

State of North Carolina

Minutes

County of Madison

The Madison County Board of Commissioners met in special session on Tuesday, June 23, 2020 at 5:30 p.m. at the North Carolina Cooperative Extension-Madison County Center located at 258 Carolina Lane, Marshall, North Carolina.

In attendance were Chairman Craig Goforth; Vice-Chairman Mark Snelson; Commissioners Norris Gentry, Wayne Brigman, and Matt Wechtel; County Manager Mark Pullium; County Attorney Donny Laws; Clerk Mandy Bradley.

The meeting was called to order at 5:30 p.m. by Chairman Goforth upon motion by Commissioner Gentry and second by Commissioner Brigman with unanimous approval of the Board.

Item 1: Public Hearing: Quarter Center Sales Tax Increase

a. Quarter Cent Sales Tax Increase Presentation-Mark Pullium

County Manager Mark Pullium presented and discussed information regarding the quarter cent sales tax increase and read into record for consideration of adoption by the Board, the Resolution Levying An Additional Once Quarter Cent (1/4 Cent) County Sales and Use Tax.

b. Public Comment

Cindie Harman- Ms. Harman spoke regarding the budget hearings and nonprofit funding. (Attachment 1.2)

c. Consider Adoption of Resolution to Authorize the Levy of a One Quarter Cent Sales Tax

Upon motion by Commissioner Gentry and second by Vice-Chairman Snelson, the Board voted unanimously to approve this resolution so that the school system can receive the taxes that the voters of Madison County said they wish to give to the schools. (Attachment 1.3)

Item 2: Public Hearing: Madison Small Business Loan

a. Madison Small Business Loan Presentation-Terry Bellamy

Community and Economic Development Director Terry Bellamy presented a power point presentation of the program as well as discussed specifics of the program including terms of the program, eligible uses, eligibility of recipients, how the program is managed by Mtn. Biz Works as well as presented the Resolution Approving Appropriation Madison County Small Business Loan Fund.

Matt Raker, Executive Director of Mtn. Biz Works addressed the Board and took questions from Board members regarding the program and the benefits of it to small businesses as well as Mtn. Biz Works management of the program.

b. Public Comment

No public comment was received.

c. Consider Authorization of the Madison Small Business Loan Program

Discussion was had by the Board. Commissioner Brigman requested that the Resolution be read into record. Mr. Bellamy read the Resolution Approving Appropriation Madison County Small Business Loan Fund into record.

Ms. Bellamy took questions from the Board and discussion was had by the Board along with County Attorney Donny Laws.

Upon motion of Vice-Chairman Snelson and second by Commissioner Wechtel, the Board voted unanimously to approve. (Attachment 2.3)

Ms. Bellamy presented information regarding the Small Business Grant Program which is funded with Cares Act funding. She discussed the program and presented a power point, answered questions from the Board, and noted that this program was already approved by the Board on May 19, 2020 and that the program is ready to begin tomorrow.

Item 3: FY 2020-2021 Budget Ordinance

a. Budget Status Update

County Manager Mark Pullium presented and discussed the proposed FY 20-21 Budget Ordinance with the Board. He highlighted key components of the ordinance and reviewed the information with the Board.

b. Discussion

Mr. Pullium discussed information regarding the proposed FY 2020-2021 Budget Ordinance with the Board as well as took questions from Board members.

Discussion regarding the FY 2020-2021 Budget Ordinance was had by the Board concerning the lack of time to adopt the budget and the need to obtain more information regarding the adoption of the FY 2020-2021 Budget Ordinance. Discussion regarding tabling the discussion and recessing the adoption of the FY 2020-2021 Budget Ordinance meeting until a future date was had by the Board. Motion to table the budget vote tonight was made by Commissioner Brigman. Council was given from County Attorney Laws regarding recessing the meeting. The Board agreed to recess the meeting until June 25, 2020 at 5:00 p.m. to be held at the North Carolina Cooperative Extension-Madison County Center located at 258 Carolina Lane, Marshall, North Carolina.

Item 4: Budget Amendment #12-FY 2020

Interim Finance Officer Kary Ledford presented and discussed information as well as answered questions from the Board regarding Budget Amendment #12.

Upon motion by Commissioner Gentry and second by Vice-Chairman Snelson, the Board voted unanimously to approve Budget Amendment #12 as submitted by the Finance Officer and County manager.

Discussion was had by the Board.

Item 5: Madison Asphalt, LLC vs. Madison County Case Number 19-CVS-340

Chairman Goforth called for a motion to enter into closed session pursuant to NC GS 143-318.11 (a) (3) Madison Asphalt, LLC vs. Madison County Case Number 19-CVS-340 for the purpose of talking with our attorneys. Upon motion of Commissioner Brigman and second by Commissioner Gentry, the Board voted unanimously to enter into closed session.

Upon motion by Commissioner Brigman and second by Commissioner Gentry, the Board voted unanimously to return to open session.

The Board took recess from 7:33 p.m. to 7:40 p.m.

Chairman Goforth opened the floor to County Attorneys Billy Clarke and Ann-Patton Hornthal. Mr. Clarke addressed the Board regarding the proposed Release and Settlement Agreement with Madison Asphalt, LLC and Madison County to settle their dispute. Mr. Clark discussed the settlement agreement with the Board and read the conditions from the Release and Settlement Agreement into record as well as took questions from the Board.

Discussion was had by the Board with Commissioner Gentry going on record to explain his position to the Board.

Chairman Goforth asked for a motion to approve said agreement. Members of the audience requested to engage the Board in conversation. Legal council was provided by County Attorney Donny Laws. Discussion was had by the Board.

Upon motion of Commissioner Brigman and second by Vice-Chairman Snelson, the Board voted 3-2 to approve the Release and Settlement Agreement that was presented to us by our Attorney with Chairman Goforth and Commissioner Gentry voting against. (Attachment 5.1)

Upon motion by Chairman Goforth and second by Commissioner Brigman, the Board voted unanimously to recess the meeting until June 25, 2020 at 5:00 p.m. to be held at the North Carolina Cooperative Extension-Madison County Center located at 258 Carolina Lane, Marshall, North Carolina.

The Board took recess from 8:00 p.m. June 23, 2020 to 5:00 p.m. June 25, 2020.

Item 3: FY 2020-2021 Budget Ordinance

a. Consider Adoption of FY 2020-2021 Budget Ordinance

Chairman Goforth called the meeting back into session on June 25, 2020 at 5:00 p.m. at the North Carolina Cooperative Extension-Madison County Center located at 258 Carolina Lane, Marshall, North Carolina.

County Manager Mark Pullium discussed the proposed FY 2020-2021 Budget Ordinance review of line items with the Board. Discussion was had by the Board.

Mr. Pullium opened the floor to Animal Shelter Director Angela Davis. Ms. Davis discussed the Animal Shelter budget with the Board. Discussion was had by the Board.

