

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: Monday, November 6, 2006

SUBJECT: Soil & Water Conservation District Operational Agreement Amendment

ATTACHMENTS: Yes

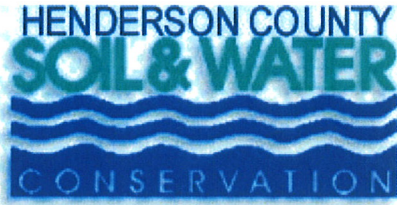
SUMMARY OF REQUEST:

Attached is a proposed amendment to the Operational Agreement for Henderson County's Soil & Water Conservation District, along with a copy of the 1998 agreement. The proposed amendment changes the classification of the Soil & Water department head from a federal position to a County position.

As the Board may recall, the 1998 agreement named a U.S. Natural Resources Conservation Service (federal) employee as the department head for the District. A County employee has served in this position since 2004. This amendment serves to appropriately reflect this employee's status as a County employee and results in no financial impact for the County.

BOARD ACTION REQUESTED:

The Assistant County Manager recommends approval of this amendment.



USDA Service Center
61 Triple Springs Road
Hendersonville, North Carolina 28792

Phone: (828) 697-4949 Fax: (828) 693-5832

October 12, 2006

Ms. Selena Coffey, Asst. County Manager
County Office Building
100 N King St
Hendersonville, NC 28792

Re: OPERATIONAL AGREEMENT AMENDMENT SIGNATURES

Dear Selena:

Please review the attached Amendment No. 1 to the Operational Agreement in Henderson County. The amendment changes the Department Head of the Henderson County Soil & Water Conservation District from NRCS personnel to Henderson County personnel. Attached is a copy of the original Operational Agreement for your review along with 4 copies of the amended page 3 for your original signatures. Please return all 4 signed copies of the amendment to me and I will have the other parties sign. You will receive a copy of the amendment after all of the original signatures have been obtained.

If you have any questions, please feel free to call me at 697-4949.

Sincerely,

A handwritten signature in blue ink that reads "Jonathan Wallin".

Jonathan Wallin
District Director/Conservationist Henderson County SWCD

JW/km
xc: file

OPERATIONAL AGREEMENT

COPY

Between the

**UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE
and
NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES -
DIVISION OF SOIL & WATER CONSERVATION
and
HENDERSON COUNTY
SOIL AND WATER CONSERVATION DISTRICT
and
HENDERSON COUNTY, NORTH CAROLINA**

**For their Cooperation in the
Conservation of Natural Resources**

BACKGROUND STATEMENT AND PURPOSE

THIS AGREEMENT is between the Natural Resources Conservation Service (NRCS), an agency of the United States Department of Agriculture (USDA), the DENR-Division of Soil and Water Conservation (DSWC) an agency of the State of North Carolina, the Henderson Soil and Water Conservation District, and Henderson County collectively referred to as the parties, to clearly define the roles and responsibilities of the parties.

The purpose of this agreement is to supplement the Cooperative Working Agreement between the USDA-Natural Resources Conservation Service, North Carolina Department of Environment, Health and Natural Resources, North Carolina Soil and Water Conservation Commission, and Henderson Soil and Water Conservation District. This operational agreement documents those areas of common interest of the federal, state and local partnership in natural resources conservation.

The parties mutually agree to provide leadership in natural resources conservation. The parties pledge to work together by advancing and practicing teamwork, including input in the decision making process; communicating, coordinating, and cooperating; promoting mutual respect, and sharing leadership, ownership, credit and responsibility.

AUTHORITIES, STATUTES, LAWS

NRCS is authorized to cooperate and furnish assistance to the parties in the conservation of natural resources as referenced in the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590; The Department of Agriculture Reorganization Act of 1994, Public Law 103-354; and Secretary's Memorandum No. 1010-1, Reorganization of the Department of Agriculture, dated October 20, 1994.

DSWC is authorized to enter into this agreement by North Carolina General Statutes Sections 139-4 and Sections 143B-294 - 143B-297.

The District authority is defined in Soil Conservation Districts Law, General Statutes of North Carolina Sections 139-1 - 139-47.

