

Local Program Report to the SCC Town of Southern Pines, February 21, 2024

On November 1, 2023, personnel from NCDEQ, DEMLR conducted a formal review of the Town of Southern Pines Erosion and Sedimentation Control Program. The Town of Southern Pines Program was last formally reviewed on 9/17/2017. The Town requires a Major Erosion Control Plan for all projects disturbing 30,000 sq. ft. or more, and a Minor Erosion Control Plan if a project is disturbing less than 30,000 sq. ft. and is located within a common plan of development. The Town also requires an Erosion Control Compliance Form for any project disturbing less than 30,000 sq. ft. but is not located within a common plan of development. A minor erosion control plan requires the financially responsible party information, a standard lot layout plan with measures and construction details. The Town has developed a standard plan set that can be used for these. An erosion control compliance form requires similar information to a minor erosion control plan. Jurisdiction of the program covers the Town's corporate limits and extraterritorial jurisdiction (ETJ). The program consists of 3 staff who contribute approximately 1.50 full time equivalents (FTE). During the previous year from October 2022 through September 2023, the Town reported they conducted 66 plan review or re-reviews, issued 18 plan approvals, 48 disapprovals and conducted 615 inspections. When a plan is found to be inadequate, the Town is sending review comments back to the applicant, however no official disapproval letter is being sent at the time. The Town is documenting inspection findings within an internal spreadsheet for each project, however, staff stated that formal inspection reports were not being generated unless an NOV was being issued. During the previous year, the Town issued 7 NOVs, 0 CPA, and issued 1 SWO. The Town also has the ability to place a hold on building permits or building inspections and have utilized this tool once in the previous year. The Town requires that a preconstruction meeting be held for all projects and the grading permit is only issued once the initial ESC measures have been installed and received approval from the Town inspector.

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

1. Water Works Ph. 1:

This project consists of 6.28 acres disturbed for commercial development and is located within the Upper Cape Fear subbasin of the Cape Fear River Basin. The project file contained the approved plan, letter of approval, a copy of the property deed, and the FRO form. The complete application was initially received by the Town on 5/30/2022 and was approved on 11/1/2022. The Town conducted 2 review cycles prior to approving the plan. The Town found that the plan was adequate and noted that the plan was approved in August 2022 but did not send the official letter of approval until the entire development package was approved on 11/1/2022. When the plan was found to be inadequate, review comments were sent back to the applicant, however, no official disapproval letter was issued. Notification of the review decision was not issued within the statutory timeframe. Specific maintenance notes for all proposed measures and seeding specifications were missing from this plan. The dissipator pad of the underground stormwater control measure (SCM) outlet was shown outside of the limits of disturbance and a specific construction sequence regarding the removal of the temporary basin and installation of the underground SCM was not included in the approved plan. The Town had conducted 48

inspections prior to our review; however, an official report had not been generated for each inspection. A NOV was issued to this project on 8/22/2023 for offsite sediment into an adjacent wetland area. The Town notified DWR of this loss at the time. Staff stated that they worked with the developer as they transitioned between contractor forces following the NOV. The Town found that the required repairs had been completed during an inspection on 10/2/23, however, DWR had not yet provided guidance and the lost sediment had yet to be retrieved. The Town lifted the NOV at the time and noted that DWR would still need to provide direction on cleanup efforts. DEMLR and Town staff discussed needing to not lift an NOV until all corrective actions have been completed. During our review the underground SCM had been installed, construction of the building and grading for the sewer line installation was underway. A large stockpile of material was placed along the top of the site and needed to be stabilized or protective measures be installed. The temporary skimmer basin had been removed as the underground SCM was installed. DEMLR and Town staff discussed the need to provide alternative measures sufficient to treat the drainage area or sufficient stabilization prior to when basins are allowed to be removed. A revised plan was needed to address the need for sufficient measures to adequately treat the drainage area during this phase of construction. Overall, this site was out of compliance. No signs of additional offsite sedimentation had been noted.