Mr. Pullium opened the floor to Solid Waste Director Sam Lunsford. Mr. Lunsford discussed the Solid Waste budget with the Board. Discussion was had by the Board.

Upon motion by Commissioner Snelson and second by Commissioner Gentry, the Board voted 3-2 to raise the trash card fee to \$180.00 with Commissioners Wechtel and Brigman voting opposed.

The Board took recess from 6:40 p.m. to 6:50 p.m.

Chairman Goforth requested that the meeting room in the building be changed due to a maintenance issue. Recess continued until 7:06 p.m. to reconfigure the space.

Discussion regarding budget items for each revenue and expense line item included in the proposed FY 2020-2021 budget was had by the Board and Mr. Pullium.

Upon motion of Chairman Goforth and second by Vice-Chairman Snelson, the Board voted 3-2 to leave the food line for the jail as requested with Commissioners Wechtel and Brigman voting opposed. Board Clerk Mandy Bradley requested to verify with the Board if this is an official vote for this budget item. Council was obtained from County Attorney Donny Laws who confirmed.

Line item discussion continued to be had by the Board and Mr. Pullium.

The Board took recess from 8:54 p.m. to 9:05 p.m.

Discussion regarding the budget for the school system was had by the Board with Dr. Will Hoffman Superintendent of Madison County Schools called into the meeting via telephone to discuss the proposed budget for the school system. Discussion was had by the Board and Dr. Hoffman.

Discussion was had by the Board regarding the Spring Creek Fire Tax with audience member Mike Tuziw discussing information with the board. Upon motion by Commissioner Gentry and second by Vice-Chairman Snelson, the Board voted 3-2 to grant the Spring Creek Volunteer Fire Department the one cent that they have requested with Commissioners Wechtel and Brigman voting opposed.

Line item discussion continued to be had by the Board and Mr. Pullium.

Commissioner Gentry made a motion that the tax levy for this year be set at 50 mills. Mr. Pullium discussed with Commissioner Gentry if he would like to clarify that the collection rate of 93.5% be included as part of the motion. Commissioner Gentry stated that he will add that to his motion. Council was had from County Attorney Donny Laws who noted that all information should be included in the budget and the Board should vote on the budget after Mr. Pullium goes over all of the modifications that have been made.

The Board took recess from 10:00 p.m. to 10:17 p.m.

Mr. Pullium discussed and presented the summary of the changes to the proposed FY 2020-2021 Budget Ordinance to the Board as well as answered questions from Board members.

Upon motion by Commissioner Gentry and second by Vice-Chairman Snelson, the Board voted 3-2 to adopt the Ordinance as presented by the County Manger with the one typo correction and by our Finance Officer with the assistance of our attorney with Commissioners Wechtel and Brigman voting opposed.

**Madison County, North Carolina
2020-2021 Budget Ordinance**

BE IT ORDAINED by the Governing Body of the County of Madison, North Carolina:

Section 1:

The following amounts are hereby appropriated in the General Fund for the operation of the county government and its activities for the fiscal year beginning July 01, 2020 and ending June 30, 2021, in accordance with the chart of accounts heretofore established for this County:

General Government	\$	2,649,746.00
Public Safety	\$	6,677,665.00
Transportation	\$	755,403.00
Health and Human Services	\$	3,396,513.00
Community Services	\$	618,926.00
Social Services	\$	4,914,561.00
Economic and Physical Development	\$	516,023.00
Education	\$	4,184,697.00
Culture and Recreation	\$	613,190.00
Contingency	\$	347,519.00
Capital Outlay	\$	159,000.00
Debt Service Principal	\$	909,667.00
Debt Service Interest	\$	159,430.00
Transfer to Revaluation Fund	\$	75,000.00
	\$	25,977,340.00

Section 2:

It is estimated that the following revenues will be available in the General Fund for the fiscal year beginning July 01, 2020 and ending June 30, 2021:

Current Year's Real Property Taxes	\$	11,761,066.00
Current Year's Motor Vehicle Taxes	\$	879,837.00
Prior Year's Real Property Taxes	\$	405,246.00
Interest and Late Listing Fees on Taxes	\$	146,000.00
Other Tax Fees	\$	900.00
Franchise Taxes	\$	14,000.00
Local Option Sales Tax	\$	3,802,500.00
Intergovernmental Revenues	\$	7,715,831.00
Fees	\$	925,510.00
Other Revenues	\$	116,950.00
Interest on Banking Accounts	\$	25,500.00
Installment Financing	\$	159,000.00
Transfer From Fund Balance	\$	25,000.00
	\$	25,977,340.00

Section 3: The following amounts are hereby appropriated in the Fire District Fund for the operation of fire protection services for the fiscal year beginning July 01, 2020 and ending June 30, 2021, in accordance with the chart of accounts heretofore established for this County:

Smokey Mountain Fire Department	\$	146,453.00
Ebbs Chapel Fire Department	\$	225,000.00
Mars Hill Fire Department	\$	554,000.00
Country Fire Department	\$	27,000.00
Walnut Fire Department	\$	123,000.00
Big Pine Fire Department	\$	30,000.00
Jupiter Fire Department	\$	29,000.00
Leicester Fire Department	\$	95,000.00
Spring Creek Fire Department	\$	65,000.00
Laurel Fire Department	\$	55,500.00
Total Appropriation	\$	1,349,953.00

Section 4: It is estimated that the following revenues will be available in the Fire District Fund for the fiscal year beginning July 01, 2020 and ending June 30, 2021:

Smokey Mountain Fire Department	\$	146,453.00
Ebbs Chapel Fire Department	\$	225,000.00
Mars Hill Fire Department	\$	554,000.00
Country Fire Department	\$	27,000.00
Walnut Fire Department	\$	123,000.00
Big Pine Fire Department	\$	30,000.00
Jupiter Fire Department	\$	29,000.00
Leicester Fire Department	\$	95,000.00
Spring Creek Fire Department	\$	65,000.00
Laurel Fire Department	\$	55,500.00
Total Estimated Revenues	\$	1,349,953.00

Section 5: The following amounts are hereby appropriated in the Vehicle Tax Fund for the three towns located in Madison County for the fiscal year beginning July 01, 2020 and ending June 30, 2021, in accordance with the chart of accounts heretofore established for this County:

Town of Hot Springs	\$	32,000.00
Town of Marshall	\$	25,000.00
Town of Mars Hill	\$	50,000.00
Total Appropriation	\$	107,000.00

Section 6: It is estimated that the following revenues will be available in the Vehicle Tax Fund for the fiscal year beginning July 01, 2020 and ending June 30, 2021:

Town of Hot Springs	\$	32,000.00
Town of Marshall	\$	25,000.00
Town of Mars Hill	\$	50,000.00
Total Estimated Revenues	\$	107,000.00

Section 7: The following amounts are hereby appropriated in the Occupancy Tax Fund for the development of tourism in Madison County during the fiscal year beginning July 01, 2020 and ending June 30, 2021, in accordance with the chart of accounts heretofore established for this County:

Tourism and Development	\$	205,897.00
Total Appropriation	\$	205,897.00

Section 8: It is estimated that the following revenues will be available in the Occupancy Tax Fund for the fiscal year beginning July 01, 2020 and ending June 30, 2021:

Occupancy Tax	\$	205,897.00
Total Estimated Revenues	\$	205,897.00

Section 9: The following amounts are hereby appropriated in the E-911 Fund for the operation of the Emergency 911 System for the fiscal year beginning July 01, 2020 and ending June 30, 2021 in accordance with the chart of accounts heretofore established for this County:

911 Emergency Telephone System	\$	207,746.00
Total Appropriation	\$	207,746.00

Section 10: It is estimated that the following revenues will be available in the E-911 Fund for the fiscal year beginning July 01, 2020 and ending June 30, 2021:

911 Telephone Surcharges	\$	207,746.00
Total Estimated Revenues	\$	207,746.00

Section 11: The following amounts are hereby appropriated in the Landfill Fund for the operation of the County Landfill for the fiscal year beginning July 01, 2020 and ending June 30, 2021 in accordance with the chart of accounts

heretofore established for this County:

Landfill	\$	1,784,600.00
Recycling	\$	241,322.00
Scrap Tire Disposal	\$	25,000.00
Total Appropriation	\$	2,050,922.00

Section 12: It is estimated that the following revenues will be available in the Landfill Fund for the fiscal year beginning July 01, 2020 and ending June 30, 2021:

Disposal Fees	\$	2,003,222.00
Other Operating Income	\$	47,700.00
Total Estimated Revenues	\$	2,050,922.00

Section 13: The following amounts are hereby appropriated in the Soil and Water Conservation Fund for the fiscal year beginning July 01, 2020 and ending June 30, 2021 in accordance with the chart of accounts heretofore established for this County:

Grant Expenses	\$	12,060.00
General Fund	\$	15,000.00
Total Appropriation	\$	38,472.00

Section 14: It is estimated that the following revenues will be available in the Soil and Water Conservation Fund for the fiscal year beginning July 01, 2020 and ending June 30, 2021:

Other Operating Income	\$	38,472.00
Total Estimated Revenues	\$	38,472.00

Section 15: There is hereby levied a tax rate of fifty (\$.50) cents per one hundred dollars (\$100.00) valuation of property tax listed as of January 01, 2020, for the purpose of raising revenue included in "2020 Ad Valorem Taxes" in The General Fund in Section 2 of this ordinance.

For comparison purposes the revenue neutral tax rate is forty six (\$.46) cents per one hundred dollars. This rate is shown since 2020 is a revaluation year.

This rate is based on an estimated total valuation of property for the purpose of taxation of \$2,515,736,130 at an estimated collection rate of 93.50% and on an estimated total valuation of vehicles of \$176,851,367 at an estimated collection rate of 99.50%.

Section 16: For the fiscal year beginning July 1, 2020 and ending June 30, 2021 the compensation for the Chairman of the Board of Commissioners is \$7,702 per year and a monthly travel allowance of \$685. The compensation of all other members of the Board of Commissioners is \$5,269 per year and a monthly travel allowance of \$400.

Section 17: The County Manager shall serve as Budget Officer and is hereby authorized to transfer appropriations as contained herein under the following conditions:

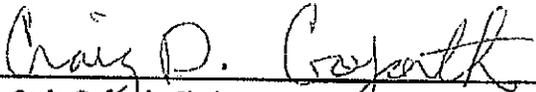
- A.** The County Manager shall be authorized to transfer amounts between line item expenditures within a department without limitation and without report being required. These changes should not result in increases in recurring obligations such as salaries.
- B.** The County Manager shall be authorized to effect inter-department transfers, in the same fund, not to exceed 10% of the appropriated monies for the department whose allocation is reduced, notation of all such transfers shall be made to the Board during their next regular session.
- C.** Interfund transfers established in the budget may be accomplished without Board approval.

Section 18: The County Manager is hereby restricted from transferring appropriations as contained herein under the following conditions:

- A.** The utilization of any contingency appropriation shall be accomplished only with Board approval.
- B.** No salary increases may be made without Board approval, except when granted in accordance with an official pay plan adopted by the Board of Commissioners.
- C.** The interfund transfer of monies, except as noted in Section 17 (Paragraph C) shall be accomplished by Board authorization only.
- D.** No travel advances may be made without written permission of the County Manager.

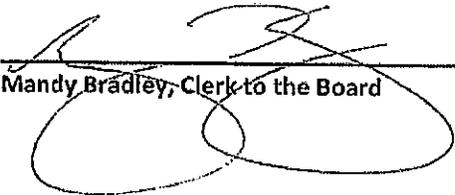
Section 19: This ordinance shall be the basis of the financial plan of Madison County during the 2020-2021 Fiscal Year. The County Manager shall administer the budget and shall insure that the operating officials are provided guidance and sufficient details to implement their appropriate portion of the budget. The accounting section shall establish records which are in consonance with the budget and this ordinance and the appropriate statutes of the State of North Carolina.

Adopted this the 25th day of June, 2020.



Dr. Craig Goforth, Chairman
Madison County Board of Commissioners

ATTEST:



Mandy Bradley, Clerk to the Board

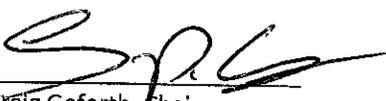
SEAL

Item 6: Adjournment

Upon motion by Commissioner Wechtel and second by Commissioner Brigman, the Board voted unanimously to adjourn.

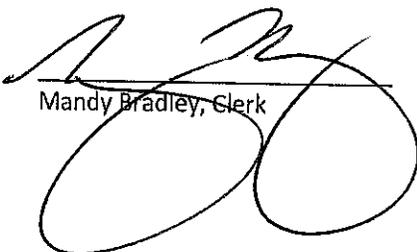
This the 25th day of June, 2020

MADISON COUNTY



Craig Goforth, Chairman
Board of Commissioners

ATTEST:



Mandy Bradley, Clerk



Madison County Commissioners Meeting Public Hearing-One Quarter Percent Sales Tax Levy

Public Comment

June 23, 2020

5:30pm

Cooperative Extension-Madison Center

159.11 D+E

3 Minute Time Limit

----- Public Comment Sign-In Sheet -----

1. ✓
V. CINDY HARMAN

Signature
Cindy Harman

- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.
- 16.
- 17.
- 18.
- 19.
- 20.