The county is authorized to enter into this agreement by North Carolina General Statute Sections 153A-11 and Sections 160A-461 - 160A-464.

ROLES AND RESPONSIBILITIES:

CONSERVATION PROGRAM IMPLEMENTATION

The parties recognize the natural resources conservation program as a unique blend of voluntary conservation initiatives and federal, state, and local mandates. Together these address a variety of natural resource, environmental, and educational issues. The parties agree to jointly commit their program authorities and financial and human resources to cooperatively implement a unified natural resources conservation program in areas of mutual concern. The implementation of all programs will be done in accordance with program policy and procedure developed for that specific program.

Inventories and Data Sharing: The parties agree to identify, define, and coordinate the collection and use of natural resource and other data needed to support the delivery of program benefits. The parties will cooperate in maintaining data to assure that it supports the mutual needs of the parties for resource planning and evaluation. The parties further agree that gathered data will be mutually shared and used in support of conservation program implementation. The parties will coordinate with public and private resource groups, other resource agencies, and interested parties to share information and resources as needed to facilitate implementation of the conservation program.

Setting Program Priorities: The parties agree to implement the conservation program based on mutually developed priorities while recognizing individual responsibilities for federal, state, or local mandates. The parties further agree to annually re-evaluate established priorities and adjust as warranted. SWCD supervisors have responsibility to organize local work groups to assess resource conditions and establish local priorities.

Programs to be Implemented: The parties agree to use federal, state, and local programs in a complimentary fashion to address local priorities and concerns. Attachment A includes a list of programs that will be utilized to address priorities and concerns.

Marketing: The parties agree to conduct a common effort to inform the public of program opportunities and benefits.

TECHNICAL STANDARDS AND JOB APPROVAL AUTHORITY

The parties agree to utilize the NRCS Field Office Technical Guide or Soil and Water Conservation Commission adopted standards as the minimum technical standards for conservation program implementation in areas of mutual concern. The parties may utilize more stringent standards when necessary to comply with locally enacted laws or ordinances. The NRCS will be the lead agency in the development, maintenance, and interpretation of the Field Office Technical Guide.

The parties agree that their respective employees will provide technical assistance based on assigned conservation practice (job approval) authority which is based on acquired knowledge, skills, and demonstrated ability and within applicable laws, regulations, and guidelines. Conservation practice (job approval) authority will be determined and documented according to NRCS National Engineering Manual, Part 501.

PERSONNEL AND FISCAL MANAGEMENT

The parties recognize that natural resources conservation programs are delivered through an intergovernmental system, in which federal, state, and local governments work together.

The parties will work together to provide staffing and fiscal resources commensurate with workload, priorities, allocated funding, and expertise necessary to deliver a balanced and diversified conservation program. Staffing will be a mix of employees provided by federal, state, county, and district resources. There are certain authorities delegated to specific staff as follows:

Department Head

The parties jointly agree that the NRCS District Conservationist will serve as the department head. The Department Head will represent the District and its employees at county meetings, conferences, and appropriate functions.

Personnel Management

The management of personnel will be as follows:

- a) Hiring and dismissal of employees is the responsibility of their respective parties.
- b) The management of NRCS personnel is the responsibility of NRCS.
- c) The management of county and/or district employees is the responsibility of the district board of supervisors and/or county manager. In the interest of facilitating these responsibilities the

NRCS District Conservationist is delegated the authority for:

- 1) Daily supervision and guidance
 - 2) Leave (absence from duty) coordination and approval according to county government policy.
 - 3) Delivery of employee training and development
 - 4) Certification of Time and Attendance reports
- d) The NRCS District Conservationist will make recommendations to the district board of supervisors regarding the following in accordance with county government policy:
 - 1) Recruitment and hiring of district employees
 - 2) Employee performance evaluation, including awards, disciplinary actions and separation
 - 3) Determination and approval of training requiring expenditure of district funds
 - 4) Adherence to DSWC policy and requirements for technical funding under the NC Agricultural Cost Share Program

In the event that a district employee feels aggrieved, their recourse is to the district board. County government personnel policy will be followed where appropriate. The parties agree to work cooperatively to resolve employee grievances.

