

Local Program Report to the SCC Town of Fuquay-Varina, February 21, 2023

On January 11, 2023, personnel from NCDEQ, DEMLR conducted a formal review of the Town of Fuquay-Varina Erosion and Sedimentation Control Program. The Town of Fuquay-Varina program was initially delegated on 8/16/2018. The Town requires an erosion and sediment control plan for all projects disturbing greater than 1 acre. Jurisdiction of the program covers the Town of Fuquay-Varina's corporate limits and extraterritorial jurisdiction (ETJ). During the 2022 calendar year, the Town conducted 50 plan reviews or re-reviews, issued 33 approvals and 17 disapprovals. During this period the Town also conducted 1,041 inspections and issued 14 NOVs and 1 Civil Penalty. Town inspection staff are responsible for erosion control inspections as well as various other inspections throughout the construction process. The Town can place a hold on building permits or deny a request for construction inspections if erosion control issues are noted or have not been corrected. Staff stated that the holds and inspection denials are not always tracked formally, because they are often used at the time a request for a construction inspection is made or during the construction inspection and not as a direct result of an erosion control inspection. However, Staff is considering ways to track the use of holds and inspection denials. Staff stated they had recently implemented the process of sending letters of disapproval with the ability to track receipt by the applicant to ensure that notice of these disapprovals was properly handled. This change was made following discussions at the previous local programs workshop. The Town has 10 staff who contribute approximately 5 full time equivalents (FTE) to the program. Staff stated that the program had also received approval and funding for an additional inspector and engineer position. It is anticipated that these positions would contribute approximately 1 FTE to the program once filled. At the time of our review the Town had 90 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. High Grove Oaks Phase 2-8:

This project consists of 28.73 acres disturbed for residential development. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, previous inspection reports, the FRO form and the 404 and 401 permits. The Town received the initial complete application for this project on 5/7/2020 and went through 3 review cycles before being approved on 2/18/2021. The Town conducted the review and rendered a decision within the appropriate timeframe during each review cycle. The approved plan appeared to be adequate, however maintenance notes were not included for all proposed measures. Construction on this project began in July of 2021 and the Town had conducted 18 inspections prior to our review. The Town issued an NOV to this project on 2/3/2022. Staff conducted a follow up inspection on 2/22/2022 and found that most items had been completed however stabilization and repairs were still needed in some locations. This project remained under NOV until the following inspection conducted on 3/24/2022 where staff noted that all corrective actions had been completed and the site was in compliance. Due to the loss of

daylight only a partial inspection was conducted on this site during our review. Staff indicated that grading had been completed and the development was awaiting plat approval before moving into the homebuilding phase. Overall, inactive areas of the site had been stabilized and appeared well vegetated. The diversion ditch to the south basin was beginning to erode and the first cell of the basin was nearing the need to be cleaned out. Minor sediment loss and staining were noted beyond the limits of disturbance and encroaching into the adjacent stream buffer area. The north basin appeared to have been dug to the permanent basin specifications and the baffles, which were underwater, needed to be raised to ensure proper function as designed. Minor sediment loss and staining were noted beyond the skimmer outlet in this location as well. The sediment losses in both locations appeared to be mostly fines with little accumulation of sediment deposition noted. Utilities had recently been installed and the areas disturbed had been seeded and mulched with straw. The stream crossing had been completed and appeared to be well stabilized. Overall, this site had been stabilized appropriately, however, was out of compliance due to the minor sediment losses noted.

2. Aviator Brewing Company:

This project consists of 6.35 acres disturbed for commercial development. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, previous inspection reports and the FRO form. A letter of consent from the landowner of record was missing from the project file. The Town received the initial complete application for this project on 12/20/2019 and went through 3 review cycles before being approved on 8/13/2020. The Town conducted the review and rendered a decision within the appropriate timeframe during each review cycle. The approved plan appeared to be adequate. Construction on this project began in May of 2021 and the Town had conducted 9 inspections prior to our review. The Town issued an NOV to this project on 5/18/2021 after finding that construction had begun without scheduling and holding a preconstruction meeting and noting minor tracking into the street. Construction was halted until the remaining permit fees were paid, and a preconstruction meeting was held. These were completed on 6/29/2021 and the NOV was lifted. During our review, grading of the building pads had been completed and foundations were being prepared to be poured. One section of silt fence appeared to have improper post spacing and would need to be reinstalled per the approved construction detail. A section of silt fence with holes in it also needed to be replaced. The completed areas below the retaining wall had been stabilized. Staff indicated that the retaining wall adjacent to the skimmer basin had recently been completed. The basin appeared to have been excavated deeper than designed. The baffles were underwater and needed to be raised to ensure that the basin functioned as designed. Additional stone was needed on a few inlet protection measures. The clean water diversion had been installed at an existing stormwater system outlet along the perimeter of the site which appeared to be functioning properly. Additional check dams, silt fence and hay bales along the building pad had been installed to help divert water draining from the site away from this clean water ditch the area was being brought up to final grade. Some rills had formed below the matting in few areas and needed to be repaired. Overall, this site was in compliance with a few maintenance needs noted.

