

## **MOUNTAIN RIDGE PROTECTION\***

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\* **State Law References:** Mountain ridge protection, formerly afforded by county ordinance, is not afforded by G.S. 113A-205 et seq.

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### **ARTICLE I**

#### **SHORT TITLE**

##### **Sec. 4-101. Title.**

This Ordinance shall be known as "The Mountain Ridge Protection Ordinance of the County of Transylvania, North Carolina."

### **ARTICLE II**

#### **AUTHORITY**

Pursuant to the authority and provision conferred by Chapter 153A and Article 14 of Chapter 113A of the North Carolina General Statutes, the Board of Commissioners of the County of Transylvania, North Carolina, hereby ordains and enacts into law these Articles and Sections.

### **ARTICLE III**

#### **PURPOSE**

The Transylvania County Board of Commissioners finds that the construction of tall buildings or structures on protected mountain ridges may cause unusual problems and hazards to the residents of and visitors to the county. The purpose of this Ordinance therefore is to regulate the construction of tall buildings or structures on mountain ridges to ensure that:

- adequate water supply is available to such building or structure;
- the disposing of sewage will not infringe on the ground water rights and/or endanger the health of those persons living at lower elevations;
- adequate fire protection can be made available;
- weather hazards are considered for safety purposes;
- such buildings or structures will not be a hazard to air navigation and/or to persons on the ground; and
- such tall structures will not detract from the natural beauty of the mountains.

## ARTICLE IV

### JURISDICTION AND ADMINISTRATION

This Ordinance shall apply to all areas of Transylvania County located outside the planning jurisdiction of any incorporated city or town. Municipalities within Transylvania County may elect to allow this Ordinance to be effective within their corporate limits and planning jurisdiction. The provisions of this Ordinance shall apply to the construction of tall buildings or structures, as defined in this Ordinance, on protected mountain ridges, also defined herein. The Transylvania County Planning and Community Development Department shall administer this Ordinance. The Planning and Community Development Director, or their appointee, shall be known as the Enforcement Officer.

## ARTICLE V

### INTERPRETATION AND DEFINITIONS

**SECTION 1: Interpretation** - Except as specifically defined herein, all words used in this article shall have their customary dictionary definitions. For the purpose of this article, certain words or terms used herein are interpreted as follows:

- 1.1 The word "may" is permissive.
- 1.2 The word "shall" is mandatory.
- 1.3 The word "building" includes the word "structure."
- 1.4 Words used in the singular include the plural, and words used in the plural include the singular.

**SECTION 2: Definitions** - For the purpose of this Ordinance, certain words or terms used herein are defined as follows:

- 2.1 Building: Any structure built for the support, shelter or enclosure of persons, animals, chattels, or property of any kind that has enclosing walls for fifty (50) percent of its perimeter. The word "building" shall be construed as if followed by the words "or part thereof."
- 2.2 Construction: Any new construction, reconstruction, alteration or expansion.
- 2.3 Crest: The uppermost line of a mountain or chain of mountains from which the land falls away on at least two (2) sides to a lower elevation or elevations.

- 2.4 Dunn's Rock: The area encompassing the exposed rock formation near Greenville Highway between Eliza Ware Road and Island Ford Road located between the 2700-2850 foot contour lines.
- 2.5 Person: Any individual, partnership, firm, association, joint venture, public or private institution, utility, cooperative, interstate body, the state and its agencies and political subdivisions, or other legal entity.
- 2.6 Protected mountain ridge: Any ridge whose elevation is at least five hundred (500) feet above the elevation of an adjacent valley floor and at least three thousand (3,000) feet in elevation, with the addition of Dunn's Rock. Protected mountain ridges are further identified by the map entitled "Identification of Protected Mountain Ridges in Transylvania County" and is on file in the Transylvania County Building Permitting and Enforcement Department the Transylvania County Register of Deeds, and the Transylvania County Planning and Community Development Department.
- 2.7 Resident: Any person, as defined in this section, residing, doing business or maintaining an office within the Transylvania County.
- 2.8 Ridge: The elongated crest or series of crests at the apex or uppermost point of intersection between two (2) opposite slopes or sides of a mountain, and includes all land within one hundred (100) feet below the elevation of any portion of such line or surface along the crest.
- 2.9 Structure: Anything constructed or erected, including, but not limited to buildings, that requires location on the land or attachment to something having permanent location on the land.
- 2.10 Tall structures: Any building, structure or unit within a multi-unit building, with a vertical height of more than forty (40) feet measured from the top of the foundation of said structure and the uppermost point of said structure; provided, however, that where such foundation measured from the natural finished grade of the crest or the natural finished grade of the high side slope of a ridge exceeds three (3) feet, then such measurement in excess of three (3) feet shall be included in the forty-foot limitation described herein; provided, further, that no such building, structure or unit shall protrude at its uppermost point above the crest of the ridge by more than thirty-five (35) feet.

