

Local Program Report to the SCC City of High Point Follow up, May 19, 2022

A report was presented to the Sedimentation Control Commission (SCC) on February 22, 2022, based on the initial formal review conducted on February 9, 2021, follow up reviews conducted on July 21, 2021, and January 25, 2022, and the subsequent continued review periods. The Commission voted to place the program on “Probation” for 3 months with a follow up report to be presented during the 2nd quarterly meeting of 2022. DEMLR staff conducted a follow up review on April 26, 2022. Throughout the probationary period, the City has provided updates on active projects and additional information requested by DEMLR. During our initial and first follow up reviews it was noted that the workload was not sustainable with the staffing level at the time. It was also noted that the program was not effectively monitoring sites for compliance and once sites were found out of compliance there was little to no follow up or enforcement actions taken by the City to bring a site into compliance.

Follow up:

During the period from January 2022 through April 2022, the City reviewed or re-reviewed 38 plans, issued 12 approvals, 22 disapprovals and conducted 430 inspections. During this period the City issued 18 NOVs, 1 SWO and 3 CPAs. Following recommendations made by DEMLR staff, the City has hired 2 additional full-time staff since our initial review. The City reports that the 2 additional inspectors were trained before redistributing the workload at the beginning of 2022. This brings their current FTE count to 5. The City also conducted an internal audit and found that projects had been duplicated or previously closed out but had not been removed from their project lists. The City reports that they currently have 56 open projects which is a significant reduction from the 109 average number they reported last year. Throughout the probationary period the City was required to provide DEMLR with all reports from inspections conducted on the 11 projects previously reviewed as well as 1 new project selected at random. In addition to inspection reports, the City was to provide all NOVs, CPAs or SWOs and corresponding inspection reports.

1. Keystone at Penny Road:

This project was previously reviewed during our follow up reviews on 7/21/2021 and 1/25/2022. This project consists of 17.9 acres disturbed for residential development. The City previously issued a SWO to this site for significant sediment loss after our inspection conducted on 7/21/2021. The City lifted this SWO on 10/7/2021 conditioned upon an evaluation of possible wetlands by an environmental consultant and possible changes to the plans as a result. The City has not allowed any land disturbance in the phase where potential wetlands are located until these items have been completed. During recent inspections, the City found this site to be out of compliance on 3/17/2022 and then in compliance on 3/31/2022 and 4/13/2022. We conducted an inspection of this site during our follow up review on 4/26/2022. Stormwater pipes were onsite, and grading was still underway. The stream crossing where significant sediment loss had previously occurred appeared to be maintained and no further signs of loss were noted. One section of silt fence had been run over to access an easement. This fence needed to be reinstalled or repaired. Areas throughout the site which were not actively being worked needed to be stabilized appropriately. Overall, this site was out of compliance, needing to stabilize bare areas and general maintenance needs on basins and sections of silt fence throughout. No offsite

sedimentation was noted, and the overall condition of measures had notably improved compared to previous inspections.

2. The Landing at Sycamore Creek:

This project was initially reviewed during our follow up on 1/25/2022. At that time this site had been found out of compliance by the City for multiple consecutive inspection reports. Following our review, the City issued an NOV on 2/1/2022. The City conducted a follow up inspection and found this site to be in compliance on 2/10/2022. The City found that this site was out of compliance due to sediment loss and issued another NOV on 3/15/2022. The City required a revised plan to address the low area where a skimmer basin had been removed and sediment was leaving the site again. The City conducted a follow up inspection on 4/11/2022 and found this site to be in compliance. The approved revised plan had been implemented properly and all sediment lost had been cleaned up. We conducted an inspection of this site during our follow up review on 4/26/2022. The riprap dissipator pad, diversion ditch with wattles and check dams appeared to be installed correctly and maintained. The areas which were disturbed to install these measures had been regraded, seeded, and matted. Vegetation was being established in the area where the sediment had been removed from cleanup and at all matted areas. Home building on a few lots had begun; silt fence around the active home building needed to be maintained and the street cleaned. Overall, this site was out of compliance due to general maintenance of individual lot measures and needing to clean the street around active lots to prevent sediment from flowing down the street and offsite. No offsite sedimentation was noted.

