

HIGH IMPACT LAND USE

Table of Contents

A. Title	2
B. Purpose.....	2
C. Authority & Jurisdiction	2
D. Definitions	2
E. Prohibitions	7
F. Location distance restrictions	7
G. Setbacks, buffers and dust controls.....	7
H. High impact land use authorization procedure	9
I. Appeals and variances.....	14
J. Permit Issuance.....	14
K. Non-conforming use	15
L. Penalties for violations	15
M. Conflict with other laws	16
N. Separability	16
O. Conflicts of interest	16
P. Effective Date	17

A. Title

HIGH IMPACT LAND USE

B. Purpose

For the purpose of promoting the health, safety, and general welfare of its citizens and the peace and dignity of Cherokee County, the County Commissioners hereby establish certain criteria relating to high impact land uses to accommodate those activities as identified and defined in this chapter, which is in accordance with its land use plan. High impact land uses, by their very nature, create potential danger from explosions, produce objectionable levels of noise, odors, vibrations, fumes, light, excessive energy consumption, excessive water consumption, unwanted glare, or smoke and have impacts upon the areas adjacent to them.

These ordinance provisions are intended to allow for the placement and growth of high impact land uses while attempting to support the health, safety and general welfare standards of established residential and commercial areas in Cherokee County.

C. Authority & Jurisdiction

1. **Authority.** This Chapter is adopted under the authority granted to Cherokee County in N.C. Gen. Stat. §§ 160D-401(a), and 160D Article 6.
2. **Jurisdiction.** In accordance with N.C. Gen. Stat. §§ 160D-202(b), this ordinance shall apply to all unincorporated areas of Cherokee County in which no town or city is exercising extraterritorial jurisdiction under N.C. Gen. Stat. § 160D, Art. 2.
3. **Exception.** All property within the Qualla Boundary of the Eastern Band of Cherokee Indians and those specific areas of trust land maintained, reserved, or operated by or for the benefit of Tribal Government are exempt from this Ordinance.

D. Definitions

Words and phrases defined in this section shall have the meanings provided in this section when used in this Ordinance. Except as defined herein, all other words used in this Ordinance shall have their dictionary definition or, for more planning-specific terms, the definition found in the most recent edition of "A Planners Dictionary," as published by the American Planning Association. If there is a conflict between the dictionary definition of a term and the definition provided in A Planers Dictionary, the definition provided in A Planners Dictionary shall be used.

1. **ADMINISTRATOR.** The County Manager of Cherokee County, or other individual designated by the County Manager to be the person interpreting the chapter and acting as a conduit between the developer of a high impact land use and the

Cherokee County Commissioners on whether or not to authorize a High Impact Land Use.

2. **AREA OF OPERATION.** The portion of a tract of land on which a high impact land use is situated that is actually in use or is planned for use to conduct the activities for which this chapter requires authorization, and shall include any area occupied by buildings, structures, equipment, storage and stationary equipment used or planned for use in the conduct of these activities.
3. **ASPHALT PLANT.** A commercial facility for the manufacture and production of a thick, dark tar-like variety of bitumen, which, when mixed with proper amounts of sand or gravel or both, results in material suitable for paving, roofing, or other similar uses.
4. **ASSISTED LIVING CENTER.** A group housing and services program for two or more unrelated adults that makes available for its residents no less than one meal a day, provides housekeeping services, and provides personal care services.
5. **CHEMICAL MANUFACTURER.** A commercial facility involved in the production, synthesis, formation, processing, or refining of chemical products.
6. **CHEMICAL STORAGE CENTER.** A commercial facility used primarily for the storage of chemical compounds.
7. **CHIP MILL.** A commercial facility that grinds logs into wood chips for production of paper, particle board, or other similar products with more than fifteen (15) employees.
8. **CLOSED-LOOP WATER OR LIQUID COOLING SYSTEM.** A sealed cooling process in which the same water or coolant circulates continuously with de minimis withdrawal from or discharge into municipal systems, groundwater sources, or surface waters.
9. **CONCRETE MIXING PLANT.** A commercial facility utilizing equipment that combines materials including, but not limited to, sand, water, aggregate, ash, and cement to form concrete and shall include, but not be limited to, both “ready mix” and “central mix” facilities.
10. **CRYPTOMINE.** Facilities that provide a commercial process by which cryptocurrency transactions are verified or added to a public ledger known as a “block chain”, and also the means through which new units of cryptocurrencies are released through the use of a server farm (2 or more interconnected computers) or similar arrangement employing data processing equipment.
11. **DATA PROCESSING FACILITY.** An establishment primarily involved in the compiling, storage, and maintenance of documents, records, and other types of information in digital form. This term does not include general business offices, computer-related sales establishments, and business or personal services.

