

SOUTHERN ENVIRONMENTAL LAW CENTER
Report to the Helen M. Clabough Charitable Foundation
A Model for Managing Growth in Western North Carolina

January 4, 2010

Over the past four years, generous support from the Helen M. Clabough Charitable Foundation has enabled the Southern Environmental Law Center to undertake a model growth project focused on Watauga County, North Carolina. Our purpose has been to provide the county with the legal and regulatory tools it needs to protect natural assets threatened by unchecked development. The results of this project, in turn, will create a template that other western North Carolina localities can follow to promote sensible and sustainable growth.

Throughout this process, the Clabough Foundation has afforded SELC the flexibility to capitalize on emerging opportunities and to adjust our strategies as necessary to advance our goals. A prime example was our participation in Watauga County's comprehensive planning process in 2009. This past year, it became abundantly evident to us that a shift in strategy was again required, given changing political and economic conditions on the ground in Watauga County. We recognized that we could achieve the most meaningful results by applying our energies to regional policy reforms and state legislative initiatives that are integral to the model growth project and that will yield direct, tangible benefits for Watauga County, as well as Ashe, Avery, Caldwell, and the other mountain counties in western North Carolina.

The Changing Landscape in Watauga County

A number of recent developments have made our work in Watauga County much more challenging than it was just a year ago. In the November election, key allies lost their seats on the Watauga County Commission. Winston Kinsey, who is committed to preserving agricultural lands and who had expressed interest in our proposal to preserve open space in major new subdivisions, was defeated by challenger Nathan Miller. Mr. Miller, who is now the new chair of the County Commission, campaigned on a promise to attract businesses by ensuring "that our county has the least restrictive regulations in place."

Similarly, incumbent Billy Ralph Winkler lost to Vince Gable, and our closest ally on the Commission, John Cooper, chose not to run for re-election. His hand-picked successor, Lowell Thomas, lost to David Blust, who also promised "less regulation" if elected. One of the chief barriers we have faced in previous years has been fear on the part of our allies that bold action on their part would cause a backlash and, ultimately, election of anti-regulation candidates. Ironically, the anti-regulation candidates won anyway, and our challenge now is to continue making headway in the face of new political realities.

We also lost our principal grassroots partner group, the Partnership for Watauga's Future. The organization dissolved, and many members have redirected their energies toward the MountainKeepers' sustainable community initiative, focusing on issues related to peak oil and community resilience. This is admirable work that we endorse, but it takes a different tack from the law-and-policy approach to addressing growth issues that we proposed when we applied for our grant. We are now in search of new local champions who can carry the flag for reform in County Commission meetings and other local proceedings.

This situation stems in part from the downturn in the economy. Proposals for new subdivisions in Watauga County are at a standstill, and thousands of approved residential units remain unbuilt. While we see this respite as an ideal time to institute new local ordinances and growth policies, the absence of a crisis has prompted our allies to turn their attention elsewhere. We know from experience, however, that the problem has not gone away.

In short, we are clearly in a rebuilding mode in Watauga County. We will continue to seek the support of local partners, and we will continue to cultivate working relationships with county staff and members of the County Commission, but in the meantime, we are focusing our efforts on broader initiatives more likely to produce substantive outcomes for Watauga County and other mountain communities.

Capitalizing on the Mountain Resources Commission

We see tremendous opportunities for continued progress in our work with North Carolina's Mountain Resources Commission. SELC senior attorney DJ Gerken was instrumental in developing the concept for the commission, and he wrote and helped pass the legislation that created it in 2009. The commission's official charge is to coordinate regional planning efforts and to recommend local, state, and federal reforms that encourage quality growth and the preservation of western North Carolina's natural resources and open spaces.

