Internal Audit Report

HOWARD SOIL CONSERVATION DISTRICT
April, 2010

Office of the County Auditor

OFFICE OF THE COUNTY AUDITOR

Haskell N. Arnold, CPA
County Auditor

April 2010

The County Executive and County Council
of Howard County, Maryland

Pursuant to Sections 212 and 213 of the Howard County Charter and Council Resolution 22-1985, we have conducted a review of selected activities of the

HOWARD SOIL CONSERVATION DISTRICT

and our report is submitted herewith. The scope of our report included a performance and fiscal review of the operations of the Howard Soil Conservation District. The body of our report presents our findings and recommendations.

The contents of this report have been reviewed with the Board of Supervisors and the District Manager of the Howard Soil Conservation District as well as the Howard County Department of County Administration. We wish to express our gratitude to the staffs at the Howard Soil Conservation District and the Howard County Department of County Administration for the cooperation and assistance extended to us during the course of this engagement.

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INTRODUCTION AND SCOPE

The Howard County Soil Conservation District (the District) is an independent political subdivision of the State of Maryland which was created by State law (Agriculture Article 8-301). The District was developed as a means to help farmers and landowners implement necessary conservation practices. The District has a governing body of five supervisors where one member is appointed by the County Executive with the approval of the County Council, one by the State Soil Conservation Committee (the Committee) from a list of three district residents submitted by the county farm bureau, one by the Committee from a list of three district residents submitted by the county extension service and two by the Committee from among residents of the district. Each supervisor appointed by the Committee serves a term of five years. All supervisors are required to be interested and knowledgeable in conservation of soil, water and related natural resources.

The District receives support from Howard County Government (the County), the Maryland Department of Agriculture (MDA) and the United States Department of Agriculture (USDA). In addition to these sources, the District receives revenue from the sale of certain items and from fund raising efforts. Beginning in Fiscal Year 2010, the District also receives fees for work done in the areas of soil erosion and sediment control.

Our audit was undertaken at the request of the County Executive in accordance with Article 213 of the Howard County Charter. We were requested *". . . to determine the source used to fund the plan review function since July 1, 2009 and to assess the amount of funding available to continue to support this function, as well as to provide a comprehensive review of the District's financial management. In addition, the audit should include an examination of the performance of all activities within HCSD to determine if public funds are being used effectively and efficiently by HCSD."* Accordingly, this audit included discussions with the District manager and various District employees and a review of governing laws, minutes of board meetings, bank statements and financial statements. Our results are presented in this report.

BACKGROUND

The Howard Soil Conservation District was formed on May 10, 1945 and has responsibilities both in State and County law.

Under State law, a soil conservation district constitutes an independent political subdivision of the state and as a public body exercises certain public powers. As agents of the district, supervisors have the following powers:

1. To conduct surveys, investigations, and research relating to the character of soil erosion and degradation of water quality and the effectiveness of preventive control measures, and to publish the results if the research program is carried out as a cooperative effort with a state, federal, or local agency.
2. Disseminate information concerning best management practices, both preventive and corrective.
3. Conduct conservation and water quality demonstration projects on any land within the district, whether state or privately owned, upon obtaining consent from the proper authority.
4. Carry out preventive and control measures within the district including, but not limited to, engineering operations, cultivation methods, the growing of vegetation, and changes in land use, with the cooperation and consent of the proper authority.
5. Cooperate or enter into agreements with any person to furnish technical assistance to any land occupier within the district and to furnish financial aid for the purpose of installing best management practices.
6. Obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, or otherwise, any real or personal property or rights or interests in it, which shall be exempt from state, county, or municipal taxation.
7. Maintain, administer, and improve any acquired properties and expend the income from the properties to further the use of best management practices.
8. Sell, lease, or otherwise dispose of district property or interests in it to further the use of best management practices.
9. Make available to district land occupiers, in accordance with supervisors' terms, any material or equipment used to assist in the installation of best management practices.
10. Develop comprehensive annual plans of work, including a prioritization for those areas within the district deemed to be most critical in terms of soil erosion and potential or existing

impairment of water quality. This plan shall set forth in detail annual goals and strategies to be used in attaining these objectives.

