LETTER OPPOSING FALLS LAKE AND JORDAN LAKE RULES AS THESE HARM NC'S FARMS AND FARMERS

TO: ALL MEMBERS OF THE NORTH CAROLINA GENERAL ASSEMBLY (LEGISLATORS)
OFFICIALS OF THE NORTH CAROLINA DEPT. OF ENVIRONMENTAL AND NATURAL RESOURCES (DENR)
OFFICIALS OF THE NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION (EMC)

FR: Members of The Southern Orange County Farmers and Landowners Coalition (SOCFLOC) Members of the Orange-Durham Counties Cattlemen's Association

DT: August 16, 2010 – Deadline for filing a response to proposed Falls Lake Rules

RE: Opposition to implementation policies and practices harming and likely to cause further harm, especially to Piedmont region farmers and rural landowners, arising from both the Falls Lake and Jordan Lake Rules of NC's 2009 Nutrient Management Regulations

ISSUE STATEMENT: County and municipal government leaders have proposed or adopted, and are likely to continue to propose and adopt, <u>new local laws designed to unfairly shift the burden for storm water run-off</u> (drinking water contamination) onto North Carolina's farms. These, in turn, threaten the sustainability of and risk bankruptcy for the region's agriculture; and especially for those within municipal extraterritorial jurisdictions (ETJ) whereas these rural property owners have NO MUNICIPAL VOTING RIGHTS under N.C.G.S. 160A-360.

RECENT HISTORY: Beginning with DENR's sharing of the proposed Nutrient Management Regulations (NMR) with municipal and county governments in early 2007 and continuing since the adoption in 2009 of the Jordan Lake Rules, it has become apparent that new local laws are harming and will continue to cause harm to NC's farms and farmers. The "how's and where's" have been documented to date to the Office of Governor Perdue, to select legislators, the NC Dept. of Agriculture, the NC Farm Bureau, among others of the state's leaders.

Unfortunately, as reported by EMC commissioners following the June 2010 Falls Lake Rules hearings, <u>these</u> <u>consequences of the state's drinking water crisis have been overlooked to the present by the EMC and DENR.</u>

IMPLICATIONS: Thus, review of the proposed Falls Lake Rules provide an opportunity to take what has been learned from consequences to date of the Jordan Lake Rules and "to get it right this time". Otherwise, as proposed, the Rules will cause continuing and additional harm to the region's unsuspecting farms and farmers.

Numerous new local laws include excessive, unreasonable, discriminatory, and widely disparate tactics which vary with each government, and which shift a an unfair and disproportionate burden for urban water pollution onto farms. Amazingly, this is occurring at a time when, according to county environmental officials, Piedmont region farmers "have reduced fertilizer use by greater than 55%" between 2003-2009. Unfortunately, farmers' efforts to improve the environment merely expanded opportunities for urban leaders to foist additional contamination onto NC's agricultural land. The outcome will be the exhaustion of nutrient loading limits BUT from a different source than agriculture. In other words, a 100% loading limit remains 100% regardless of nutrient source.

Local leaders have responded to the State's mandated deadline of December 31, 2010 in two quite distinct ways to date:

- (a) Towns and counties sharing watersheds raced to adopt new laws to protect their interests and to exclude others; in turn, they are competing with and interfering with one another's management practices so as to gain a disproportionate share of the remaining potable water [loading limits]; and,
- (b) Rural landowners' property rights have been and continue to be transferred to urban centers without owners' knowledge and without compensation. In the near future farmers will be required to pay property taxes BUT will be unable to utilize their land for farm purposes. Unable to generate revenue as a result, this will bankrupt many. Some may imagine at that point selling for development. But no developer will want land whereas nutrient loading limits will previously have been exhausted by maxed-out urban growth.

Regarding (a), to date it's <u>been estimated that state-mandated local nutrient management plans</u> -- when combined for a particular watershed – <u>likely far exceed the nutrient contamination loading limits to be allowed in the future</u>. In this respect, the General Assembly imposed an unmanageable burden upon DENR to decide how to fairly apportion nutrient loading limits among competing governments and interests. Why is this so? Because it presumes that the EMC and DENR have an understanding of NC laws that they seemingly lack [as demonstrated by correspondence with EMC commissioners]. And, in particular, with N.C.G.S. 160A-360 (as noted above) whereas local Governments have exclusive control over ETJ farms and rural land BUT owners cannot serve on those elected government bodies that control their assets – their homes, business and land.

Regarding (b), new local laws are designed to disproportionately restrict nutrient loading from agricultural uses and to shift related benefits so that urban centers can attain maximum growth at rural land owners' expense. This is being achieved by new local laws; for example, those that have unreasonably widened ETJ stream buffers (up to 150') while significantly narrowing them (15') within designated urban growth areas. Other laws require historic farms to sacrifice large swaths of agricultural land for "non-use"; disallow the use of fertilization to adequately sustain crops or livestock; disallow the keeping of livestock; require excessive acreage for the keeping of pet and farm animals; impose excessive oversight, fees and penalties for violations; and the like.

Most disturbing is the loss of land owners' property rights. In this regard, we believe that North Carolina's laws and regulations, and in particular the Falls Lake and Jordan Lake Rules [as being implemented] may violate property rights as guaranteed by the U.S. Constitution in that they allow and encourage the adoption of harmful local laws — without acknowledgment of such losses or fair compensation to property owners.

Summarily, <u>local governments that are committed to continued growth cannot simultaneously reduce water contamination while complying with the 35/40% reduction goals to be overseen by DENR.</u> Thus, to achieve these goals, <u>local governments found a way to continue to pollute</u>; that way has manifested as new local laws intended to turn rural farms into "giant sponges" to offset urban pollution. To this end, area law firms and consultants are advising local and county governments regarding tactics that rely upon their respective area farmland to enable future growth. At a time when a dramatic shift exists to grow food locally, NC's laws threaten the existence of local farmland. How can the Piedmont absorb another 500,000 people by 2020 and expect to feed itself when NO FARMS = NO FOOD!