

## **Local Program Report to the SCC Town of Apex, August 18, 2022**

On July 7, 2022, personnel from NCDEQ, DEMLR conducted a formal review of the Town of Apex Erosion and Sedimentation Control Program. The Town of Apex program was last reviewed on 12/13/2017. The Town requires an erosion and sediment control plan for projects disturbing greater than 20,000 sq. ft. Jurisdiction of the program covers the Town of Apex's corporate limits and extraterritorial jurisdiction (ETJ). The Town has 6 staff that contribute approximately 3 full time equivalents to the program. During the period from July 2021 through June 2022, the Town conducted 135 reviews or re-reviews, issued 33 plan approvals and 102 plan disapprovals. During this same period the Town conducted 1140 official inspections, issued 1 NOV and 1 SWO. The Town is currently reviewing plans submitted and sending comments back to the applicant until an approvable plan is submitted but not sending any official notice of plan review decision during this process. The letter of plan approval is not issued by the Town until all aspects of the construction plans have been approved, the preconstruction meeting has occurred, and the performance bond has been posted by the plan holder. The Town stated that they conduct at least one official inspection each month on all their projects but are also on site each week to provide additional oversight and guidance. At the time of our review the Town had 82 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. The Preserve at White Oak Phase 4:**

This project consists of 7.96 acres disturbed for residential development. The project file contained the approved plan, letter of approval, design calculations, documentation of property ownership, previous inspection reports and the FRO form. The approved plan for this project was initially received by the Town on 4/1/2021 and the letter of approval issued on 4/20/2021. The approved plan for this project appeared to be adequate from a design standpoint, however maintenance notes were not included for all proposed measures. No NOVs or CPAs had been issued to this project prior to our review. This project began construction in April of 2021 and the Town had conducted 17 inspections prior to our review. On the day of our review, streets had been installed, homebuilding had begun and active grading in the western portion of the site was ongoing. During the Town's previous inspection conducted on 6/29/2022 several areas needing to be stabilized and repaired had been noted. The areas behind the construction trailer and diversion ditch in this area had not been repaired or stabilized as previously noted on the last inspection report. The silt fence outlet below this area was being bypassed allowing a small amount of sediment to leave the site. The baffles in one basin needed to be extended to function properly since the basin had been excavated to the permanent SCM depth and a permanent pool covered the baffles currently installed. Dissipator pads for the basin outlets needed to be maintained and the silt bag lying on one pad needed to be removed. Silt fence and construction entrances for active individual lots needed to be repaired throughout. Perimeter measures in the areas being actively graded had been installed and appeared to be maintained. The contractor was onsite and replacing silt fence around recently graded areas during our inspection. Slopes in the northwest corner of the site and the drainage swale which had recently been graded had been tracked properly; a reminder to stabilize these areas was noted. The slopes above a stream

crossing had been matted and sediment accumulation removed from the silt fence in this area. Overall, this site was out of compliance needing to repair or install measures and to stabilize completed or inactive areas throughout. Minor offsite sediment was noted.

## **2. Ellsworth:**

This project consists of 17.0 acres disturbed for residential development. The project file contained the approved plan, letter of approval, design calculations, documentation of property ownership, previous inspection reports and the FRO form. The approved plan for this project was initially received on 2/11/2019. The letter of approval was issued on 6/23/2020. The Town indicated that this project went through 4 review cycles and 2 revisions during this time, although no official notice of disapproval was sent during this time. The approved plan for this project appeared to be adequate from a design standpoint, however maintenance notes were not included for all proposed measures. No NOV's or CPAs had been issued to this site prior to our review. This project began construction in November of 2020 and the Town had conducted 24 inspections prior to our review. On the day of our review, the streets had been installed and lots graded. The Town indicated that this project was awaiting final plat approval and had been idle for a couple of months. The site had been well stabilized throughout. The Town had noted the need to repair and stabilize rills which had formed above one of the basins and the need to clean the streets and curb inlet protection measures on their most recent inspection. The rills appeared to have been repaired and matted and the streets had been swept and curb inlet protection measures maintained. Overall, this site was in compliance and no offsite sedimentation was noted.