3. Westmoreland Place Ph. 2:

This project was initially reviewed during our follow up on 4/26/2022. This project consists of 50.4 acres disturbed for residential development. The City initially approved the plan for this project on 11/22/2017. As this construction progresses and a home builder buys lots, the City has received periodic requests to transfer coverage of said lots under the builders' responsibility. The City approved an initial transfer on 9/7/2021 and indicated that they have since transferred additional lots upon the builders' requests. The City has not required an updated FRO form or confirmed through property deeds that these lots have been bought by the builder. The City issued an NOV to this site on 3/18/2022 following an inspection conducted on 3/17/2022. The NOV was issued for failure to take measures to protect property, failure to follow the approved plan and failure to maintain temporary measures. The skimmer basin forebay had blown-out and was eroding away; baffles had fallen over and the dissipator pad for the basin outlet was not functioning properly. The emergency spillway had not been properly installed and the diversion ditches needed to be regraded and stabilized. Individual lot measures and wattles used for curb inlet protection measures needed to be repaired or maintained. The City also noted that the sediment in the streets needed to be removed. The NOV stated a 15 working day deadline from the receipt of the NOV to bring the site into compliance. Taking rainfall data into consideration, the City noted that this site was to be in compliance by 4/28/2022. During our inspection on 4/26/2022 we found that this site had made substantial progress towards resolving all required corrective actions listed in the NOV. The skimmer basin had been cleaned out and the forebay, emergency spillway and baffles had been reinstalled. The outlet dissipator pad had been extended and refreshed to ensure proper functioning. The diversion ditch had been regraded and check dams installed. All areas disturbed for this work had either been matted or covered with seed and straw. It was evident that the streets had been cleaned and wattles had been replaced.

The silt fence and construction entrance on a few individual lots still need to be maintained but overall, this site had addressed most of the violations and areas of concern noted by the City. The City conducted a compliance inspection on 4/28/2022 and found that all corrective actions had been completed and therefore, lifted the NOV.

4. Chipotle – Main St:

This project was initially reviewed during our follow up on 4/26/2022. This project consists of 1.25 acres disturbed for commercial development. The project file contained the approved plan, letter of approval, a copy of the property deed, the FRO form, design calculations and previous inspections. The approved plan went through 2 review cycles. The plan was approved on 2/14/2022. The City had conducted 1 inspection prior to our review. During the day of our follow up, the building foundation had been installed and the stormwater system was being installed. Silt fence throughout the site needed to be reinstalled properly in some sections. One of the existing entrances had wattles installed but did not extend completely across the opening in the silt fence. Sediment was leaving the site and flowing into the road and down the curb line. This sediment needed to be removed and the street cleaned as well as silt fence extended across the entrance per the approved plan. It was also noted that inlet protection measures would need to be installed as the stormwater system was being completed. The City issued an NOV to this site on 5/2/2022 following our inspection.

Conclusion:

During the probationary period, the City has worked diligently to address the concerns noted and discussed during the previous reviews and continued review periods. The City reviewed its project list and found several projects that had been duplicated or closed out and not removed from the list. The City currently has 56 open projects and reported that inspection frequency has increased to at least monthly but may actually be closer to twice a month. Throughout the probationary period, the City provided DEMLR with inspection reports for the 11 projects which we had previously reviewed, and an additional project chosen at random, as well as NOV's, CPAs and corresponding inspection reports. The City states that an NOV will be issued to a site after continuing violations are found on the 3rd consecutive inspection and whenever offsite sedimentation has occurred. In review of the inspection reports and NOV's provided, the City appears to be implementing this practice with NOV's being issued following the 3rd out of compliance inspection report. The City has issued 18 NOV's between January and the end of April. The City has conducted follow up inspections finding that 12 sites were in compliance within the deadline set in the NOV. The City found that three sites remained out of compliance by the deadline given and issued a CPA to each. Three NOV's are still open with the deadline for compliance yet to be reached. Over the last few months, the City has taken a new approach to getting sites into compliance. A significant concern during the previous reviews was the City's willingness and attitude towards using the enforcement tools available to them to bring sites into compliance. Throughout the probationary period, DEMLR staff has noted the effort and dedication that City staff have put into addressing the deficiencies of the program. Although 3 sites were out of compliance during our follow up review, no offsite sediment was noted, and a pattern of violations left unresolved was not evident. The City has demonstrated its ability and willingness to issue NOV's and CPAs when necessary to compel compliance on sites. City staff have shown their ability to conduct an adequate inspection. All three city inspectors have obtained the NCDOT Level II Erosion and Sediment Control Certification. City staff also

attended the Local Program Workshop in April. The City must continue to use the tools available to them while monitoring and enforcing the SPCA of 1973. The City will need to start obtaining proper documentation when transferring part of or a whole plan to a new financially responsible party. The local ordinance is outdated and will need to be updated in adherence to the 2021 Model Ordinance. A process for hearing and deciding civil penalty appeals as well as penalty remission requests in the City's ordinance is devoid. The City has indicated that updates are underway and will be completed in the coming months. DEMLR staff have noted that City staff have the ability and knowledge to implement an effective program and have demonstrated their willingness to follow through with enforcement actions when needed to bring sites into compliance. The City is no longer allowing sites to remain out of compliance inspection after inspection with no repercussions.

DEMLR staff will recommend to "Continue Delegation" of the City of High Point Erosion and Sedimentation Control Program conditioned upon their ordinance being updated to include, among other language, the civil penalty appeals process, and the remission process by the time of the Q4 Commission meeting held in November of 2022. The City should continue to work to improve their program and fulfill the authority delegated to them.

This report was prepared based on the initial formal review conducted on 2/9/2021, follow-up reviews conducted on 7/29/2021, 1/25/2022 and 4/26/2022, and the continued review and probationary periods in between and will be presented to the Sedimentation Control Commission during its 2022 Q2 meeting on May 19, 2022.