Just as SELC played an instrumental part in creating the Mountain Resources Commission, we are now playing a pivotal, behind-the-scenes role in shaping its work and, ultimately, its policy recommendations. DJ successfully championed the appointment of commission members who are eager to advance land use planning in the mountain region. He also serves on the commission's Technical Advisory Council and is helping to guide the commission's two current projects:

- 1) **A Regional Sustainability Report Card.** This assessment focuses on each of the 27 mountain counties and covers a wide range of issues, including the health of national forest lands and the status of agriculture, tourism, real estate, and economic development. The commission is drawing on the perspectives of a wide range of constituencies in this process, ranging from the U.S. Forest Service to developers, realtors, and conservation groups. The resulting report card will be a clear and accurate picture of the challenges facing the region and each of its

counties. We see it as an invaluable tool for spurring protection of high-value resources and effective action on the region's growth challenges.

- 2) **Model Controls on Steep-Slope Development.** With behind-the-scenes guidance from DJ and other members of the Technical Advisory County, the Mountain Resources Commission is identifying best practices for reining in development on steep slopes, which imperils the region's scenic views, wildlife habitat, and waterways. Again, the commission is reaching out to all sides of this issue, including members of the real estate and development communities, as well as engineers and planners.

Drawing on our work on model ordinances for the Watauga County project and on our success this year in passing improvements to the steep-slope ordinance in Buncombe County, we will help the commission craft a model ordinance that all mountain counties can use to address steep-slope development. In the case of Watauga County, our intention is to use the credibility of the Mountain Resources Commission to make the county more receptive to the draft ordinance and to encourage forward movement on enacting controls on steep-slope construction.

In the current political climate, we see the Mountain Resources Commission as the most effective vehicle now available for pursuing our goals in Watauga County and throughout western North Carolina. Our success in developing a model steep-slope ordinance, for example, will set the stage for promoting other model ordinances and planning policies we have crafted to help mountain communities manage growth. We clearly have the ear of the commission, and we will take advantage of its credibility and stature to secure broad buy-in for reasonable controls on development in the region.

Passing Mountain Protection Legislation

On another front, SELC is championing the Safe Artificial Slope Construction Act in the General Assembly. Passage of this legislation will have an enormous impact in Watauga County, where landslide risks affect 40 percent of developable land. Using our GIS mapping and media-outreach capabilities, SELC has raised public awareness of landslide issues in western North Carolina and why state-level safeguards are needed. Our work in Watauga County, funded by the Clabough Foundation, provided analysis and reports that have been persuasive with legislators and county commissioners throughout the mountains.

One of our strategies has been to help the real estate industry recognize the liability risks of selling properties with landslide risks and how this legislation could lessen their exposure to possible litigation. Under the measure we are proposing, the state will make concrete data on landslide hazard areas readily available. Sellers' liability would be reduced in return for the requirement that landslide risks be included in standard real estate disclosure forms that typically cover problems such as lead, asbestos, and flood risks. Our goal is to use this provision to convince the real estate industry to get behind this legislation.

We are currently working on a revision of the bill for the upcoming legislative session. The political climate in the North Carolina General Assembly has changed as dramatically as it has on the Watauga County Commission, but we believe a strategy that works with the Association of Realtors as an ally has a genuine prospect of advancing.

Our other current legislative priorities include developing a bill to protect the viewshed of the Blue Ridge Parkway. This effort will be challenging in the current political environment, but we see potential for building on the momentum of the parkway's 75th anniversary this past year, which has highlighted its enormous value as a driver of tourism, economic development, and preservation of western North Carolina's mountain heritage.

Showcasing Best Practices

We are complementing the work described above with an effort to develop an architectural pattern book customized for the region. The project will provide the opportunity to promote best building practices in the mountains and to showcase western North Carolina's best designers. Our goal is to provide a resource that is embraced and championed by the homebuilding community and chambers of commerce and that at the same time educates builders, the public, and elected officials about how to construct buildings responsibly in mountain environments.

Your Partnership and the Year Ahead

In the coming months, SELC will expand its Asheville-based team to four attorneys. This will give us even more capacity to pursue the broad initiatives described above, complemented by continued work with local commissioners, planners, and community allies in Watauga County to craft and enact model ordinances and policies.

Support from the Helen M. Clabough Charitable Foundation for SELC's model growth project has been essential to our effort to address western North Carolina's development challenges. We hope you will continue to be our partner as we advance solutions that will help Watauga and all of the state's mountain counties preserve scenic and ecological resources vital to their long-term well-being.