

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

On January 11, 2024, personnel from NCDEQ, DEMLR conducted a formal review of the Town of Waxhaw Erosion and Sedimentation Control Program. The Town was initially delegated by the Sedimentation Control Commission (SCC) in November of 2016. The jurisdiction of the program covers the Town of Waxhaw corporate limits. The Town requires an erosion and sediment control plan for commercial, industrial or subdivision projects disturbing greater than 12,000 sq. ft. and non—subdivision residential projects disturbing greater than an acre. For projects disturbing less than those thresholds, the Town requires a “Compliance Form” which captures the owner and financially responsible party(FRP) information, a general sketch plan of erosion control measures to be used and notifies the FRP of their responsibility to install and maintain measures sufficient to retain sediment at their site. The town has 2 staff who contribute approximately 1 full time equivalent (FTE) position to the program. During the 2023 calendar year, the Town conducted 14 plan reviews or re-reviews. The Town approved 5 plans and disapproved 9 plans. During this period, the Town was reviewing plans and sending a letter with reasons the plan was not able to be approved back to the applicant. These instances were being counted as disapproval, but an official disapproval notice was not always being sent to the applicant with the appropriate language or within appropriate timeframe to meet statutory requirements. During the 2023 calendar year, the Town conducted 153 “official” inspections. Staff stated that an “official” inspection was conducted on active projects at least each month, but that they were often onsite weekly. Staff stated that findings from “official” inspections were not always being documented using a formal inspection report. Emails with corrective actions or concerns were sometimes sent to the financially responsible party. At the time of DEMLR’s audit, the Town had 20 approved projects. Town staff stated that there had been approximately 10 inches of rain within the two weeks prior to the review, including 2 inches two days prior to the review. DEMLR staff looked at four project files and conducted site inspections on three projects.

The following is a summary of projects reviewed:

### **1. Blythe Mills Townhomes:**

This project consists of 18 acres disturbed for residential development and is located within the Lower Catawba Subbasin of the Catawba River Basin. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, the FRO form, and previous inspection reports. The Town received the complete application on 6/15/2022 and issued a letter of disapproval on 6/20/2022. This letter of disapproval did not include language notifying the applicant of their right to appeal the decision. This letter of disapproval was sent with the ability to track receipt by the applicant. The Town received the complete revised plan package on 9/18/2023 and approved the plan on 9/26/2023. The letter of approval was not dated and was missing language conditioning the approval upon the applicant’s compliance with State and Federal Water Quality laws, rules, and regulations. Both plan reviews were completed, and notification of the review decision was sent within the appropriate timeframes. Specific maintenance notes for some proposed measures were not included in the approved plan. No NOV’s or CPAs had been issued to this project prior to the review. Construction on this project

began in November of 2023 and only 1 formal inspection report was retained in the project file. Staff stated that additional inspections had been conducted but were not always documented through a formal inspection report but rather through email correspondence with the plan holder. Some of these emails were retained in the project file. At the time of the audit, grading was underway and the initial phase erosion control measures were being installed. The slope drain in one of the completed basins had been placed in between the second and third baffles and needed to be moved to the bay furthest from the skimmer device. Installation of the third basin was underway. Staff stated that the contractor had worked to grade the basin and install the skimmer device but was unable to get the baffles installed before the recent rain events. Minor sediment loss was noted at the silt fence outlet adjacent to this basin. The silt fence and outlet at this location appeared to have been repaired or maintained and was functioning on the day of our review. The diversion ditch from the skimmer outlet needed to be regraded and stabilized. This would help reduce the potential for sediment overwhelming the downstream silt fence outlet during future rain events. Minor sediment loss was also noted just beyond one of the silt fence outlets in the northwest corner of the site. Sediment loss at both locations needed to be retrieved and the disturbed areas stabilized. Construction materials and vehicles were being staged along an old roadbed adjacent to the project site until these areas were completed. Staff stated that the adjacent landowner had given permission to use these areas temporarily. However, these areas were not included within the approved limits of disturbance. All construction materials, vehicle storage and parking areas should be included within the limits of disturbance. These materials and vehicles needed to be removed and placed onsite and the areas disturbed, restabilized or a revised plan showing the usage of these areas should be obtained. Check dams had been installed in the diversion ditches throughout the site and seed and straw had been spread across inactive areas. Overall, silt fence and silt fence outlets throughout the site appeared to be maintained. However, this site was out of compliance with minor sediment loss noted in two locations and disturbances beyond the approved limits of disturbance.

