

## **Local Program Report to the SCC Town of Clayton, February 21, 2024**

On August 1, 2023, a 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 Commission voted to “Continue Delegation with Review” for a period of 6 months the administration of the Sedimentation Pollution Control Act of 1973 to the Town of Clayton. A follow up report will be presented to the SCC during the 2024 Q1 meeting. The following corrective actions needed were noted during the initial review:

- The Town should ensure that both permanent and temporary seeding specifications are included within the plans prior to approval. Staff should also verify that the size of measures are reflected in the supporting design calculations. It is also recommended that both the skimmer and orifice size are depicted in the plan drawings and not only shown in the calculations table, even if the table is included in the plan set.
- 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. 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). When a plan is found to be inadequate, notice of the plan disapproval should be sent. These notices should be sent with the ability to track when the applicant has received the notice.
- Erosion and sedimentation control plans shall be disapproved unless the application includes an authorized statement of financial responsibility and documentation of property ownership. 15A NCAC 04B.0118. Staff should ensure that the disturbed acreage shown on the proposed plan matches that on the FRO form and that all FRO forms are notarized.
- A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Commission within 30 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. G.S. 113A-64.2. The authority to receive, consider and resolve remission requests for civil penalties has been delegated to Local Programs by the Sedimentation Control Commission (SCC). If the local government and violator are unable to resolve the remission request, the request should be referred to the Civil Penalty Remissions Committee for a final agency decision. The Town should include language notifying a violator of their option to request remission and should include the appropriate waiver of the right to a contested case hearing form in all civil penalty assessment letters. A template for a civil penalty assessment letter, the waiver of the right to a contested hearing form, the Remission Authority Delegation from the SCC, and

the adopted Remission Guidelines for Local Programs can be found on the [Local Programs Reporting SharePoint site](#).

- During the initial review, a civil penalty issue by the Town in February 2023 was reviewed. The assessment document did not include language notifying the violator of their option to request remissions or the accompanying documentation as noted above. DEMLR staff discussed this process with Town staff at the time. The Town has not issued any Civil Penalties during the continued review period but should ensure that this language and documentation is included in future civil penalty assessments.

### **Summary of Continued Review Period:**

During the continued review period, the Town has provided inspection reports and updates for various projects. The Town has also hired and began training a full-time field inspector. The Town has begun the process of updating the local ordinance to be in line with the most recent Model Ordinance and DEMLR staff have conducted joint inspections to provide oversight and some additional informal training. Town staff have also obtained the NCDOT Level II Erosion and Sediment Control, and the Stormwater Inspection and Maintenance Certifications. DEMLR staff conducted a day of joint inspections on 11/30/2023 and 12/7/2023 . A formal full-day follow up review was conducted on 2/2/2024. During the Continued Review period from August through December 2023, the Town reviewed or re-reviewed 34 plans and issued 7 approvals. The Town reports that 28 plan disapprovals were issued during this period. The Town is still reviewing plans and when found to be inadequate, sending review comments back to the applicant for them to address. Through this process, no official notice that the plan is being disapproved is sent. For reporting purposes, the Town counted each time a plan was reviewed, found to be inadequate and comments sent back to the applicant as a disapproval. The Town conducted 325 inspections and issued 7 NOVs. The Town is still contracting with a consulting engineering firm to conduct plan reviews while the Stormwater Engineer position remains vacant. Staff stated that this position was recently readvertised. At the time of the follow up audit, the Town reported having 56 open projects.

The following is a summary of a few projects reviewed throughout the continued review period and during the follow up review on 2/2/2024.

#### **1. US 70 Outparcels (File Review Only):**

This project was recently approved during the continued review period. A file review was conducted during the follow up audit on 2/2/2024. This project consists of 3.0 acres disturbed for commercial development in the Upper Neuse Subbasin of the Neuse River Basin. The project file contained the approved plan, a copy of the property deed, design calculations and the FRO form. Written consent from the landowner for the financially responsible party (FRP) to submit the ESC plan and conduct the land disturbing activity had not been obtained. The Town received the complete application for this project on 5/31/2023 and sent the first set of review comments back to the applicant on 7/13/2023. This review was not conducted within the 30-day review timeframe for new plans and no official review decision was sent to the applicant. This plan went through 3 additional review cycles before being approved on 12/1/2023. Not all subsequent review cycles were completed within the 15-day timeframe for revised plans and no official letter

of disapproval was sent when review comments were sent back to the applicant. The FRO form was notarized, and the disturbed acreage listed matched that which was shown on the plans. The Registered Agent information for the company listed as the FRP was missing. The approved plans were missing temporary and permanent seeding specifications.

## **2. Highgate Ph. 5 (Field Review):**

This project was inspected during a joint inspection during the continued review period on 11/30/2023. The Town issued a NOV to this site on 12/13/2023, noting repairs needed on silt fence, the basin, and inlet protection devices. The NOV also noted that some inlet protection devices had not been installed, sediment was being tracked out of the site onto public roads and exposed slopes and graded areas were not being stabilized within the required timeframes. The Town conducted a follow up inspection on 1/5/2024 and noted that corrective actions were underway and nearing completion but that some inlet protection measures still needed repairs and some areas still needed to be stabilized. The NOV was lifted following an inspection on 2/1/2024. A site inspection was conducted during the follow up review on 2/2/2024. The lot pads had been graded and vegetation was establishing. The disturbed areas along the streets had been seeded and mulched with straw. Inlet protection measures and silt fence had been repaired and maintained throughout site. State staff agreed with Town staff's findings that all corrective actions from the NOV had been completed and the site was in compliance.