12. **DAY CARE CENTER.** A facility, whether or not operated for profit and without regard to its hours of operation, where six or more individuals are afforded opportunity for temporary provision of activities designed to assist children, persons with disabilities, or elderly persons with daytime care.
13. **DWELLING UNIT.** A permanent structure constructed for the purpose of housing natural persons that has not been classified by government authority as uninhabitable.
14. **EDUCATIONAL CENTER.** An elementary school, secondary school, charter school, private school, community college, college, university, or similar institution providing for the education of natural persons. Its area shall include all spaces utilized for educational instruction and spaces actually needed for related activities regularly conducted for the benefit of its students, participants, employees, or other associated persons.
15. **EXPLOSIVES MANUFACTURER.** A commercial facility used for manufacturing of a chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, and shall include, but is not limited to: dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniting cord, igniters, and display fireworks. Facilities not included in this category are those producing only small firearms ammunition.
16. **EXPLOSIVES STORAGE WAREHOUSE.** A commercial facility used for the storage of products created by an explosives manufacturer, regardless of whether the explosives manufacturer is located within Cherokee County.
17. **FUEL STORAGE CENTER.** A commercial facility used for the storage, distribution, mixing, or transfer of flammable or combustible liquids, gases, or solids, including propane, methane, ethanol, gasoline, kerosene, oil, coal, and other fuels, received or transferred by truck, train, tank vessel, pipelines, tank car, piping, portable tank, portable containers, or by similar method, and stored in quantities greater than a one-day supply for a customer of this facility. Facilities not included in this category are gasoline dispensing facilities used solely for distribution to individual consumers, and any fuel storage center at an agricultural farm, residence, business, or other facility where use of the product is limited to on-site consumption for uses related to the agricultural operations. Facilities with total storage tank capacity of less than XXX,XXX gallons (or its measurement equivalent) are exempt from the definition of Fuel Storage Center if their classification as a Fuel Storage Center is based on their use of the storage tanks.
18. **HIGH IMPACT LAND USE.** An activity which creates potential danger from explosions or produces levels of sound/noise, odors, vibrations, fumes, heat, light, smoke, air pollution or water pollution that have an adverse effect on the health, safety or general welfare of the citizens of Cherokee County, which includes, but is not limited to asphalt plants, cryptomines, data processing facilities, quarries, stone crushing operations, incinerators, sawmills, chip mills, tub grinding operations, explosives manufacturers, explosives storage warehouses, fuel

storage centers, concrete mixing plants, chemical manufacturers, chemical storage centers, and medical waste disposal centers.

19. **HISTORIC SITE.** An area of land determined by the Secretary of the Interior to qualify as a registered historic district, or:
 - a. A structure listed individually in the National Register of Historic Places - as maintained by the U.S. Department of the Interior;
 - b. A structure preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; or
 - c. A structure certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district.
20. **INCINERATOR.** A facility designated as a “hazardous waste incinerator” and having its operation regulated by the U.S. Environmental Protection Agency.
21. **MEDICAL CENTER.** A facility which has an organized medical staff, and which is designed, used, and operated to provide health care, diagnostic and therapeutic services.
22. **MEDICAL WASTE DISPOSAL CENTER.** A facility that stores or treats medical waste at a location separate from the facility where it was generated.
23. **NOISE.** For the purposes of this ordinance, any sound of such level and duration as to be or tend to be injurious to human health or welfare, or which would unreasonably interfere with the enjoyment of life or property throughout the County or in any portions thereof, but excludes all aspects of the employer-employee relationship concerning health and safety hazards within the confines of a place of employment.
24. **NURSING HOME.** A facility maintained for the provision of nursing or convalescent care for three or more people unrelated to the operator, and which operates under a license from the State of North Carolina.
25. **PERSON.** An individual, corporation, partnership, business entity or a named group organized to advocate a public position related to an existing or proposed high impact land use.
26. **PLACE OF WORSHIP.** A church or similar area is used on a regular basis for the primary purpose of serving as a place of public worship. Its area shall include all spaces utilized for worship services and spaces needed for related activities regularly conducted for the benefit of its congregation members.
27. **PROTECTED SITE.** A location in Cherokee County is used by its citizens for activities that are expected to be conducted without interruption by loud noise/sounds, noxious odors, smoke or fumes, disturbing vibrations, unwanted glare or pollution of air or water. Designated sites deserve to be protected by regulated distances and by buffers from any high impact land use, based on the