## **2. Madison Park:**

This project consists of 13.53 acres disturbed for commercial development and is located within the Lower Catawba subbasin of the Catawba River Basin. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, the FRO form and previous inspection reports. The Town received the complete application for this project on 5/9/2022 and was approved on 6/8/2022. The letter of approval included some modifications that were required to be made to the plans. In instances such as this, an approval with modifications should have been issued. Letters of approval with modifications should include language stating the official review decision, modifications required, and should notify the applicant of their right to appeal the required modifications. These should also be sent with the ability to track receipt by the applicant. Specific maintenance notes for some proposed measures were not included in the approved plan. Construction on this project began in June of 2023 and the Town had conducted approximately 22 inspections prior to our review. Only 2 official inspection reports were included in the project file, the remaining inspection findings were documented through email discussions with the plan holder. No NOVs or CPAs had been issued to this site prior to the review. On the day of the review, grading was underway and retaining walls throughout the site had been installed. A couple of sections of silt fence below the wall

needed to be repaired. There were multiple stockpiles onsite; if these were not actively being worked, silt fence should be installed surrounding the 3 down slope sides and the piles stabilized within the appropriate timeframes. Minor rills had formed during the recent rains and would need to be repaired. Inlet protection devices throughout the site were maintained and appeared to be functioning. The construction entrance was installed and maintained. No signs of offsite sediment were noted. Overall, this site was in compliance with some minor maintenance needed.

### **3. 300 North Broad St. Townhomes**

This Project consists of 1.97 acres disturbed for residential development and is located within the Lower Catawba Subbasin of the Catawba River Basin. The project file contained the approved plan, letter of approval, design calculations, the FRO form and previous inspection reports. Documentation of property ownership was not retained in the project file and the registered agent information for the financial responsible party was missing from the FRO form. The Town received the complete application for this project on 8/29/2019 and issued the approval letter on 2/17/2020. The Town conducted 3 review cycles during this period. When the plan was found to be inadequate, the Town provided a letter stating that the plan was not approved and listed the reasons why. These letters did not include the language stating the official review decision as disapproved nor language notifying the applicant of their right to appeal the decision. Specific maintenance notes for some proposed measures were not included in the approved plan. The project file contained 8 previous inspection reports. Staff stated that construction of this project began in the middle of 2020 and that regular inspections were conducted at least monthly and often more frequently, but a formal inspection report was not always completed. No NOVs or CPAs had been issued to this site prior to the review. On the day of the review, the internal road and construction of one of the Townhomes had been completed. The completed areas below the finished building were being permanently stabilized and landscaped. Perimeter silt fence appeared to be maintained. Additional silt fence had been installed surrounding the remaining building pads and appeared to be maintained. The slope above the remaining building pads had been matted. Seed and straw had been spread along other inactive areas. Inlet protection measures throughout the site appeared to be maintained. Silt fence outlets along the front of the remaining building pads needed to be maintained with additional stone. No signs of offsite sediment were noted. Overall, this site was in compliance with a few minor maintenance needs noted.

### **4. Old Town Village: (Project File Review Only)**

This project consists of 9.96 acres disturbed for residential development and is located within the Lower Catawba Subbasin of the Catawba River Basin. The project file contained the approved plan, letter of approval, a copy of the property deed, the FRO form and previous inspection reports. The Town received the complete application on 9/24/2021 and issued the approval letter on 5/25/2022. The Town conducted 2 review cycles during this period. When the plan was found to be inadequate, the Town sent review comments back to the applicant via email. No official review decision was sent to the applicant within this process. Specific maintenance notes were not included for each proposed ESC measure in the approved plan. Construction on this project started in October of 2023 and 1 formal inspection report was retained in the project file.

Numerous emails noting required maintenance or repairs were retained in the project file. No NOVs or CPAs had been issued to this project prior to the review.

**Positive Findings:**

During the review DEMLR Staff noted positive aspects about the Town of Waxhaw local Erosion and Sedimentation Control Program including:

- The Town requires a preconstruction meeting for all projects.
- The Town has updated their local ordinance in accordance with the most recent Sedimentation Control Commission approved Model Ordinance.
- The Town has a stricter criterion than the State as to when an Erosion and Sediment Control Plan is required. An approved plan is required for commercial, industrial or subdivision projects disturbing greater than 12,000 sq. ft. and non—subdivision residential projects disturbing greater than an acre. The Town also requires an erosion control “Compliance Form” for all projects that do not exceed the approved plan requirement threshold. This form collects the FRP and landowner information, a sketch plan of proposed erosion control measures and notifies the applicant of their responsibility to retain sediment on their project site.
- The Town has the ability to place a hold on building permits or inspections or issue Stop Work Orders as additional tools to bring sites into compliance. Staff stated that while these tools are available, they have not been utilized over the past few years.
- The Town has developed a set of standard construction details that are to be included for each proposed measure within the set of plans. Having a standard Town set helps to ensure consistency across plans and projects.

**Issues noted and Required Actions:**

During the review DEMLR Staff found that the Town of Waxhaw Erosion and Sedimentation Control Program had deficiencies including:

- Documentation of Property ownership was not retained in each project file.
- The registered agent information on the Town’s FRO form should be updated to clarify that the registered agent information is required if the FRP is a company or firm.
- When plans are submitted to the Town, they are reviewed and either approved or, if found to be inadequate, review comments are sent back to the applicant. The Town issued letters of disapproval for some projects that were reviewed during the audit; however, these letters did not always contain language stating the official review decision or notice of the applicants right to appeal. Staff stated that these disapproval letters were previously being sent via certified mail, but the Town had recently switched to issuing these letters via email. Through this process, notification of the official review decision was not always being sent back to the applicant within the appropriate timeframes.
- One of the projects reviewed had been issued a letter of approval and this letter included some modifications that needed to be made to the plan. When a plan is found to be approvable but has some minor modifications that are needed, the plan should be approved with modifications and the decision letter should include all the necessary language for an approval with modifications. Letters of approval were also missing

language conditioning the approval on the applicant's compliance with Federal and State Water Quality Laws. These letters were also not always dated.