**MADISON COUNTY BOARD OF COMMISSIONERS
THE STATE OF NORTH CAROLINA**

**RESOLUTION LEVYING AN ADDITIONAL ONE-QUARTER CENT (1/4¢)
COUNTY SALES AND USE TAX**

WHEREAS, The General Assembly has authorized county boards of commissioners across the State of North Carolina to levy a one-quarter percent (.25%) county sales and use tax, contingent on an advisory referendum in which the majority of those casting ballots voted for the levy of the tax; and

WHEREAS, the Madison County Board of Commissioners directed the Madison County Board of Elections to conduct an advisory referendum on the question of whether to levy the One-Quarter Cent (1/4¢) County Sales and Use Tax in Madison County on the 3rd day of March, 2020; and

WHEREAS, the ballots were cast 62.67% FOR and 37.33% AGAINST the levy of the One-Quarter Cent (1/4¢) County Sales and Use Tax; and

WHEREAS, the Board has provided the required 10 days public notice of the Board's intent to consider this resolution to levy the tax; and

WHEREAS, the Madison County Board of Commissioners hereby finds that the levy of the One-Quarter Cent (1/4¢) County Sales and Use Tax is necessary to help address and alleviate fiscal constraints within Madison County; and

NOW, THEREFORE, BE IT RESOLVED by the Madison County Board of Commissioners:

(1) There is hereby levied within Madison County, the One-Quarter Cent (1/4¢) County Sales and Use Tax, authorized in Section 31.17(b) of the Current Operations and Capital Improvements Appropriations Act of 2007 (Session Law 2007-323).

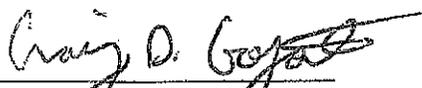
(2) Collection of the tax by the North Carolina Secretary of Revenue, shall begin on and continue after the 1st day of October, 2020.

(3) The net proceeds of the tax levied herein shall be distributed by the Secretary of Revenue to Madison County in accordance with Article 39 Chapter 105 of the North Carolina General Statutes. Notwithstanding the provisions of Article 39 of Chapter 105, the additional One-Quarter Cent (1/4¢) County Sales and Use Tax does not apply to the sales price of food that is exempt from tax pursuant to N.C.G.S. 105-164.13B. The Secretary shall not divide the amount allocated to a county between Madison County and the municipalities within Madison County.

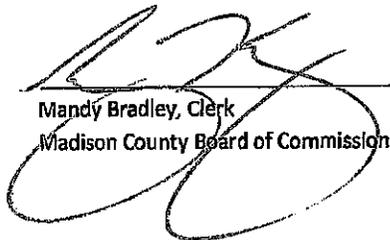
(4) This Resolution is effective upon its adoption, and a certified copy hereof shall be forwarded to the Secretary of the North Carolina Department of Revenue, P.O. Box 25000, Raleigh, NC 27640, along with a certified copy of the Madison County Board of Election results from the advisory referendum.

Adopted this 23rd day of June 2020.

(SEAL)



Craig Goforth, Chairman
Madison County Board of Commissioners



Mandy Bradley, Clerk
Madison County Board of Commissioners

Resolution #: _____

**RESOLUTION AUTHORIZING APPROPRIATION MADISON COUNTY SMALL
BUSINESS LOAN FUND**

- WHEREAS, on May 19, 2020 the Madison County Commissioners approved the creation of the "Madison County Small Business Fund," a COVID-19 relief fund, the purpose of which is to provide a support relief efforts for businesses in the community; and
- WHEREAS, Madison County is partnering with organizations to create this centralized COVID-19 loan fund; and
- WHEREAS, the Madison County Commissioners proposes to provide an economic development appropriation in the amount of seventy-five thousand (\$75,000) Dollars to Mountain BizWorks, a non-profit, US Treasury-certified community development financial institution (CDFI); and
- WHEREAS, Mountain BizWorks is based in Asheville and has 30 years of small business lending and training experience. Mountain BizWorks will leverage its current capacities to operate the fund, maximize impacts, and minimize operating expenses; and
- WHEREAS, the purpose is to make loans to provide low-cost "bridge funding" to help businesses stay open, successfully re-open and/or to provide general assistance to limit job losses until businesses and individuals can qualify for longer term disaster funding from SBA or others; and
- WHEREAS, this investment will further the economic interests of the County in numerous ways by creating a mechanism to increase and maintain the population, taxable property, employment, and small business prospects in Madison County; and
- WHEREAS, pursuant to the provisions of North Carolina General Statutes §158-7.1 and NCGS Chapter 166A, the North Carolina Emergency Management Act, this Board of Commissioners deems its desirable and in the best interests of the County and its businesses and residents to make this economic development appropriation to Mountain BizWorks; and
- WHEREAS, this Board of Commissioners has organized and approved the holding of a public hearing at the Board's June 23, 2020 regular meeting to discuss making the appropriation to Mountain BizWorks.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Madison County, North Carolina, as follows:

1. Pursuant to the provisions of NCGS §158-7.1 and NCGS Chapter 166A, the North Carolina Emergency Management Act, this Board approves appropriating and spending from the

County's general fund amounts to make appropriations of seventy five thousand (\$75,000) Dollars to Mountain BizWorks.

2. This Board approves entering into an Agreement by and between Madison County and Mountain BizWorks for its administration of these funds.

3. That this Board finds and determines that these efforts to provide low-cost "bridge funding" and to provide general assistance to limit job losses until businesses and individuals can qualify for longer term disaster funding from SBA or others will further the economic interests of the County in numerous ways by creating a mechanism to increase and maintain the population, taxable property, employment, industrial output, and small business prospects in Madison County.

4. The Chairman and County Manager, or either of them, are hereby authorized, empowered and directed to do any and all other acts and to execute any and all other documents, which they, in their discretion, deem necessary and appropriate in order to consummate the transactions contemplated by this Resolution, except that none of the above shall be authorized or empowered to do anything or execute any document which is in contravention, in any way, of the specific provisions of this Resolution.

5. All acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.

6. Any prior resolutions or parts thereof of the Madison County Commissioners' Board in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

7. This Resolution is effective upon its adoption.

This the 23rd of June, 2020.

ATTEST

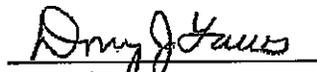
BOARD OF COMMISSIONERS FOR THE
COUNTY OF MADISON



Mandy Bradley, Clerk
APPROVED AS TO FORM

By: 

Craig GoForth, Chairman



County Attorney

STATE OF NORTH CAROLINA
COUNTY OF MADISON

**RELEASE AND
SETTLEMENT AGREEMENT**

THIS RELEASE AND SETTLEMENT AGREEMENT (this "Agreement") is made and entered into this 23rd day of June, 2020, by and between **MADISON ASPHALT, LLC** (hereinafter "MA") and the **MADISON COUNTY** (hereinafter the "County"). MA and the County are each hereinafter known as a Party and collectively as the "Parties."

