

TRANSMITTAL, ACTION AND CONTROL

(The proponent of this form is the Chief of Staff)

MARKS CONTROL NUMBER 20150414-00	ACTION OFFICE CONTROL N CESAW-OP-LW	SUSPENSE DATE	CLASSIFICATION	DATE
SUBJECT Partnership - Cooperative Agreement with the Brushy Mountain Cyclists Club				
ACTION OFFICE CESAW-OP-LW Kevin Heape		ACTION OFFICE TELEPHONE 336-921-3390		
END STATE	<input checked="" type="checkbox"/> SIGNATURE	<input type="checkbox"/> APPROVAL	<input type="checkbox"/> INFORMATION	
<input type="checkbox"/> DX	<input type="checkbox"/> DP	<input type="checkbox"/> DD	<input checked="" type="checkbox"/> DE	

1. PURPOSE

Signature by Commander - Cooperative Agreement with non-profit group Brushy Mountain Cyclists Club as friends group for W Kerr Scott Lake

2. SUMMARY

The Brushy Mountain Cyclists Club (BMCC) is a local non-profit organization that has been working at W Kerr Scott for several years. BMCC has provided volunteers to help design, construct, and maintain over 40 miles of multi use single track trail, with more under construction. This agreement will more formally define our partnership designating roles and expectations for BMCC and Corps as we partner in future activities.

3. RECOMMENDATION

Signature by Commander

ACTION OFFICER SIGNATURE BLOCK (CAN USE ONE LINER TO SAVE SPACE)

OFFICE	COMMENTS	NAME	DATE	EXT.
OP-L		Brown	4/10/15	
OP		Sartin	4/13/15	4822
OC		Pruitt	4/14/15	
DA		Prentiss		
CoS		Burch	4/14/15	
DPM		Brayman	Leav	
DCDR		MAJ Hughes	14 APR 15	
CDR		COL Landers		

APPROVAL AUTHORITY USE ONLY

SAW FORM 6 AUG 99



DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS

W. KERR SCOTT DAM & RESERVOIR
499 RESERVOIR ROAD, WILKESBORO, NC 28697-2330
PHONE: (336) 921-3390 FAX: (336) 921-2330

CESAW-OP-LW

January 15, 2015

MEMORANDUM THRU:

CESAW-OP-L-Hosey (District Contributions Coordinator) HOSEY.MICHAEL

.L.II.1231836124

FOR THE RECORD

Digitally signed by
HOSEY.MICHAEL.L.II.1231836124
DN: c=US, o=U.S. Government,
ou=DoD, ou=PKI, ou=USA,
cn=HOSEY.MICHAEL.L.II.1231836124
Date: 2015.02.03 12:11:38 -05'00'

SUBJECT: W. Kerr Scott Lake, Donor Screening, Cooperative Agreement with Brushy Mountain Cyclist Club (BMCC)

1. Documentation of donor screening for cooperative agreement with the BMCC, a local non-profit, which has offered to be a partner with the Corps at W. Kerr Scott Lake.
2. The mission of the BMCC is to build and maintain the multi-purpose trails at W. Kerr Scott Lake, to promote mountain bike cycling as an outdoor recreational opportunity.
3. BMCC is not involved in litigation or other disputes with the Corps; is not currently engaged in or seeking a business relationship with the Corps; has not been debarred or suspended from contracting with the federal government; does not have a recent public history of violations either criminal or civil in nature; and is not regulated by or seeking a permit from the Corps.
4. This mission of BMCC is consistent with Corps programs and policy goals. Entering into this agreement and accepting of contributions from BMCC would not likely result in public controversy.

Kevin Heape
Operations Project Manager

**COOPERATIVE AGREEMENT
BETWEEN THE
U.S. ARMY CORPS OF ENGINEERS, WILMINGTON DISTRICT
AND THE
BRUSHY MOUNTAIN CYCLISTS CLUB**

This Cooperative Agreement is for the mutual benefit of both parties and is between the United States Army Corps of Engineers, Wilmington District, W. Kerr Scott Lake (hereinafter referred to as the Corps) and the Brushy Mountain Cyclists Club, Inc. (hereinafter referred to as the BMCC), acting through the Director of the Board of Trustees or the Board's designee.

WITNESSETH:

WHEREAS, the Corps operates the W. Kerr Scott Lake project, for the congressionally authorized purposes of water supply, flood risk management, fish and wildlife enhancement, recreation, and to promote the Corps' missions, which include stewardship of environmental and cultural resources;

WHEREAS, the Corps operates its projects for the benefit of the public. The public requires information and facilities for the safe and appropriate use of Corps projects. This information may be conveyed through a variety of interpretive media such as; programs, exhibits, and displays which rely heavily upon the use of audio visual materials, photographs, models, interactive displays, lectures, artifacts and other materials which illustrate the Corps, its mission and activities in and around the W. Kerr Scott Lake project as well as the archaeological, natural and cultural history of the area; and

