

# Haywood County Flood and Buffer Properties Policy for Use and Maintenance

## **Purpose of Policy:**

To standardize requests from citizens of Haywood County seeking to lease county-owned flood and/or Pigeon River Buffer property.

## **Policy Requirements:**

### **A. LEASES**

1. All lease requests must be submitted in a written request to the County Recreation and Parks Director for evaluation by the Recreation Advisory Board to determine if the request is valid and use of property is in accordance with State requirements and/or stated in the deed restrictions and covenants.
2. Lease request will then be presented by the County Recreation and Parks Director to the Board of County Commissioners for consideration.
3. Lease agreement will be for a period of one year unless otherwise specified.
4. Lease property shall only be used for gardening or mowing.
5. Lease property shall not be used for the storage of junk cars, trailers, boats, motor homes or other items not required for gardening purposes.
6. Lessee shall maintain all lease property as stated in the lease agreement and shall assume all liability for the property. For Hazard Mitigation properties, a copy of the deed restrictions and covenants shall be attached to the lease.
7. No buildings may be constructed on the property.

### **B. MAINTENANCE**

1. For flood properties not leased, the County Recreation and Parks Department will maintain the grass and plantings in accordance with town requirements when in town limits. Properties outside of town limits will be maintained on a regular schedule.
2. County Recreation and Parks Department will be the point of contact for concerns or questions regarding the maintenance of county-owned flood properties.

9/17/07  
Revised 3/18/12

## **Deed Restrictions and Covenants**

### **Hazard Mitigation Properties**

**WHEREAS**, this Property is being purchased under the Hazard Mitigation Acquisition Program conducted with **STATE ACQUISITION FUNDS**; and

**WHEREAS**, the State of North Carolina's Department of Crime Control and Public Safety has entered into a Contract Agreement with **HAYWOOD** County, North Carolina (hereinafter referred to as the "County"), and herein incorporated by reference, in which the County will use the Property described hereafter under the terms and conditions thereunder; and

**NOW, THEREFORE**, this conveyance is made upon the express conditions that:

1. **LAND USE**: The land must be dedicated and maintained in perpetuity for uses compatible with open space, recreational purposes or wetlands management practices.
2. **STRUCTURES**: No new structure(s) will be built on the property except for the following:
  - a. A public facility that is open on all sides and functionally related to a designated open space or recreational use;
  - b. A public restroom; or
  - c. A structure that is compatible with open space, recreational, or wetlands management usage and proper flood plain management policies and practices, which the Secretary of Crime Control and Public Safety approves in writing before the construction of the structure begins.
3. **ASSISTANCE**: After completing the project, no application for additional disaster assistance will be made for any purpose with respect to the property to any Federal or State entity or source, and no Federal or State entity or source will provide such assistance.
4. **CONVEYANCE**: The properties so acquired or any interest therein may be conveyed only to another public entity or non-profit organization created to enhance or promote the purposes set forth in Paragraph 1 above with prior approval of the State of North Carolina Department of Crime Control and Public Safety and subject to this Declaration.
5. **TERM AND BINDING EFFECT**: The foregoing covenants, conditions and restrictions shall run with the land and be binding upon all parties having any right, title or interest in the described properties and any part thereof, their successors and assigns, but is not intended to restrict the rights of third parties in existing easements for public roads, highways, public utilities, railroads and pipelines.
6. **APPLICATION**: Nothing herein contained shall be construed as to impose any covenant, condition or restriction on any other property than that conveyed to Declarant pursuant to the Grant Agreement and any amendments thereto, to which these specific covenants, conditions and restrictions apply.

- 7. **FLOOD PROOF STRUCTURES:** Any structures built on the property must be located to minimize the potential for flood damage, be flood proofed, or be elevated to the Base Flood Elevation plus one foot of freeboard.
- 8. **CERTIFICATION REQUIREMENTS:** Every two years on October 1<sup>st</sup>, the RECIPIENT/SUBGRANTEE will report to the AGENCY/GRANTEE certifying that the property continues to be maintained consistent with the provisions of these restrictions.
- 9. **ALLOWABLE USES:** Allowable open space, recreational, and wetland management uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time it not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved, permeable parking lots, and buffer zones. Allowable uses generally do not include walled buildings, flood reduction levees, or other uses that obstruct the natural and beneficial functions of the flood plain.