classification of such use. The following are protected sites: educational centers, day care centers, assisted living centers, nursing homes, medical centers, places of worship, dwelling units, public outdoor recreational facilities, historic sites as held by tribal standards, local ordinance, state law, and federal law, Apalachia Lake, Hiwassee Lake, Valley River, Nottely River, and Cherokee Lake.

28. **PUBLIC OUTDOOR RECREATION FACILITY.** A tract of land owned by a government agency or a non-profit community group intended for public use as active or passive recreation. Its area shall include all spaces regularly utilized for its intended purposes.
29. **PULP MILL.** A commercial facility engaged in activities classified by the U.S. Environmental Protection Agency as belonging to a “pulp and paper mill” with its operation regulated by that agency.
30. **QUARRY.** A commercial facility for the dredging, digging, extraction, or mining of minerals, ores, soils, and other solid matter. Facilities not included in this category are tracts of land less than one acre in size when used either:
 - a. For excavation or grading when conducted solely in aid of on-site farming or on-site construction of commercial or residential buildings; or
 - b. Removal of ores or mineral solids when done solely for the purpose and to the extent necessary to determine the location, quantity, or quality of any natural deposit.
31. **SAWMILL.** A commercial facility where logs are customarily processed into lumber, finished wood products or mulch. Facilities not included in this category are those employing less than fifteen (15) full-time employees, and in operation for a duration of less than six months at the same area of operation.
32. **SOLAR ENERGY SYSTEMS.** Shall mean solar arrays or solar panels including mounting structures and inverters. This definition does not apply to solar farms which are less than 10 acres.
33. **SOUND.** See “NOISE” defined herein.
34. **STONE CRUSHING OPERATION.** A commercial facility engaged in the use of mechanized equipment or machinery to reduce the size of stone material or material having the qualities of stone.
35. **TUB GRINDING OPERATION.** A commercial facility engaged in the use of mechanized equipment to produce organic mulch from natural inert or organic material such as tree stumps, tree branches, brush and other type of natural forestry waste material. Facilities not included in this category are those employing less than fifteen (15) full-time employees, and in operation for duration of less than six months at the same area of operation.

36. VEGETATIVE BARRIER. Plant material on a strip of land having a designated width along a specified land feature with the purpose of separating that land feature from view or pollution.

E. Prohibitions

A facility defined by this Ordinance as a High Impact Land Use shall not begin construction or operate without obtaining authorization from the Cherokee County Board of Commissioners through the review process established in this Ordinance and no area of operation, building, or structure subject to or regulated by Ordinance shall be erected, moved, occupied, electrified, added to, or structurally altered without approval of Administrator, and pursuant to the processes outlined in this Ordinance.

F. Location distance restrictions

A high impact land use shall not be located nearer to a Protected Site than 2,000 feet, measured from the area of operation of the high impact land use to the nearest point of: (1) any lot line of the protected site, (2) the contour elevation indicating the recognized boundary of a water body listed as a protected site, or (3) the edge of the 500 year flood plain associated with a water body listed as a Protected Site.

G. Setbacks, buffers, water and energy consumption, and dust controls

Applicants must demonstrate through its application and maintenance the following mandatory provisions have been met:

1. Vegetative Barrier. A vegetative barrier, approved by the Cherokee County Board of Commissioners, sufficient in width, height, and all-year existence, to serve as a buffer to mitigate the visual impact of the area of operation both at road grade level and from all sides, and provide noise/sound, glare and particulate matter reduction.
2. Dust Alleviation Material. Inclusion of a dust-alleviation surface material for roads within, and leading to, the area of operation. The application should include an evaluation from a qualified design professional attesting to the adequacy of the surface material, design, and configuration to achieve the reduction of dust from the applicable roads.
3. Paving. Inclusion of permanent paving material applied along any road from the proposed use onto a public roadway for a distance of at least 100 feet in length and 20 feet in width, which may be expanded by the Board depending on the anticipated impacts of the proposed use.
4. Security/ Visual Barrier. Construction of a security/visual barrier fence which surrounds the entire area of operation. The material shall be chain link, nine gauge or better, and at least six (6) feet in height with one or more strands of barbed or razor wire above the top. The fence should obstruct the view of the area of

operation from outside of the fence and include a siren activated gate that is closed and locked when the facility is not in operation or maintained. The gate shall comply with all other County ordinance requirements. The Administrator may vary the material and gauge of the required fence based on the anticipated impacts of the proposed use. The Administrator may require specific sound proofing or other aesthetic components be incorporated into the fence in order to ensure compatibility with the surrounding area and the land use plan.

5. Solar energy systems are subject to the following setbacks and requirements:
 - i. At least 100 feet from centerline of roads;
 - ii. At least 50 feet from adjacent properties;
 - iii. At least 100 feet from adjacent residential property lines; and
 - iv. At least 100 feet from properties containing existing structures, that include homes, barns, sheds, or outbuildings.
 - a. Solar energy systems must be designed, constructed and sited to minimize glare or reflections on adjacent properties and roadways and to not interfere with traffic, including air traffic, or otherwise create a safety hazard.
 - b. Solar energy systems that do not produce energy for a continuous period of one year or more are presumed to have been abandoned unless the failure to produce energy results from a cause outside of the control of the owner/operator.

This provision is pursuant to N.C. Gen. Stat. § 160D-914, and shall be pursuant to such statute.

6. Sound Barrier. Construction of a sound barrier along the perimeter of the operation adjacent to any Protected Site. The sound barrier shall be designed by a licensed professional engineer and constructed of materials capable of reducing noise levels generated by the operation. The barrier shall be of such height as is necessary to reduce noise levels to XX decibels outside of the barrier. The Administrator may require a greater height, additional sound attenuation measures, or acoustical testing where necessary to ensure compatibility with surrounding land uses and to protect the public health, safety, and welfare. The sound barrier shall be continuously maintained in good condition and promptly repaired or replaced if damaged.
7. Electrical Load Limitation. No High Impact Land Use shall operate with a peak electrical demand in excess of XX megawatts (MW), as measured at the point of utility interconnection. The facility owner shall provide annual certification from the electric utility provider demonstrating compliance with this section. Electrical

consumption shall be calculated based upon the facility's maximum coincident demand during any fifteen-minute interval. The Administrator may require the installation of monitoring equipment and periodic reporting to verify compliance. Any expansion, equipment replacement, or operational modification that increases the facility's peak electrical demand by more than ten percent (10%) above the demand approved in the original permit application shall constitute a material modification requiring review and approval under this Ordinance.

8. **Water Consumption Restriction.** No High Impact Land Use shall be permitted to withdraw, consume, divert, or utilize water at a rate exceeding XX gallons per day ("GPD") average daily demand or XX gallons per day peak demand. The applicant shall submit a report prepared by a qualified engineer or hydrogeologist identifying:
 - A. The anticipated average daily water consumption and peak daily water consumption;
 - B. The source of all water supplies to be utilized by the operation;
 - C. The anticipated effects upon nearby wells, springs, streams, rivers, lakes, and public water systems;
 - D. Any proposed water recycling, reuse, conservation, or mitigation measures; and
 - E. The anticipated wastewater generation and disposal method.

No permit shall be issued unless the applicant demonstrates that the proposed use will not materially diminish the availability of water resources for residential, agricultural, commercial, governmental, or emergency service purposes within Cherokee County.

The Administrator may require installation of water metering equipment and periodic reporting of water usage. Any increase in water consumption exceeding ten percent (10%) above the amount approved in the permit application shall constitute a material modification requiring additional review and approval.

H. High impact land use authorization procedure

Facilities classified as High Impact Land Use, shall only be authorized when the person has demonstrated through its application the following mandatory provisions have been met:

1. **Administrative Approval.** Approval from the Administrator is required for the establishment and operation of a High Impact Land Use.