RECITALS:

WHEREAS, certain disputes ("Dispute") between MA and the County have arisen related to the County's Zoning Board of Adjustment's ("BOA") denial of a special use permit ("Special Use Permit") for an asphalt plant, ("Project") at 3807 US 25-70 Hwy, NC ("Site"), including the permit conditions stated on Exhibit "1" attached hereto and incorporated herein by reference ("Permit Denial"); and

WHEREAS, the Parties are involved in a pending appeal of the Permit Denial identified as *19 CVS 340*, Madison County Superior Court ("Superior Court Appeal"); and

WHEREAS, in order to avoid the high costs and expenses associated with the Superior Court Appeal, the uncertainty of litigation, and the possibility of additional litigation pursuant to North Carolina General Statutes 160A-393.1, the Parties are desirous of settling the Dispute; and

NOW, THEREFORE, in consideration of the agreements and undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency

of which is hereby acknowledged, MA and the County agree to settle the Dispute and enter into this Release and Settlement Agreement, as follows:

1. **CONSENT ORDER** Contemporaneous with the execution of this Agreement, the Parties, by and through their authorized representatives, shall authorize the entry of the Order attached hereto as Exhibit "A". This Exhibit "A" Order shall be presented to the Superior Court for consideration and approval on the Hearing Date. The "Hearing Date" is currently scheduled for September 4, 2020 in Watauga County, part of the 24th Judicial District. The Hearing Date may be rescheduled upon the consent of MA and the County or by the Court in its discretion. The purpose of this Court Order is to show the County's agreement with the reversal of the BOA's Permit Denial and to specially authorize via Court Order the BOA, upon remand, to approve issuance of the special use permit for the Project with the revised development conditions set forth on Exhibit "2" ("Revised Project").

2. The parties acknowledge and agree that there are individual parties to the pending litigation, including Edward Feldman, Lisa Long Feldman, Timothy J. Ruemler, Billy Jean Haynie, Linda Payne, Ronnie Payne, Douglas J. Bruggeman, Emily Sontag, Earl Andrew Carlson, James Tibbetts, Vivian Long, and Connie M. Molland ("Individual Litigants"), that the Individual Litigants are not bound by this agreement, and that the Individual Litigants may continue the litigation. The County, through its attorneys, will exercise reasonable efforts to obtain the consent and agreement of the individual parties to the Consent Order through their attorneys, however, the Parties recognize that the Individual Litigants

may not agree, and that the litigation may continue. The County agrees that if the litigation continues, the County will comply with the litigation stance set forth in paragraph 2a below but otherwise take no active role in the litigation, and the County will not oppose the issuance of a Special Use permit for the Revised Project comprising the asphalt plant if and as directed by a court of competent jurisdiction

2a. At the hearing on the Hearing Date, or at any other hearing addressing the merits of the Permit Denial in Superior Court proceedings in *19 CVS 340*, the County, by and through its attorneys of record, shall represent substantially before the tribunal the following: The County acknowledges that MA presented competent, material and substantial evidence to the BOA, showing a prima facie entitlement to the issuance of the Special Use Permit for the Project as shown on the Original Plan with the conditions set forth on Exhibit 1 to the Consent Order. Although the BOA's decision was solely based on MA's initial burden of production, the County agrees that there was not competent, material and substantial evidence in the record to the contrary that would otherwise justify denial of the permit as stipulated to in the Exhibit "A" Order in light of applicable statutory provisions (G.S. 160A-388 and 160A-393) and appellate court precedent, including the most recent holding from the North Carolina Supreme Court in *PHG Asheville, LLC v. City of Asheville*, 839 S.E.2d 755 (N.C. 2020). The County further acknowledges that the Special Use Permit as requested by the Petitioner should have been issued in accordance with the original conditions of Exhibit 1 in that Petitioner had made out before

the BOA a *prima facie* case of entitlement to said permit and said permit should now be allowed to be issued for the Revised Project with the consented-to additional conditions in Exhibit 2.

Provided, however, that nothing herein shall impose a requirement on the County to participate in any appeals from any decisions in the Superior Court Appeal or in any subsequent, related litigation. The County shall not be required to file any briefs or position statements with any appellate courts.

3. ISSUANCE OF SPECIAL USE PERMIT.

Unless otherwise enjoined, directed, instructed or ordered by a court of competent jurisdiction, the County shall cause the BOA to notice in and conduct a special, public meeting of the BOA during the month of September, 2020 or as soon as practicable for the purposes of issuing the special use permit for the Revised Project consistent with the terms in Paragraph No. 1 above, regardless of whether the Exhibit "A" Court Order is appealed. The County acknowledges that any delay in the approval of development plans for the Site is injurious to MA, and potentially increases MA's damages. Consequently, the County Commissioners for the County agrees that it, nor any of its commissioners, employees or agents, shall not oppose or interfere with MA developing the Revised Project in any way, including in any judicial proceeding or action. Further, the County further agrees to not oppose or interfere with the Revised Project. Provided, however, that nothing in this paragraph shall limit the County's ability to enforce the conditions set forth on Exhibit "2."

4. **RELEASE OF CLAIMS.** In exchange for the terms and conditions of this Agreement (except as provided below), including the agreement to not oppose the Revised Project, MA, for itself and its managers, members, employees, agents, successors in interest and assigns, does hereby release and discharge the County, its commissioners, officers, employees, agents, attorneys, successors in interest and assigns from any and all claims, demands, damages, actions, causes of action, fees, expenses or costs, of any kind or nature, arising out of or connected with the Dispute, known or unknown, which were or could have been asserted related to same, except for specific enforcement of this Agreement, including the Orders specified above, and damages that may arise as a result of a breach. It is not a condition of the Release that the Court enter the Exhibit "A" Court Order. If the Court declines to enter the Exhibit "A" Court Order, this Release is still effective; provided however, the County shall continue to not oppose the Revised Project and shall continue to support the issuance of the related special use permit and to otherwise take the litigation stance as provided in paragraph 2a above.

The County, on behalf of itself and its commissioners, officers, employees, agents, successors in interest and assigns, does hereby release and discharge MA, and its managers, members, employees, agents, successors in interest and assigns, from any and all claims, demands, damages, actions, causes of action, fees, expenses or costs, of any kind or nature, arising out of or connected with the Dispute, known or unknown, which were or could have been asserted related to same, except for specific enforcement of this Agreement, including the Orders specified above.

5. **COSTS AND FEES.** All Parties agree that they will bear their own attorney's fees, costs and expenses of any kind incurred in the Dispute. provided, however, if enforcement of this Agreement becomes necessary due to default by the County, MA shall, in addition to all other legal and equitable relief, be entitled to an award of attorney's fees from the County pursuant to N.C. Gen. Stat. §6-21.7 and its costs as allowed by law.

6. **CHOICE OF LAW; CHOICE OF FORUM.** This Release and Settlement Agreement shall be governed by and interpreted in accordance with the laws of North Carolina. In the event of a dispute related to the terms or the enforceability of this Release and Settlement Agreement, Madison County, North Carolina shall be the exclusive venue for the resolution of such disputes.