## ARTICLE VI

### EXEMPTIONS

#### **SECTION 3: Exemptions -**

- 3.1 Structures of a relatively slender nature that are minor vertical projections of a parent building, including chimneys, flues, spires, steeples, belfries, and cupolas,
- 3.2 Structures designated as national historic sites on the National Register of Historic Places.
- 3.3 Fire towers.
- 3.4 Government structures including, but not limited to, those required for emergency services.

## ARTICLE VII

### PERMITS

**SECTION 4: Permits** - No tall structure greater than forty (40) feet tall shall be constructed, altered, reconstructed or expanded on any protected mountain ridge without a permit that has been obtained as provided by this Ordinance. No permit shall be issued that would not be in compliance with the provisions of this Ordinance. The Protected Mountain Ridge Permit Application is available from the Transylvania County Planning Department.

**SECTION 5: Permit Application** - All applications for permits shall be submitted to the Enforcement Officer and shall be accompanied by a site development plan prepared by a N.C. Registered Professional Engineer containing, the following information:

- 5.1 Title block containing the name of the development, name of owner, name of developer, scale, and north arrow.
- 5.2 The name, address, signature and seal of the engineer preparing the site development plan.
- 5.3 Existing site conditions, including contours, water courses, any unique natural or manmade features such as vegetation and groundcover.
- 5.4 Survey by a registered N.C. Land Surveyor showing boundary lines of the property containing the proposed construction.
- 5.4 Location and use of all existing and proposed buildings or structures.

- 5.5 Plans of proposed water and sewer layouts shall note whether community or individual, show the location of lines, line sizes, approximate location of manholes, pumps, hydrants, force mains, and the connection of the proposed system with existing systems, as appropriate.
- 5.6 Location of existing and proposed easements and rights-of-way.
- 5.7 The proposed treatment of the perimeter of the development including materials and/or techniques such as screens, fences and walls.
- 5.8 Information on adjacent land areas, including land use, zoning classifications, public facilities and any unique natural features.
- 5.9 Existing and proposed road access to and within the development showing rights-of-way and pavement widths. Notation of the proposed ownership of the street system (public or private).
- 5.10 A front and side elevation profile, drawn to scale, of all existing and proposed buildings.
- 5.11 A visual impact assessment report including photographic depictions of the proposed structure taken from key viewpoints, such as major roads, parks, public lands, historic districts, or other sites where the site is visible by a large number of visitors, travelers, or residents.
- 5.12 Other Details - In addition to the development plan, all applications for permits shall be accompanied by the following documentation, as appropriate:
  - 5.12.1 If a street is to be dedicated for public use, a letter of approval for the proposed street plan shall be submitted indicating that street plans have been reviewed and approved in the following manner:
    - a. Street plans shall be reviewed and approved by the North Carolina Department of Transportation.
    - b. Street plans shall contain all data, calculations and information as required by the NC Department of Transportation.
    - c. The developer shall meet all requirements of G.S. 136-102.6 if the development constitutes a subdivision.
  - 5.12.2 If the proposed water and/or sewer system is to connect onto an existing system, a letter of approval from the owner of said existing system for such connection shall be submitted. In addition, a letter of approval from the appropriate regulatory agency shall be submitted indicating that the proposed connection will not cause any problems related to overloads, discharges, or shortages on said existing system.

