

Local Program Report to the SCC Johnston County, May 23, 2023

On March 14, 2023, personnel from NCDEQ, DEMLR conducted a formal review of the Johnston County Erosion and Sedimentation Control Program. The Johnston County Program was last reviewed on 1/16/2019. The County requires an erosion control plan for all projects disturbing greater than one acre. Jurisdiction of the program covers all unincorporated areas of the County and within the Towns of Archer Lodge, Benson including extraterritorial jurisdiction (ETJ), Pine Level including ETJ, and Wilson Mills including ETJ. The program consists of 4 staff which contribute approximately 1.5 full time equivalents (FTE). During the previous year from March 2022 through February 2023, the County conducted 296 plan reviews or re-reviews, issued 122 approvals and 174 disapprovals. The County appeared to be sending a letter of disapproval to the applicant when plans were found to be inadequate, however, these letters were not being sent with the ability to track receipt. Letters of disapproval must be sent with the ability to track receipt by the applicant as the applicant can appeal this decision if they file a request within 15 days of receiving the written notice of disapproval. During this same period the County conducted 456 inspections and issued 6 NOVs. Staff stated that the County can place a hold on building inspections and hold the final plat approval or the issuance of a certificate of occupancy until any outstanding erosion and sedimentation control issues have been resolved. The County has used their ability to place a hold on building inspections or permits 10 times during this period. At the time of our review the County had 359 open projects. During our review of the program, we looked at three project files and conducted site inspections on two projects.

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

1. Precision Tune Auto Care (File Review Only):

This project consists of 1.67 acres disturbed for commercial development and is located within the Upper Neuse subbasin of the Neuse River basin. 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 a letter of landowner consent. The County received the initial complete application for this project on 1/2/2022 and went through 2 review cycles before issuing the letter of approval on 7/5/2022. Each review cycle consists of a review of the plans and notice of the review decision being sent. During the first review cycle for this project, the plan was found to be inadequate, and a letter of disapproval was sent to the applicant. This review cycle was not completed within the statutory timeframe. The County stated that these letters are not being sent with the ability to track receipt by the applicant. The approved plan contained the use of an existing “regional basin”; however, this basin was not included within the limits of disturbance. If an existing basin is to be used, this should be included within the limits of disturbance and staff should verify that the basin has been designed to handle the proposed drainage area. Protective measures were not shown around stockpile locations on the plan. Construction of this project began in October of 2022 and the County conducted 3 inspections prior to the day of our review. Due to time constraints, a site inspection was not conducted on this site during our review.

2. Norris Road:

This project consists of 59.59 acres disturbed for residential development and is located within the Upper Neuse subbasin of the Neuse River basin. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports, and the FRO form. After the initial application was submitted to the County, the applicant purchased the land and submitted an updated FRO form. The new FRO form was retained in the project file however, documentation of property ownership was not retained in the project file. Staff indicated that current land ownership is verified using the County GIS website, but a copy of the property deeds are not always printed and kept in the project file. The County received the initial complete application for this project on 2/18/2021 and went through 4 review cycles before issuing the letter of approval on 11/23/2021. During this time, each review cycle was not completed within the statutory timeframe. A drainage area map, seeding specifications and maintenance notes for some proposed measures were missing from the approved plan. The diversion ditches proposed in the approved plan did not show a means of stable conveyance into the basin. Construction on this project started in December 2022 and the County had 1 inspection report in the project file. This report noted that the site was inaccessible at the time and a full inspection was not completed.

On the day of our review, active grading was underway. Diversion ditches throughout the site needed to be maintained or reworked per the construction details in the approved plan. Rock pads needed to be installed below the skimmer devices and diversions were observed to be bypassing baffles in multiple basins. A stockpile had been placed adjacent to a basin and would need to be moved or measures installed to protect from eroding. Minor sediment loss was noted at two basin outlets. Offsite sediment needed to be removed and the disturbed areas stabilized. Basin slopes throughout the site had been stabilized and baffles installed properly. Overall, this site was out of compliance. The County conducted a follow up inspection on 4/2/2023. The inspection report stated that the site was in compliance having completed all corrective actions and noted no sediment was observed outside of the LOD.

3. Flowers NW 13 Phase 1 and Phase 2:

This project consists of multiple phased portions. Only the project file for phase 1 was reviewed. Phase 1 consists of 40 acres disturbed for residential development and is located within the Upper Neuse subbasin of the Neuse River basin. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports and the FRO form. Written consent from the landowner was not retained in the project file. The County received the initial complete application for this project on 3/29/2019 and went through 2 review cycles before issuing the letter of approval on 6/6/2019. The County approved a revision to the plans on 3/23/2020. A construction detail for check dams was missing from the approved plan. The County had conducted 11 inspections on this project and issued two NOVs prior to the day of our review. An NOV was issued to this project on 4/15/2021 for sediment loss into a buffer and stream. The County coordinated with the Division of Water Resources and the US Army Corps of Engineers to facilitate cleanup of these areas. The County had not documented when corrective actions had been completed and the NOV lifted. The second NOV was issued following an inspection conducted by the County on 10/21/2021 for failing to control dust. The County noted that all corrective actions had been completed and found the site to be in compliance and

lifted the NOV during their follow up inspection on 11/3/2021. The last inspection conducted by the County on this project was on 1/10/2022.