11. Develop comprehensive long-range plans for the district in conjunction with the statewide conservation or water quality plan, using the annual plan as part of the overall strategy development toward long range goals.
12. Publish these plans and information and bring them to the attention of district residents.
13. Take over by purchase, lease, or otherwise and administer any soil conservation or water quality project located within the district and undertaken by agencies of the state or federal government.
14. Act as agent for federal or state agencies in connection with the acquisition, construction, operation, or administration of any conservation project within its boundaries.
15. Accept gifts in money, services, materials, or otherwise from federal, state, or local agencies and use them to carry out district operations.
16. Borrow money on its negotiable paper to carry out its powers and duties.
17. Approve or disapprove plans for clearing, grading, transporting or otherwise distributing soil pursuant to the Environmental Article, Annotated Code of Maryland §4-(101-109).
18. Recommend a fee system to cover the cost of grading and sediment plan review and approval to be enacted by the local governing body. Any fees collected under this system are supplementary to county and state funds and may not be used to reduce county or state funds nor should the fee exceed the cost of plan review. SCDs may also collect fees to assist the Maryland Department of the Environment with sediment and erosion control inspections in nondelegated counties.
19. Sue and be sued; have a legally recognized seal. Supervisors may make and execute contracts and other instruments necessary or convenient to exercise district powers and to adopt, amend, and repeal rules and regulations pertaining to SCDs to accomplish district goals.
20. Formulate rules and regulations governing the use of land within the district in order to conserve soil and soil resources and prevent and control soil erosion. Supervisors may conduct public meetings and public hearings upon tentative rules and regulations as necessary. Before any land-use regulations are enacted into law, they must be submitted to referendum to residents of the district.

21. May go upon any lands within their district to determine whether land use regulations are being observed.
22. Delegate any of the foregoing powers or duties to its employees. The district does NOT have powers of taxation, police, or eminent domain normally associated with a subdivision of state government.

In addition to the above, supervisors shall designate annually a chairman and such other officers as may be necessary and shall have authority to change these designations. Additionally, they shall provide for the execution of surety bonds for every employee and officer who is entrusted with funds or property. They shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules and regulations, and orders issued or adopted. They shall provide for an annual audit of the accounts of receipts and disbursements.

Under State law, the District is responsible for the approval of erosion and sediment control plans and may approve plans and specifications for certain reservoirs, dams and waterways within the County.

Under the County Code, a District representative participates in the review committee that is an advisory group to the Department of Planning and Zoning, organized to coordinate the subdivision and site development.

By agreement with the County, the District performs the following functions:

1. Approve soil conservation and water quality plans for parcels of land for which the development rights are being purchased by the County. This type of plan is also required for wells located on residential lots.
2. In conjunction with the Health Department, approve the types of crops to be grown on land that is used for subsurface wastewater disposal from a shared sewage disposal facility.

REVENUES THROUGH FISCAL YEAR 2009

The District has historically relied on a variety of sources for financial support. For Fiscal Year 2009, these sources included the USDA, the State of Maryland, the County, the 2010 Chesapeake Bay Trust Fund and self-generated revenue through sales and fund raising events.

The support from the USDA comes in the form of employees and equipment, which are paid directly by the USDA. The District does not receive any funds directly from USDA. The State of Maryland provides a grant to the District to support its operations. The District receives money into

a designated account and uses it to fund operations, including partial funding of two positions. The State also provides non-cash support in the form of employees and equipment. The District receives a grant from the 2010 Chesapeake Bay Trust Fund to pay for one position. The County provides funding through the budget process to pay for both salaries and operating costs. The County does not provide any payments directly to the District. Employees are paid by the County through the County's payroll process. Other payments are requested by the District and processed through the County's Bureau of Disbursements.

BANK ACCOUNTS

At the end of Fiscal Year 2009, the District maintained three checking accounts, one savings account and three certificates of deposit. One checking account was with PNC Bank for payroll; all other accounts were with Sandy Spring Bank.

One of the Sandy Spring checking accounts is for funds received from the State. Payments from this account are used mostly to reimburse the County for the partial funding of two positions, to pay for part of the building rental and to pay for meeting costs, both on the local and state level. The other Sandy Spring checking account is the District account and is used to receive funds received from other sources, including grants. Payments from this account are used to pay for the salary of a grant-funded position, to provide grant revenues to farmers who participate in the best management practices and for other activities of the District.

The savings account represented funds that the District had saved over the years. At the end of May, the account had a balance of $24,016.63. We asked how the District had accumulated a balance of that size. The District provided us with a history of deposits and payments, showing that there was a total of $23,390 of deposits received from the State between 2003 and 2005 that were originally supposed to be used to purchase software from a vendor under a State contract. However, the contract between the vendor and the State never happened and the State advised them to keep the funding and use it for purposes related to their mission. In June, 2009, the District transferred $20,000 from the savings account to set up the PNC Bank payroll checking account.