7. **MERGER.** The Parties represent that they have read this Release and Settlement Agreement and acknowledge that no representation or promise of any kind, other than as contained herein, has been made by the Parties hereby released or anyone acting for them. The Parties have relied fully and completely on their own judgment and advice of their attorneys in executing this.

8. **VOLITIONAL ACT.** By signing this Release and Settlement Agreement, the Parties acknowledge they have done so voluntarily, having been advised by their attorneys as to its contents. Each Party hereto represents that it has carefully read and fully understands the terms, conditions, meaning and intent of this Release and Settlement Agreement, and that each Party has had an opportunity to discuss the terms, conditions and provisions with legal counsel prior

to the execution hereof. Each Party specifically hereby acknowledges receipt of a copy of this Release and Settlement Agreement before signing it and understands that each and every provision of this Release and Settlement Agreement is contractual, legally binding and not mere recitals. Each Party acknowledges that they are executing this Release and Settlement Agreement after having received from independent legal counsel of his, her or their own choosing, legal advice as to his, her or their rights hereunder and the legal effect thereof, to the extent each Party deemed appropriate. Each Party agrees to sign this Release and Settlement Agreement as his, her or their own voluntary act and deed, and represents that such execution was not the result of any duress, coercion or undue influence upon any of them.

9. **MULTIPLE COUNTER-PARTS.** This Release and Settlement Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same instrument. However, in making proof with respect to this Release and Settlement Agreement it will be necessary to produce only one copy hereof signed by the Party to be charged.

10. **NO DRAFTING PRESUMPTIONS.** This Release and Settlement Agreement has been drafted by the Parties and no presumptions or rules of construction related to drafters shall be applied in favor of one against the other.

11. **FUTURE COOPERATION.** The Parties agree to cooperate fully, to promptly execute any and all supplementary documents, and to promptly take all additional actions that may be necessary to give full force and effect to the terms of this Release and Settlement Agreement.

12. **SUCCESSORS/ASSIGNS.** This Release and Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto. The terms of this Release and Settlement Agreement are contractual and not a mere recital.

13. **FORCE MAJEURE.** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is delayed due to issues related to, court scheduling outside of its control, or prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, pandemic, or other catastrophic natural event or act of God.

14. **NOTICES.**

Madison Asphalt, LLC

Address: 1089 South Ammons Branch Rd.
Marshall, NC 28753

With Copy to Petitioner's counsel:

The Van Winkle Law Firm
Craig D. Justus
11 North Market Street
Asheville, NC 28801
P.O. Box 7376
Asheville, NC 28802

Madison County

Address: Mark Pullium, County Manager
107 Elizabeth Lane
Marshall, NC 28753

With Copy to Respondent's counsel

Roberts & Stevens, P.A.
Ann-Patton Hornthal
William Clarke
PO Box 7647
Asheville, NC 28802

IN WITNESS WHEREOF, the Parties have executed this Release and Settlement Agreement as of the day and year first hereinabove set forth.

MADISON ASPHALT, LLC

By: Regina Reed

Print Name: Regina Reed

Print Title: managing member

STATE OF NC

COUNTY OF MADISON

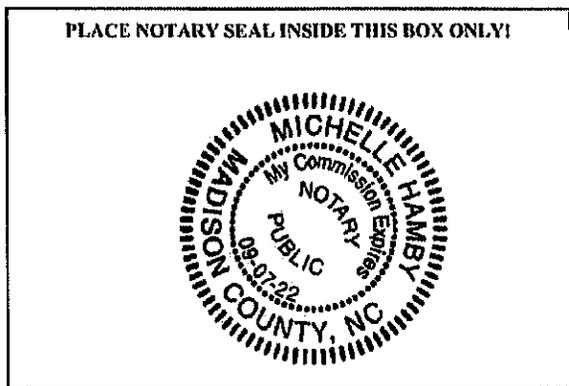
I, Michelle Hamby, a Notary Public of the County and State aforesaid, certify that Regina Reed personally came before me this day and acknowledged that he/she is the Managing Member of **Madison Asphalt, LLC** and that he/she, as Managing Member being authorized to do so, executed the foregoing instrument on behalf of **Madison Asphalt, LLC**.

Date: 6-18-2020

Michelle Hamby
Notary Public

Michelle Hamby
(Printed Name of Notary)

My Commission Expires: 9-7-22



MADISON COUNTY

By: Craig D. Goforth

Print Name: Craig D Goforth

Print Title: Chairman, Madison County Board of Commissioners

STATE OF North Carolina

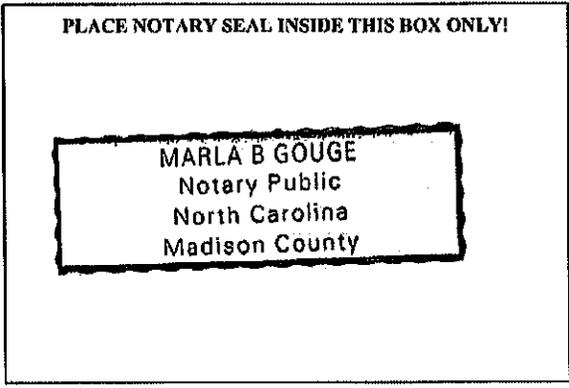
COUNTY OF Madison

I, Marla B Gouge, a Notary Public of the County and State aforesaid, certify that Craig D Goforth personally came before me this day and acknowledged that he/she is the Chairman of the Board of Commissioners of Madison County and that he/she, as Chairman, being authorized to do so, executed the foregoing instrument on behalf of Madison County.

Date: 6/23/20

Marla B Gouge
Notary Public

Marla B Gouge
(Printed Name of Notary)



My Commission Expires: Dec 11 2021

**EXHIBIT 1 TO
RELEASE AND
SETTLEMENT
AGREEMENT**

EXHIBIT "1"

Original Project Terms and Conditions

- a. Petitioner shall apply for and obtain a driveway permit from the N.C. Department of Transportation for the added traffic at the entrance of McCrary Stone Co., as this entrance is a shared right of way.
- b. Petitioner shall be in compliance with any applicable State and Federal fire code requirements.
- c. Petitioner's normal operating hours for its asphalt plant shall be 6 a.m. till 5 p.m. Monday – Friday with the option to operate some weekends. Petitioner reserves the right to operate at night ONLY when the job is specifically required to be done at night.
- d. Petitioner will maintain a "no idling" policy for trucks that are parked or are waiting to load. This will include proper signage to indicate the policy to new drivers and first-time clientele.
- e. Petitioner shall add a condenser to the liquid asphalt "AC tank as described in plans". The condenser is designed to catch and liquify the steam at the top of the tank.¹

4843-6029-3044, v. 1

¹ This condenser is said to lower odor and emissions on the tank. This is a device that is not found on any of the three plants in Buncombe County, the three plants in Henderson County and the plant in Haywood County. This device was also not taken into consideration when the modeling for air quality was done nor is it required by the NCDEQ.