Following the audit, the Town began sending formal inspection reports at least monthly and whenever a site is out of compliance. The Town conducted an inspection on 12/11/2023 and found that items noted during the audit had not all been resolved. The Town conducted a follow up inspection on 1/2/2024 and noted that the previously noted corrective actions had still not been completed. The Town issued an NOV on 1/5/2024. During the most recent follow up inspection conducted on 1/12/2024, staff noted that stabilization efforts throughout the site were underway; however, a number of corrective actions had yet to be completed. This site remained out of compliance and under the NOV.

2. Morganton Park South Phase 1:

This project consist of 28.0 acres disturbed for commercial development and is located within the Lumber subbasin of the Lumber River Basin. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed and the FRO form. The landowner and Financially Responsible Party differed and written consent from the landowner had not been obtained. The complete application was initially received on 12/23/2021 and underwent 6 review cycles before being approved on 11/9/2022. Review comments were sent to the applicant during each review cycle, but the official review decision was not sent within the statutory timeframe. The approved plan appeared to be adequate. Construction on this project began in December of 2022 and the Town had conducted 26 inspections prior to our review. However, an official inspection report was not always generated. No NOV's or CPAs had been issued to this project prior to our review. On the day of our review vertical construction was underway and the parking lot area was being prepped for paving. A large stockpile was located at one corner of the site and silt fence needed to be installed surrounding the pile until it could be removed. The large sediment basin was being converted to the permanent SCM. The contractor was utilizing a pump to dewater the basin but was not using a silt bag to filter the pumped discharge. Inlet protection measures throughout the site needed to be maintained. Inlet protection measures that had been removed for paving of the parking lot needed to be

reinstalled once paving was completed. Overall, this site was out of compliance. No signs of offsite sediment were noted.

The Town has provided official inspection reports following the initial audit. The Town conducted an inspection on 12/14/2023 and 1/4/2024. During the most recent inspection report, the site was found to be in compliance and noted that the construction entrance would soon need to be maintained.

3. Fort Bragg Federal Credit Union:

This project consists of 1.88 acres disturbed for commercial development and is located within the Lumber subbasin of the Lumber River Basin. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed and the FRO form. The complete application was initially received on 7/21/2023 and was approved on 8/22/2023. Notification of the official review decision was not sent within the statutory timeframe. The approved plan appeared to be adequate from a design standpoint, however, some items such as the silt fence and limits of disturbance were drawn at a scale which made it difficult to distinguish from each other when printed. Town staff typically conducts their plan reviews digitally and has the ability to zoom in on the plan sheets during review. Staff should also consider the scale items are drawn at and how items will appear when plans are printed out and being utilized in the field. Construction on this project began in September of 2023 and the Town had conducted 3 inspections prior to our review, however official inspection reports were not always generated. On the day of our review grading was underway and the retaining wall onsite had recently been completed. The skimmer basin appeared to have been installed properly and wattle silt fence outlets had been installed. The diversion ditch along the retaining wall had not yet been installed. Overall, this site was in compliance. No signs of offsite sediment were noted.

Following the audit, the Town has conducted 2 formal inspections on 12/13/2023 and 1/10/2024. The site was found to be in compliance during both inspections.

Positive Findings:

During the review DEMLR staff noted positive aspects about the Town of Southern Pines Erosion and Sedimentation Control Program including:

- The Town requires a preconstruction meeting for all approved projects.
- The Town provides reference to the NCG01 permitting process within their letters of approval.
- The Town has a more restrictive criterion than the State as to when an ESC plan is required. A major plan is required for all projects disturbing 30,000 sq. ft. or more and a minor plan is required for projects disturbing less than 30,000 sq. ft. within a common plan of development. For projects disturbing less than 30,000 sq. ft. that are not within a common plan of development, the Town requires an Erosion Control Compliance form.
- The Town can use Stop Work Orders and place a hold on various building inspections as additional tools to bring sites back into compliance.