- 5.12.3 If individual wells and/or septic tanks are to be utilized, a written statement from the Transylvania County Health Department indicating approval of wells and/or septic tanks for use in the development shall be submitted.
- 5.12.4 If an onsite package water and/or sewer treatment system is to be utilized, a letter of approval from the state N.C. Department of Environmental Quality (DEQ) shall be submitted.
- 5.12.5 Documentation of an approved sedimentation and erosion control plan shall be submitted.
- 5.12.6 A letter of approval from the appropriate fire department indicating the adequacy of the development facilities for emergency medical and fire services. Such determination shall take into consideration the street access, water pressure and availability, building height, and any other relevant factors.
- 5.12.7 Copy of lease or letter of authorization from property owner(s) evidencing applicant's authority to pursue application, if applicable.

**SECTION 6: Application Submission** - A completed permit application and three (3) copies of all supporting documentation as identified in Section 5 shall be submitted to the Enforcement Officer for review at least thirty (30) calendar days prior to a regularly scheduled meeting of the Transylvania County Planning Board.

**SECTION 7: Permit Application Fee** - A fee is required to be paid for permitting tall structures. A fee schedule shall be determined by the Transylvania County Board of Commissioners and posted by the Transylvania County Planning and Community Development Department Office.

**SECTION 8: Enforcement Officer Application Review** - The Enforcement Officer shall review the application for compliance with the provisions of this Ordinance. Any permit application not containing all information and not meeting specifications set forth in this Ordinance shall be rejected and returned to the applicant together with the reasons for rejection. The Enforcement Officer may allow the applicant thirty (30) calendar days or a reasonable time period agreed upon by both parties in writing, to resolve any deficiencies in the application, which if resolved, would make the application complete. After the Enforcement Officer has determined the application contains all information required, they shall recommend to the Transylvania County Planning Board either approval or disapproval of the application. In making this recommendation, the Enforcement Officer may include any appropriate conditions they feel should be placed on the issuance of the permit.

**SECTION 9: Application Review and Approval Process -**

- 9.1 Upon receipt of a complete permit application, the Enforcement Officer shall be responsible for submitting a notice to the local paper(s) and mailing a certified letter to all known property owners abutting the property where the proposed tall structure is to be located. The notice shall state that the Planning Board will review and consider the permit application at their next meeting and that the application is available for public review in the Planning and Community Development Department. The notice shall not appear less than ten (10) calendar days or more than twenty-five (25) calendar days prior to the date set for public hearing. The public notice shall also contain a map highlighting ¼ mile radius around the proposed tall structure.
- 9.2 Consideration of the application shall be at the next regularly scheduled meeting of the Transylvania County Planning Board after receiving the recommendation of the Enforcement Officer. The Transylvania County Planning Board shall take action on the application at that meeting. In taking action, the Transylvania County Planning Board may include any appropriate conditions to be placed on the issuance of the permit. If the Transylvania County Planning Board fails to take action at the next regularly scheduled meeting, it shall be deemed to have recommended approval of the application.

**SECTION 10: Issuance of permit -**

- 10.1 If the application is approved by the Transylvania Planning Board, such approval shall be stated in a letter. One (1) copy of said letter shall be sent via certified mail to the applicant, one (1) copy shall be retained by the Enforcement Officer, and one (1) copy shall be sent to the Transylvania County Board of Commissioners. Said letter shall be sent within ten (10) days of approval of the application. Said letter shall contain a listing of all conditions imposed on the issuance of the permit. With the letter indicating approval, the Enforcement Officer shall include a permit granting permission to begin the construction permitting procedures.
- 10.2 If no construction has begun within twelve (12) months after the date of issuance of the permit, the permit shall expire. Construction shall be deemed to have begun when any grading or excavation has commenced. If a permit expires, it shall not be reissued except under the provisions outlined in this article for all permits.
- 10.3 The Enforcement Officer shall record a copy of the permit in the Register of Deed's office and the owner or his agent shall record the approved development plan in the Register of Deed's office before obtaining a building permit for the subject structure.

**SECTION 11: Denial of permit -** The Transylvania County Planning Board shall, if it disapproves the application, make findings of fact to justify such disapproval. These findings of fact shall be entered in the minutes of the board's meeting. In

addition, a letter containing the findings of fact and specifying the provisions of this article with which the application does not comply shall be prepared. One (1) copy of said letter shall be sent to the applicant, one (1) copy shall be sent to the Enforcement Officer, and one (1) copy shall be sent to the Transylvania County Board of Commissioners. Said letter shall be sent within ten (10) days of disapproval of the application. If the application is not approved, the applicant may make such changes as will bring the application into compliance with this Ordinance and resubmit same for reconsideration by the Enforcement Officer as provided in Section 5.