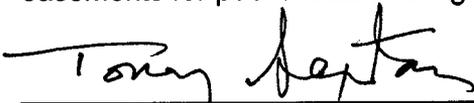
Any breach or threatened breach of the above conditions may be enjoined upon application by the State of North Carolina. In addition, the State of North Carolina shall have the option to repurchase the above described premises for the sum of One Dollar (\$1.00), if the County, its successors or assigns shall have failed to remove or correct any violation of the above conditions within thirty (30) days after the mailing of written notice thereof by said State of North Carolina or its successor, to the County, its successors or assigns.

The above conditions and restrictions, along with the right to enforce the same are deemed to be covenants running with the land in perpetuity and are binding on subsequent successors, recipients, or assigns.

The Seller releases and deeds unto the County and its assigns, all rights, title, and interest which the Seller may have in the banks, bed and waters opposite to or fronting upon said land, and in any alley, road, street, ways strips, gorges and railroad right-of-way abutting or adjoining said lands, and in any means of ingress and egress appurtenant thereto.

**TO HAVE AND HOLD** the said premises with all and singular the rights and privileges belonging unto the said County and its assigns forever.

**THIS** conveyance is expressly subject to rights outstanding in third parties for existing easements for public road and highways, public utilities, railroads, and pipelines.

  
 \_\_\_\_\_  
 For the County

6-20-06  
 Date

Witness my hand and official seal this 20 day of June, 2006.

  
 \_\_\_\_\_  
 Notary Public

Property Address:

SAMPLE

**HAZARD MITIGATION PROPERTY LEASE**

NORTH CAROLINA

HAYWOOD COUNTY

**THIS LEASE AGREEMENT** (this "Lease"), made and entered into this \_\_\_day of \_\_\_\_\_, 20\_\_\_, by and between HAYWOOD COUNTY, a subdivision of the State of North Carolina and a body politic and corporate ("Lessor") and \_\_\_\_\_, resident(s) of Haywood County, North Carolina, (whether one or more, "Lessee");

WITNESSETH:

WHEREAS, Lessor acquired the real estate described on Appendix I, attached hereto and incorporated herein by reference (the "Premises"), pursuant to the Hurricanes Francis and Ivan Hazard Mitigation Grant Program (the "Grant Program"); and

WHEREAS, Lessor is obligated under the terms of the Grant Program to own the property perpetually and prevent its reuse for residential or commercial occupancy; and

WHEREAS, Lessee desires to lease the Premises and has offered to keep and maintain the same as open space or wetlands management use including cultivation, such uses being specifically set forth in the deed to Haywood County for the Premises; and

WHEREAS, Lessor has agreed to lease the Premises to Lessee subject to the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the rent stated herein and the covenants, terms, and conditions hereinafter set forth, Lessor does hereby let, lease, and demise unto Lessee and Lessee does hereby rent and lease from Lessor the Premises described on Appendix I.

This Lease is executed upon the following terms and conditions:

1. Term. The term of this Lease shall commence on the 1<sup>st</sup> day of December, 20\_\_\_ (the "Commencement Date") and, unless sooner terminated as herein provided, shall exist and continue for a period of one (1) year until the 30th day of November, 20\_\_\_ (the "Expiration Date"); provided, however, notwithstanding any other provision of this Lease, Lessor shall have the right to terminate this Lease at any time upon not less than seven (7) days written notice to Lessee. Such notice of termination shall specify a termination date, which shall not be less than seven (7) days from the date the notice is given, and this Lease shall terminate on the date so specified.
2. Rent. Lessee shall pay rent to Lessor in the amount of \_\_\_\_\_ for the use of each of the Premises.