2. **Fee Required.** A fee to cover the administrative costs of an application of \$2,500 shall be paid to the Cherokee County Board of Commissioners at the time the application is submitted.
3. Provisions provided in # Setbacks, Buffers, Water and Energy Consumption and Dust Control above.
4. **Deconstruction Plan.** A deconstruction plan outlining the anticipated process and cost of removing the proposed use must be submitted with the application. Any high impact use that has been abandoned must be deconstructed and removed within 18 months; however, the period may be extended by approval of the Administrator. Any such extension shall not exceed 12 months. Extensions may be renewed for 12 month increments as necessary, but if the extension is not renewed by the expected deadline then an extension may not be granted. Rather, the applicant must re-apply for an extension.
5. **Performance Guarantee/ Surety.** The applicant shall also provide a performance guarantee, as authorized under N.C. Gen. Stat. § 160D-804.1, equal to 125% of the reasonably estimated cost of completing or constructing any requirement included by the Board as a condition of approving the proposed use. In order for a guarantee to be extended by the Board, the developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee. Good-faith progress shall not exist when the developer has not made any progress towards completion of the required improvements within a reasonable time. Further, after any initial extension, to demonstrate good-faith progress for any subsequent extension, it must be shown that at least 85% of the required improvements that were incomplete at the time the previous extension was granted have since then been completed. Further, upon granting an extension, a developer shall be required to provide the County with quarterly updates on the status of completing all required improvements secured by the guarantee. Quarterly updates may be provided in writing and submitted to the Clerk to Board and County Manager. Failure to submit any required update shall be primarily evidence of a lack of good faith on the part of the developer and shall be considered by the County if any subsequent performance guarantee extension is sought.
6. **Required Permits.** The applicant shall obtain all requisite County and State permits prior to initiation of construction.
7. **Format and Process.** The application shall be made on a form issued by the Administrator and include all information required by this Ordinance. An application shall be considered only upon submittal of a complete application by the owner of the affected property or a duly authorized representative of the property owner.
8. **Minimum Requirements.** The application and development plans shall contain at a minimum the following items:

- a. A description of all existing or proposed buildings or proposed alterations to the property;
- b. Existing and proposed uses of the buildings and the property;
- c. Site plan which includes impact on residential properties and schools within 500 feet of the center property boundary, impact on surface and ground water resources, air quality, thermal plumes, agricultural resources, parks, registered historical sites, and forestland on the property or directly contiguous property;
- d. The exact location within a tract upon which the area of operation will be placed;
- e. Topographical and other geographic conditions existing on the property;
- f. A sedimentation control plan (prepared by a licensed landscape, architect, engineer, or surveyor), all property lines and current and proposed owners of the property;
- g. Traffic Impact Analysis performed by N.C. Department of Transportation.
- h. Estimate of utilities to be used by the proposed high impact land use, with estimated daily and monthly usage;
- i. Signed statements from utility vendors attesting utility demand can be met while maintaining current consumer demands without detriment to existing consumers;
- j. Phase 1 environmental study from a licensed professional engineer with affixed seal;
- k. Assessment of the sound profile within 500 feet from the center property boundary;
- l. Deed book and page number from the Cherokee County Register of Deeds evidencing ownership for the current property owners;
- m. A list of names and addresses of adjacent property owners and all other owners within 2,000 feet of the property;
- n. Attestation from applicant verifying the facility will use close loop water or liquid cooling system that results in the minimization of water consumption for the cooling system; and
- o. Signed affidavit by Administrator attesting to physical inspection of the proposed site, verification the required application materials have been submitted, and the proposed use is consistent with the comprehensive plan.