- Inspections reports are not always completed following an inspection conducted by the Town. Town staff stated that inspections are often conducted weekly or more frequently but are not always documented through an official inspection report. Email correspondence between Town staff and the plan holder regarding needed maintenance or repairs on site were available in some project files. Staff also stated that when a site was found to be in compliance an inspection report was not completed.
- Maintenance notes for some proposed measures were missing from approved plans.

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

- Documentation of land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.018(c). A copy of the property deed or other form of documentation of property ownership should be retained within each project file.
- The Town should update their FRO form to clarify that the registered agent information is required whenever a company/firm is the FRP. Staff should also verify the company/firm information with the business registration on the NC Secretary of State website. [https://www.sosnc.gov/online\\_services/search/by\\_title/Business\\_Registration](https://www.sosnc.gov/online_services/search/by_title/Business_Registration)
- 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). Staff should ensure that an official review decision is being sent to the applicant within the appropriate statutory timeframe. When plans are being disapproved or approved with modifications, these notices should include language stating the official review decision and notifying the applicant of their right to appeal the decision. Since the applicant can appeal these decisions if a written request is made within 15 days of receiving the official review decision, the Town should resume sending these notices with the ability to track receipt by the applicant. Letters of approval should also include language conditioning the approval upon the applicant's compliance with Federal and State water quality laws, regulations, and rules. G.S. 113A-61(b1). All plan review decision letters should be dated.
- The Town shall document in writing, including electronic document, and report shall include at a minimum, all information in the model sedimentation inspection report developed by the Commission. MOA Part III.D.2 & 3. Town staff stated that an inspection report would be filled out during all inspections moving forward.
- 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 specific maintenance notes for all proposed measures prior to approving plans. These can be incorporated into the Town's standard construction details or included within the notes of the plan.

**Recommendations for improvement:**

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

- It is recommended that the Town monitor for and provide guidance regarding potential NPDES violations while conducting their inspections. Potential violations including but not limited to operating without obtaining coverage under the NCG01 Construction Stormwater permit, improper concrete washout and improper fuel containment on site can be brought to the FRP attention. If necessary, refer potential violations to the NCDEQ Mooresville Regional Office.
- The Town is requiring the two NPDES plan sheets to be included in the erosion and sediment control plans. It is recommended that NCG01 related actions, such as obtaining the NCG01 Certificate of Coverage and the eNOT process, be specified within the construction sequence of plans as well.

**Conclusion:**

Overall, DEMLR found the Town of Waxhaw Locally Delegated Erosion and Sedimentation Control Program had a few deficiencies. The Town will need to ensure that all the appropriate language is included in the official plan review decision notices and that these notices are sent within the appropriate 30- and 15-day timeframes. All letters should be dated as the day they are sent and letters of approval with modifications and letters of disapproval should be sent with the ability to track receipt by the applicant. The Town will also need to ensure that inspections are adequately documented through official inspection reports. When sites are found to be in compliance, an inspection report should still be completed. Staff stated that an inspection was conducted on all projects at least monthly but often weekly and staff was often onsite more frequently than that. The Town will need to update their FRO form and ensure that all of the FRP information is included and accurate before approving a plan. Documentation of property ownership also needs to be retained within the project file. Overall, the plans appeared to be adequate. Staff appeared knowledgeable and aware of design considerations that may be of concern when reviewing a plan. While onsite, Town staff noted all areas seen by State staff. The Town has the ability to utilize additional enforcement tools to bring sites back into compliance, such as stop work orders or placing holds on building permits. Town staff appear to have a firm technical understanding of the erosion and sediment control plans and what to look for while conducting site inspections. The Town will need to make the administrative adjustments noted above during the plan review process and start documenting inspections consistently.

Following the audit, the Town has provided some follow up. The Town has developed a formal inspection report and states that the report will be issued following formal inspections at least monthly and when sites are found to be out of compliance. Staff have forwarded a copy of the inspection reports from their inspections conducted in late January. Staff also stated that the FRO form has been updated and language conditioning plan approval on federal and state water quality laws has been added to the letters of approval.

DEMLR staff recommend "Continue Delegation with Review" of the Town of Waxhaw Erosion and Sedimentation Control Program for a period of 3 months, with a follow up report to be presented to the SCC during its 2024 Q2 meeting.

This report has been prepared based on the formal review of the Town of Waxhaw Erosion and Sedimentation Control Program conducted on January 11, 2024, and will be presented to the Sedimentation Control Commission during its 2024 Q1 meeting on February 21, 2024.