The three certificates of deposit accounts (CD's) had balances of $54,427.14, $39,005.48 and $20,693.86 at the end of Fiscal Year 2009. We asked how the District had acquired these funds. They stated that the first two CD's represented money that they had been received from the Washington Suburban Sanitary Commission (WSSC) to be used to provide grants to farmers to

install best management practices to help with watershed protection. The third CD was for interest that had accumulated over the years on the other two CD's. They stated that the criteria for awarding grants through this program are so stringent that it is difficult to find farms that meet the specifications to spend the funds from the first two CD's. We were told that the interest on the third CD could be spent on any purpose related to the District's mission and was not restricted to WSSC projects. We were provided with a spreadsheet showing the activity of the first two CD's since inception. The first CD had a deposit of $51,989.98 on October 31, 2000 and had no other deposits other than interest since then. The second CD had deposits of $28,000 on March 22, 2001 and $10,000 on February 20, 2002, but no other deposits other than interest since then. The District had no other documentation related to these deposits and the District staff who dealt with financial matters had either not been employed at the time of the deposits or they did not recall what had happened.

We contacted Thomas Traber, Chief Financial Officer of WSSC to inquire about the funds that had been received between 2000 and 2002. He was able to tell us that there had been a check for $12,500 sent to the District, dated October 26, 1999, but had no other record of payments. He suggested that we contact Dr. Mohammed Habibian, who ran the Patuxent Reservoir Watershed Protection Program and would be the most knowledgeable about the funding of the program. We spoke to Dr. Habibian, who told us that the $12,500 was part of a grant that totaled $25,000 and was split between Howard and Montgomery Counties. He was not aware of any other funding that had been provided to the District for this program. Neither Mr. Traber nor Dr. Habibian was aware of any provision about how any interest earned was to be spent.

Since we could find no other evidentiary matter concerning the balances in the three CD's we decided not to pursue this further and accepted the balances as presented.

EXPENDITURES

For Fiscal Year 2009, there were $677,900.39 of expenditures from the amount budgeted by the County to support the District. Of this amount, $611,212.77 was for payroll and another $24,046.91 was for expenditures charged to the District by internal County journal vouchers, such as for vehicle capitalization charges, Central Services charges and GIS chargeback. The balance of $42,640.71 represented the amount of expenditures that the District controlled through purchases that were paid by the County's Bureau of Disbursements. We reviewed invoices totaling

$34,682.82, or 81.34% of the total and found none that were questionable with regard to their use in supporting the District's mission.

We also reviewed the payments from the State checking account for Fiscal Year 2009. Out of a total of $65,345.08 of expenditures, we selected ten checks totaling $17,687.54, or 27.07% of the total, for our review. Again, we found none that were questionable. We did note that there was one check for $444.54, dated June 10, 2009, payable to BGE for utility service. All of the other BGE bills were paid through the County. We were told that there was not enough money left in the County budget under utilities to pay this bill. We looked at the budgetary information and found that the balance in that budget was only $8.97.

Finally, we reviewed payments from the District checking account. Our review included payments from both Fiscal Years 2009 and 2010. Out of a total of $95,385.31 of expenditures, we selected 15 checks totaling $25,216.06, or 26.44% of the total for our review. Again, we found none that were questionable.

REVENUES FOR FISCAL YEAR 2010

In Fiscal Year 2010, two positions in the Urban Program that had traditionally been supported by County funds were, instead, to be supported by a fee system for reviews conducted by the District. Resolution No. 65-2009, which approved this fee, was passed by the County Council on September 8, 2009 and approved by the County Executive one day later. However, between July 1 and the approval of this resolution, the District needed to find a revenue source to pay for the services of these employees. They utilized a variety of sources to accomplish this.

First, they used the $20,000 that had been transferred from the savings account to the payroll account. They then closed out the third CD, which represented interest earned on the other two CD's, and, after a penalty for breaking the CD before its maturity, deposited $20,565.68 into the payroll account on August 11, 2009. When this ran out, the supervisors donated a total of $12,000 to support the continuation of this function. Of this amount, $10,000 was deposited into the payroll account on September 9, 2009 and the other $2,000 was deposited on September 15, 2009. The supervisors did not donate the money to the District directly. Rather, they donated to the Maryland Association of Soil Conservation Districts, which is a tax exempt organization under Section 501(C)(3) of the Internal Revenue Code. The amount donated by the supervisors to the state Association was subsequently donated by the state Association to the District.

