

Local Program Report to the SCC City of Henderson, May 19, 2022

On March 9, 2022, personnel from the NCDEQ Land Quality Section, conducted a formal review of the City of Henderson Erosion and Sedimentation Control Program. The City of Henderson was last reviewed on 10/14/2014. The City currently has 1 staff member who contributes approximately 0.25 full time equivalents to the erosion control program. The City requires an erosion and sediment control plan for all projects which disturb greater than 0.5 acres or greater than 1 acre if only a single-family residence is involved. Jurisdiction of the program covers all areas within the City of Henderson's corporate limits. During the past year from March 2021 through February 2022, the City conducted 1 plan review and approved 1 plan. During the same period the City conducted 124 inspections and issued 1 NOV. No CPAs or SWOs were issued. The City has not been providing official documentation for project close out and was informed of the need to indicate on inspection reports or through a "close-out" letter that projects have been completed and are permanently stabilized. This documentation serves to release a project under the requirements of the SPCA, as well as will be used to terminate coverage under the NCG01 permit if applicable. At the time of our review the City only had 1 open project which had not been completed and stabilized. This open project had received approval but had not yet begun land disturbance. During our review of the program, we looked at the project files for two projects and we conducted an inspection on one project which had previously been completed.

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

1. St. Charles Place Apartments:

This project consisted of 8.3 acres disturbed for residential development. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, past inspection reports and the FRO form. A letter of consent between the landowner and financially responsible party was missing from the project file. The plan for this project was initially received by the City on 5/8/2020 and the Letter of Approval was sent on 5/18/2020. The approved plan appeared to be adequate. The City had conducted 38 inspections on this project prior to the day of our review. The last inspection the City conducted was on 8/12/2021, at which time they found this project to be completed and the site permanently stabilized. During the day of our review, we conducted an inspection of this site, this site appeared to have been properly stabilized and all temporary measures had been removed. The City is not currently providing any type of official closeout documentation once a project is found to be completed and stabilized. State staff provided the standard language that is included on closeout inspection reports and clarified the process of closing a project. City staff indicated that they would make adjustments to their template inspection report to include this language when conducting a final inspection and closing a project.

2. The Landing at Henderson:

This project consisted of 6.0 acres disturbed for residential development. The project file contained the approved plan, letter of approval, design calculations and the FRO form. A copy of the property deed was missing from the project file. The plan for this project was initially received by the City on 9/21/2021 and approved on 9/22/2021. The approved plan for this project appeared to be adequate. This project had not yet begun construction at the time of our review.

Positive Findings:

During our review we noted a few positive aspects about the City of Henderson Erosion and Sedimentation Control Program including:

- The City has a stricter criterion than the State when requiring an erosion and sediment control plan. The City requires plans for all projects disturbing greater than 0.5 acres or 1 acre if only a single-family residence is involved.
- The City includes reference to the NCG01 permit and the process to obtain coverage in their letters of approval.
- The City is conducting erosion and sediment control inspections weekly.

Issues Noted and Required Actions:

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

- Documentation of land ownership was not kept in all project files.
- A letter of consent was not obtained when the landowner and financially responsible party differed.
- Certain sections within your ordinance are devoid or no longer adhere to the most recent state statutes or state administrative code pertaining to that which constitute your delegation authority for erosion and sedimentation control.
- The Program has previously reviewed, approved and monitored projects which fall under the exclusive jurisdiction of the commission.
- Letters of Approval were absent of language conditioning the approval of the erosion and sedimentation control plan upon compliance with federal and state water quality laws, regulations, and rules.
- No official documentation of a project closeout is being kept once construction has been completed and the site has been permanently stabilized.

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

- Documentation of Land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.0188(c). A copy of the property deed should be obtained and retained in each project file.
- 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). A consent letter should be obtained and kept in the project file when the landowner and financially responsible party differ.
- The local ordinance was last updated in 2016 and 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 recently approved an updated Model Ordinance at their November 2021 meeting. This can be found on the Local Erosion and Sediment Control Programs Website.
- The Commission retains exclusive jurisdiction over certain land disturbing activities as listed under G.S. 113A-56(a). Any projects funded in whole or in part with public monies should be referred to the DEMLR Regional Office for review, approval, and monitoring.
- A local government shall condition approval of a draft erosion and sedimentation control plan upon the applicant's compliance with federal and State water quality laws,

regulations, and rules. G.S. 113-61(b1). Letters of approval should include language as such. A template letter of approval can be found on the Local Program Reporting SharePoint site.

- Documentation in the form of comments on a final inspection report or a “close out” letter should be provided when projects are found to be completed and sites stabilized.

Recommendations for improvement:

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

- Update all template letters and inspection reports to reflect the most current references to the North Carolina Administrative Code and your local ordinance once its is updated. Template letters and inspection reports with the most recent references to the NCAC rules and State Statutes can be found on our Local Program Reporting SharePoint site.
- Developing a set of Standard Operating Procedures or guidance documents for different aspects of the program or staff positions, will help to provide consistency and uniformity throughout the program. These documents can also provide expedited training during times of staff turnover or in cases of prolonged absence.

Conclusion:

During our formal review of the City of Henderson Erosion and Sedimentation Control Program we found a few minor deficiencies. The City will need to adjust the documentation required prior to plan approval to ensure that a copy of the property deed and letter of consent, when applicable, are obtained and retained in each project file. The City will also need to update the local ordinance, letter and inspection report templates to reflect the most recent state statutes and rules. State staff reminded the City that publicly funded projects should be referred to the DEMLR Regional Office as they fall under the exclusive jurisdiction of the Commission. The City should also address the project closeout process and ensure that documentation is provided when projects are found to be completed, permanently stabilized, and released under the SPCA. Based on the review of previous inspection reports, City staff is conducting adequate inspections and continuing to monitor all sites frequently throughout the life of a project. Approved plans appeared to be adequate and had been reviewed within the required timeframes. City staff demonstrated their knowledge and understanding of erosion control practices and appeared to effectively be implementing their delegated authority.

DEMLR staff recommends to “Continue Delegation” of the City of Henderson’s locally delegated erosion and sediment control program.

This report has been prepared based on the formal review of the City of Henderson Erosion and Sedimentation Control Program conducted on March 9, 2022 and will be presented to the Sedimentation Control Commission (SCC) during its 2022 Q2 meeting on May 19, 2022.