## **3. Christian Brothers Automotive:**

This project consists of 0.95 acres disturbed for commercial development. The project file contained the approved plan, letter of plan approval, documentation of property ownership, previous inspection reports and the FRO form. The landowner and financially responsible party were different, however, no letter of consent from the landowner had been obtained. The approved plan for this project was initially received on 7/11/2021. The letter of approval was issued on 2/7/2022. The approved plan for this project appeared to be adequate from a design standpoint, however maintenance notes were not included for all proposed measures. No NOV's or CPAs had been issued to this site prior to our review. This project began construction in April 2021 and the Town had conducted 17 inspections prior to our review. On the day of our review, building construction was underway and the retaining wall along the west side of the site had been installed. The Town indicated that they had recently received complaints from the public reporting damage to perimeter silt fence. The Town stated that at the time of these complaints the contractor had already reported building materials were delivered and placed on top of the silt fence. During our review, the materials had been removed and silt fence had been repaired. Some further repairs to silt fence below the recently completed retaining wall were needed. Town staff commented that once this area had been permanently stabilized this silt fence could be removed and reinstalled along of the top of the wall. 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 Apex Local Erosion and Sedimentation Control Program including:

- The Town requires that all 404/401 permits are obtained prior to the ESC plan approval.
- The Town has stricter criterion than the State as to when an ESC plan approval is required. Approved ESC plans are required for all projects with greater than 20,000 sq. ft.
- The Town provides reference and guidance on the NCG01 permitting process in the letter of plan approval and on their website. Town staff confirm that NCG01 coverage has been obtained prior to construction beginning.
- The Town has also developed a standard waste management plan which is distributed as part of the construction plan review and approval process to address the expectations of containment and disposal of construction waste. This plan provides guidance and reinforces the requirements of the NCG01 permit.
- The Town requires preconstruction meetings on all projects.

**Issues Noted and Required Actions:**

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

- Written consent from the landowner was not obtained when the FRP and landowner differ.
- Plans are not being reviewed with written notice of the review decision sent within 30 days of receiving the complete package.
- Maintenance notes for all proposed measures were not included in the approved plans.
- Certain sections of the local ordinance are devoid or no longer adhere to the most recent statutes and administrative code.

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

- 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). The Town should obtain a letter of consent when the landowner and FRP differ and retain this letter in each project file. The Affidavit of Ownership the Town is currently requiring as part of the complete application package serves as documentation of landownership but does not currently include a statement of consent from the landowner for the FRP to submit this application and conduct the land disturbing activity.
- 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 15 days for a revised plan. G.S. 113A-64(b), MOA Part III.C.1&3. Official notice of disapproval should include the reasons which the plan is being disapproved and must be sent with the ability to track receipt by the applicant, as the applicant has the right to appeal the decision if written request for a hearing is submitted within 15 days of receiving the notice of disapproval.
- The Town has developed a set of standard construction details which adds consistency to plans being received, however not all ESC measure details contain maintenance notes. The Town should ensure that specific maintenance notes are included for each proposed measure within the plan.

- The Town should update their ordinance to reflect the 2021 Model Ordinance. A redlined version with the most recent changes can be found on the [NCDEQ Local Programs Website](#).

### **Recommendations for Improvement:**

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

- The Town should update template letters, and inspection reports and guidance documents to reflect any changes once the local ordinance has been updated. DEMLR has made template letters and inspection reports available to all local programs, which can be found on our [Local Program Reporting SharePoint site](#). It is also recommended to update the standard construction details to include maintenance notes for those measures which do not already contain them.
- Continue to monitor and provide guidance for NPDES violations including operating without a permit, improper concrete washout, and fuel containment on site during inspections. Note possible NPDES violations and refer to the NCDEQ Raleigh Regional Office when necessary.

### **Conclusion:**

During our review we found that the Town of Apex locally delegated erosion and sedimentation control program had a few deficiencies. The Town's current plan review process of receiving a complete package, reviewing, and sending back comments until an approvable plan has been submitted should be adjusted to ensure that notification of the plan review decision is sent within 30 days for new plans and 15 days for revised plans. Notification of plan disapprovals should be sent with the ability to track receipt. The Town has developed a set of standard construction details for erosion control measures however, not all details include maintenance notes. Plan review staff should ensure that all proposed measures include a construction detail as well as specific maintenance notes. The Town is conducting official inspections at least monthly and stated that inspectors are typically onsite weekly but are not always filing official inspection reports for the weekly inspections. This frequent presence allows the Town to provide guidance, continual monitoring, and maintain open and frequent communications with contractors reducing the potential for major issues to arise. During our inspections Town staff noted all areas seen by State staff. The Town demonstrated their knowledge and ability to effectively implement the local program's delegated authority. DEMLR staff recommends to "Continue Delegation" of the Town of Apex Erosion and Sedimentation Control Program.

This report has been prepared based on the formal review of the Town of Apex local program conducted on July 7, 2022 and will be presented to the SCC during its 2022 Q3 meeting on August 18, 2022.