**SECTION 12: Application to existing buildings** - The provisions of this article shall apply to buildings that existed upon the effective date of this Ordinance as follows:

- 11.1 No reconstruction, alteration or expansion may aggravate or intensify a violation by an existing building or structure that did not comply with this Ordinance upon its effective date.
- 11.2 No reconstruction, alteration or expansion may cause or create a violation by an existing building or structure that did comply with this Ordinance upon its effective date.

## **ARTICLE VIII**

### **ENFORCEMENT, APPEALS AND PENALTIES**

**SECTION 13: Enforcement** - The Enforcement Officer shall enforce all provisions of this Ordinance. The Enforcement Officer shall also have the following authority:

- 13.1 **Violation Notice.** A Violation Notice shall be delivered by certified mail, return receipt requested, or by such other method as allowed by law, to the owner of the development in violation of the Ordinance. Whenever the owner of the development cannot be located and notified, said notice shall be delivered to the owner of record of the real property whereon the tall structure is located. The time period provided herein shall commence upon receipt of such Violation Notice. The Violation Notice shall identify the tall structure and shall describe the nature of the violation, refer to the section of the Ordinance violated, specify in detail what action must be taken to correct the violation and specify all potential enforcement penalties that may apply. Violations shall be corrected within fifteen (15) calendar days unless the Enforcement Officer grants an extension.
- 13.2 **Compliance Order.** A Compliance Order shall be issued for any tall structure violation not corrected within the time allotted under the Violation Notice. The Compliance Order shall be delivered to the development owner and to the owner of record of the real property whereon the structure is located in the same manner



as set out for a Violation Notice and shall not be effective until received. The Compliance Order recipient shall be allowed thirty (30) calendar days to remove the subject structure at owner's expense. The Compliance Order shall identify the tall structure and refer to the section of the Ordinance violated.

**SECTION 14: Appeals** - Appeals of the decision of the Planning Board shall be made to the Board of Commissioners within thirty (30) calendar days of their action. Appeal of the decision of the Board of Commissioners shall be made to Superior Court within thirty (30) calendar days of their action.

**SECTION 15: Penalties** - Upon receipt of the Compliance Order, the Enforcement Officer or the County Attorney may issue a citation imposing a penalty, in addition to legal expenses, of not more than one hundred dollars (\$100.00) as provided in G.S. 14-4. Each twenty-four (24) hour period in which the violation exists shall constitute a separate violation. In addition to the above described penalty, the county may enforce this Ordinance by any one or more of the remedies authorized by Chapter 153A-123 of the General Statutes, with the exception of 153A-123(b). In addition, any person injured by a violation of this article or any person who resides in Transylvania County in which a violation occurred may bring a civil action against the person alleged to be in violation in accordance with G.S. 113A-211(b). If a building or structure is constructed, reconstructed, altered or expanded in violation of this article, the Enforcement Officer, in addition to other remedies, may institute any appropriate action or proceedings pursuant to G.S. 153A-123 and G.S. 113A-211 to prevent the unlawful construction, reconstruction, alteration or expansion, to restrain, correct or abate the violation, or to prevent occupancy of the building.

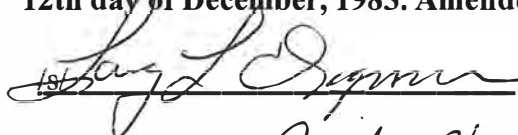
## ARTICLE IX

### LEGAL STATUS PROVISIONS

**SECTION 17: Conflict With Other Laws** - Whenever the regulations of this Ordinance conflict with the requirements of another statute, the more restrictive standard shall govern.

**SECTION 18: Separability** - Should any section of provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof, which is not specifically declared to be invalid or unconstitutional.



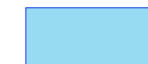





**SECTION 19: Effective Date** - This Ordinance shall take effect and be enforced on and after the date of its adoption by the Board of Commissioners of Transylvania County, this 12th day of December, 1983. Amended September 11, 2018.