3. Renewal. This Lease shall automatically renew for successive terms of one (1) year each unless one party shall have notified the other in writing of its desire to terminate this Lease not less than thirty (30) days prior to the end of the then current term.

4. Lessor's Obligations. Lessor is leasing the Premises to Lessee in "as is condition" and makes no representations, express or implied, that the Premises is suitable for the use permitted by this Lease, or any other use. Lessor shall have no obligation of any kind, sort, or nature with regard to the Premises, nor shall Lessor have any obligation to make any payment or invest any money in, or take any other action with respect to the Premises.

5. Use of the Premises. The Premises are to be used and occupied by Lessee solely as open space and wetlands management use including cultivation and for no other purpose. Lessee shall at all times fully and properly comply with all laws, ordinances, and regulations governing the use of the Premises enacted or adopted by every lawful authority having jurisdiction over the same.

6. Rules Governing the Use of the Premises. The following rules and regulations shall govern the use of the Premises by Lessee:

(a) Lessee shall not erect any building or structure on the Premises or install any impervious surface, including, without limitation, a paved area or a concrete pad.

(b) Lessee shall not erect or post any signs on the Premises, except for "No Trespassing" signs.

(c) Lessee shall not excavate any soil or other surface or subsurface material from the Premises, and shall not dig holes or otherwise change the surface thereof; provided, however, that, subject to any restrictions of record to the contrary, Lessor agrees that Lessee may have and maintain a personal garden or other cultivation on the Premises.

(d) Lessee shall not remove any tree, other natural growth, or any natural object from the Premises (except as provided in subparagraph (h) below) unless first approved in writing by Lessor, which approval may be withheld in Lessor's sole discretion.

(e) Lessee shall not build any fires or permit any burning on the Premises and shall not cause or permit any use that will in any way increase the possibility of fire or other casualty, nor shall Lessee allow or permit the use of any firearms or explosives on the Premises.

(f) Lessee shall not cause or permit any improper noises on the Premises or allow any unpleasant odors to emanate from the Premises or otherwise annoy in any way other residents in the area.

(g) Lessee shall not alter the topography of Premises in any way and shall not fill in any part of the Premises with any material, including, without limitations, dirt, rocks, or brush.

(h) Lessee agrees to maintain the Premises by regular mowing and pruning vegetation

to a standard that is consistent with the property maintenance of Lessee's primary residence and to the reasonable satisfaction of Lessor.

(i) Lessee shall not cause or permit Hazardous Material (as hereinafter defined) to be brought upon, kept or used in and about the Premises by Lessee, his/her, or their agents, employees, contractors, or invitees. As used herein the term "Hazardous Material" means any hazardous or toxic substance, material or waste, including, but not limited to, those substances, materials, and waste listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.01) or by the Environmental Protection Agency as hazardous substance pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended (42 U.S.C. § 9601 et seq.), and any regulations promulgated thereunder and amendments thereto, and shall include all substances, materials, and waste that are or become regulated under any other applicable local, state, or federal law. Hazardous Material shall also extend to and include any substances prohibited under standard forms of fire insurance policy.

(j) Lessee shall not use the Premises in any way that is inconsistent with real estate held as vacant, open space.

7. Assignment or Sublease. Lessee shall not voluntarily (i) assign or in any manner transfer this Lease or any estate or interest therein, (ii) permit any assignment of this Lease or any estate or interest therein by operation of law or otherwise, (iii) sublet the Premises or any part thereof, (iv) grant any license, concession or other right of occupancy of any portion of the Premises, or (v) permit the use of the Premises by any parties, other than Lessee. Lessee shall not mortgage, pledge or otherwise encumber Lessee's interest in this Lease or in the Premises.