9. Development plans shall be prepared by a licensed design professional and shall be prepared in accordance with this Ordinance and any other applicable ordinances, County policies and state law.
10. Additional requirements for Solar Energy Systems are reflected in Subsection 12 below.
11. **Pre-Application Conference.** Applicants or their representatives shall schedule and attend a pre-application conference with the Administrator prior to submittal of the application. These conferences allow the applicant and staff an opportunity to discuss the proposed use, the requirements for completing the review process, contact persons for services and other related permits, and information regarding site plans, landscaping, and development requirements.
 - a. As part of this review process, the Administrator may consult various County staff members or experts to review the proposed development for compliance with any applicable County ordinances or other technical requirements.
 - b. The Administrator and Board are authorized to retain the services of outside design or other industry professionals to evaluate the application for compliance with this Ordinance and the County's Comprehensive Plan. The applicant agrees as part of its application fee to be assessed the reasonable costs for retaining any outside professional in an amount not to exceed \$5,000.00.
 - c. If conditions are recommended by the Administrator, the pre-application conference shall be re-administered upon completion of conditions.
 - d. Upon receipt of a complete application and recommendations, if any, from the Administrator, the applicant shall send written notice to the owners of all property within 2,000 feet of the property to advise them of the application and provide to them a summary of the ordinance provisions.
 - e. No development authorizations or permits may be issued on the subject property until the property owner has recorded the approved plan and conditions pertinent to the specific property at the Cherokee County Register of Deeds, including a notation of the pertinent deed number with book and page reference.
 - f. Upon approval of a high impact land use, the official high impact land use map of the County shall be amended to add the approved location. The Clerk to the Board of Commissioners shall maintain a book or other official record for high impact operational approvals, and each approval shall be filed therein. Failure to comply with this provision shall not render the approval invalid.
 - g. The adopting ordinance approved as provided herein shall be perpetually binding upon the affected property unless subsequently

changed or amended as provided for in this chapter. However, such approved ordinance of such high impact land use may not be perpetually binding if the property is abandoned, as provided in this chapter. In the event a high impact land use discontinues, a record kept with record of high impact operational approvals by the Clerk shall reflect the discontinued use and dismantling plan.

- h. Minor modifications to the site plan approved by the Commissioners may be reviewed and approved by the Administrator provided they do not involve a change in allowed uses, changes in overall density or substantial changes to the configuration of the development that affect the operation or impacts of the development. Any other modification of the conditions and standards shall be approved by the Administrator following this review process as an amendment. The Administrator shall in every case have the discretion to decline to exercise the power to approve minor modifications as provided for herein and may require the applicant to seek an amendment from the Board.

12. Additional Requirements for Solar Energy Systems. A solar energy system must provide the following additional items with its application.

- a. Department of Natural Resources reply.
- b. FAA Notice of No Flight Hazard and/or application to the FAA for Notice of Criteria Tool.
- c. Preliminary site plan identifying the following
 - i. Subject property including the property lines, setback lines, and right-of-way lines.
 - ii. Physical features including but not limited to roads, floodplain(s) (if applicable), wetland(s) (if applicable), existing and proposed building(s), solar panels and equipment (number, location, and spacing of solar panels/arrays), proposed locations of underground or overhead electric lines and utility poles, landscaping, and fencing.
 - iii. Identification of proposed construction and ongoing maintenance routes from the nearest arterial public road as detailed on a map.
 - iv. Letter of intent with the applicable transportation authority that acknowledges the proposed project and confirms that all necessary transportation permits and approvals have been secured as of the date of the letter from the applicable transportation authority.
 - v. Proposed product cut-sheets.
 - vi. Glare study report.

vii. Proof of liability insurance.

viii. Preliminary emergency services plan, including but not limited to the project summary, electrical schematic and means of shutting down energy systems throughout the life of the installation.

13. State and Federal Agency Review. In the discretion of the Administrator, there may be consultation with other county, state, and federal agencies when a recommendation from such agency would be relevant in determining whether the applicant is able to comply with this Ordinance. These contacts may include the EPA, North Carolina Department of Environmental Quality, or U.S. Forest Service. Upon receipt of a recommendation from a state or federal agency, that recommendation will be presented to the applicant for comment. Upon receipt of a written recommendation from a state or federal agency that the application be denied, it shall be presumed that approval of the application would not be consistent with the County's Comprehensive Plan and violate the duty to protect the welfare of the citizens of Cherokee County. Conditional reviews for high impact land uses and the associated adopting ordinances are legislative in nature, and judicial review shall be as provided by law.

I. Appeals and variances

1. **Right to Appeal.** Property owner or the applicant has the ability to appeal the decision to the Planning Board.
2. **Notice of Right to Appeal.** Property owner and the applicant, if separate persons, shall be made aware of the Administrator's decision in writing within 7 days of their decision. Such notice shall be mailed first-class via United States Postal Service. However, applicants or property owners have the right to waive this notice.
3. **Notice of Appeal.** Property owner or the applicant must provide notice of appeal in writing to the Clerk to the Board no later than thirty (30) days after the post date of the Administrator's decision.
4. **Appeal to Court of Competent Jurisdiction.** After further review from the Planning Board, as outlined in subsection 1, the appellee may further appeal the decision to Cherokee County Superior Court.