On the day of our review a partial inspection of both phase 1 and phase 2 was conducted. Sediment loss was noted at multiple silt fence outlets in phase 1 and rills that had formed behind completed homes needed to be repaired and then stabilized. Sediment was observed to be moving from phase 1 into phase 2 and then into an unprotected culvert allowing sediment to flow through the culvert. The culvert outlet was nearly completely full, and sediment was noted into the downstream buffer area. County staff conducted a full inspection of both phase 1 and 2 on 3/21/2023 and issued an NOV for the sediment loss and other violations. The County conducted a follow up inspection of both phases on 4/24/2023 and found that the contractor was working to address the violations but had not yet completed all corrective actions noted. The County placed a hold on all building inspections until compliance is achieved. The County conducted another inspection on 5/4/2023 and found that all corrective actions in Phase 1 had been completed. Staff noted that work to complete corrective actions in Phase 2 were ongoing. The County lifted the building inspection hold on Phase 1 but left the hold on Phase 2 until all corrective actions are completed.

Positive Findings:

During the review DEMLR staff noted positive aspects about the Johnston County Erosion and Sedimentation Control Program including:

- The County provides reference to the NCG01 permitting process within their letters of approval and is reviewing self-inspection records for compliance with both the SPCA and NCG01 requirements.
- The County requires a preconstruction meeting for all approved projects.
- The County can place a hold on building inspections, final plat approvals and Certificates of Occupancy as additional tools to bring sites into compliance.

Issues Noted and Required Actions:

During the review DEMLR staff found that the Johnston County Erosion and Sedimentation Control Program had deficiencies including:

- Documentation of property ownership was not retained in all project files and written landowner consent was not obtained when the financially responsible party and landowner differed. Staff stated that they were verifying property ownership using the County GIS website.
- Once a complete application is received, plans are reviewed, and the applicant is notified of the review decision. When plans are found to be inadequate, the County is sending a letter of disapproval. However, notification of the plan review decision is not always being sent within the required statutory timeframes and letters of disapproval are not being sent with the ability to track receipt.
- Approved plans were missing construction details and maintenance notes for some proposed measures. One plan did not include seeding specifications or a drainage area map. Stable conveyance of water into basins was not always shown on the approved plans.

- The County's monthly activity reports, project files and conditions onsite indicate an infrequent presence on site. The last inspection that was conducted on the Flowers NW 13 project occurred over a year ago and no full inspection of the Norris Rd. project had been conducted. The current workload is not sustainable with the current staffing.

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

- Documentation of land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.0118(c). A copy of the property deed should be 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). When the landowner and financially responsible party differ, written consent from the landowner should be obtained and retained in the project file.
- 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 within 15 days of receipt of a revised plan. G.S. 113A-61(b) and MOA Part III.C.1 & 3. Staff should ensure that plans are being reviewed and notice of the 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.
- Plans should include all information necessary to ensure that they can be approved in accordance with 15A NCAC 04B.0107(a) & (c) and 15A NCAC 04B.0118(d)(1) pursuant to the basic plan objectives under 15A NCAC 04B.0106. Staff should ensure that plans include construction details and maintenance notes for all proposed measures prior to approving plans. To ensure that proposed measures are adequate for the respective drainage area, staff should require delineation of proposed drainage areas.
- The County shall employ a sufficient number of qualified personnel and provide adequate resources for plan review and compliance inspections. MOA Part III.A.3 & 4. The County will need to work towards increasing the full-time equivalents contributed to the program in order to increase inspection frequency and sufficiently monitor sites for compliance with the SPCA.

Recommendations for Improvement:

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

- The County is in the process of updating the local ordinance. If substantive changes from the 2021 Model Ordinance are made, review and approval is required from the Sedimentation Control Commission. If this is the case, it is recommended that you provide

a draft of the proposed changes and request an informal review prior to adopting the changes at the local level and seeking formal review.

- Monitor and provide guidance for NPDES violations including operating without a permit, improper concrete washout, and fuel containment on site during inspections. Note possible violations and refer to the NCDEQ Raleigh Regional Office when necessary.

Conclusion:

During the review DEMLR staff noted that the Johnston County locally delegated erosion and sedimentation control program had a number of deficiencies. The County will need to adjust their plan review procedure to ensure that plans are reviewed, and the applicant notified of the decision properly and within the statutory timeframe. Staff should ensure that construction details and maintenance notes are included for all proposed measures prior to approving plans. Staff should also ensure that all measures are being appropriately designed for the respective drainage areas. Documentation of property ownership and landowner consent should be retained within each project file. Staff demonstrated their technical understanding and experience regarding both design and implementation of the erosion control plans. However, due to the unsustainable workload, the County is unable to maintain a frequent presence onsite. This was evident in the project files and onsite. Prior to our review, Flowers NW 13 Phase 1 and 2 had not been inspected since January 2022 and Norris Road had not been fully inspected since construction began in December 2022. Offsite sedimentation was noted in varying degrees on both sites. The County needs to increase the full-time equivalents contributed to the program to ensure that the expectations and responsibilities of their delegated authority can be met. The County has provided follow up since the audit and indicated that documentation of property ownership will be retained in project files moving forward. Staff also stated they will ensure that all necessary details and maintenance notes are included within each plan. DEMLR staff recommend to “Continue Delegation with Review” for a period of 9-months of the Johnston County locally delegated program with a follow up report to be presented during the 2024 Q1 meeting.

This report has been prepared based on the formal review of the Johnston County Erosion and Sedimentation Control Program conducted on March 14, 2023 and will be presented to the Sedimentation Control Commission during its 2023 Q2 meeting on May 23, 2023.