8. Release and Indemnity. To the fullest extent permitted by law, Lessee shall release, indemnify, keep and save harmless Lessor, Lessor's agents, officials, and employees, from any and all responsibility or liability for any and all damage or injury of any kind or nature whatever (including death resulting therefrom) to all persons, whether agents, officials, and employees of Lessor, Lessee, or third persons, and to all property (including the property of Lessee) caused by, instituted, resulting from, rising out of, or accruing in connection with, directly or indirectly, the use or occupancy of the Premises by Lessee (or by any person who may be acting for Lessee or for whom Lessee is or is alleged to be in any way responsible), whether such claim may be based in whole or in part upon contract, tort (including alleged active or passive negligence or participation in the wrong), or upon any alleged breach of any duty or obligation on the part of Lessee, Lessee's agents, employees, or invitees, or otherwise. The provisions of this paragraph shall include any claim for equitable relief or damages (compensatory or punitive) against Lessor, Lessor's agents, officials, and employees, including alleged injury to the business of any claimant and shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, cost, and expenses. Expenses as used herein shall include, without limitation, the cost incurred by Lessor, Lessor's agents, officials, and employees, in connection with investigating any claim or defending any action, and shall also include attorneys' fees by reason of the assertion of any such claim against Lessor, Lessor's agents, officials, or employees. Lessee expressly understands and agrees that any insurance protection required by this Lease, or otherwise provided by Lessee, will in no way limit Lessee's

responsibility to release, indemnify, keep and save harmless and defend Lessor as provided herein. The intention of the parties is to apply and construe this Release and Indemnity broadly in favor of Lessor.

9. Default. Lessee's failure to (i) use the Premises as provided in the Lease, (ii) comply with the rules and regulations governing of the use of the Premises, (iii) provide and keep in force the required insurance, or (iv) comply with any other term or condition of this Lease shall constitute an Event of Default. Upon the occurrence of an Event of Default Lessor shall notify Lessee in writing of such default and if the Event of Default has not been cured or corrected within fifteen (15) days of the giving of such notice this Lease shall automatically terminate.

10. Notices. All notices given hereunder shall be made in writing. Such notices shall be deemed given when personally delivered or deposited in the United States mail, certified or registered mail, postage prepaid, addressed to the respective party at the address shown below unless a different address shall have been provided in writing:

If to Lessor: Haywood County  
215 North Main Street  
Waynesville, North Carolina 28786  
Attention: Marty Stamey, County Manager

If to Lessee:

11. No Waiver. Lessor's failure to enforce or delay in enforcing any of the provisions, rights, or remedies in this Lease shall not be a waiver nor in any way affect the validity of this Lease or any part hereof, or the right of Lessor to enforce each and every provision, right, or remedy contained herein. No waiver of any breach of any provision of this Lease shall be held to be a waiver of any other subsequent breach of the same or any other provision.

12. Entire Agreement. This Lease sets forth all of the covenants, promises, agreements, conditions, and understandings between Lessor and Lessee concerning the Premises. Lessee shall make no claim on account of any alleged representations contained in prior discussions, correspondence, or other documents, not set forth in this Lease. This Lease shall not be altered, amended, or changed except by a written document executed by Lessor and Lessee.

13. Time is of the essence. Time is of the essence of this Lease and the performance of all obligations hereunder.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Lease as of the day and year first written above.

LESSOR:

HAYWOOD COUNTY

By: \_\_\_\_\_  
Mark S. Swanger  
Chairman, Board of Commissioners

ATTEST:

\_\_\_\_\_  
Marty Stamey, County Manager

(SEAL)

LESSEE

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)

NORTH CAROLINA

HAYWOOD COUNTY

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, do hereby certify that MARTY STAMEY personally appeared before me this day and acknowledged that he is County Manager and Clerk to the Board of Commissioners of Haywood County, a subdivision of the State of North Carolina, and that by authority duly given and as the act of the Board of Commissioners, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal, and attested by herself as its County Clerk.

Witness my hand and official stamp or seal, this the \_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_

Notary Public

OFFICIAL SEAL

NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, of the County and State aforesaid, do hereby certify that \_\_\_\_\_ personally came before me this day and executed the foregoing Lease Agreement.

Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_

Notary Public

OFFICIAL SEAL