The employees were paid from these amounts into October 2010. The total amount of the payments, both to the employees and for withholding and employer taxes was $53,305.59. However, the total amount that was transferred to the payroll account and available to pay for these employees was only $52,565.68. The balance was from the money placed into the payroll account to pay for the salary of the employee who was funded by the 2010 Chesapeake Bay Trust Fund. As the grant does not cover these two employees, the difference of $739.91 should be returned to the payroll account. Therefore, we recommend that:

1. ***The Howard Soil Conservation District should return $739.91 from operating funds to their payroll account.***

Howard Soil Conservation District Response:

Your analysis may be correct, but the funds in question are composed entirely of State grant money. The District will seek clarification from the Maryland Department of Agriculture regarding the most appropriate manner to handle this question.

ADDITIONAL ITEMS

In the course of our review, we asked to see the employee records of the three employees who were being paid by the District directly. They stated that they did not have this information and that it was at PNC Bank, who was handling their payroll accounts. The Internal Revenue Service requires that employers keep employee records on hand, including, but not limited to, dates of employment for each employee and copies of employees' and recipients' income tax withholding allowance certificates (Forms W-4, W-4P, W-4(SP), W-4S AND W-4V). Therefore, we recommend that:

2. ***The Howard Soil Conservation District should obtain the necessary employee information as required by law and set up a file to maintain these records.***

Howard Soil Conservation District Response:

Recommendations duly noted.

We also noted that the employee who was funded by the 2010 Chesapeake Bay Trust Fund was paid as an independent contractor and not as an employee from the beginning of her employment in 2008 through July 2009. The employee worked at the direction of the District Manager and should have been paid as an employee with taxes withheld and payroll taxes paid by the District. All of this should have come from the amount of the grant. Instead, the District paid her the full amount of the grant and reported her income as Nonemployee compensation on form 1099-MISC. When we asked why the employee had been treated this way, we were told that the State had recommended that treatment. We believe this to be incorrect and the affected employee should be made aware of her rights as an employee. She should file a form 8919 with the IRS for uncollected social security and Medicare taxes. It would probably be in her best interest to seek professional help with tax preparation and in filing this form. We recommend that:

3. ***The Howard Soil Conservation District should inform the affected employee that her treatment as an independent contractor was incorrect and that she should file with the IRS a form 8919 for the years where she should have been treated as an employee.***

Howard Soil Conservation District Response:

Recommendations duly noted.

We obtained from the District a Statement of Receipts and Disbursements for the period July 1, 2008 to June 30, 2009. This statement is prepared by the treasurer and is reviewed by TGM Group, LLC, a public accounting firm. It is prepared on a basis that approximates the cash basis. However, it shows the entire amount budgeted by the County as a receipt and the unused amount of the budget as a disbursement. As previously noted, the District does not receive any funds directly from the County.

The District provided us with a document that they indicated contained guidelines from the State Department of Agriculture about the annual review of District accounts. They stop short of requiring an audit of the District's operations. The guidelines state: *"Soil conservation districts are required to provide an annual accounting of receipts and disbursements. This includes all funds handled by the district and requires the funding sources and individual projects to be listed separately. MDA recognizes that this is an accounting of receipts and disbursements and not an audit conducted in accordance with general accounting principles. However, it is strongly*

recommended that it be performed by a certified public accountant."

However, we noted that in the State Code, under §8-303(c) of the Agriculture Article, it states that the *supervisors ". . . shall provide for an annual audit of the accounts of receipts and disbursements."* The Code expressly states that it should be an audit and not anything less. We believe that what is written in the State Code should take precedence over what is written in a Department's guidelines. Therefore, we recommend that:

4. ***The Howard Soil Conservation District should have an annual audit of the accounts of receipts and disbursements performed, in accordance with State Code.***

Howard Soil Conservation District Response:

The District has always conducted its annual audit in accordance with the State Code consistent with direction received from the Maryland Department of Agriculture. For decades we have undertaken the same audit that all other districts in the state have performed. We submit that this is entirely a matter for State interpretation. The Agriculture Article does not specify under what accounting protocols the audit should be conducted. Just as this audit is something less than a full financial audit, the State has established a policy for annual audits of the districts consistent with their interpretation of the requirements of the State Code.

Auditor Comment:

The American Institute of Certified Public Accountants (AICPA) has identified three different levels of examinations of financial statements. They are: compilation, review and audit. The statements we received were reviewed but not audited. The AICPA notes that "A review provides limited assurance that no material changes need to be made to the financial statements" while "An audit provides the highest level of assurance that the financial statements fairly represent the entity's financial position and results of operation in accordance with generally accepted accounting principles." Notwithstanding the guidance provided by the State Department of Agriculture, the State Code requires that *". . . an annual audit of the accounts of receipts and disbursements"* be performed, not a review.

