

Local Program Report to the SCC Buncombe County, November 16, 2023

On October 11, 2023, personnel from NCDEQ, DEMLR conducted a formal review of the Buncombe County Erosion and Sedimentation Control Program. The County was last reviewed and presented to the Sediment Control Commission on October 15, 2019. The County requires an erosion and sediment control plan for all projects disturbing 1.0 or more acres and for Hillside Developments disturbing $\frac{1}{4}$ or more acres. Hillside Development is defined by the County Ordinance as subdivisions where the average natural slope is 25% or greater. Jurisdiction of the program covers the unincorporated areas of the County and within the towns of Woodfin, Weaverville, Biltmore Forest, Black Mountain, and Montreat. The program consists of two staff whose positions contribute full-time to erosion and sedimentation control. During the previous year from September 2022 through August 2023, the County conducted 140 plan reviews or re-reviews, issued 53 approvals and 39 disapprovals. During this period, the County conducted 1703 inspections and issued 21 Notices of Violation, no Civil Penalties, and 1 Stop Work Order. The County can issue building permits and inspection holds as additional tools to bring sites into compliance. Although these tools had not been utilized in the past year. When plans are submitted to the County, they are reviewed and either “Approved with Modification” or, if found to be inadequate, “Disapproved”, with notification of the decision being sent to the applicant. The Letters of Disapproval were being sent via certified mail and contained necessary language informing the applicant of their right to appeal; however, the timeframe for appeal was 60 days instead of the statutory requirement of 15 days. Additionally, Letters of Approval with Modification were not being sent with the ability to track receipt and did not notify the applicant of their right to appeal. It appeared that many of the modifications listed in these approvals were standard comments not related to the Erosion and Sediment Control Plan but rather general permitting processes and other developmental requirements. Approval with modifications should be sent when minor changes to the proposed ESC plan are needed but a complete revision is not necessary. Additional requirements or processes in the overall developmental permitting should not be listed as modifications to the ESC plan approval. At the time of our review the County had 325 active projects. During our review of the program, DEMLR staff looked at three project files and conducted site inspections on two of those projects.

The following is a summary of the projects that were reviewed:

1. The Village (paperwork review only due to time constraints):

This project consists of 3.46 acres disturbed for commercial development and is located within the Upper French Broad Subbasin of the French Broad River Basin. The project file contained the approved plan, letter of approval with modification, design calculations, a copy of the property deed, previous inspection reports, and a digital copy of the FRO form. The FRO form did not include all parties listed on the property deed and no written letter of landowner consent was included in the file. The County should verify that all landowners are included on the FRO form and obtain landowner consent if the landowner differs from the FRP. The County should retain the notarized original FRO form. The County received the complete application on October

14, 2021, and underwent 2 review cycles before issuing the approval with modification letter on March 28, 2022. A review cycle starts when the package is deemed complete and ends when a plan has been approved, approved with modification, or disapproved. Not all review cycles for this project were completed within the statutory timeframe. The approved plan appeared to be adequate. The County issued an NOV to this project on February 25, 2022, for conducting land disturbing activities without an approved plan. The County had conducted 3 inspections prior to our review; the most recent inspection was on April 12, 2023, and had found the site was in need of stabilization. A site inspection was not conducted on this project due to time constraints.

2. Villages at Bradley Branch Lots 61-76:

This project consists of 2.86 acres disturbed for residential development and is located within the Upper French Broad Subbasin of the French Broad River Basin. The file contained the approved plan, letter of approval, previous inspection reports and the FRO form. A copy of the property deed was not retained within the project file; however, County staff was able to retrieve it online through the register of deeds. This project consisted of 16 single family residential lots within a common plan of development and a standard single family lot plan was submitted for approval. The County received the complete application on February 7, 2023, and issued the approval letter on February 14, 2023. The County's standard single family lot plan package reflects the State's package. The approved plan appeared to be adequate. The County had conducted 2 inspections prior to our review, and no NOVs or CPAs had been issued to this project. During our review, vertical construction of the homes was underway. One silt fence outlet on lot 75 needed to be maintained and stone refreshed. The inlet protection devices behind lots 73, 74, and 75 needed to be maintained. The slopes behind the lots needed to be stabilized, in particular lots 64-68 were recommended to be hydroseeded to establish vegetation and prevent rill erosion. The silt fence and construction entrances for each lot were being maintained. Overall, this site was in compliance with some maintenance issues noted.