WHEREAS, The Corps achieves its operational goals through cooperation with state and local government partners, non-profit organizations, and members of the public using a wide range of activities, programs and events; and

WHEREAS, the BMCC is a Section 501(c)(4) non-profit organization that has its purpose the promotion of cycling in northwest North Carolina and intends to contribute to public recreation at the W Kerr Scott Lake by assisting the Corps in the conduct of its programs and activities;

WHEREAS, The Corps and the BMCC mutually recognize there are significant benefits to public outdoor recreation from providing safe and challenging multiple-use trails at W Kerr Scott Lake;

WHEREAS, BMCC has the authority to assist the Corps in its mission through contributions and carrying out activities and programs;

WHEREAS, The Corps has the authority pursuant to PL 102-580, Water Resources Development Act, 1992 Section 203 (106 Stat. 4838, 33 U.S.C. 2325) to accept contributions to provide for operation and management of recreation facilities and protection and restoration of natural resources at civil works water resource projects.

WHEREAS, the Corps has authority, pursuant to Section 4 of the 1944 Flood Control Act, 16 U.S.C. 460d, to permit the maintenance and operation of recreation facilities at water resource development projects by local interests and may provide out grants to non-profit organizations for park and recreational purposes;

WHEREAS, the Corps has the authority, pursuant to the Federal Water Recreation Act, Public Law 89-72; the National Historic Preservation Act, as amended, Public Law 89-665; The National Environmental Policy Act, Public Law 89-190; and the Archaeological Resource Protection Act, as amended, Public Law 96-95, to provide Natural Resources Management programs, activities and interpretive functions;

NOW, THEREFORE, the parties agree as follows:

1. The Corps authorizes BMCC to provide, and BMCC agrees to provide, the hereinafter described contributions to include services, equipment, materials, supplies, and funds for the benefit of the visiting public and the Corps missions at W. Kerr Scott Lake.

2. CORPS RESPONSIBILITIES

A. Timely Review and Approval.

The Corps agrees to review and give necessary approvals or disapprovals in a timely manner to BMCC for any and all proposals, programs, special events, suggestions and other activities in which BMCC might wish to engage.

B. Use of Government Facilities, including Park and Natural Resource areas:

1. Should BMCC, as part of its cooperative activities, require the use of Corps facilities at W. Kerr Scott Lake the Corps agrees, that in recognition of the services BMCC is contributing to the public, to provide at no cost to BMCC use of equipment, facilities, utilities, janitorial services, and routine and general maintenance when incidental to the normal operation of the facility by the Corps.

2. Should BMCC require facilities, utilities and services over and above what the government would normally require for operation of the facility, or area used by BMCC, BMCC will reimburse the Corps at an agreed upon, but nominal cost in recognition of the services that BMCC is contributing to the public.

3. Should the need arise, a separate real estate instrument will be granted to the BMCC for the use of government owned real property. The instrument will not merge with the Agreement.

3. BMCC RESPONSIBILITIES

A. Corporate Requirements.

1. BMCC's Articles of Incorporation and By-Laws shall comply with the requirements of the state(s) in which BMCC is incorporated. Non-profit 501(c)(4) status must be maintained in accordance with state and Federal laws. BMCC will make available for inspection, at the request of the Corps, documents demonstrating non-profit status.

2. This agreement will automatically terminate if non-profit status is not maintained.

3. The BMCC shall have liability insurance which indemnifies, saves, holds harmless, and defends the United States against all fines, claims, damages, losses, judgments and expenses arising out of, or from any omission, or activity of BMCC in connection with activities under this Agreement.

4. The BMCC will exercise reasonable care to prevent damage to any Government property used, or occupied during its operation and shall, insofar as possible, protect all such property.

B. Activities

1. The BMCC may offer educational and interpretive services which support the mission of the Corps and/or the project. This includes assisting, planning, designing, implementing and conducting interpretive and educational programs, activities, and exhibits.

2. The BMCC may offer contributions which support the Corps missions and programs.

3. The BMCC may with prior written approval of the lessee and in full compliance with the lease, independently and/or in cooperation with other partners plan and carry out special events in leased areas on government property at W. Kerr Scott Lake.

4. The BMCC will cooperate with the Corps in the following activities:

a. Planning and carrying out public activities and events.

b. Developing and producing interpretive and educational literature, signs, exhibits, materials, and audio-visual aids to increase public understanding and appreciation of the natural, cultural, historical, and man-made features of W. Kerr Scott Lake.

C. Sales Option

1. As part of this Agreement, the BMCC may operate sales areas on a continuous or intermittent basis in locations approved by the Operations Project Manager.

2. The BMCC is hereby authorized to sell and/or distribute interpretive and educational items such as publications, maps, audiovisual aids, crafts, recreational gear, and other objects directly related to the purposes of the project and the missions of the Corps. The Corps may request BMCC to sell specific items of interpretive value.

