

Local Program Report to the SCC Buncombe County Follow Up, August 1, 2024

On November 16, 2023, a report was presented to the Sedimentation Control Commission (SCC) based on the formal review of the Buncombe County Erosion and Sedimentation Control Program conducted on October 11, 2023. The Commission voted to Continue Delegation with Review for 9 months with a follow up report to be presented during the 2024 Q3 meeting. During this 9 month continued review period, the County needed to address the deficiencies listed below.

- The disapproval 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 shall 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 shall 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 shall retain land ownership documentation in the project file.
- The County shall update its FRO form to include Registered Agent information and should verify this information with the NC Secretary of State's website prior to approval of a plan.
- 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 year's budget.

Follow Up:

During the continued review period, the County provided inspection reports for the projects initially reviewed. DEMLR conducted a formal follow up review on July 9, 2024. The County has updated the FRO form to include registered agent information and has updated the disapproval letter templates to include the correct deadline for when an appeal of the disapproval must be received by the County. The County has implemented a new landowner consent/authorization template letter for when the landowner and FRP differ; however, the language the County has utilized in this template is not fully capturing the intended consent. DEMLR staff reviewed two recently issued NOV's during the follow up review. One NOV had inconsistent dates with the inspection reports and was not clear on the deadlines that corrective actions must be completed by. During the calendar year through June, the County has conducted 78 plan reviews or re-reviews, issued 23 approvals and 18 disapprovals. During this period the County has conducted 1326 inspections, issued 13 NOV's and 1 SWO. The County currently reports 185 open projects. The County has begun to transition an existing staff member from the Stormwater program which has added approximately 0.5 FTE to the ESC program. During the follow up review, DEMLR staff conducted 3 site inspections and reviewed 1 additional project file.

1. Creekside Community (Site Inspection):

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. This project was inspected as part of the initial review. The County issued a NOV to this site on 10/13/2023, following the review. A Notice of Continuing Violations (NOCV) was issued on 10/25/2023 after finding corrective actions had not been completed. Staff noted that a number of the items listed in the NOV had been completed or were underway during a follow up inspection conducted on 11/17/2023 but that some items remained. The County conducted additional inspections on 12/15/2023 and 1/5/2024, noting missing baffles in basins and improperly installed construction entrances. Another NOCV was issued to this site on 1/24/2024. The County found the site to be in compliance and lifted the NOV on 2/2/2024. Staff conducted routine inspections on 2/15/2024, 3/14/2024, 4/11/2024, 5/17/2024 and 6/20/2024 and noted the site was out of compliance during each. Various repairs and maintenance needs along with areas needing adequate stabilization were noted in these reports. On the day of the follow up review, some roads had been paved with curb being poured and vertical construction had begun. Silt fence needed to be repaired or replaced throughout the site. Curb inlet protection measures had not been installed throughout the site and most of the drop inlet protection measures needed to be repaired or replaced. One skimmer basin appeared to have been installed with improper elevations and did not drain towards the skimmer device. A number of manholes appeared to have been uncovered to allow the site to drain into the stormwater system. This meant a bypassing of measures. State staff recommended that if the erosion control measures installed are inadequate during the

current phase of construction, a revised plan may be needed. The County set a compliance deadline of 7/24/2024 and stated that an NOV would be issued to this site following the review.

2. Hawthorne at Holbrook (Site Inspection)

This project consists of 22.0 acres disturbed for residential development in the Upper French Broad subbasin of the French Broad River basin. On the day of our review, roads had been paved and building foundations were being poured. Silt fence and silt fence outlets had been overwhelmed and losses into a stream buffer were noted in multiple locations below one retaining wall and a basin. The need to remove accumulated sediment and repair these areas had been noted in the previous two inspection reports. One skimmer basin did not have baffles installed and inlet protection measures throughout the site were missing or needed to be maintained. The other skimmer basins did appear to be installed properly and functioning. Completed slopes throughout the site had been matted and vegetation was establishing. This site was out of compliance and a compliance deadline was set for 7/24/2024. County staff stated that a NOV would be issued to this site as well.

