

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: July 10, 2019

SUBJECT: Approve Declaration of Land Use Restrictions
Stoney Mountain Solid Waste Facility

PRESENTER: Marcus Jones, P. E.

ATTACHMENTS: Yes

1. Department of Environmental Quality (DEQ) cover letter
2. Draft Declaration of Perpetual Land Use Restrictions
3. Property Owner Consent Form

SUMMARY OF REQUEST:

On June 5, 2017, the Board of Commissioner's granted access to DEQ for cleanup work at the pre-regulatory landfill site on the Stoney Mountain Solid Waste property. The site is located on the aerial below in green; the road to the convenience center crosses over the site about halfway to the center from Stoney Mountain Rd.



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Since the June 5, 2017 meeting, DEQ has completed the investigation and design of the mitigation plan to “address public health and environmental hazards posed at the site.” The plan calls for leaving the waste in place and constructing a modern landfill as much as possible: clearing vegetation, removing topsoil, constructing a cap with impermeable clay soils, construction a drainage system, and installing monitoring wells. The plan estimates the cost at appropriately \$750,000 with funding from the pre-regulatory landfill program. This program is funded by the \$2/ton tax at all landfills and transfer stations in North Carolina.

The restrictions DEQ is asking the County (property owner) to approve basically protect the investment the State is making at the site. Staff does not anticipate any conflicts between future use of the property and the restrictions.

BOARD ACTION REQUESTED:

Authorize the Chairman to sign and date the Declaration of Perpetual Land Use Restrictions and the Property Owner Consent Form.”

Suggested Motion:

I move that the Board authorize the Chairman to sign and date the Declaration of Perpetual Land Use Restrictions and the Property Owner Consent Form.”



ROY COOPER
Governor

MICHAEL REGAN
Secretary

MICHAEL SCOTT
Director

July 1, 2019

Mr. Grady Hawkins, Chairman
Henderson County
c/o Board of Commissioners
100 N King St
Hendersonville, NC 28792
ghawkins@hendersoncountync.gov

Property ID: 9650811005, 9650719088, 9650806865,
9650920038, 9650727217, and 9650800835

Re: Remedial Action with Declaration of Perpetual Land Use Restrictions
Henderson Co. Landfill
Hendersonville, Henderson County, NC
ID #NCD980557961

Dear Mr. Hawkins:

As you are aware, the North Carolina Department of Environmental Quality (DEQ) has completed the remedial investigation for the landfill on your property. Draft Remedial Action Plan (RAP) for the Site is being prepared to mitigate risks associated with the old closed landfill. Since it is not technically practicable to remove the waste other methods are needed to ensure risks are managed long term. As provided in previous letters, implementation of control and mitigation measures include agreeing to record and implement perpetual land use restrictions. Since the waste will remain on the property a declaration of perpetual land use restriction is part of this remedy

Attached please find a copy of the Declaration of Perpetual Land Use Restrictions (draft). Please sign and date, along with the the “**Property Owner Consent Form**”, and send them to me in the next 10 days after receiving this letter.

You may call me at (919) 707-8347 or e-mail me at zi-qiang.chen@ncDENR.gov with any question regarding this request. Your continued cooperation will be very much appreciated.

Sincerely,

A handwritten signature in black ink that reads 'Chen, ZQ,'.

Ziqiang Chen, PhD, Environmental Engineer II
NC Division of Waste Management, Superfund Section/ISHB/PRLF

CC: Declaration of Perpetual Land Use Restrictions (draft)
Property Owner Consent Form

DECLARATION OF PERPETUAL LAND USE RESTRICTIONS

For Property Owned by: *Henderson County*

The real property which is the subject of this Declaration of Perpetual Land Use Restrictions (“Declaration”) is contaminated with hazardous substances, and is part of an INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE (“the Site”) as defined by North Carolina's Inactive Hazardous Sites Response Act of 1987, which consists of Section 130A-310 through Section 130A-310.19 of the North Carolina General Statutes (“N.C.G.S.”). This Declaration is part of a Remedial Action Plan for the Site that has been approved by the Secretary of the North Carolina Department of Environmental Quality, Division of Waste Management, Superfund Section or its successor in function, or his/her delegate, as authorized by N.C.G.S. Section 130A-310.3(f). The North Carolina Department of Environmental Quality shall hereafter be referred to as “DEQ”. Hereafter, the Division of Waste Management, Superfund Section shall be referred to as “Superfund Section”.

Henderson County, is the owner in fee simple of the properties (“the Property”), which is located at *54 Moonstone Lane* and adjacent acres in the County of Henderson, City of Hendersonville, State of North Carolina, and is the real property legally described in Deed Book /Page *1542/540, 1542/540, 1381/308, 660/17, 218/159 (Plat C 008)*, and *1055/631* in the Office of the Register of Deeds for Henderson County. The Property is also shown on a Notice of Inactive Hazardous Substance or Waste Disposal Site, in the form of a survey plat (“Notice Plat”), which has been recorded prior to the recordation of this Declaration in Map Book ____ Page ____ in the Office of the Register of Deeds for Henderson County.