EXHIBIT 2 TO
RELEASE AND
SETTLEMENT
AGREEMENT

EXHIBIT "2"

Revised Project Terms and Conditions

- a. Petitioner will obtain a driveway permit from the N.C. Department of Transportation for the added traffic at the entrance of McCrary Stone Co., as this entrance is a shared right of way.
- b. Petitioner shall be in compliance with any applicable State and Federal fire code requirements.
- c. Petitioner's normal operating hours for its asphalt plant shall be **7 a.m.** till 5 p.m. Monday – Friday with the option to operate only **one Saturday** of each calendar month, except in the event of work related to a State or local government project, which job shall allow for a different schedule. Petitioner reserves the right to operate after normal operating hours **ONLY** when the work is for a State or local government project. Notwithstanding anything to the contrary, Petitioner will never operate on Sundays including after midnight on Saturdays.
- d. Petitioner shall maintain a "no idling" policy for trucks that are parked or are waiting to load. This will include proper signage to indicate the policy to new drivers and first-time clientele.
- e. Petitioner shall add a condenser to the liquid asphalt "AC tank as described in plans" that shall operate while the asphalt plant is operating. The condenser is designed to catch and liquify the steam at the top of the tank.¹
- f. Petitioner shall have on-site during the time that the asphalt plant is operating a trained and capable employee who is versed in visual opacity. This individual will be trained by an EPA approved agency training program. This individual shall monitor and inspect the stack and its opacity to determine that the plant is operating in compliance with State air quality permit requirement. Petitioner shall maintain records of such inspections, and shall make them available for inspection by the County during normal operating hours. Petitioner shall maintain the records and keep the records available for a period of five years from the date of each report, after which time they may be disposed of.

¹ This condenser is said to lower odor and emissions on the tank. This is a device that is not found on any of the three plants in Buncombe County, the three plants in Henderson County and the plant in Haywood County. This device was also not taken into consideration when the modeling for air quality was done nor is it required by the NCDEQ.

- g. Petitioner shall spray down area of operations for the asphalt plant on a regular basis to minimize fugitive dust.
- h. Petitioner shall operate the asphalt plant in accordance with applicable laws and regulations including, but not limited to, the terms and conditions of any air operating permit issued by the State of North Carolina Division of Air Quality.
- i. Along its southern border in the area depicted on Exhibit "2a", Petitioner shall plant and maintain an additional vegetative buffer consisting of: 15 Leyland Cypress trees planted 5-10 feet apart.
- j. Petitioner shall pave the truck routes on the lot.
- k. Petitioner shall install conveyor covers for 5 conveyors that transfer raw material (rock, sand, screenings and RAP) to the mixing drum.
- l. These Revised Project Terms and Conditions shall be binding upon and inure to the benefit of the successors and assigns of Madison Asphalt, LLC, including any entity or person who acquires the Special Use permit.

EXHIBIT 2A
TO RELEASE
AND
SETTLEMENT
AGREEMENT

EXHIBIT "2A"

15 Leyland Cypress Trees planted 5 - 10 ft apart along the southern border. In the area depicted highlighted in red below.





EXHIBIT A TO
RELEASE AND
SETTLEMENT
AGREEMENT

STATE OF NORTH CAROLINA

COUNTY OF MADISON

MADISON ASPHALT, LLC;

Petitioner,

v.

MADISON COUNTY, a North Carolina county and body politic; EDWARD FELDMAN, LISA LONG FELDMAN, TIMOTHY J. RUEMLER, BILLY JEAN HAYNIE, LINDA PAYNE, RONNIE PAYNE, DOUGLAS J. BRUGGEMAN, EMILY SONTAG, JAMES TIBBETTS, VIVIAN R. LONG, CONNIE M. MOLLAND, and EARL ANDREW CARLSON,

Respondents.

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

FILE NO. 19 CVS 340

ORDER

THIS MATTER coming on to be heard and being heard before the undersigned Superior Court Judge presiding over the Superior Court Division, Madison County, North Carolina during the _____ term of court, upon notice of hearing given by Petitioner in this cause. Having reviewed the administrative record and pleadings and having heard arguments of counsel, the Court is of the opinion that entry of this Order is warranted. The Court makes the following FINDINGS OF FACT:

1. Madison Asphalt, LLC, (herein "Petitioner" or "Applicant") possessed and still has a contract to lease a parcel of land located at 3807 US 25-70 Hwy within the County of Madison with the following Parcel Identification Number: 9716-52-7165 (herein "Site"). The Site consists of approximately 2.0 acres.

2. Petitioner submitted an application dated January 31, 2019 to the County for a special use permit for an asphalt plant on the Site ("Project"), as provided in the County's zoning ordinance ("Original Plan").

3. The Site is zoned ID, industrial district. At all relevant times hereto, asphalt plants were allowed in ID, subject to the issuance of a special use permit.

7. The County, by and through its County's planner, accepted Petitioner's application for a special use permit as being complete and that all information showing compliance with the County's zoning ordinance was provided.

8. The technical requirements in the County's zoning ordinance for approval of an asphalt plant are set forth in Sec. 3.6.8 of the County's code. The Project complied with all of the technical requirements in this section.

9. Sections 8.2.1 and 11.3(2)c of the County's zoning ordinance establishes additional general standards for the issuance of a special use permit related to an asphalt plant. Based on the testimony of several documented experts in real estate and traffic engineering presented on behalf of Petitioner, Petitioner has satisfactorily proven the Project's adherence to the standards in Sections 8.2.1 and 11.3(2_c.

10. As a condition of its special use permit, Petitioner offered to do the following:

- a. Petitioner will obtain a driveway permit from the N.C. Department of Transportation for the added traffic at the entrance of McCrary Stone Co., as this entrance is a shared right of way.
- b. Petitioner will be in compliance with State and Federal fire codes.
- c. Petitioner's normal operating hours will be 6 a.m. till 5 p.m. Monday – Friday, with the option to operate some weekends. Petitioner would also like to reserve the right to operate at night ONLY when the job is specifically required to be done at night.
- d. Petitioner will maintain a "no idling" policy for trucks that are parked or are waiting to load. This will include proper signage to indicate the policy to new drivers and first-time clientele.
- e. Petitioner will add a condenser to the liquid asphalt "AC tank as described in plans". The condenser is designed to catch and liquify the steam at the top of the tank. This condenser is said to lower odor and emissions on the tank. This is a device that is not found on any of the three plants in Buncombe County, the three plants in Henderson County and the plant in Haywood County. This device was also not taken into consideration when the modeling for air quality was done nor is it required by the NCDEQ.

11. During the public hearings related to the Project before the County's zoning board of adjustment ("BOA"), persons opposed to the Project presented concerns about the Project, including air quality, lighting, noise, storm water runoff and property values. Much of the evidence was generalized, not factually based and did not correlate to any applicable County standard.