It should be noted that this audit is a performance audit, not a financial audit.

OTHER ISSUES

We looked at several other areas of concern regarding the performance of all activities within HCSD to determine if public funds are being used effectively and efficiently by HCSD.

We reviewed the urban plan review process to determine the procedures employed by the employees doing the reviews. Currently, the reviewers are following the 1994 Standards and Specifications for Soil Erosion and Sediment Control. These can be found on the Maryland Department of the Environment website. Beginning May 30, 2010, they will begin following the updated 2010 Standards and Specifications for Soil Erosion and Sediment control. Two checklists are employed to ensure that the process is completed properly.

We asked about the role of the District Manager and the supervisors in oversight of the review process. The District Manager stated that he would occasionally review the work, but, in general, he relied on the fact that both employees were professionals in their fields and would produce a quality review. The Maryland Department of the Environment (MDE) periodically reviews the District's sediment control and stormwater management programs. We obtained a copy of their most recent review on October 20, 2009. In that review, Herbert M. Sachs, Special Project Coordinator for MDE stated *"based on the plans reviewed, MDE determined that the review process was entirely adequate and consistent with that used by other Districts."* While the results of the review are certainly encouraging, we believe that it would be in the best interest of the District to formalize a procedure for District management to review the work done in the plan review process. We recommend that:

5. ***The Howard Soil Conservation District should formulate and implement a management procedure for the review of the soil erosion and sediment control reviews.***

Howard Soil Conservation District Response:

As noted in the audit, the District, under its State statutory mandate, follows the State Erosion and Sediment Control Manual in its review and approval of erosion and sediment control plans. Again, it is the State that establishes the policies and protocols that govern appropriate procedures for review under State statutes, regulations, policies, guidelines and review checklists.

The District continuously refines the details of its office procedures to ensure the efficient and expeditious review of plans including appropriate levels of management oversight. To that end, we are currently considering having the District Manager sign all plans once they are deemed ready for approval by technical staff. Signature by the District Manager will provide an added assurance that all State review protocols have been correctly followed and will also more

directly reflect the District Manager's actual operational involvement in the review process.

It should also be noted that more rigorous management review procedures were in place prior to the County forcing the implementation of an inadequately funded fee schedule. A more appropriate management system will be restored and instituted once adequate funding for the cost of conducting plan reviews is provided.

In trying to determine the time necessary to review a plan, we tried looking at what is done in other counties within Maryland. We spoke to a County Council staff member, who had done research in this area for Council Resolution 65-2009. He stated the he found that each county performs the process differently so that comparisons between two counties may not be fair. Also, the types of plans being reviewed make a difference. We obtained three e-mails that he received from different districts when asked how long it took for their soil conservation district to review a plan. One district replied, *"On average, I would say about an hour. However, obviously, if the plan is complex, several hours."* Another district replied, *"We set a maximum of ten work days to review a plan and we are currently averaging about three days."* The third stated, *"Due to the amount of environmental regulation on the local, state and federal levels the required time for an in-depth review as required by law takes three days to two weeks for the average plan."* An internal estimate from the Howard County Department of Planning and Zoning put the time of a review at about three hours. Due to the disparity of the responses, we believe that comparisons between counties of time taken to review plans may be lacking in value.

We believe that the best way to determine the amount of time needed for a review would be to have a time and motion study done, where the review process is examined over a period of time to determine optimum review time. However, our office does not have the expertise to conduct such a study. We could contract with an entity that has sufficient experience in this area to produce a reliable result, but we believe that the cost of such a contract would probably exceed any benefit derived from entering into that type of arrangement and, therefore, we will not pursue this further.

For Fiscal Year 2009, the Maryland Association of Soil Conservation Districts published summary results of the 24 districts in the State. Of the 23 districts that reported the number of plans reviewed, Howard County's 898 plans reviewed ranked fifth. The state average was 493 plans. Of the 23 districts that reported the number of acres reviewed, Howard County's 16,922 acres reviewed ranked first. The state average was 2,960 acres.

