

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 7, 2022

SUBJECT: Town of Fletcher Revised Resolutions - Erosion Control and Stormwater

PRESENTER: Natalie Berry, Project Engineer

ATTACHMENTS: Yes – Amendments to Resolutions

1. Town of Fletcher Soil Erosion Administration
2. Town of Fletcher Stormwater Administration

SUMMARY OF REQUEST:

On January 11, 2022, Town of Fletcher Planning Director requested amendments to the Resolutions for County Administration and Enforcement of Soil Erosion and Storm water. The amendments are highlighted in dark orange font. The Resolutions are required to have certain language to meet Fletcher's Stormwater Phase 2 MS4 permit.

The revised Resolutions effectively put into writing the practices that are already being followed by both Fletcher and Henderson County.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

The Board is requested to adopt the amended Resolutions as presented.

SUGGESTED MOTION:

I move the Henderson County Board of Commissioners adopt the amended Resolutions as presented.

TOWN OF FLETCHER, NORTH CAROLINA

RESOLUTION

SOIL EROSION AND SEDIMENTARY CONTROL ORDINANCE ENFORCEMENT

WHEREAS the Town of Fletcher seeks to cooperate with other governing bodies to provide for the efficient enforcement of law.

WHEREAS the Town of Fletcher is subject to the state and federal environmental laws;

WHEREAS Henderson County adopted the Soil Erosion and Sedimentation Control Ordinance, hereinafter “the Ordinance”;

WHEREAS preventing accelerated erosion and sedimentation is important to protect our water sources and public and private property;

WHEREAS environmental stability is crucial to ensure the economic and ecological strength of the County;

WHEREAS a uniformed enforcement in Henderson County and municipalities will provide for consistent procedures throughout the County;

NOW, THEREFORE, BE IT RESOLVED by the Town of Fletcher as follows:

1. the Town of Fletcher will permit Henderson County to enforce the Ordinance within municipal boundaries.
2. Henderson County will be responsible for the implementation of their State delegated Erosion Control Local Program within the Town of Fletcher municipal and ETJ limits. This shall include review and approval of development plans, inspection of projects under construction, investigation of complaints and required actions regarding current land-disturbing activities. When public funds are associated with development projects, the Erosion and Sediment Control review will be implemented by the State of North Carolina's appropriate Regional Office.
3. In order to meet the requirements of the Town of Fletcher's NPDES MS4 permit, the Town of Fletcher is responsible for oversight and tracking of approved projects within their jurisdiction. Henderson County shall assist the Town of Fletcher with project tracking and inspection results by providing the current data to the Town of Fletcher.
4. the Town of Fletcher will provide assistance to the County’s primary enforcement officer in this area, the Ordinance Administrator, whenever necessary.

5. Henderson County, through its Ordinance Administrator, will provide the Town of Fletcher with investigation, enforcement, and inspection services under the Ordinance.
6. ~~Henderson County will review permits and plans under the Ordinance throughout the County including within the Town of Fletcher.~~ The Henderson County Board of Adjustment will hear all appeals under the Ordinance.
7. Any civil or criminal penalties or injunctive relief under the Ordinance will be requested by Henderson County on the behalf of the Town of Fletcher. These enforcement measures will be initiated by the Ordinance Administrator in conjunction with the Henderson County Attorney's Office. Any funds recovered from the enforcement of the Ordinance are retained by the County to offset enforcement costs.
8. This resolution will be effective for the Town of Fletcher upon the date of adoption.
9. Enforcement under the Ordinance will commence October 1, 2007.

Adopted this the _____ day of _____, 2022

[Name], Mayor of the Town of Fletcher

ATTEST:

[Name],

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

AGREEMENT FOR STORMWATER ENFORCEMENT & ADMINISTRATION ASSISTANCE

THIS AGREEMENT, made and entered into this the 7th day of February, 2022, by and between, the Henderson County, herein and after referred to as the Henderson County and the Town of Fletcher, a duly incorporated North Carolina municipality within Henderson County, hereinafter “Municipality”.

WITNESSETH:

WHEREAS, Henderson County is a body politic protecting the water resources of Henderson County and promoting uniform enforcement of related regulations;

WHEREAS, Henderson County administers a stormwater program as codified under 15A NCAC 02H .1003 Requirements that apply to all projects.

WHEREAS, management of stormwater is important to protect our water resources and public and private property;

WHEREAS, environmental stability is crucial to ensure the economic and ecological strength of the County;

WHEREAS, uniformed & centralized enforcement efforts in the County and its municipalities will provide for consistent procedures throughout the County;

WHEREAS Henderson County has the expertise and ability to enforce the regulations within the Municipality;

WHEREAS the Municipality is desirous of County enforcement of these regulations within the municipal jurisdiction.