12. During the public hearings, the Petitioner repeatedly offered to impose any reasonable conditions on the Project that the BOA would desire. Specific conditions offered to the BOA are shown on Exhibit "1" attached hereto and incorporated herein by reference.

13. After closing the public hearings, the BOA voted unanimously to deny Petitioner's special use permit for the Project.

14. The BOA denied the special use permit for the Project. On September 27, 2019, the BOA adopted a written decision, concluding therein that the Petitioner had not made out a *prima facie* case of entitlement to the special use permit for the Project. The Petitioner timely appealed this Order to Madison County Superior Court.

15. The Petitioner has standing to bring this action as a result of being the applicant before the decision-making board whose decision is being appealed and for having a contract to lease the property that is the subject of the decision being appealed as provided for in N.C. Gen. Stat. §160A-393(d)(1).

16. The Petitioner and County have presented to the Court a revised plan with the conditions attached hereto as Exhibit "2" and incorporated herein by reference. The parties have also presented to the Court a proposed Consent Order for the BOA ("BOA Consent Order") which outlines the terms and conditions of a settlement of this existing controversy, which the Court finds to be reasonable.

Based on the above FINDINGS OF FACT, the Court makes the following CONCLUSIONS OF LAW:

1. The Revised Plan for an asphalt plant is a reasonable plan that satisfies the terms and conditions of the County's zoning ordinance. ***The Original Plan for an asphalt plant, with the conditions set forth in Exhibit "1", is also a reasonable plan that satisfies the terms and conditions of the County's zoning ordinance.***

2. The Petitioner presented competent, material and substantial evidence to the BOA, showing a *prima facie* entitlement to the issuance of the special use permit for the Project as shown on the Original Plan with the conditions set forth on Exhibit "1". There was not competent, material and substantial evidence in the record to the contrary justifying denial of the permit.

3. The BOA lacked competent, substantial and material evidence to support its denial of the Project as shown on the Original Plan with the conditions set forth on Exhibit "1. Based on the above findings and conclusions, the BOA's

decision should be reversed, and the Petitioner is entitled to the issuance of the special use permit for an asphalt plant with the conditions set forth on Exhibit "1".

4. The Petitioner and County have presented to the Court a reasonable plan to settle this matter based on the Revised Plan as depicted in the BOA Consent Order. This matter should be remanded to the BOA to issue the special use permit for the asphalt plant with the conditions set forth on Exhibit "2."

5. This Order is a final judgment as to the merits of Petitioner's appeal regarding the BOA's denial of a special use permit for the Project.

BASED ON THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED THAT:

The BOA's decision is hereby REVERSED. This matter is hereby remanded to the BOA for the issuance of a special use permit for the Project with the Exhibit "2" conditions or, in lieu thereof, the adoption and entry of the BOA Consent Order.

This _____ day of _____, 2020

Superior Court Judge Presiding

EXHIBIT "1" TO COURT ORDER

Original Project Terms and Conditions

- a. Petitioner shall apply for and obtain a driveway permit from the N.C. Department of Transportation for the added traffic at the entrance of McCrary Stone Co., as this entrance is a shared right of way.
- b. Petitioner shall be in compliance with any applicable State and Federal fire code requirements.
- c. Petitioner's normal operating hours for its asphalt plant shall be **6 a.m.** till 5 p.m. Monday – Friday with the option to operate some weekends. Petitioner reserves the right to operate at night **ONLY** when the job is specifically required to be done at night.
- d. Petitioner will maintain a "no idling" policy for trucks that are parked or are waiting to load. This will include proper signage to indicate the policy to new drivers and first-time clientele.
- e. Petitioner shall add a condenser to the liquid asphalt "AC tank as described in plans". The condenser is designed to catch and liquify the steam at the top of the tank.¹

4843-6029-3044, v. 1

¹ This condenser is said to lower odor and emissions on the tank. This is a device that is not found on any of the three plants in Buncombe County, the three plants in Henderson County and the plant in Haywood County. This device was also not taken into consideration when the modeling for air quality was done nor is it required by the NCDEQ.

EXHIBIT "2"

Revised Project Terms and Conditions

- a. Petitioner will obtain a driveway permit from the N.C. Department of Transportation for the added traffic at the entrance of McCrary Stone Co., as this entrance is a shared right of way.
- b. Petitioner shall be in compliance with any applicable State and Federal fire code requirements.
- c. Petitioner's normal operating hours for its asphalt plant shall be 7 a.m. till 5 p.m. Monday – Friday with the option to operate only one Saturday of each calendar month, except in the event of work related to a State or local government project, which job shall allow for a different schedule. Petitioner reserves the right to operate after normal operating hours ONLY when the work is for a State or local government project. Notwithstanding anything to the contrary, Petitioner will never operate on Sundays including after midnight on Saturdays.
- d. Petitioner shall maintain a "no idling" policy for trucks that are parked or are waiting to load. This will include proper signage to indicate the policy to new drivers and first-time clientele.
- e. Petitioner shall add a condenser to the liquid asphalt "AC tank as described in plans" that shall operate while the asphalt plant is operating. The condenser is designed to catch and liquify the steam at the top of the tank.¹
- f. Petitioner shall have on-site during the time that the asphalt plant is operating a trained and capable employee who is versed in visual opacity. This individual will be trained by an EPA approved agency training program. This individual shall monitor and inspect the stack and its opacity to determine that the plant is operating in compliance with State air quality permit requirement. Petitioner shall maintain records of such inspections, and shall make them available for inspection by the County during normal operating hours. Petitioner shall maintain the records and keep the records available for a period of five years from the date of each report, after which time they may be disposed of.

¹This condenser is said to lower odor and emissions on the tank. This is a device that is not found on any of the three plants in Buncombe County, the three plants in Henderson County and the plant in Haywood County. This device was also not taken into consideration when the modeling for air quality was done nor is it required by the NCDEQ.

- g. Petitioner shall spray down area of operations for the asphalt plant on a regular basis to minimize fugitive dust.
- h. Petitioner shall operate the asphalt plant in accordance with applicable laws and regulations including, but not limited to, the terms and conditions of any air operating permit issued by the State of North Carolina Division of Air Quality.
- i. Along its southern border in the area depicted on Exhibit "2a", Petitioner shall plant and maintain an additional vegetative buffer consisting of: 15 Leyland Cypress trees planted 5-10 feet apart.
- j. Petitioner shall pave the truck routes on the lot.
- k. Petitioner shall install conveyor covers for 5 conveyors that transfer raw material (rock, sand, screenings and RAP) to the mixing drum.
- l. These Revised Project Terms and Conditions shall be binding upon and inure to the benefit of the successors and assigns of Madison Asphalt, LLC, including any entity or person who acquires the Special Use permit.

EXHIBIT "2A"

15 Leyland Cypress Trees planted 5 - 10 ft apart along the southern border. In the area depicted highlighted in red below.