The District maintains a listing of contractors who can be used by farmers to achieve best management practices. This listing is available on the District website. Farmers who are awarded grants through the efforts of district employees are made aware of the listing, but no recommendations are made as to which vendor to use, it is only recommended that the farmers get competitive bids. To test this, we sent out a questionnaire to ten farmers. We asked if they had been awarded a grant, if they were made aware of the listing on the website and if any specific vendor had been recommended. We received responses from seven farmers. One of our questionnaires was returned as undeliverable. Of the seven responses we received, all had been awarded a grant, four stated that they were made aware of the contractor listing while three answered that they were not aware of the listing, and no one had a specific vendor recommended to them by the District. From the responses that we received, it appears that the District is not publicizing the vendor listing enough. To assist farmers in making decisions about hiring contractors, we recommend that:

6. ***The Howard Soil Conservation District should work diligently to ensure that all farmers receiving grants to implement best management practices are made aware of the listing of contractors available on the District website.***

Howard Soil Conservation District Response:

Recommendation duly noted.

We noted that the first contractor on the list was the Chairman of the Board of Supervisors for the Howard Soil Conservation District, Mr. William Barnes. The fact that he was placed first on the list was due to the listing being in alphabetical order, but we questioned whether there was a potential conflict of interest by being on the listing at all. We found that this issue had been raised previously by a citizen and we were given a copy of the response to the citizen from Louise Lawrence of the State of Maryland, Department of Agriculture. In her letter dated June 16, 1997, she stated: *"It is not unusual for a contractor to be an active SCD member. It is however incumbent upon Mr. Barnes, given his private business interests, to recuse himself from any SCD business if it in any way relates to his or a family member's private benefit or interests. I understand this is typically the way Howard SCD has conducted business."* We were also given a copy of the "SCD Supervisor Ethics Guidance" which supports this position. Our review of the minutes of the Board

of Supervisors meetings from Fiscal Year 2009 did not indicate any instance of Mr. Barnes voting on any issue from which he stood to profit.

We looked at the usage of other County resources. The District currently has two County vehicles available for use at their office. We asked about the vehicle usage. One vehicle is used by District employees in carrying out the District's mission. The other vehicle is used mainly for transportation to other County offices. We believe that this vehicle could be used by the County for better purposes. We recommend that:

7. ***The Howard County Central Fleet management should look to determine if the vehicle being under utilized by the Howard Soil Conservation District could be better utilized in another department.***

Howard County Administration Response:

After an analysis by the Fleet Administrator, it was determined that the 2004 Chevy and the 1998 GMC each registered approximately 5,000 miles per year. Since these vehicles are being underutilized, it would be more cost effective for Soil Conservation employees to use their private vehicles and receive mileage reimbursement.

Effective July 1, 2010, and dependent upon execution of a Memorandum of Understanding (MOU) between Howard County and the Howard Soil Conservation District, the two vehicles will be returned to Central Fleet for reassignment. Funding for mileage reimbursement will be included in the budget in accordance with any MOU executed.

Auditor Comment:

The vehicles in question are both pick-up trucks. If both vehicles are being used only as transportation for District employees, we believe that the use of private vehicles and reimbursement of District employees for that usage is warranted. However, if the District can demonstrate the need for a particular utility of a pick-up truck beyond that of a passenger vehicle (e.g., hauling), then the Administration should re-consider and allow the District to retain a pick-up truck to assist in achieving their mission.

We asked for vehicle logs for the two vehicles. None were available. Since vehicles are considered as listed property by the Internal Revenue Service and any personal use of these vehicles would be considered as earnings to the employee who was using the vehicle, it is important to keep usage logs in order to document of the business use of vehicles. Therefore, we recommend that:

8. ***The Howard Soil Conservation District should keep logs of the usage of all vehicles under their control. These logs should include the beginning and ending mileage of each trip and the business purpose for which the vehicle is being used.***

Howard Soil Conservation District Response:

Recommendation duly noted.

We also asked about the use of computers and the ProjectDox software. At the time of our visit, we were told that the ProjectDox software was not being utilized because it required upgraded computers. Dual monitors are recommended for its use. New computers were supposed to be ordered, but had not yet arrived. As we left the office that day, employees from the Department of Technology and Communication Services were arriving to prepare for the installation of the new equipment. We assume that the situation has improved since our visit.

One of the goals of the Agricultural Program is to reduce the amounts of nitrogen and phosphorus that gets into streams and rivers and, ultimately, the Chesapeake Bay. The Chesapeake Bay Program has developed a listing of conservation practices and the related reductions in nitrogen and phosphorus. For example, an animal waste management facility for livestock will result in a reduction in nitrogen of 531 pounds per acre per year and 104 pounds of phosphorus per acre per year. The District is then able to apply these figures to the best management practices that they assist in implementing and calculate the total reduction in nutrients into the County's waterways. The District and the MDA have prepared an annual Memorandum of Understanding which includes a work plan with goals to be achieved in the current calendar year.