3. Redeemer Community Church:

This project consists of 8.17 acres disturbed for institutional development. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, previous inspection reports and the FRO form. The Town received the initial complete application for this project on 8/3/2021 and went through 2 review cycles before being approved on 2/18/2022. The Town conducted the review and rendered a decision within the appropriate timeframe during both review cycles. The approved plan appeared to be adequate. Construction on this project began in December of 2022 and the Town had conducted 1 inspection prior to our review. No NOV or CPAs had been issued to this project. During our review, active grading was underway. Two skimmer basins had been installed and the surrounding areas stabilized. Diversion ditches throughout the site had been stabilized with matting or seed and straw. Wattles had been properly staked; however, did not appear to be stapled down. Staff indicated that a field change had been made to add a stockpile above the back skimmer basin which was to be used when grading the building pad. Silt fence needed to be installed at the toe of this stockpile to prevent erosion into the basin. Perimeter measures throughout the site and the construction entrance appeared to be well maintained and functioning properly. Town staff reminded the contractor that the recently cleared areas in the southwest corner of the site would need to be stabilized within the appropriate timeframe. Overall, this site appeared to be well maintained and properly stabilized. This site was in compliance.

Positive Findings:

During the review DEMLR Staff noted positive aspects about the Town of Fuquay-Varina Local Erosion and Sedimentation Control Program including:

- The Town requires a preconstruction meeting for all projects.
- The Town requires that applicable 404/401 permits are obtained and provided to staff by the time of the preconstruction meeting.
- Town staff utilize the ability to place holds on various permits and construction inspections as additional tools to bring sites into compliance.
- The Town utilizes sections of the Land Development Ordinance (LDO) regarding illicit discharge and stormwater control to enforce proper concrete washout on construction sites and are noting when potential NCG01 violations are seen. The Town also provides reference to the NCG01 permitting process within their letters of approval.

Issues Noted and Required Actions:

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

- Written consent from the landowner was not obtained when the financially responsible party (FRP) and landowner differ.
- Maintenance notes for all proposed measures were not included in all approved plans.

The Town shall implement the following changes to correct the deficiencies found during the 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 in each project file.
- The Town accepts Wake County 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 somewhere within the plans, and the standard details are up to date for each proposed measures within the plan.

Recommendations for Improvement:

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

- The Town is in the process of developing their own set of standard construction details. It is recommended to include maintenance notes within each detail to provide consistency and ensure that notes are included for each proposed measure.
- The Town has developed a set of standard operating procedures for various aspects of the program. This helps to provide consistency across program staff and aids in training when staff turnover occurs. It would be beneficial to update the SOPs to include the process of utilizing building inspection or permit holds.
- It is recommended to document when tools such as placing a hold on building permits, inspections or plats are being utilized. These tools are currently not always being documented or tracked. When holds are placed as a direct result of an erosion control inspection, this can be noted on the inspection reports.

Conclusion:

During the review, DEMLR staff found that the Town of Fuquay-Varina locally delegated erosion and sedimentation control program had a few deficiencies. The Town will need to ensure that written landowner consent is obtained in all cases when the financially responsible party and landowner of record differ. Staff should also ensure that maintenance notes are included for all proposed measures when reviewing plans. The Town is reviewing plans and sending official notice of the review decision within the statutory timeframes. However, the Town has previously not sent notices of disapproval with the ability to track receipt by the applicant. Staff indicated that as of January 1, 2023, letters of disapproval were being sent via certified mail to meet this requirement. The Town has updated their local ordinance to reflect the most recent Model Ordinance. During the review, the Town demonstrated a thorough understanding of the enforcement processes and tools which are delegated to them. The Town will take additional action such as placing a hold on various construction inspections, building permits and final plat approval, when necessary, as incentives to bring sites into compliance. Town inspectors are responsible for the erosion control as well as other building and infrastructure inspections. This allows staff to maintain a frequent presence onsite throughout

the construction process beyond their regular monthly erosion inspections. Town staff noted all areas seen by state staff on site and demonstrated their ability to conduct adequate inspections. Current staffing levels appear to be adequate, and the addition of the approved engineer and inspector positions will only aid in the distribution of workload. The Town demonstrated their ability to effectively implement the local program's delegated authority. DEMLR staff recommends to Continue Delegation of the Town of Fuquay-Varina locally delegated program.

This report has been prepared based on the formal review of the Town of Fuquay-Varina Erosion and Sedimentation Control Program conducted on January 11, 2023 and will be presented to the Sedimentation Control Commission during its 2023 Q1 meeting on February 21, 2023.