tournaments, and home facilities of professional sports teams at the highest level of competition.

2. Places of Public Accommodation

New General Statute 18C-926 allows permanent "places of public accommodation" (presumably sportsbooks or betting windows) to be established on the property of a sports facility. A golf tournament can also have a temporary place of public accommodation on site if it does not have a permanent one. The law also allows up to one place of public accommodation to be on other property owned or controlled by the owner or operator of the sports facility within a half-mile radius of a NASCAR or pro-team sports facility, and no more than one place of public accommodation within one and a half miles of a golf-tournament site.

A revision to the law included in the appropriations act (S.L. 2023-134, Section 11.18) also requires facility owners and operators to commit to working with a single wagering operator. Specifically, a sports wagering operator must enter into a "designation agreement" with a major-league pro sports team, the owner or operator of a NASCAR or pro-golf facility, a sports governing body that sanctions multiple NASCAR races per year, or a sports governing body that sanctions more than one professional golf tournament per year. If the wagering operator breaks its contract, it can lose its license. However, each team, track, course, or governing body may not enter into a designation agreement with more than one wagering operator.

The law also addresses horse racing and sets up a new fund to attract major events. Section 3 of the law adds an Article 10 to General Statutes Chapter 18C to cover pari-mutuel wagers on live or simulcast horse races. It also requires the Lottery Commission to adopt rules governing horse racing in the state, including rules regarding bets on simulcast horse races. The statute does not appear to include the same location restrictions as apply to sports-betting places of public accommodation, although establishments must be licensed by the Lottery Commission.

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B. Grants for Local Government Development Assets

Among the items of legislation contained in the 625-page 2023 Appropriations Act (S.L. 2023-134 / H.B. 259) are several additional grant opportunities for local governments. These include the following:

1. Megasite Fund Grants

Section 11.11 allows for two additional megasites in the state, adds the semiconductor industry, allows Megasite Fund grants to be used for due diligence and infrastructure planning, and allows certain public records to be withheld.

2. Grants for Parks and Trails

Section 14.4 provides 5:1 matching grants for improving accessibility at parks and recreational facilities, and Section 14.6 also starts a "Great Trails Fund" that can be accessed by local governments, regional councils of government, and other entities.

3. Fund for "Major Events"

In addition, the sports-betting legislation (S.L. 2023-42 / H.B. 347) creates a new Major Events, Games, and Attractions Fund, to be administered by the Department of Commerce and to be funded by the tax on sports wagering. This fund will be used to retain or attract "major events." The statute defines *major event* as an entertainment, musical, political, sporting, or theatrical event that

- will be held at a sports facility or other significant indoor venue (as described in the new law), or will be sponsored by NASCAR, the Ladies Professional Golf Association, the Professional Golfers' Association of America, the PGA Tour, or the US Golf Association;
- is held no more often than annually; and
- for which a site in North Carolina was chosen over sites outside the state through a competitive process.

Major events thus might include major concerts, political conventions, all-star games, golf tournaments, and international sporting events, to name a few. The awarding of these grants will depend on criteria such as economic activity, positive media exposure, total benefits, and the necessity of the grant to keeping the event in North Carolina.

C. Proposed Legislation

The bills discussed below were proposed during the 2023 Long Session but have not been ratified by the General Assembly as of this bulletin's publication.

1. S.B. 675 Land Use Clarification and Changes

Although it stalled in committee in June 2023, Senate Bill 675 contained a number of proposed changes to land-use regulatory authority that could return to consideration in later sessions. These proposed changes included the following:

- a new provision which would have required all zoning ordinances to allow public school buildings to be permitted (by right or as special use) in commercial zoning districts;
- a clarification that obtaining one vested right does not preclude or extinguish another vested right related to the same property;

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- a clarification that where special use permits expire without vesting, the existing zoning classification applies; and
- removal of extraterritorial jurisdiction for counties with populations of 50,000 and below, along with a prohibition on new areas of extraterritorial jurisdiction.

2. S.B. 692 Various Changes to Education Laws

Senate Bill 692, which includes a number of education-related provisions, also would allow public schools by right in commercial zoning districts (similar to Senate Bill 675).

It also would allow public, parochial, and other private schools by right in all residential districts under very particular circumstances. Among these limitations are requirements for county size and population that only Union, Buncombe, Cumberland, Gaston, Guilford, Forsyth, Durham, Wake, and Mecklenburg Counties would meet.

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