FUTURE SUPPORT

As noted above, the District is paying the costs of two employees through the use of a fee for plan reviews. However, the fee is limited by State law to the cost of reviewing certain types of plans. In a letter from Craig A. Nielsen, Assistant Attorney General and Counsel to the Department of Agriculture, to the District Manager of the Howard Soil Conservation District it was stated *"Since the district may only charge a fee for its work if allowed by law, Md. Agric. Code Ann. § 8-311, authorizes it to establish a yearly fee schedule and charge fees, but limited to what it costs the district to review a developer's grading and sediment control plan."*

Beginning in November 2009, the District has been submitting a monthly spreadsheet which documents the work performed by the two employees in the urban program. The November spreadsheet showed a total of 214 hours worked and 24 hours of holidays for a total of 238 hours paid to employees. Of that total, 78 hours were spent on plan reviews that could be recovered through fees. The 136 hours that were worked but could not be recovered through fees included 29½ hours of "Database Management" and 33½ hours of "Misc." The approximate cost for the month was stated at $11,270, which computes to approximately $47.35 per hour. The approximate income expected from fees was $7,705. At the average rate of pay, the 78 hours of plan review time that could be recovered through fees had a cost of $3,694. There were an additional 13 hours spent on second and third reviews which cannot be recovered by fees. This resulted in an additional $616 of costs. The income from fees for plan reviews exceeded the costs of the initial reviews by $4,011 and the costs of first, second and third reviews by $3,395. However, the total cost of the employees, $11,270, exceeded the approximate revenue of $7,705 by $3,565.

In December 2009, the monthly spreadsheet showed 193½ hours worked, 8 hours of holidays and 15½ hours of personal leave used for a total of 217 hours paid to employees. Of that total, 49 hours were spent on plan reviews that could be recovered through fees. The 144½ hours that were worked but could not be recovered through fees included 52 hours of "Database Management" and 28½ hours of "Misc." Using the same hourly rate as November, the approximate cost for the month would have been $10,276. The approximate income expected from fees was $6,627. At the average rate of pay, the 49 hours of plan review time that could be recovered through fees had a cost of $2,320. There were an additional 17 hours spent on second and third reviews which cannot be recovered by fees. This resulted in an additional $805 of costs. The income from fees for plan reviews exceeded the costs of the initial reviews by $4,307 and the costs of first, second and third reviews by $3,502. However, the total cost of the employees, $10,276, exceeded the approximate revenue of $6,627 by $3,649.

It is obvious that the fees generated from plan reviews are not sufficient to cover all of the costs associated with the two employees. However, as stated in Mr. Nielsen's letter, the fees are only designed to recover the costs of specific reviews. As shown above, the fees implemented under Council Resolution 65-2009 are sufficient to cover the cost of these specific reviews. Some reviews being performed by these employees go beyond the types of reviews that can be recovered by fees. The fee system cannot support all of the work being done by the employees, nor was it designed to

do so. The District needs another revenue source in order to continue to perform all of its normal functions.

Traditionally, the County provided financial support for these positions, but that did not occur in Fiscal Year 2010. In other years, it may have been possible for the County to transfer funds from its contingency reserve to assist the District, but with the record snowfall that has occurred during the winter, we believe that all of the contingency funds will be committed to snow removal and other related costs. The District has exhausted virtually all of its reserves to pay for these positions during the early part of the fiscal year. At this point, there appears to be no other revenue source that could be tapped to make up for the shortfall. County Administration has offered the services of County employees who are qualified to review plans to the District with the cost being absorbed by the County. While this may not be an ideal situation, it seems to be the only option available to cover the District's workload within the limited revenue available to them through the current fees. Therefore, we recommend that:

9. ***The Howard Soil Conservation District should utilize the services of qualified County employees to assist them with their workload is carrying out the mission of the District.***

Howard Soil Conservation District Response:

The District will not accept the concept of County employees working in the District as replacement or supplemental to qualified District employees. The recommendation is contrary to the statutory system established more than sixty years ago by the Maryland General Assembly that created a separate political entity to undertake certain critical governmental functions deemed important to keep administratively apart from other county or State agencies. In order to maintain the managerial integrity of the review process established by the State, which places the Soil Conservation Districts as an independent review authority for sediment and erosion control plans and dam safety reviews, the offer of a current county employee to replace an efficient, experienced, knowledgeable and impartial reviewer must be declined.