Issues Noted and Required Actions:

During the review DEMLR staff found that the Town of Southern Pines Erosion and Sedimentation Control Program had deficiencies including:

- Once a complete application was received, the Town reviewed the plans and would send review comments to the applicant when plans were found to be inadequate. The Town was also not always sending the letter of approval once the ESC plan was found to be adequate but rather would wait until the overall development plan was approved before sending the erosion control plan approval letter. Through the current plan review process, an official review decision was not always being sent within the statutory timeframe.
- Written landowner consent was not always obtained when the financially responsible party (FRP) and landowner differed.
- Seeding specifications and specific maintenance notes for some proposed measures were not included in all plans. One plan contained items, such as silt fence and the limits of disturbance, drawn at a scale which made distinguishing between them difficult when printed out as a full-size plan set.
- The Town is conducting frequent inspections and documenting their findings within an internal log. Official inspection reports are only being generated if an NOV is to be issued.
- Certain sections of the local ordinance are devoid or no longer adhere to the most recent state statutes and administrative code.

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

- 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 the plans are reviewed and notice of the review decision is being sent within the statutory timeframes.
- 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 to conduct the land-disturbing activity. G.S. 113A-54.1(a). When the landowner and FRP differ, written consent from the landowner shall be obtained and retained in the project file.
- Plans should include all information necessary to ensure that they can be approved in accordance with 15A NCAC 04B.0107(a) & (c) and 15A NCAC 04B.0118(d)(1) pursuant to the basic plan objectives under 15A NCAC 04B.0106. Staff should ensure that plans include all the necessary details and specifications. Staff should also ensure that all items of the plan are drawn at a scale that is clearly visible when printed.
- The Town should document inspections in writing, including electronic documents. Inspection reports shall include, at a minimum, all information in the model sedimentation inspection report developed by the Commission. MOA Part III.D.2 & 3. A Template Inspection Report, along with other template documents can be found on the [Local Programs Reporting SharePoint site](#).
- The Local ordinance should be updated to reflect the most recent state statutes and administrative code pertaining to that which constitute your delegation authority for erosion and sedimentation control. The Commission has approved a Model Ordinance

which can be found on the [NC DEQ Erosion and Sedimentation Control Local Programs Website](#). Staff shall coordinate with DEMLR staff during the updating process and provide a draft of proposed updates to DEMLR staff by July 1, 2024.

Conclusion:

During the review, DEMLR staff noted the Town of Southern Pines locally delegated erosion and sedimentation control program had a few deficiencies. The Town will need to adjust the plan review process to ensure that landowner consent is obtained when the landowner and FRP differ and that all necessary items are included in a plan. The Town should also ensure that notice of the official review decision is sent within the statutory timeframes. When plans are found to be inadequate, the plan should be disapproved, and notice of the disapproval should be sent with the ability to track the receipt by the applicant. The applicant has the ability to appeal an approval with modification or disapproval if written request for a hearing is made within 15 days of receiving notice of the modification or disapproval. Once a plan is found to be adequate the letter of approval should be sent to the applicant. The Erosion and Sediment Control Approval cannot be withheld due to ongoing other departmental reviews. The Town is conducting frequent inspections and tracking their findings using an internal log. Official inspection reports are not being generated unless a NOV was to be issued. Staff will need to begin generating official inspection reports and distribute them to the financially responsible party. Official inspections should be conducted at least monthly to remain in compliance with the Sedimentation Control Commission's expectations. The Town can utilize additional tools such as Stop Work Orders and placing a hold on building permits and inspections in order to bring sites into compliance. The Town also has a stricter criterion than the State as to when an Erosion Control Plan is required. Town staff have obtained NCDOT Erosion and Sediment Control Certifications and have continuously reached out to Central Office with questions as they arose over the past year. Staff demonstrated a general knowledge of erosion control plan design and implementation but would benefit from additional guidance and training. Staff should continue to reach out to the Central and Regional offices for guidance, work to address the noted deficiencies and continue to train new staff.

Following the audit on November 1, 2023, the Town has begun sending formal inspection reports at least monthly for all projects. Town staff continue to conduct inspections more frequently and will issue reports when sites are found out of compliance and at least monthly moving forward. Town staff have also begun the process of updating the local ordinance.

DEMLR Staff recommend to "Continue Delegation with Review" for a period of 3 months with a follow up report to be presented during the 2023 Q2 meeting. This report has been prepared based on the formal review of the Town of Southern Pines Erosion and Sedimentation Control Program conducted on November 1, 2023, and will be presented to the Sedimentation Control Commission during its 2024 Q1 meeting on February 21, 2024.