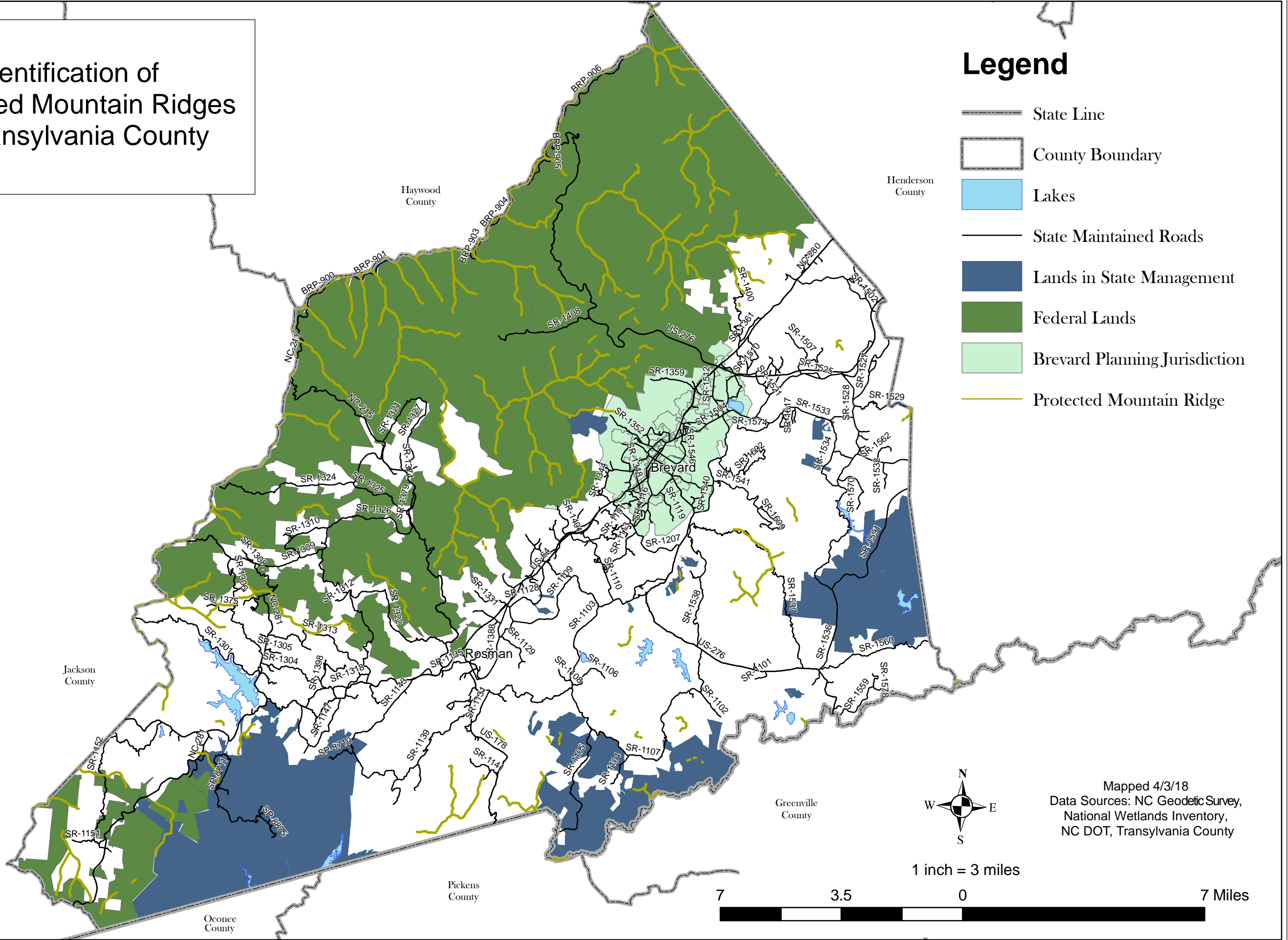
 Larry Chapman, Chairman Board of Commissioners

Attest:  Trisha Hogan, Clerk to Board of Commissioners

# Identification of Protected Mountain Ridges in Transylvania County

## Legend

-  State Line
-  County Boundary
-  Lakes
-  State Maintained Roads
-  Lands in State Management
-  Federal Lands
-  Brevard Planning Jurisdiction
-  Protected Mountain Ridge



Mapped 4/3/18  
 Data Sources: NC Geodetic Survey,  
 National Wetlands Inventory,  
 NC DOT, Transylvania County