

## **Local Program Report to the SCC Durham City/County, August 1, 2023**

On June 29, 2023, personnel from NCDEQ, DEMLR conducted a formal review of the Durham City/County Erosion and Sedimentation Control Program. The Program was last reviewed and presented to the Sediment Control Commission in July 2017. The Program requires an erosion and sediment control plan for projects disturbing greater than 20,000 sq ft. Jurisdiction of the program covers all Durham County including Durham City corporate limits. The Program has 8 staff who contribute approximately 4.5 full time equivalent (FTE) positions to the program. Staff stated that the City/County has approved an additional inspector position in the next FY budget, which they plan to hire in the coming months. From June 2022 through May 2023, the Program conducted 141 plan reviews or re-reviews, issued 116 approvals and no disapprovals. During this period the Program also conducted 2,223 inspections and issued 57 Notices of Violation, 0 Civil Penalty, and 0 Stop Work Order. The authority to issue stop work orders was recently added to the local ordinance and approved by the City and County in March 2023. When plans are submitted to the Program, they are reviewed and either approved or, if found to be inadequate, comments are sent back to the applicant; however, these comments do not contain an official plan decision and are not being sent with the ability to track receipt. When plans are found to be inadequate, a Letter of Disapproval must be sent and include the necessary language. Letters of Disapproval must be sent with the ability to track receipt by the applicant as the applicant can appeal this decision if they file a request within 15 days of receiving the written notice of disapproval. At the time of review the Program had 286 open projects. DEMLR staff looked at four project files for the review and conducted site inspections on two of those projects.

The following is a summary of projects reviewed:

### **1. Coffey Residential Upgrades (paperwork review only due to time constraints):**

This project consists of 3.63 acres disturbed for residential development and is located within the Little River Sub-basin of the Neuse River Basin. The project file contained the approved plan, letter of approval, design calculations, property deed, previous inspection reports, land disturbing permit, FRO form, and letter of consent between landowner and financially responsible party (FRP). The FRO form was not filled out correctly and only one of two landowners signed the letter of consent. The Program received the complete application for this project on February 3, 2022, and approved it on February 28, 2023. The Program conducted the plan review and rendered a decision within the statutory timeframe. A land disturbing permit was issued on March 1, 2023. The approved plan appeared to be adequate. Construction on this project began in March 2023 and the Program had conducted 5 inspections prior to our review. No NOV or Civil Penalties had been issued for this project.

### **2. The Building Center:**

This project consists of 18.68 acres disturbed for commercial development and is located within the New Hope River Sub-basin of the Cape Fear River Basin. The project file contained the approved plan, letter of approval, design calculations, property deed, previous inspection reports,

land disturbing permit, and FRO form. The Program received the complete application for this project on February 17, 2022, and approved it on March 7, 2022. The Program conducted the plan review and rendered a decision within the appropriate timeframe. A land disturbing permit was issued on January 10, 2023. The approved plan appeared to be adequate. Construction on this project began in January 2023 and the Program had conducted 5 inspections prior to our review. No NOV or Civil Penalties had been issued for this project.

At the time of the review, the site had been graded, E&SC measures had been installed and vegetative groundcover had been established across the site. No activity at the site had occurred since April 2023. The silt fence outlet at the southwest corner of the site needed to be refreshed. At sediment basin #2, the diversion ditch entering the basin needed to be stabilized and stable conveyance of water into the basin needed to be installed. The riprap dissipator pad at both sediment basin outlets needed to be refreshed. Baffles needed to be extended at sediment basin #1. The clean water diversion ditch needed to be to be stabilized in some areas. Overall, this site was in compliance, with a few maintenance needs noted.

### **3. Signature Elevate at the Park:**

This project consists of 17.20 acres disturbed for residential development and is located within the New Hope River Sub-basin of the Cape Fear River Basin. The project file contained the approved plan, letter of approval, design calculations, property deed, previous inspection reports, land disturbing permit, and FRO form. The Program received the complete application for this project on July 7, 2021, and approved it on July 28, 2021. The Program conducted the plan review and rendered a decision within the appropriate timeframe. The land disturbing permit was issued March 24, 2022. The approved plan was missing delineation of limits of disturbance on the northeastern and eastern side of the site and maintenance notes were missing for some proposed measures. Construction on this project began in March 2022 and the Program had conducted 19 inspections prior to our review. The Program issued an NOV to this project on January 24, 2023, for failure to follow the approved plan, failure to establish groundcover, and failure to install or maintain measures. This NOV was resolved by March 2, 2023. The site received an NOV on June 22, 2023, for offsite sediment and failure to establish groundcover.