The District has long held the policy of employing Certified Professional Erosion and Sediment Control Specialists. Currently one employee is also a Professional Engineer which is required for dam safety reviews. The Professional Engineer has engineering approval authority as delegated by the USDA, NRCS; the federal agency responsible for the standards and specifications for pond and dam designs nationwide including Maryland. Any outside individual would have to meet the rigorous standards and experience requirements to obtain the certifications and

approval authorities necessary to function in the position. This is a time consuming process and success is not guaranteed for any applicant. It would simply be impractical to move a County employee temporarily into the District. In addition to concerns related to qualifications and training, maintaining appropriate supervision and managerial control over an employee that is not an actual employee of the District, or is not contractually obligated to the District, would not be wise or sustainable.

We agree that it will be necessary for the County and the District to work together, and that any concern for additional review time requiring additional staff will be met by any budget adjustments required, as allowed by state statute, to fulfill the District's obligations.

The District believes strategies are available that would enable it to successfully close out the current fiscal year and move forward in future fiscal years. We recognize that some of the options may be constrained by budget realities, but the options should, nonetheless, be included in the auditor's report. The options include:

- The County could include the two positions in the County system as prior to July 1, 2009.
- The County could provide funds directly to the District as would have been provided if the County Council had approved the fee schedule submitted by the District for FY 2010 rather than changing it to an amount inadequate to fund the program.
- As clearly allowable under the State Code, the District could implement a separate fee to developers for the difference between what is provided through the existing fee schedule and the true cost of doing the required business.
- The District could cease work until adequate funds are provided and the developers could deal directly with MDE, the agency that holds the ultimate authority for plan review and approval.
- An additional $30,000 for the District could be added to the impending withdraws from the County "Rainy Day Fund" to balance the budget this year.

The Howard Soil Conservation District has been attempting to re-establish a good working relationship with the County. However, certain individuals in the County have made decisions without open dialog or willingness to compromise and work toward a goal that provides improved services to customers, yet allows the District to maintain the statutorily mandated role of a politically independent review agency.

Auditor Response:

The County has employees who are Certified Professional Erosion and Sediment Control Specialists. The County also has employees who are Professional Engineers. Therefore, we believe that the County has employees who are qualified to perform the types of reviews currently being performed by District employees. We also noted that certification as a Professional Erosion and Sediment Control Specialist is not a requirement in the State of Maryland. The United States Department of Agriculture, Natural Resources Conservation Services stated in Maryland Bulletin No. MD 190-8-1, dated October 12, 2007, that". . . a certification program for Professional Erosion and Sediment Control Specialists is offered by the Soil and Water Conservation Society and the International Erosion Control Association. While certification is not required by the State of Maryland, it can enhance the professional credibility of individuals who conduct erosion and sediment control reviews."

With regard to the options presented by the District in the bullet points above, we offer the following comments:

- During the Fiscal Year 2010 budget process, including at the County Council's budget work session on May 5, 2009, an offer was made to the District to come back into the budget. However, the offer was rejected by the District.
- As noted above, the fee system cannot support all of the work being done by the employees of the program, nor was it designed to do so.
- The County's Office of Law is unaware of any legal authority by which the District could charge a separate fee. If the District could submit the legal authority for the basis of those fees, we would encourage discussion of this option.
- The option of ceasing operations is the worst case scenario, and one that we looked to avoid by making this recommendation.
- The County has not made, nor does it plan to make, any withdrawals from the Budget Stabilization Account, commonly referred to as the "Rainy Day Fund."

The Maryland Department of the Environment has developed an updated set of standards for soil erosion and sediment control. The 2010 Maryland Standards and Specifications for Soil Erosion and Sediment Control take effect in May, 2010. It is anticipated that the review process will take longer under these new standards. Lynne Hoot, Executive Director of the Maryland Association of Soil Conservation Districts, stated *". . . we expect the workload of the SCDs to increase and many of*

the districts will be raising their fees to address the additional time needed to review and approve plans."

As we move toward the Fiscal Year 2011 budget, it is obvious that the funding structure for Fiscal Year 2010 was inadequate and needs to be changed. The additional review time that will be necessary under the new standards will only exacerbate the situation. It will be necessary for the County and the District to work together to come up with a solution that will allow the District to fulfill its mission within budgetary constraints. We believe that Mr. Sachs of the MDE stated it best in his review:

"The overall conclusion was that the District urban program is implemented very similar to those of other Districts. One major difference from most other Districts is the absence of a good working relationship with County agency staff. This District indicated that this is a recent development – until recently there had always been a cordial relationship. Whatever the cause for the change, it is unacceptable and needs to be changed. With the workload facing the district, and probably the County agencies as well, neither can waste their energies on petty turf battles. Both the District and County agencies must make a concerted effort to quickly change this situation and move on to addressing the important programmatic matters."