J. Permit Issuance

1. **Duration & Violation.** The permit is valid for the time expressed on the approved application. The duration of the permit shall continue until the proposed expiration date, or until the high impact land use falls outside the scope of the issued permit, which in such case the permit will expire 180 days after issuance of notice of permit violation. Before expiration, the permit-holder may bring the property back into compliance, and the notice of permit violation will be rescinded.

2. **Expansion and Alterations.** Alteration or expansion are not allowed under a valid high impact land use permit. In order to alter or expand a high impact land use permit, the permit holder must submit a new application and conduct a new application process.

K. Non-conforming use

1. It is recognized that, over time, lawful nonconformities may develop. It is important that such properties, while nonconforming, be adequately maintained, but not expanded or enlarged in any fashion that increases the extent of nonconformity. Where possible, such nonconformities should be made, wholly or incrementally, conforming.
2. The provisions of this section apply only to lawful nonconformities, except as noted below. Nonconformities other than lawful nonconformities shall be considered violations of this Ordinance.
3. Any existing use that is not in compliance with the requirements of this chapter at the time of its enactment may continue to operate as a non-conforming use, but may not expand the size of the area of operation existing at the time of this enactment. Such prohibited activity shall include, without being limited to: a physical addition to, or expansion of, a structure that creates a new, or increases the extent of an existing, dimensional nonconformity; an extension or transference of a nonconforming use into new construction including separate buildings, building additions, or expansions; an extension of the use within an existing structure to any floor area not occupied by the use at the time that it became nonconforming; an expansion to any outdoor areas used in direct support of a nonconforming use beyond the limits existing at the time that the use became nonconforming.
4. A nonconforming use is allowed to continue unless the use is discontinued for a period of 180 or more consecutive days, and there are no substantial good faith efforts to re-establish the use during this period. Obtaining authorizations to maintain the existing use or significant continuous efforts to market the property for sale or lease for the existing use (e.g., MLS listing, realtor contract, etc.) shall be regarded as substantial good faith efforts. A nonconforming use shall be deemed discontinued after a period of 365 consecutive days regardless of any substantial good faith efforts to re-establish the use. Thereafter, the structure or property associated with the use may be used only for conforming use.
5. No use may be established if it renders another conforming use to become nonconforming.

L. Penalties for violations

1. **Separate Offenses.** Each day of a violation of this chapter shall be a separate offense.

2. **Financial penalties.** In addition to criminal penalties for a violation of this chapter, the Board of County Commissioners may impose civil penalties for each day's continuation of the offense. The amount shall be limited to \$1,000. A penalty unpaid 30 days after the offender has been cited for violation of this chapter may be recovered in a civil action in the General Court of Justice.
3. **Other remedies.** All appropriate remedies for relief authorized by G.S. § 160D-404, including orders for mandatory and prohibitory injunctions and for abatements, may be used to enforce this chapter.

M. Conflict with other laws

Wherever the provisions of this chapter or application of this chapter impose higher standards than are required in any other local ordinance or regulation, other than Cherokee County ordinances to control specific land uses, provisions and application of this chapter shall govern. Whenever the provisions of any other statute or local ordinance or regulation, other than Cherokee County ordinances to control specific land uses, impose higher standards than are required by the provisions of this chapter, the provisions of such other statute or local ordinance or regulation shall govern.

N. Separability

Should any section or provision of this chapter be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this chapter as a whole or any part thereof which is not specifically declared to be unconstitutional or invalid.

O. Conflicts of interest

No staff member, Administrator, or Commissioner shall make a final decision on an administrative or legislative decision required by this chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member, Administrator, or Commissioner has a close familial, business, or other associational relationship. If a staff member or Administrator has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the County Commissioners. No staff member or Commissioner shall participate in a decision authorized by this Ordinance if they are financially interested, or employed by a business that is financially interested, in a development subject to regulation under this chapter unless the staff member or Commissioner is the owner of the land or building involved, in which case the staff member or Commissioner shall not take part in any review or vote regarding the application. All staff members and Commissioners shall comply with the requirements of N.C. Gen. Stat. § 160D-109.

P. Effective Date

This chapter shall become effective on the _____ day of _____, 2026.