At the time of the review, the site was still under this NOV. Apartment building construction was underway, and the roads had been paved throughout most of the site. The silt fence needed to be toed in in some areas. Offsite sediment into a wetlands area needed to be removed and wetland vegetation reestablished. The stone at the silt fence outlet near Basin 1 needed to be refreshed. Perimeter slopes had a thin layer of straw but needed to be properly stabilized. The baffles at both basins were underwater and needed to be extended. Basin 1 had a tree limb on the skimmer that needed to be removed to ensure it functions properly and the skimmer at Basin 2 was missing a leg. Basin slopes required repair and stabilization. Stable inlet and outlet protection was needed at basins. Overall, this site was out of compliance. Several of the issues observed during the review, including the offsite sediment, had been noted by Durham City/County staff in the June 22, 2023, NOV. At the time of the review, the deadline for corrective actions noted in the NOV had not passed. Program staff reinspected after the NOV deadline on July 5, 2023, and issued a Continuing Notice of Violation for offsite sediment, failure to establish groundcover, and failure to provide measures.

**Positive Findings:**

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

- The Program 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 greater than 20,000 square feet, and projects disturbing greater than 12,000 sq. ft. when located within sensitive water quality areas, including Lake Michie/Little River Critical Area, Lake Michie/Little River Protected Area, Falls/Jordan Critical Area, and Eno River Critical Area. The Program also requires a permit for single lot development projects that disturb less than 1 acre. Single lot permits require the applicant to provide financially responsible party information and a copy of the deed.
- The Program requires a preconstruction meeting for all projects.
- An erosion and sediment control bond of \$4000 per acre is required for sites over 5 acres.
- The Program 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.
- The Program has created standard specifications and details for E&SC measures and have made them available online for applicants to use when submitting plans. This provides consistency and ensures that construction and maintenance notes are included for each measure.
- Durham City and County recently updated their Erosion Control Ordinance to include additional requirements for areas with Triassic soils, including larger basin size with a four-day-minimum dewatering time, the use of flocculants to reduce turbidity in discharge leaving the site, and stabilization of moderate and steep slopes with matting or hydroseeding to provide groundcover more rapidly. The ordinance also requires the submittal of a flocculant application plan as part of the erosion control plan. These updates to the erosion and sedimentation control ordinance were approved by the Sedimentation Control Commission in May 2023.
- The Program has created a GIS dashboard for Staff to use that shows land disturbing project data, including compliance status of sites, when sites were last inspected, and which have underlying Triassic soils.

**Issues Noted and Required Actions:**

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

- The landowner listed on the FRO form for one of the projects did not match the landowner on the deed.
- When the financially responsible party differed from the landowner, written consent from the landowner was retained in the project file; however not all landowners listed on the deed had given consent.
- Once a complete application is received, plans are reviewed, and either approved or review comments are sent back to the applicant. Official notification of the plan review decision is not always being sent within the required statutory timeframes.

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

- Staff should verify that the landowner listed on the FRO matches the deed.
- 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). Ensure all landowners on the deed have given written consent.
- 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 notice of the official review decision is being sent within the statutory timeframes. The applicant has the right to appeal a disapproval or modification if written demand for a hearing is made within 15 days after receipt of written notice of the disapproval or modification. G.S. 113A-61(c). Notices of Disapproval should be sent with the ability to track when the applicant has received the notice to ensure any request for appeal has been made in accordance with the statutory timeframe.

**Recommendations for Improvement:**

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

- It is recommended that the Program continue to monitor and provide guidance for NPDES violations including operating without a permit, improper concrete washout, and fuel containment onsite during inspections. Note possible NPDES violations and refer to the NCDEQ Raleigh Regional Office when necessary.

**Conclusion:**

Overall, DEMLR found the Durham City/County Locally Delegated Erosion and Sedimentation Control Program to be robust but had a few minor deficiencies. The Program will need to verify that the landowner listed on the FRO form matches the landowner on the deed and ensure all landowners on the deed have given written consent when they differ from the FRP. When the Program receives erosion and sediment control plans, they are reviewed within 30 days and either approved or review comments are sent back to the applicant. The Program will need to ensure that notification of the official plan review decision (approval, approval with modification, or disapproval) within the required statutory timeframes. The Program has a more restrictive criterion than the State as to when an E&SC plan is required and the design criterion for E&SC measures. The Program has updated its ordinance to include additional requirements in areas with Triassic soils to reduce erosion, sedimentation, and turbidity in the stormwater discharging from the site. In addition, the Program requires a preconstruction meeting for all projects and an E&SC bond. The Program has created and made available standard specifications and details for E&SC measures. During the review, the Program demonstrated a thorough understanding of the enforcement processes and tools which are delegated to them. Program staff noted all areas seen by state staff on site and demonstrated their ability to conduct adequate inspections.

Current staffing levels appear to be adequate; however, with the increase in construction projects in the County, the addition of staff approved in the upcoming budget year will aid in the distribution of workload and ensure any future increase in workload will be sustainable. The Program demonstrated their ability to effectively implement the local program's delegated authority. DEMLR staff will recommend to "Continue Delegation" of the Durham City/County locally delegated program.

This report has been prepared based on the formal review of the Durham City/County Erosion and Sedimentation Control Program conducted on June 29, 2023, and will be presented to the Sedimentation Control Commission during its 2023 Q3 meeting on August 1, 2023.