## **3. Southside Christian School:**

This project was inspected during a joint inspection during the continued review period on 11/30/2023. The Town conducted inspections on this site on 12/12/2023, 12/20/2023, 1/4/2024, and 1/26/2024. This site was out of compliance during the most recent inspection conducted by the Town needing repairs to diversion ditches and check dams throughout the site and minor sediment loss at the silt fence outlet below the skimmer basin and sediment tracking onto the adjacent road. An inspection was conducted during the follow up review on 2/2/2024. An area adjacent to the site had recently been cleared and Town staff stated that when they asked the developer about this area they were told that it would be used to stockpile material. State staff discussed that this area was beyond the limits of disturbance and not otherwise permitted, a revised plan including this area would be needed. The previously noted sediment loss at the silt fence outlet below the skimmer basin had been retrieved. The diversion ditches had been matted and one ditch had been revised to ensure positive drainage to the basin. The skimmer basin itself appeared to be well-maintained. It appeared that due to the topography of the site a large portion of the drainage area was not being directed to the skimmer basin as designed. State staff discussed the need for a revised plan to show how the drainage area not being directed to the skimmer basin would be treated during this phase of construction. The construction entrance needed to be refreshed. Silt fence and silt fence outlets throughout the site appeared to be maintained or recently repaired. No offsite sediment was noted during the inspection. This site was out of compliance and a revised plan would need to be submitted, reviewed, and approved to address how the drainage areas will be treated during this intermediate phase of grading and to add the areas disturbed outside of the approved LOD.

## **4. The Walk at East Village Ph. 4:**

This project was inspected during the follow up review on 2/2/2024. The Town recently issued an NOV to this site on 1/12/2024 for offsite sediment and failing to maintain measures. The found that all corrective actions had been completed and the NOV had been lifted during a follow up inspection on 1/30/2024. On the day of our review, the completed lot pads and areas below the retaining wall had been seeded and mulched with straw. The silt fence outlet that had previously been overwhelmed had been repaired and the sediment loss had been retrieved. The skimmer basin and inlet protection measures throughout the site appeared to be maintained. A rill had begun to form at the end of one of the retaining walls and needed to be repaired and then stabilized. Stable conveyance from the diversion ditch into the basin needed to be installed or the steep slope of the ditch that was cut into the basin should be reduced and then stabilized. The skimmer device appeared to be clogged and was not functioning. Individual lot measures had been installed on lots where homebuilding had begun, and crews were cleaning the internal streets while we were onsite. State staff agreed that all corrective actions noted on the NOV had been completed. Overall, this site was out of compliance for needing to ensure the skimmer device was functioning properly and for needing to establish stable conveyance from the diversion ditch into the basin. These areas were also noted by Town staff.

**Conclusion:**

Throughout the continued review period, the Town has provided follow up and inspection reports for various projects. The Town has onboarded a full-time erosion control inspector and continues to train them. This inspector has obtained the NCDOT's Level II Erosion and Sediment Control and Stormwater Inspection and Maintenance Certifications. The Town has inspected sites on a monthly frequency over the past 6 months. The Town is still contracting with a consulting firm to conduct plan reviews while the Stormwater Engineer position remains vacant. Staff stated that the position was recently reclassified and readvertised. Over the continued review period, the Town has issued NOVs when necessary to bring sites back into compliance. The new full time inspector has demonstrated a general understanding of erosion control practices and has continued to develop a technical understanding while onsite. Town staff are noting most of the items seen by State staff during inspections.

During the follow up review the project file for a recently approved plan was reviewed. The project file was missing a letter of consent from the landowner and the registered agent information on the FRO form. Temporary and permanent seeding specifications were still missing from the approved plan. During the follow up review DEMLR staff also reviewed a plan that had recently been disapproved. This plan included proposed measures shown outside of the limits of disturbance and was also missing the seeding specifications. Neither of these items were included in the consultant's review comments that were provided to the Town nor the Town's review comments letter that was sent to the applicant. The Town is still not always meeting the appropriate plan review timeframes and is not sending an official plan review decision when plans are found to be inadequate. Town staff should ensure that all necessary items and details are included in a plan prior to approval. The Town still needs to ensure that plan reviews and notice of the official plan review decision is being sent to the applicant within 30-days for new plans and 15-days for revised plans. When plans are disapproved, the notice of the disapproval should include official language stating such and that the applicant has the right to appeal the disapproval. Notice of disapprovals and approvals with modifications should be sent with the

ability to track receipt by the applicant. The applicant can make a written request appealing the disapproval or modifications within 15 days of receiving the notice and therefore the Town must be able to track when the applicant received the disapproval or modifications notice. It is also strongly recommended that Town staff meet with their consultant to discuss missing items from plans and to conduct periodic quality control reviews to ensure that plan reviews are being adequately conducted.

The Town has worked to address the inspection infrequency and has onboarded a full-time inspector. Staff noted most areas seen by State staff while onsite and will continue to develop their technical knowledge as time goes on. A number of deficiencies within the plan review process and project files were noted during the follow up review. These issues were noted during the initial audit in July and have yet to be addressed. Staff stated that once the vacant Stormwater Engineer position is filled, these issues would be able to be resolved quickly. However, this position has been vacant for an extended period of time and the Town must work to address these deficiencies immediately. The Town has developed a contract with a consultant to facilitate plan reviews while this position is vacant and must still meet all of the requirement and expectations as a locally delegated program.

DEMLR staff recommend to continue delegation with review for another 3 months with a follow up report to be presented to the SCC during the 2024 Q2 meeting. During this period, The Town must work to address the remaining deficiencies noted during the initial review, continued review period and the follow up review.