3. Creekside Community:

This project consists of 29.3 acres disturbed for residential development and is located within the Upper French Broad Subbasin of the French Broad River Basin. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports and the FRO form. The FRO form did not include an area for businesses to list their Registered Agent information. Any business doing work in the state of North Carolina must be registered with the NC Secretary of State (NC SOS) and must have a Registered Agent responsible for forwarding any legal notices to the business. The County should update its FRO form to include Registered Agent information and should verify this information with the NC SOS website. A copy of the property deed was not retained within the project file; however, County staff was able to retrieve it online through the register of deeds. The County received the complete application for this project on November 7, 2022, and after two review cycles, approved it on May 10, 2023. Not all review cycles for this project were completed within the statutory timeframe. The plans appeared to be adequate. The County conducted 2 inspections of the site prior to our review, the most recent on October 3, 2023, noted that vegetative stabilization and dust control were needed. No NOVs or CPAs had been issued to this project. During our review, mass grading was underway with little stabilization. Diversion ditches throughout the site had been graded over and were not

function per the approved plan. Sediment basins throughout the site were missing baffles and basin slopes needed to be stabilized. Conversion of numerous basins to the permanent stormwater design had begun and one basin had been relocated without approval by the County. Inlet protection measures needed to be installed throughout the site. Perimeter silt fence was missing from a long stretch adjacent to Brevard Road and the gravel residential road bordering the site. Skimmer device outlets needed rock outlet protection. Overall, this site was out of compliance for failure to follow the approved plan, failure to provide exposed graded slopes or fills with temporary ground cover sufficient to restrain erosion, and failure to install and maintain all temporary and permanent ESC measures as required by the approved plan. The County issued an NOV and Stop Work order on October 13, 2023, in response to this inspection.

Positive Findings:

During the review DEMLR Staff noted positive aspects about the Buncombe County Local Erosion and Sedimentation Control Program including:

- The County has a more restrictive criterion than the State as to when an Erosion and Sediment Control Plan is required. Plans are required for all projects disturbing 1 acre or greater and for Hillside Developments disturbing $\frac{1}{4}$ acre or greater. Hillside Development is defined by the County Ordinance as subdivisions where the average natural slope is 25% or greater.
- The County requires a preconstruction meeting for all projects prior to a grading permit being issued. Staff state they require proof of coverage under the NCG01 permit at the preconstruction meeting.
- The County requires that erosion and sedimentation control measures, structures and devices be planned, designed, and constructed to provide protection from the calculated-maximum peak of runoff from the 25-year storm.
- County staff has the ability to place holds on various permits and construction inspections as additional tools to bring sites into compliance.

Issues Noted and Required Actions:

During the review DEMLR Staff found that the Buncombe County Erosion and Sedimentation Control Program had deficiencies including:

- When plans are submitted to the County, they are reviewed and either “Approved with Modification” or, if found to be inadequate, “Disapproved”, with notification of the decision being sent to the applicant.
 - Letters of Disapproval were being sent via certified mail and contained necessary language informing the applicant of their right to appeal; however, the timeframe for appeal was 60 days instead of the statutory requirement of 15 days.
 - Letters of Approval with Modification were not being sent with the ability to track receipt and did not notify the applicant of their right to appeal. These Letters of Approval with Modification were being used as Approval Letters with standard comments unrelated to the Erosion and Sediment Control Plan.
- Staff stated that they verified property ownership during plan review, however, a copy of the property deeds were not always being retained in the project file.

- The FRO form did not include an area for businesses to list their Registered Agent information. Any business doing work in the state of North Carolina must be registered with the NC Secretary of State and must have a Registered Agent responsible for forwarding any legal notices to the business.
- The FRO form did not include all parties listed on the property deed and no written letter of landowner consent was included in the file for one of the projects. Additionally, the County's template Landowner Authorization form did not contain language explicitly granting permission from the landowner to the FRP to conduct land disturbing activities.
- For some of the projects, ESC plans were not reviewed by the County, a decision rendered, and sent to the applicant within the statutory timeframe.
- The County's monthly activity reports and project file reflect a low inspection frequency of between 2-3 months.