Hiring, supervision, development, evaluation and dismissal of district employees will be done by the District Board in accordance with County policy where appropriate.

Fiscal Management

The parties will work together to maximize available resources and actively seek funding to accomplish natural resource priorities and programs.

Each party is responsible for its own fiscal resources to include equipment, supplies, and accounts.

The District Administrative Assistant will actively assist the district with the following:

- 1) Development of operating budgets
- 2) Tracking of expenditures for maintaining funding accountability
- 3) Making recommendations regarding expenditure of funds and purchases

RECORDS, FACILITIES, AND EQUIPMENT

The parties will work together to provide office space, vehicles, and equipment within funding limits, operating guidelines, authorities, federal and state laws, and local ordinances. The parties will cooperatively share these resources. Any and all parties may negotiate formal agreements when financial reimbursement for use of office space, vehicles, or other equipment/facilities is required.

The parties will agree on the maintenance, update, and disposition of relevant records in accordance with county and federal records retention schedules. Access to records will be governed by the Federal Freedom of Information Act (FOIA) and/or the North Carolina Public Records Law.

FEE FOR SERVICES

The parties recognize that nonfederal signatories may establish procedures to collect fees, where permissible, for delivery of such services which are not provided through federal financial or technical assistance.

ACCOUNTABILITY

The parties agree to cooperatively develop and utilize FOCS resource and program databases to measure effectiveness in program delivery and customer satisfaction. The District will provide a copy of its Annual Report and Plan of Operations to the other signatories of this agreement by July 31st of each year. The District will also provide a copy of their Long Range Plan which, at no time, will be in excess of five years old.

SCOPE OF AGREEMENT

This agreement covers the basic operating understanding between all parties. Authority to carry out specific projects or activities, transfer of funds, or acquisition of services or property, will be established under separate agreement. The parties agree that contracts, memorandums of understanding, and/or additional agreements may be entered into, as needed, to facilitate the implementation of natural resources conservation programs within the conservation districts.

TORT LIABILITY

The parties will each assume responsibility for the actions of their officials or employees acting within the scope of their employment to the extent provided by federal and state laws and local ordinances.

CIVIL RIGHTS

The parties recognize the benefit and importance of delivering conservation programs equitably to all customers, having a diverse staff to assist this customer base, and having diversity within the district board. The parties agree to work cooperatively to achieve diversity in all aspects of the conservation program through effective outreach and marketing.

The parties will be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987 (Public Law 100-259) and other nondiscrimination statutes, namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, and in accordance with regulations of the Secretary of Agriculture (7CFR-15, Subparts A & B) which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Agriculture or any agency thereof.

REVIEW/MODIFICATION/TERMINATION

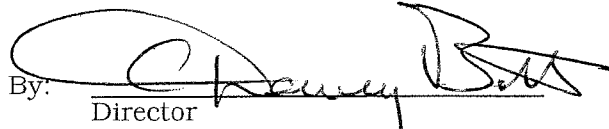
This agreement will be reviewed at least annually. The agreement can be modified or terminated at any time by mutual consent of all parties or can be terminated by any party by giving 60 days written notice to the other parties.

U.S. DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION
SERVICE

By: 
State Conservationist

Date: Nov. 30, 1998

NC DENR-DIVISION OF SOIL AND WATER
CONSERVATION

By: 
Director

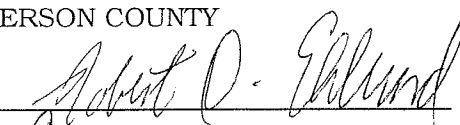
Date: 11-23-98

HENDERSON SOIL AND WATER
CONSERVATION DISTRICT

By: Andrew C. Brannon
Chairperson

Date: 11-10-1998

HENDERSON COUNTY

By: 
Title: Chairman

Date: October 26, 1998

Attachment A

The following is a list of programs which will be utilized to address local priorities and concerns. The parties agree to utilize these programs in a complimentary manner, thus maximizing the delivery of conservation benefits to customers and clients.