For the purpose of protecting public health and the environment, *Henderson County* hereby declares that all of the Property shall be held, sold and conveyed subject to the following perpetual land use restrictions, which shall run with the land; shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall, as provided in N.C.G.S. Section 130A-310.3(f), be enforceable without regard to lack of privity of estate or contract, lack of benefit to particular land, or lack of any property interest in particular land. These restrictions shall continue in perpetuity and cannot be amended or canceled unless and until the Henderson County Register of Deeds receives and records the written concurrence of the Secretary of DEQ or its successor in function, or his/her delegate. If any provision of this Declaration is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or

impaired.

PERPETUAL LAND USE RESTRICTIONS

The following restrictions shall apply to the Waste Disposal Area:

1. The Waste Disposal Area shown on the Notice Plat shall be used for open space only. “Open space” for purposes of this restriction means an undeveloped area where the sole human use shall be non-dermal recreational activities such as hiking, running, hunting, fishing and bird watching. All other uses at the Property are prohibited, except as approved in writing by the Superfund Section or its successor function.
2. The Waste Disposal Area shown on the Notice Plat shall not be used for the following:
 - a) Horseback riding
 - b) Bicycle riding
 - c) Motorized vehicle or motorbike riding
 - d) Farming
 - e) Gardening
 - f) Grazing of livestock
 - g) Timber production
 - h) Kennel or private animal pens
 - i) Mining, extraction of coal, oil, gas or any other minerals or non-mineral substances
 - j) Storage of any bulk materials
3. No surface or subsurface native or fill earthen materials may be removed from the Waste Disposal Area shown on the Notice Plat without prior written approval by the Superfund Section or its successor in function.
4. No above- or below-ground construction or improvements (including, but not limited to, utilities, roads, sidewalks, landscaping, asphalt, concrete, other impervious materials, temporary and permanent structures) and no alteration or disturbance of the existing soil and contours, other than erosion control measures, are allowed in the Waste Disposal Area shown on the Notice Plat without prior written approval by the Superfund Section or its successor in function.
5. No new trees or shrubs may be planted in the Waste Disposal Area shown on the Notice Plat.
6. The Waste Disposal Area shown on the Notice Plat shall not be accessed by any mobile heavy equipment including, but not limited to, cranes, tractors, and excavators without prior written approval by the Superfund Section or its successor in function.
7. Surface water shall not be used on the Property for any purpose without prior written approval by the Superfund Section or its successor in function.

8. No activities that would cause the exposure, removal, or use of groundwater, including but not limited to, installation of water supply wells, fountains, ponds, lakes, swimming pools or other features that use groundwater, or construction or excavation activities that would encounter or expose groundwater may occur on the Property without prior approval of the Superfund Section or its successor in function.
9. The main building shown on the Notice Plat shall not be demolished without prior written approval by the Superfund Section or its successor in function.
10. The Property Owner shall conduct and comply with the following maintenance activities unless the Property Owner is a single-family residence, non-profit organization or school:
 - A. No woody vegetation shall be allowed to grow on the Waste Disposal Area shown on the Notice Plat.
 - B. All grassed areas shall be properly maintained to ensure that a healthy vegetative cover is always present. Mowing or brush hogging of the Waste Disposal Area shown on the Notice Plat should be conducted twice a year.
 - C. A soil cover of a thickness of 12 inches shall be maintained over the geotextile erosional marker covering the Waste Disposal Area shown on the Notice Plat. Erosion of the soil cover shall be repaired promptly upon discovery.
 - D. All bollards shall be inspected at least annually and maintained in the specific location depicted on the Notice Plat, in original or like condition and in a manner that demarcates the Waste Disposal Area.
 - E. Signs indicating the presence of contamination and restricting disturbance of soil shall be located at each corner and along the perimeter of fencing surrounding the Waste Disposal Area. The front of each sign shall face away from the Waste Disposal Area. Each sign shall be located at a maximum distance of 100 feet apart and in a manner such they are easily visible along the perimeter of the Waste Disposal Area at all times. The signs shall state the following using similar font with a minimum of one-half (0.5) inch font size:

<p>NOTICE RESTRICTED ACCESS - CONTAMINATED AREA Contact the Property Owner Regarding Land Use Restrictions Prior to Access or Disturbing Soil</p>
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11. If the property owner is a single-family residence, non-profit organization or school, the Property Owner shall conduct and comply with the following maintenance activities:
 - a) No woody vegetation shall be allowed to grow on the Waste Disposal Area shown

on the Notice Plat.

