

Local Program Report to the SCC Town of Cary Follow Up, November 16, 2023

On May 23, 2023, a report was presented to the Sedimentation Control Commission (SCC) based on the formal review of the Town of Cary Erosion and Sediment Control Program conducted on March 28, 2023. The Commission voted to “Continue Delegation with Review” for 6 months with a follow up report to be presented at the 2023 Fourth Quarter SCC meeting. During the initial review in March, the following programmatic issues and corresponding corrective actions were noted:

Issues Noted and Corrective Actions Required:

- Documentation of property ownership was not retained in project files. Staff stated that they were verifying property ownership during the stormwater application, which occurs before the certificate of occupancy is issued, but that they were not verifying the deed information or retaining a copy in the file during the erosion and sediment control plan review.
 - A copy of the property deed should be retained in each project file.
- Written landowner consent was not obtained when the financially responsible party (FRP) and landowner differed.
 - Except for certain utility construction, if the applicant is not the owner of the land to be disturbed, the Town should obtain a letter of consent from the owner and retain this in the project file.
- The FRO form did not include landowner information and in one instance was missing the business’s registered agent information.
 - The Town’s FRO form should be updated to include landowner information and Town staff should ensure that the form is filled out completely.
- Once a complete application is received, plans were being reviewed, and either approved or review comments sent back to the applicant. Official notification of the plan review decision was not always being sent within the required statutory timeframes. The approval and disapproval notifications were missing necessary language, and notifications of disapproval were not being sent with the ability to track receipt.
 - 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). Notice of Disapproval and modifications should be sent with the ability to track when the applicant has received the notice to ensure any request for appeal has been made in accordance with the statutory timeframe.
- Maintenance notes for all proposed measures were not included in all approved plans.
 - The Town should ensure that specific maintenance notes for each proposed measure are included somewhere within the plans.

Follow up:

During the Continued Review period, DEMLR staff coordinated with Town staff to provide additional oversight and training regarding both plan reviews and site inspections. DEMLR Regional Office staff conducted two days of cross training with Town staff to provide oversight and offer additional guidance regarding inspections. Additionally, Town inspection staff obtained the NCDOT Level II Erosion and Sediment Control Certification. The Town now requires a property deed with the FRO form and revised the FRO form to include landowner information. The Town has adjusted their plan review process to ensure that plans are reviewed, and the review decision is sent to the applicant within the statutory timeframes. The Town updated its standard E&SC details to include maintenance notes for all measures and made them available online. During the Continued review period from May through September the Town reviewed and approved 10 plans, conducted 736 inspections, and issued 29 NOVs. The Town reported 68 open projects as of the end of September. During the continued review period, the Town provided a few plans and project files once approved for DEMLR staff's review.

DEMLR staff met with Town staff on October 17, 2023, to conduct a follow up review. The following is a summary of projects based on the initial review and follow up review.

1. North Harrison Hotels:

This project consists of 6.44 acres disturbed for commercial development and is located within the Upper Neuse sub-basin of the Neuse River basin. On the day of our initial review diversion ditches throughout the site had been driven over and needed to be reinstalled or revised to ensure flow diverts to the basin. Some stockpiles had silt fencing installed along the toe of the slope while others did not. The sediment basin did not appear to be functioning; the basin outlet pipe had been installed near the top of riser and above skimmer attachment elevation such that the skimmer was not dewatering the basin. The baffles were underwater due to excavation to the permanent stormwater design and the skimmer not functioning. Minor sediment loss and staining were noted beyond the limits of disturbance at a silt fence outlet into a wooded area. The Town conducted recent inspections of this site on 7/19/2023, 7/26/23, 8/23/2023, 9/20/2023. Inspection reports were adequately documented for each inspection. During the follow up review, Town staff noted minor tracking leaving the site, the construction entrance needed to be extended, newly installed inlet boxes needed inlet protection measures, and silt fence around stockpiles needed to be repaired.

2. Young Farm Property:

This project consists of 68.73 acres disturbed for residential development and is located within the Haw sub-basin of the Neuse River basin. On the day of our initial review, silt fence and silt fence outlet had been undermined at both the stream and wetland crossing resulting in sediment loss into the stream and wetland area. Drop inlet protection measures had been installed and maintained in some areas but others needed to be replaced or repaired. Soil stockpiles needed to be stabilized and silt fence installed around the toe of the piles. Slope drains needed to be staked down and extended to the toe of the slope. Outlet and inlet protection measures were also needed on slope drains. Town staff issued an NOV for the sediment loss and other violations. The Town conducted recent inspections on 8/3/2023, 8/11/2023, and 8/24/2023. During the follow up review, Town staff noted that the construction entrance for individual lots needed to be maintained, inlet protection throughout the site needed to be

maintained, drainage swales between some lots needed to be stabilized, and silt fence needed to be maintained. The areas of sediment loss noted in the original NOV had been removed and repaired.

3. Massey Condominiums:

This project was received, reviewed, and approved by the Town during the continued review period. The approved plan and project file was provided to DEMLR staff. This project consists of 1.47 acres disturbed for residential development and is located within the Neuse River basin. The complete package was received by the Town on 8/10/23 and was approved on 8/14/23. The Town completed the review of this plan and issued official notice of the review decision within the statutory timeframe. The Letter of Approval included all required language. The project file contained all necessary documentation and the approved plan appeared to be adequate.

Conclusion:

During the continued review period, the Town implemented required corrective actions listed above. The Town is now reviewing plans once a complete package has been received and notifying the applicant of the review decision within the statutory timeframes. When plans are found to be inadequate, a disapproval letter will be sent. These letters include the appropriate language and will be sent with the ability to track receipt by the applicant. DEMLR staff noted improvement in the Town's understanding of the plan review process. Recently approved plans included specific maintenance notes for each proposed measure and appeared to be adequate. Additionally, DEMLR staff observed an improvement in the Town's ability to conduct thorough inspections. Town staff have benefited from further internal training as well as joint inspections conducted with DEMLR staff. Staff have also obtained the NCDOT Level II Erosion and Sedimentation Control Certification. During the continued review period, the Town has worked to address the deficiencies noted during our initial review and demonstrated their ability to adequately implement their delegated program. DEMLR staff recommend to "Continue Delegation" of the Town of Cary Erosion and Sedimentation Control Program.

This report is based on the formal review conducted on March 28, 2023, follow-up review conducted on October 17, 2023, and oversight during the continued review period. This report will be presented to the Sedimentation Control Commission during its 2023 Q4 meeting on November 16, 2023.