

Local Program Report to the SCC

Town of Boone, November 15, 2022

On September 15, 2022, personnel from NCDEQ, DEMLR conducted a formal review of the Town of Boone Erosion and Sedimentation Control Program. The Town of Boone program was last reviewed on June 22, 2017. The Town requires an erosion and sediment control plan for residential development projects disturbing greater than 0.5 acre and commercial development projects disturbing greater than 2,500 square feet. The Town also requires an FRO form for all land disturbing projects regardless of size. Jurisdiction of the Town covers all areas within the town limits. During the period from September 2021 through August 2022, the Town conducted 77 plan reviews or re-reviews, issued 49 plan approvals and 28 disapprovals. During this same period the Town conducted 190 inspections and issued 6 stop work orders. Town staff reported that an NOV was recently drafted but not issued as the contractor mobilized and completed all corrective actions immediately following a meeting onsite with Town staff. In addition to NOVs, CPAs and SWOs the Town can place holds on various building permits or inspections throughout the construction process to bring sites into compliance. The Town has 1 staff who contributes approximately 0.5 full time equivalent to the program. The Town currently receives a complete application and conducts a review of the plan. When plans are found to be inadequate the plan is not approved, and comments are sent back to the applicant. Under this process no official review decision is being rendered until an approvable plan has been submitted. At the time of our review the County had 26 open projects. During our review of the program, we looked at three project files and conducted site inspections on those projects.

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

1. O'Reilly Auto Parts:

This project consists of 0.79 acres disturbed for commercial development. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports, the FRO form and written landowner consent. A copy of the property deed was not retained in the project file. The Town received the initial complete application for this project on 4/12/2021 and went through 5 review cycles before being approved on 4/20/2022. The approved plan appeared to be adequate. This project began construction in May 2022 and the Town had conducted 5 inspections prior to our review. No NOV's or CPAs had been issued to this project. On the day of our review, the building foundation had recently been poured and grading of the parking lot areas was being completed. The retaining wall and slope above the wall along the back of the site had been completed and vegetated. The slope below the retaining wall needed to be stabilized. Silt fence around the site appeared to be well maintained. Areas of silt fence previously noted on Town inspection reports had been repaired or replaced and additional wattles had been added. Installation of the sidewalk along the front of the site was underway and Town staff stated that the contractor has been reminded to reinstall silt fence along the back of the sidewalk once complete. The construction entrance appeared maintained and functioning properly. Overall, this site was in compliance and no signs of offsite sedimentation were noted.

2. The Collection on 421:

This project consists of 2.14 acres disturbed for residential development. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports, the FRO form and written landowner consent. A copy of the property deed was not retained in the project file. The Town received the initial complete package for this project on 6/29/2021 and went through 2 review cycles before being approved on 10/27/2021. The approved plan appeared to be adequate. Construction on

this project began in November 2021 and the Town had conducted 7 inspections prior to our review. No NOVs or CPAs had been issued to this site. Town staff stated that during an inspection conducted on 8/15/2022 the site was found to be out of compliance and noted areas of minor sediment loss. The Town drafted an NOV as a result of this inspection but did not issue the NOV as the contractor was responsive and shutdown all work on the site immediately to address all corrective actions. The Town conducted an official follow up on 8/30/2022 and found the site in compliance. On the day of our review, grading was underway, and signs of previous repairs could be noted. The areas where minor losses had occurred had been repaired, sediment that was lost had been removed and the areas seeded. The sediment trap had been partially cleaned out. The diversion ditch to the skimmer basin did not appear that it would function properly due to vehicle traffic crossing during grading activities. Town staff indicated that the site grader was previously reinstalling the ditch at the end of each day to ensure proper functioning. It was indicated that there was a new site grader and a reminder to continue to reinstall the diversion ditch would be given. The large steep slope at the back of the site had recently been completed and would need to be stabilized within the required timeframe. Sections of silt fence throughout the site needed to be repaired and toed in properly to prevent undermining. Overall, this site was out of compliance needing to maintain and clean out the basin and trap and repair silt fence throughout the site. No signs of further offsite sedimentation were noted.

