

Local Program Report to the SCC Town of Clayton Follow Up, August 1, 2024

On May 23, 2024, a follow up report was presented to the Sedimentation Control Commission (SCC) based on the formal review of the Town of Clayton Erosion and Sedimentation Control Program conducted on July 6, 2023, the subsequent 6-month continued review period, a formal follow up review conducted on February 2, 2024, and the subsequent 3-month continued review period. The Commission voted to place the Town's program on probation with a follow up report to be presented during the 2024 Q3 meeting on August 1, 2024. During this probationary period, the Town needed to address the remaining deficiencies listed below which were noted during the initial and follow up reviews.

- 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 calendar days of receipt of a new plan and within 15 calendar days of receipt of a revised plan. Staff are to ensure that plans are being reviewed and notice of the official review decision is being sent within the statutory timeframes. When a plan is found to be inadequate, notice of the plan's disapproval shall be sent. These notices are to be sent with the ability to track when the applicant has received the notice. These notices should also include language notifying the applicant of their right to appeal the disapproval.
- When the Financially Responsible Party is a company/firm, the registered agent information should be included on the FRO form.

Follow Up:

During the probationary period from April through June, the Town conducted 25 plan reviews or re-reviews, issued 5 approvals and 20 disapprovals. The Town has conducted 264 inspections and issued 2 NOVs. No CPAs, SWOs or building permit/inspection holds were issued during this period. The Town has utilized a part-time staff who has been assisting with the update of template letters and forms as well as helping to address some of the administrative burden. The Town has also recently filled the vacant Stormwater Engineer position and reported approximately 2 full time equivalent (FTE) staff contributing to the program at the end of June. This is an increase of 0.5 FTE from the previous months. The Town has worked with DEMLR to update the language within the template letter of disapproval and stated that when plans are found to be inadequate, a letter of disapproval is being sent via certified mail. The Town also provided the dates which the official review decision was sent to the applicant and the date which the Town received the respective plan for all projects approved or disapproved during the month of June. DEMLR staff conducted a formal follow up review on July 11, 2024. At the time, the Town reported 63 open projects. During the follow up review, DEMLR staff reviewed 3 project files.

1. Clayton Pawville (Recently Disapproved):

The plan for this project was reviewed and disapproved during the probationary period. This project is a proposed 2.2 acres disturbed for commercial development. The plan was

disapproved by the Town, and this was the 3rd review cycle conducted on this project. The Town received this revised plan on 6/3/2024 and a letter of disapproval was sent on 6/27/2024. The disapproval letter included language notifying the applicant of their right to appeal the decision and the reasons for disapproval. The registered agent information was not included on the FRO form nor was this information noted in the disapproval letter. The disapproval letter was sent with the ability to track when it was received by the applicant. However, the official review decision was not sent to the applicant within 15 days of receiving the revised plan. One of the items mentioned as a reason for disapproval in the disapproval letter was for the applicant to provide sediment trap sizing calculations and dimensions for each trap. DEMLR staff discussed the need for the dimensions and layout of proposed sediment traps to not only be provided through the calculations but to be shown on the plans themselves in lieu of a generic symbol as well as the inclusion of a drainage area map to demonstrate that sediment traps are adequate measures for the proposed drainage areas. These items were not clearly requested in the reasons for disapproval listed in the disapproval letter and staff recommended clarifying in future submittals if needed.

2. Candlewood Townes (Recently Approved):

The plan for this project was reviewed and approved during the probationary period. This project consists of 3.75 acres disturbed for commercial development. The project file contained the approved plan, a copy of the property deeds, landowner consent letters, and the FRO form. The registered agent information for the FRP was not provided within the FRO form. The Town conducted 5 total review cycles on this plan. The most recent revised plan was received on 5/29/2024 and the letter of approval was sent to the applicant on 7/10/2024. The notice of the official review decision was not sent within the appropriate 15-days from receiving the revised plan.

3. Aldi (Recently Approved):

The plan for this project was reviewed and approved during the probationary period. The project file contained the approved plan, a copy of the property deed and the FRO form. The registered agent information for the FRP was included. The Town conducted 4 total review cycles on this plan. The most recent revised plan was received on 6/4/2024 and the letter of approval was sent to the applicant on 7/10/2024. The notice of the official review decision was not sent within the appropriate 15-days from when the town received the revised plan.

Conclusion:

The Town has recently filled the vacant stormwater engineer position and has brought on a part-time employee who contributes some time to the program. Official language stating that the plan is disapproved and notification of the applicant's right to appeal the decision has been added to the letters of disapproval. While notification of a formal review decision is now being sent to the applicant, notification is not always being sent within the appropriate 30- or 15-day timeframe. Town staff stated that other departments were implementing a pilot program for plan reviews, and this may have contributed to a delay in some plan review decisions being sent. Staff stated that they have recently implemented a new method of tracking reviews to ensure that plans are reviewed and notice of the review decision is sent within the appropriate

timeframe moving forward. The registered agent information for the financially responsible party was only included on the FRO form for one of the two recently approved plans and was not included on the FRO form for the recently disapproved project. This item was not mentioned in the letter of disapproval.

The Town still needs to ensure that all plans are being reviewed and notice of the official review decision is sent within the required timeframes. Staff also need to ensure that whenever the financially responsible party is a company or firm, the registered agent information must be included on the FRO form. This applies to both in-state and out-of-state companies.

DEMLR staff recommend to continue the probationary period for an additional quarter with a follow up report to be presented to the SCC during the 2024 Q4 meeting. During this probationary period, the Town must demonstrate the ability to conduct all plan reviews and provide notice of the formal review decision within the required statutory timeframes. Staff must also ensure that the registered agent information is included on the FRO form whenever the FRP is a company or firm. Town staff stated that newly hired staff and the recently implemented review tracker will aid in ensuring plans are reviewed within the timeframes and that another quarter will provide enough time for the Town to demonstrate its ability to fulfill the requirements and expectations of the delegated local program.

This report has been prepared based on the initial formal review and follow up reviews conducted on 7/6/2023, 2/2/2024, 7/6/2024, the respective 6-month and 3-month continued review period, and the 3-month probationary period. This report will be presented to the SCC during the 2024 Q3 meeting on August 1, 2024.