- b) All grassed areas shall be properly maintained to ensure that a healthy vegetative cover is always present. Mowing or brush hogging of the Waste Disposal Area shown on the Notice Plat should be conducted twice a year.
12. No person conducting environmental assessment or remediation at the Site or involved in determining compliance with applicable land use restrictions at the Property, at the direction of, or pursuant to a permit or order issued by the Superfund Section or its successor in function may be denied access to the Property for the purpose of conducting such activities.
 13. Each person who owns any portion of the Property shall cause the instrument of any sale, lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this Declaration. The failure to include such provision shall not affect the validity or applicability of any land use restriction in this Declaration.
 14. Each person who owns any portion of the Property shall submit a letter report, containing the notarized signature of the owner, in January of each year on or before January 31st, to the Superfund Section or its successor in function, confirming the following:
 - a) This Declaration is still recorded in the Office of the *Henderson* County Register of Deeds.
 - b) Activities and conditions at the Property remain in compliance with the land use restrictions herein.
 - c) The Property has not been subdivided since the last letter report submitted to the Superfund Section.
 - d) The Waste Disposal Area has been inspected to verify the following:
 - i. Erosion of the cover system has not occurred; and
 - ii. Bollards or signs are in good condition and remain in original location.

REPRESENTATIONS AND WARRANTIES

The owner of the Property hereby represents and warrants that the owner of the Property is the sole owner of the Property holding fee simple title to the Property free and clear; and

that this Declaration will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which the owner of the Property is a party or by which the owner of the Property may be bound or affected.

ENFORCEMENT

Adherence to the above land use restrictions is necessary to protect public health and the

environment. The restrictions are an integral part of the remedy for the contamination at the Site and shall be enforceable without regard to lack of privity of estate or contract, lack of benefit to particular land, or lack of any property interest in particular land. These land use restrictions shall be enforced by any owner, operator, or other party responsible for any part of the Site. The above land use restrictions may also be enforced by the Superfund Section through the remedies provided in N.C.G.S. Chapter 130A, Article 1, Part 2 or by means of a civil action, and may also be enforced by any unit of local government having jurisdiction over any part of the Site. Any attempt to cancel this Declaration without the approval of the Superfund Section or its successor in function shall constitute noncompliance with the Remedial Action Plan approved by the Superfund Section for the Site and shall be subject to enforcement by the Superfund Section to the full extent of the law. Failure by any party required or authorized to enforce any of the above restrictions shall in no event be deemed a waiver of the right to do so thereafter as to the same violation or as to one occurring prior or subsequent thereto.

FUTURE SALES, LEASES, CONVEYANCES AND TRANSFERS

When any portion of the Property is sold, leased, conveyed or transferred, pursuant to N.C.G.S. Section 130A-310.8(e) the deed or other instrument of transfer shall contain in the description section, in no smaller type than that used in the body of the deed or instrument, a statement that the real property being sold, leased, conveyed, or transferred has been used as a hazardous substance or waste disposal site and a reference by book and page to the recordation of the Notice of Inactive Hazardous Substance or Waste Disposal Site referenced in this Declaration.

OWNER SIGNATURE

IN WITNESS WHEREOF, I execute these presents on this ____ day of _____, 20____.

Signatory's name typed or printed: _____

Signature: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public, do hereby certify that
_____ personally appeared before me this day,
produced proper identification in the form of _____, and signed this Declaration.

WITNESS my hand and official seal this ____ day of _____, 20____.

Notary Public

My Commission expires: _____

[SEAL]

APPROVAL AND CERTIFICATION OF THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY

The foregoing Declaration of Perpetual Land Use Restrictions is hereby approved and certified.

By: _____

Jim Bateson, Chief
Superfund Section
Division of Waste Management
North Carolina Department of Environmental
Quality

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public, do hereby certify that
_____ personally appeared before me this day,
produced proper identification in the form of _____, and signed this
Declaration.

WITNESS my hand and official seal this ___ day of _____, 20__.

Notary Public

My Commission expires: _____

[SEAL]

REGISTER OF DEEDS CERTIFICATION

The foregoing Declaration of Perpetual Land Use Restrictions is certified to be duly recorded at the date and time, and the Book and Page, shown on the first page hereof.

Register of Deeds for Henderson County

By: _____
Signature

Type or print name and title

Property Owner Consent to Land-Use Restrictions

Corporate Ownership

_____ Henderson County _____, the owner of real property located at **54 Moonstone Line and adjacent acres, City of Hendersonville, Henderson County**, North Carolina (“Property”), hereby states that it is agreeable to the imposition of Land-Use Restrictions (“Restrictions”) on the Property partially or completely in lieu of remediation of hazardous substances to unrestricted-use levels. Said corporation understands that it may refuse to consent upon review of the specific Restrictions proposed for the Property.

<check the boxes that apply>

The corporation holds fee simple title to the Property free, clear and unencumbered;

[or]

There are non-financial encumbrances (utility easements, greenways, lease agreements, land-use restrictions, etc.) on the property. I have provided to the Superfund Section the names of all other persons that own an interest in or hold an encumbrance on the Property (Attachment A) and have notified such persons of my intention to record Restrictions on the Property;

and, *[if applicable]*

I understand that if other interest in, or encumbrances on, the Property conflict with the proposed Restrictions, the persons who own such interests or hold such encumbrances must agree to subordinate such interest or encumbrances to the Restrictions. The subordination agreement[s] is [are] included as Attachment B.

Signature of County’s Representative

Signatory’s name and title typed or printed

Title