3. Skyline Terrace:

This project consists of 4.90 acres disturbed for a mixed residential and commercial use development. The project file contained the approved plan, letter of approval, design calculations, and the FRO form. A copy of the property deed was not retained in the project file and no inspections had been conducted yet. The Town received the initial complete package for this project on 6/2/2022 and went through 2 review cycles before being approved on 8/4/2022. The approved plan appeared to be adequate. No NOVs or CPAs had been issued to this project however, the Town did issue a Stop Work Order upon finding that ground was broken prior to all appropriate permits being obtained. The coverage under the NCG01 permit had not been obtained and a preconstruction meeting had not been scheduled. It was also discovered that site grader had not been given the most current set of approved plans and had begun installing measures that had not been approved. At the time of our review, all appropriate permits had been obtained and the SWO had been lifted. During our inspection of the site, demolition of the existing buildings had been completed and perimeter measures had been installed. The diversion ditch had been installed and matted. The sediment basins appeared to be installed properly but basin slopes needed to be stabilized. Silt fence throughout the site appeared to be installed and functioning. Overall, this site was in compliance and no offsite sedimentation was noted.

Positive Findings:

During our review we noted a few positive aspects about the Town of Boone Erosion and Sedimentation Control Program including:

- The Town has a more restrictive criterion than the State as to when an approved ESC plan is required. The Town requires an approved ESC plan for all residential projects disturbing greater than 0.5 acres and all commercial projects disturbing greater than 2,500 square feet. The Town also requires financially responsible party information for all projects conducted within the Town regardless of the size.
- The Town provides reference to the NCG01 permitting process within their letter of approval. Town staff are providing guidance and monitoring for NCG01 violations while onsite and referring violations to the Winston-Salem Regional Office when necessary.
- The Town requires any 404/401 permits and trout buffer waivers be obtained prior to approval of the ESC plan.

- The Town requires a preconstruction meeting for all projects and requires that any additional permits, including coverage under the NCG01 permit (when applicable) have been obtained.
- The Town can place holds on various building permits or building inspections throughout the construction process as additional tools to bring sites back into compliance.

Issues noted and Required Actions:

During our review we found that the Town of Boone Erosion and Sedimentation Control Program had a few deficiencies including:

- A copy of the property deed was not kept in each project file.
- Once a plan is reviewed and found to be inadequate, the Town is sending back review comments to the applicant/designer, but no official plan review decision is rendered until the plan is approved.
- Certain sections of the local ordinance are devoid or no longer adhere to the most recent state statutes or state administrative code and certain sections of the model ordinance are not reflected in the current ordinance.

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

- Documentation of land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.0118(c). A copy of the property deed should be kept in each project file.
- Once a complete application is received, plans are to be reviewed, and the person submitting the plan notified that this has been approved, approved with modifications, or disapproved within 30 days of receipt of a new plan and 15 days for a revised plan. G.S. 113A-64(b). Once a plan has been reviewed, written notification of the review decision must be sent to the applicant. When plans are found to be inadequate and disapproved, the notification must be sent with the ability to track receipt because the applicant has the right to appeal the review decision if request is made within 15-days of receiving the disapproval notification. Failure to issue a review decision within the appropriate timeframes will constitute an automatic approval of a plan per 15A NCAC 04B.0118(a).
- The Commission has approved an updated Model Ordinance which can be found on the [NCDEQ Local Erosion and Sedimentation Control Programs website](#). The Town should ensure that all sections of the model ordinance are reflected in the local ordinance. Note that any substantive deviations from the Model Ordinance will require a formal review and approval by the Sedimentation Control Commission.

Recommendations for Improvement:

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

- The Commission has drafted a Memorandum of Agreement (MOA) between themselves and locally delegated programs. This MOA outlines the responsibilities of both the Commission and the locally delegated program. It is highly encouraged that the Town enter this MOA with the Commission.

Conclusion:

During our review we found that the Town of Boone locally delegated erosion and sedimentation control program had a few deficiencies. The Town will need to adjust the plan review process to ensure that a review decision is made, and notification of that decision is sent to the applicant within the required timeframes. The Town will also need to retain a copy of the property deed in project files and

update the local ordinance. The Town has a more restrictive criterion than the state as to when they require an approved ESC plan and are requiring FRP information for all projects regardless of size. The Town's monthly activity reports indicate a low inspection frequency between September 2021 and February 2022. This can be attributed to staff turnover. However, in recent months inspection frequency has returned to a monthly basis. Approved plans appeared to be adequate and review comments sent back to the applicant indicated a comprehensive plan review. During our inspections, it appeared that measures were being installed and generally well maintained. Required corrective actions that were noted on previous inspection reports appeared to have been completed within the deadline given by the Town. Town staff noted all areas seen by State staff and demonstrated their knowledge and experience. The Town demonstrated their ability to effectively implement the local program's delegated authority. DEMLR staff recommends to "Continue Delegation" of the Town of Boone locally delegated program.

This report has been prepared based on the formal review of the Town of Boone Erosion and Sedimentation Control Program conducted on September 15, 2022 and will be presented to the SCC during its 2022 Q4 meeting on November 15, 2022.