3. The BMCC shall order, receive, inventory, stock, and otherwise manage all items offered for sale and/or distribution.

4. The BMCC will sell only items that are appropriate and of high quality. BMCC will not sell any item that has not been approved by the District Commander or his authorized representative. BMCC will sell items at their fair market value and prices of said items will be submitted and approved in writing, in advance by the District Commander or his authorized representative.

5. The BMCC will not sell any original artifacts, sacred items, or antiquities to which the Archaeological Resource Protection Act, as amended, would apply, whether or not such items were discovered on lands owned or controlled by the United States.

6. The BMCC will display the sales items in good taste and in keeping with the general design and decor of the sales area.

7. The BMCC's sales are restricted to locations approved by the Corps, which will be kept clean and presentable at all times.

D. Fiscal Management.

1. The BMCC shall conduct its fiscal operations in accordance with accepted business practices. This includes the appropriate use of a funds accountability system, purchase orders, receipts, invoices, and inventory records.

2. The BMCC shall annually submit (within 135 days following the end of each fiscal year) a complete financial report to the Corps which includes a written summary of BMCC income and expenses.

3. The Corps may review the fiscal records of the BMCC at any time during the term of this Agreement.

4. JOINT RESPONSIBILITIES.

A. Loan / Donation of Services or Materials.

1. BMCC may, at the discretion of its governing Board, donate materials and/or services or loan items to the Corps. The Corps reserves the right to accept or decline without obligation, any donation or loan by BMCC.

2. The Corps will take reasonable precautions to protect items loaned by the BMCC, but assumes no other responsibility for these items. The Corps will return loaned property or items as requested by the BMCC.

B. Personnel

1. The BMCC and the Corps shall each designate, in writing, a BMCC member and a Corps person and alternates who will act as points of contact for the purpose of implementing this Agreement.

2. The BMCC will provide such personnel as are reasonably necessary to conduct, operate and manage its cooperative activities. This does not preclude Corps personnel, during the course of their normal duties, from assisting the BMCC with nominal duties, including sales.

3. Corps employees may not, in their official capacity, serve on the board, either as a voting member or as non-voting member, including as an ex-officio member, or as an officer or trustee of a cooperating association, friends group or other Corps partner organization. However, Corps employees may be appointed as points of contact or liaisons to non-federal partner organizations as part of their official duties when appropriately appointed. Corps personnel may not be appointed as liaisons to organizations in which they are officers or directors. Corps personnel may not act as the official representative of BMCC in any matter relating to the Corps, or the terms of this Agreement. However, if BMCC has a membership program, Corps personnel may join and participate in membership activities in their personal capacity.

4. The Corps will orient all BMCC personnel, staff and/or volunteers with regard to Corps rules, regulations, requirements, particularly with regard to the project and facilities, safety, and appropriate emergency procedures. BMCC staff and volunteers involved in visitor contact will receive additional orientation in regard to interpretive services. All orientation will be conducted prior to assumption of duties.

5. BMCC employees, or volunteers may not wear the Corps uniform, or items of clothing that resemble the uniform. Employees and volunteers of BMCC, when working at duties that bring them into contact with the public, will wear visible identification that identifies them as a BMCC employee or volunteer.

5. ASSIGNMENT.

No transfer or assignment of this Agreement or any part thereof or interest therein, directly or indirectly, voluntary or involuntary, shall be made by the BMCC unless approved in writing by the Corps.

6. MODIFICATION AND AMENDMENTS.

Modifications and amendments to this agreement in the form of Supplemental Agreements may be made from time to time upon the mutual written consent of the District Commander for the Corps and the Board of Trustees of the BMCC.

7. DURATION.

This agreement shall be effective for five years commencing on the day following the ratification of this agreement by the Corps. This agreement will automatically renew for another five year period on October 1 of the last year, unless notice of cancellation is given by either party

before the date of renewal. The Corps reserves the right to terminate the agreement, or any part thereof, at any time upon written notice. Prior to giving such notice, the Corps will meet with the BMCC to set forth the reasons for such termination.

8. MISCELLANEOUS.

A. The rights and benefits conferred by this agreement shall be subject to the laws of the United States governing the U.S. Army Corps of Engineers and to the rules and regulations promulgated thereunder whether now in force or hereafter enacted or provided; and the mention of specific restrictions, conditions, and stipulations herein shall not be construed as in any way impairing the general powers of supervision, regulation and control by the Corps.

B. This Agreement in no way obviates the responsibilities of the Corps or BMCC as may be required by a real estate instrument. In situations where BMCC receives a real estate out grant for facilities or areas from the Corps, this Agreement would become null and void upon the termination or cancellation (not planned expiration) of the outgrant.

C. The BMCC agrees that all its activities shall be conducted in accordance with all applicable laws and regulations, both state and Federal.

IN WITNESS WHEREOF, The Brushy Mountain Cyclists Club, Inc. has caused this agreement to be executed this 24th day of March, 20 15

By Brian Johnson
Brian Johnson
Director

IN WITNESS WHEREOF, The Corps has caused this agreement to be ratified this
20 day of April, 20 15

By Kevin P. Landers Sr.
Kevin P. Landers Sr.
District Commander