RESOURCE INVENTORY & DATA SHARING

Natural Resources Inventory (NRI)
Soil Survey Maps and related data
River Basin Study Reports
Geographic Information System (GIS) data
Henderson SWCD Long Range Plans
Natural Resources Plans (i.e. FSA, NCACSP, .0200, etc.)
Cumulative Progress Report Data
Ag Census Data

PROGRAMS

Federally Initiated Programs

Conservation Technical Assistance (CTA)
National Cooperative Soil Survey (NCSS)
Small Watersheds Program (PL-566)
River Basins Surveys & Investigations (RB-09)
Resource Conservation and Development (RC&D)
Emergency Watershed Program (EWP)
Environmental Quality Incentives Program (EQIP)
Forestry Incentives Program (FIP)
Wetland Reserve Program (WRP)
Wildlife Habitat Incentive Program (WHIP)
Conservation Reserve Program (CRP)
Emergency Conservation Program (ECP)

State Initiated Programs

NC Agricultural Cost Share Program (NCASCP) - DSWC
Stewardship Incentive Program (SIP)- DFR
Clean Water Management Trust Fund

Locally Initiated Programs

Farmland Preservation
Sediment and erosion control - urban areas
Environmental education

MARKETING

The Times News (daily news)
The Asheville Citizen-Times (daily news)
WHKP Radio
Internet Web Pages
Newsletters
WLOS-TV13 (Asheville)
Local churches
Public Schools

AMENDMENT NO. 1

TO THE

OPERATIONAL AGREEMENT IN HENDERSON COUNTY

“PERSONNEL AND FISCAL MANAGEMENT” is hereby deleted and the attached page covering “PERSONNEL AND FISCAL MANAGEMENT” substituted in lieu thereof.

All other terms and conditions remain the same.

UNITED STATES DEPARTMENT OF
AGRICULTURE
NATURAL RESOURCES
CONSERVATION SERVICE

DENR-DIVISION OF SOIL AND
WATER CONSERVATION

By: _____
State Conservationist

By: _____
Director

Date: _____

Date: _____

SOIL AND WATER CONSERVATION
DISTRICT

COUNTY REPRESENTATIVE

By: _____
Chairperson

By: _____

Title: _____

Date: _____

Date: _____

PERSONNEL AND FISCAL MANAGEMENT

The parties recognize that natural resources conservation programs are delivered through an intergovernmental system, in which federal, state, and local governments work together.

The parties will work together to provide staffing and fiscal resources commensurate with workload, priorities, allocated funding, and expertise necessary to deliver a balanced and diversified conservation program. Staffing will be a mix of employees provided by federal, state, county, and district resources. There are certain authorities delegated to specific staff as follows:

Department Head

The parties jointly agree that the Henderson County SWCD District Director/Conservationist will serve as the Department Head. The Department Head will represent the District and its employees at county meetings, conferences, and appropriate functions.

Personnel Management

The management of personnel will be as follows:

- a) Hiring and dismissal of employees will be in accordance with county personnel policies.
- b) The management of NRCS personnel is the responsibility of NRCS.
- c) The management of county employees is the responsibility of the district board of supervisors and/or county manager. The parties jointly recognize that the District Conservationist will provide the following when carrying out NRCS responsibilities:
 - 1) Technical oversight
 - 2) Delivery of employee technical training and development.
- d) The Department Head will make recommendations to the district board of supervisors regarding the following in accordance with county government policy:
 - 1) Recruitment and hiring of district employees
 - 2) Employee performance evaluation, including awards, disciplinary actions, and separation
 - 3) Leave coordination and approval
 - 4) Certification of Time and Attendance reports
 - 5) Determination and approval of training requiring expenditure of district funds
 - 6) For counties with technicians cost shared through the state's Agriculture Cost Share Program, responsibility for documenting 2080 hours for each funded position spent per year on non-point source pollution control issues by office staff.

In the event that a county employee feels aggrieved, their recourse is according to county government personnel policy. The parties agree to work cooperatively to resolve employee grievances.

Hiring, supervision, development, evaluation and dismissal of employees will be done in accordance with applicable law and county personnel policies.