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December 31st, 2009

Mr. F. Mell Nevils, PE, CPESC
Land Quality Section Chief
North Carolina Department of Environment & Natural Resources
1612 Mail Service Center
Raleigh, North Carolina 27699-1612

RE: Haywood County Sediment Control Board Resolution

Dear Mr. Nevils:

The Haywood County Sediment Control Board recently adopted a resolution asking for certain state assistance in the event a local erosion control program gets sued in the course of doing its job enforcing the sediment law. The Haywood County Board of Commissioners endorsed this resolution as well. The attached copy of the resolution further explains the concerns.

I would like to ask you to have the NC Sedimentation Control Commission consider this resolution as an agenda item at their February 18, 2010 meeting in order to see if they can possibly endorse it as well. Haywood County will gladly make our County Attorney, Leon M. Killian, III available to answer any questions that you or Chairman Donnie Brewer may have in advance of the meeting.

As well, please advise me at your earliest convenience as to whether Haywood County may have a couple of representatives attend the Commission meeting to answer questions and make brief statements to the Commissioners in support of the subject resolution.

Best regards,
COUNTY OF HAYWOOD

David B. Cotton
County Manager



c: Mr. Chip Killian, Haywood County Attorney
Mr. Marc Pruett, Erosion Control Director – Haywood County

**RESOLUTION
HAYWOOD COUNTY SEDIMENT CONTROL BOARD
REGULAR MEETING
NOVEMBER 23, 2009**

Whereas: The State of North Carolina adopted the Sedimentation Pollution Control Act (the "Act") in 1973, and the Act applies to all land within the State of North Carolina; and

Whereas: The Act established an enforcement program for the control of erosion and sediment control from certain activities; and, the State expanded the enforcement program by developing a model ordinance that would give local governments concurrent jurisdiction with the State over the control of regulated land-disturbing activities; and

Whereas: For many years the State has encouraged the establishment of local erosion and sediment control programs; Haywood County adopted the State's model ordinance with some additions in 1988 (the "Ordinance"); and Haywood County initiated an Erosion Control Program county-wide with the endorsement and encouragement of the State in 1988; and

Whereas: It has become apparent that a great disparity exists between the respective abilities of the County and the State to absorb costs associated with enforcement of the erosion and sediment control laws of North Carolina; specifically noted is the more limited ability of those local governments having an Ordinance that was adopted to enforce State law; and

Whereas: While legal activities associated with State enforcement of the Act is performed by full-time staff attorneys of the North Carolina Attorney General's Office, Haywood County's legal activities associated with enforcement of the Ordinance is performed by private, paid attorneys; and

Whereas: Haywood County individually does not have adequate resources to pay private attorneys for extended challenges relating to erosion and sediment violations in court; and

Whereas: Haywood County was recently sued as a result of enforcing its Erosion and Sediment Control Ordinance and expended a total of \$462,000 in legal fees and settlement costs after completion of a trial; and

Whereas: This extreme cost of litigation resulted in the County considering termination of the Haywood County Erosion Control Program and requiring the State to resume control of the program; and



Whereas: Many citizens of the County have come forward and expressed support for the local program including, but not limited to, the Haywood Soil and Water Conservation District, the Daniel Boone Council of the Boy Scouts of America, and the Haywood Waterways Association; and

Whereas: On November 2, 2009, the Haywood County Board of Commissioners (the "BOCC") voted unanimously to retain the local Haywood County Erosion Control Program; and

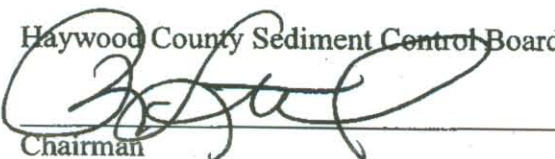
Whereas: The BOCC requested the Haywood County Sediment Control Board (the "Sediment Board") to explore options to defray future costs associated with enforcing the Erosion Control Ordinance, which is based upon the State's model, so

Now, Therefore, Be It Resolved: That the Haywood County Sediment Control Board hereby unanimously requests the State of North Carolina to adopt the following procedure by either revising its standard operating procedure or requesting appropriate legislation:

"In the event a person as defined in N.C.G.S. § 113A-52(8) brings suit against any State approved local erosion and sediment control program in North Carolina arising out of the exercise of its concurrent jurisdiction with the State with regard to conditions of erosion and/or enforcement of its sediment control ordinance, the North Carolina Attorney General's Office shall make adequate staff available to provide legal services and otherwise defend such actions brought against local programs, the local government, or any of its public body representatives that are responsible for policy and guidance of local programs."

Adopted this 23 day of November, 2009.

Haywood County Sediment Control Board


Chairman