NOW THEREFORE, for mutual consideration and promises, the Henderson County and the Municipality agree as follows:

1. Henderson County will enforce and administer the Municipality’s stormwater regulations, which address post-construction runoff, within Municipality’s boundaries including but not limited to:
 - a. Enforcement of the Ordinance.
 - b. Administration duties related to the permitting process and any enforcement activities.
 - c. Investigation and actions for complaints and violations.
 - d. Review of applicable plans, reports, calculations, operation and maintenance agreements, engineer’s certifications, and all required permit application materials.
 - e. Issuance of the stormwater permit.
 - f. Collection of all pertinent fees related to the permitting process.
 - g. Manage the pertinent information needed on the County’s website, to inform the public of the Municipality’s Stormwater Ordinance by providing links and the Municipality’s hotline number.
2. Henderson County shall enforce the Municipality’s ordinances regarding stormwater that address post-construction runoff, hereinafter “stormwater regulations”. Where there is a conflict between municipal law and state or federal law, the County shall follow the stricter of the regulations

where legally possible. The Municipality shall not determine which law to follow where there is conflict with other law and any questions shall be directed to the Henderson County Office of the County Attorney.

3. The delegated county administrator, as designated by the County Manager, shall be responsible for administration and enforcement of the stormwater regulations within the Municipality. S/He and related staff shall have the authority to make decisions on the stormwater regulations within the Municipality. Appeals under the Municipal ordinance shall be heard by the appropriate Municipal appellate board. ~~Other than in the instance of appeal the Municipal government shall not have the authority to mandate enforcement, administration or other duties described under Section 1.~~
4. The Municipality shall remain responsible for IDDE discharges within their jurisdiction and any inspection requirements per their MS4 permit. All findings to be shared with the County if related to the stormwater permitting.
5. The Municipality must notify the County of any amendments to its ordinance.
6. The Henderson County Manager, or their designee, is authorized to sign the contracts necessary for enforcement of the specified stormwater regulations, or portions thereof, within the municipal jurisdiction.
7. Enforcement and administration of the stormwater regulations will commence on the later date of either September 1, 2010 or upon approval by the County and applicable municipality.
8. In lieu of direct payment by the municipality, Henderson County shall retain all fees and fines collected to offset program costs. Additional and future costs of the program may be reimbursed by the Municipality upon later written consent of both parties. It is intended that the permit fees retained by the County will cover the cost of administration and enforcement.
9. Any criminal or civil penalties or injunctive relief under the specified stormwater regulations will be requested by Henderson County on behalf of the municipality.
 - a. These enforcement measures will be initiated by the applicable administrator in conjunction with the Henderson County Attorney's Office.
 - b. Any funds received from the enforcement and administration of the stormwater regulations are retained by the County to offset enforcement costs.
 - c. The County has full discretion in determining any litigation, whether criminal, administrative, or civil, initiated by the County under the Municipal stormwater regulations. The Municipality shall not make decisions regarding the litigation including but not limited to: initiation, type of case, penalties assessed, settlement, or litigation strategy.
10. Amendments, changes, deletions may be made to the Agreement upon the written consent of both parties.
11. This is the entire agreement between the parties and there are no terms, conditions, representations or warranties relating to the work to be performed hereunder which are not specifically set forth herein.

12. This Agreement shall run indefinitely unless terminated in writing by either party. The Agreement may be terminated with or without cause by either party with 120 days written notice to the other party.
13. This Agreement is expressly non-assignable without prior written consent and approval by the non-assigning parties. This Agreement may not be continued by a successor to either party without the prior written consent of the non-moving parties.
14. The singular of any term used in this Agreement shall include the plural, and the masculine shall include the feminine and vice versa.
15. The laws of the State of North Carolina shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.
16. If any of the provision contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such as invalidity, illegality or unenforceability will not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
17. This Agreement gives no rights or benefits to anyone other than the County and the Municipality.
18. The County shall share program data with the Municipality as set forth and agreed upon by both parties. The information shall include but not be limited to tracking of plan reviews (high density and low density), number of approvals, permit violations, enforcement actions, O&M Agreements, and number of recorded deeds and protective covenants. The required annual inspection reports submitted by the project owners shall be made available to the Municipality. The County shall make available the number and type of SCMs added to the Municipality's inventory; and the number and acreage of low-density projects constructed.

IN WITNESS WHEREOF, the Municipality and Henderson County have duly executed this agreement as of this the _____ day of _____, 2022.

HENDERSON COUNTY

BY: _____
John Mitchell, County Manager

ATTESTED BY:

[CORPORATE SEAL]

Clerk

Municipality

BY: _____
Mark Biberdorf, Town Manager

ATTESTED BY:

[CORPORATE SEAL]

Christine Thompson, Town Clerk

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Samantha Reynolds, Henderson County Finance Director

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Heather N. Taylor, Town of Fletcher Finance Officer

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

I, _____, Notary Public for said County and State, certify that John Mitchell personally came before me this day and acknowledged that he is the County Manager for Henderson County, a body politic and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by himself as County Manager.

THIS the _____ day of _____, 2022__

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

MUNICIPALITY

I, _____, Notary Public for said State and County certify that Mark Biberdorf, Fletcher Town Manager, came before me this day and acknowledged that he/she is the Town Manager of the Town of Fletcher, a municipal corporation and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by her/himself as Town Manager.

THIS the _____ day of _____, 2022

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]