The County shall implement the following changes to correct the deficiencies found during the review and noted above:

- The disapproval or modification of any proposed erosion and sedimentation control plan by a local government shall entitle the person submitting the plan to a public hearing if the person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval or modification. § 113A-61(c).
 - The County should update the Letter of Disapproval to notify the recipient of their right to appeal within 15 days instead of 60 days. Template letters with references to the NCAC and state statute can be found on our [Local Program SharePoint Reporting site](#).
 - The County should send all Letters of Approval with Modification, with the ability to track receipt, and notify the recipient of their right to appeal. The County should send Letters of Approval in cases where no modifications of the plan are necessary. The County can add language referencing standard comments and additional developmental approval requirements to their standard letter of approval.
- Documentation of land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.018(c). The County should retain land ownership documentation in the project file.
- The County should update its FRO form to include Registered Agent information and should verify this information with the NC SOS website.
- Except for certain utility construction, if the applicant is not the owner of the land to be disturbed, the erosion and sediment control plan must include the landowner's written consent for the applicant to submit a plan and to conduct the land-disturbing activity. G.S. 113A-54.1(a). The County should obtain a letter of consent when the landowner(s) and FRP differ and retain this in the project file. The County's template Landowner Authorization form should contain language explicitly granting permission from the landowner to the FRP to submit the erosion and sediment control plan application and conduct land disturbing activities.

- Once a complete application is received, plans are to be reviewed and the person submitting the plan notified that it has been approved, approved with modifications, or disapproved within 30 days of receipt of a new plan and within 15 days of receipt of a revised plan. G.S. 113A-61(b) and MOA Part III.C.1 & 3. Staff should ensure that plans are being reviewed and notices of the official review decisions are being sent within the statutory timeframes.
- The County will need to increase inspection frequency in order to effectively monitor projects for compliance with the SPCA and local ordinance. The Sedimentation Control Commission has long viewed an inspection frequency of monthly to generally be adequate. Staff stated that a new position which would contribute time to the ESC program has been approved for next fiscal years budget.

Recommendations for Improvement:

DEMLR staff has also compiled a list of recommendations that would help to improve the program:

- It is recommended to review the local ordinance to ensure that the most recent state statutes and administrative codes are reflected and to update all template letters to reflect any changes.
- It is recommended that the County continue to monitor and provide guidance for NPDES violations including operating without a permit, improper or incomplete self-inspection records and improper concrete washouts. Note possible violations and refer to the NCDEQ Asheville Regional Office when necessary.

Conclusion:

During our review we found that the Buncombe County locally delegated erosion and sedimentation control program had a few deficiencies. The County will need to ensure that plans are reviewed, and the review decision sent to the applicant within the appropriate statutory timeframes. The County will need to update the Letter of Disapproval language to reflect the correct statutory timeframe requirements. The County will need to adjust its process to send Letters of Approval when no modifications are needed and send Letters Approval with Modification with the ability to track receipt and include notification of the applicants right to appeal. The County will need to update its FRO form to include business registered agent information, verify, and retain documentation of land ownership, and obtain landowner consent when the FRP differs from the landowner(s). The County has the ability to issue stop work orders and place holds on various other inspections. Staff stated that they will utilize these additional tools to bring sites into compliance. The County has a more restrictive criterion than the State as to when an Erosion and Sediment Control Plan is required. The County requires a preconstruction meeting for all projects. The County is currently reporting a low inspection frequency. This was evident in the project files and onsite. The County will need to increase inspection frequency to sufficient levels to ensure active projects are compliant with the SPCA and local ordinance. Staff stated that a new position has been approved for the next fiscal year’s budget. This additional position will aid in distributing workload once filled. County staff demonstrated a technical understanding of plan reviews and overall program administration; however, the County will need to work to address the deficiencies listed above to ensure the

expectations and responsibilities of their delegated authority are being met. DEMLR staff will recommend to “Continue Delegation with Review” for a period of 9-months of the Buncombe County locally delegated program with a follow up report to be presented during the 2024 Q3 meeting.

This report has been prepared based on the formal review of the Buncombe County Erosion and Sedimentation Control Program conducted on October 11, 2023, and will be presented to the Sedimentation Control Commission during its 2023 Q4 meeting on November 16, 2023.