3. Crossroads Community Development (Site Inspection):

This project consists of 35.74 acres disturbed for mixed commercial and residential development in the Upper French Broad subbasin of the French Broad River basin. On the day of our review, vertical construction was underway and sod along the entrance and around a completed building was being placed. Curb inlet sacks had been installed, however it appeared that a number of them were not functioning as designed and water was bypassing the sack. Rills had formed along uncovered areas and sediment was running along the paved parking areas throughout. Completed and inactive areas needed to be stabilized. The large basin onsite appeared to be functioning and maintained. One section of perimeter silt fence above a large slope had been pulled away and needed to be reinstalled. Drop inlet protection measures also needed to be maintained. No signs of offsite sediment were noted. Overall, this site was out of compliance.

4. Eagle Rock Cove Ph. 2 (File Review):

This project was received and reviewed during the continued review period. The County received the initial complete package for this project on 2/15/2024 and issued a letter of disapproval on 3/15/2024. The County received a complete revised plan package on 5/2/2024 and issued the letter of approval on 5/15/2024. The approved plan consists of 6.46 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, design calculations, letter of approval, a copy of the property deed and the FRO form. The County conducted both reviews and sent notice of the review decision within the statutory timeframes. The County has adjusted the language of the disapproval letter to include the correct deadline for requesting an appeal. The FRO form included all parties listed on the deed and the registered agent information.

Conclusion:

During the continued review period the County has worked to address the items noted during the initial review. The County has revised the template letters for their letters of disapproval to

include the proper language regarding the applicants right to appeal. Staff have also revised the FRO form to include a place for the registered agent information. The County created a template landowner consent letter but was not fully incorporating the required written consent language. After the follow up review DEMLR provided additional sample language and County staff stated the language would be updated immediately. Staff are verifying property ownership during plan reviews and are retaining a copy of the property deed in the project file. Staff stated that they had worked to close out projects which had been completed and not formally closed. The County has also analyzed staffing and has begun transitioning an existing employee from the stormwater program to the erosion control program. The County has also approved an additional new position which will split duties between the ESC and Stormwater program. Once this transition is complete and additional staff are hired, the County anticipates to have approximately 3.5 FTE contributing to the program. The County reported 2.5 FTEs at the time of the follow up review. DEMLR staff reviewed two recently issued NOVs and noted some inconsistencies with the dates of the inspections and separate deadlines for some corrective actions that were unclear. While the county has worked to clean up the open project list and has worked to conduct inspections at a higher frequency, the sites reviewed showed a history of non-compliance. The County will need to maintain a regular inspection frequency and must demonstrate an ability to bring sites into compliance in a timely manner.

Considering the conditions on site and documentation reviewed during the continued review period and follow up reviews, DEMLR staff will recommend to continue delegation with review of the Buncombe County Erosion and Sedimentation Control Program for 2 more quarters with a follow up report to be presented during the 2025 Q1 meeting. During a continued review period, the County will need to ensure that the dates of inspections referenced in NOVs are consistent and accurate. If there is an extended deadline for specific items such as submitting a revised plan, those should be made clear to avoid confusion of when corrective actions must be completed. Staff should also work to ensure that inspection reports fully depict the conditions and corrective actions that may be required. If corrective actions are not completed within the set deadline further action should be taken to ensure sites are brought back into compliance. Staff should document when corrective actions have been completed and if violations are new or continuing from report to report. Staff will need to provide inspection reports throughout the review period to demonstrate their ability to ensure that sites remain in compliance or can be brought back into compliance.

This report has been prepared based on the formal review of the Buncombe County Erosion and Sedimentation Control Program conducted on October 11, 2023, the subsequent continued review period and the formal follow up review conducted on July 9, 2024. This report will be presented to the Sedimentation Control Commission during its 2024 Q3 meeting on August 1, 2024.