

Local Program Report to the SCC Winston-Salem/Forsyth County, February 21, 2023

On December 7, 2022, personnel from NCDEQ, DEMLR conducted a formal review of the Winston-Salem/Forsyth County Erosion and Sediment Control Program. The program was last reviewed on 7/24/2017. The program requires an erosion and sediment control plan for multi-family residential projects disturbing greater than 20,000 sq. ft and 10,000 sq. ft. for any other non-exempt purpose. The program has also developed a single-family residential lot application for all single-family residential lot projects which disturb less than an acre but are within a common plan of development and require coverage under the NCG01 permit and thus require an ESC plan approval. Jurisdiction of the program covers all unincorporated areas of the County and within the City of Winston-Salem, the Towns of Lewisville and Walkertown, and the Village of Clemmons. During the period from November 1, 2021, through October 30, 2022, the program approved 207 plans and conducted 2151 inspections. During this same period, the program issued 18 NOVs and 1 CPA. The program also issued 2 SWO/building permit or building inspection holds. The program has transitioned to an electronic permitting system. When plans are found to be inadequate, review comments are sent through the permitting system until an approvable plan has been received. The program is not currently tracking the number of reviews and re-reviews, nor the number of approvals and disapprovals issued in each month. Prior to the summer of 2022, this review process did not include sending official written notice of the disapprovals. Program staff stated that the review process has been adjusted and that official written notice of plan disapprovals are being sent properly but have not been reported accurately in the monthly activity numbers. The program has 5 full time staff. Staff stated that they will work with the Building Inspections Department to place holds on building permits and building inspections as additional tools used to bring sites back into compliance. At the time of our review the program had 381 open projects. During our review of the program, we looked at three project files and conducted site inspections of those projects.

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

1. The Grove at Fishel Road:

This project consists of 30.30 acres disturbed for residential development. The project file contained the approved plan, approval letter, design calculations, a copy of the property deed, previous inspection reports and the FRO form. The complete application was received on 2/18/2020 and went through 6 review cycles before being approved on 7/9/2020. Construction of this project began in August of 2020 and the program had conducted 20 inspections prior to our review. The program issued an NOV to this site on 1/18/2021 and a Notice of Continuing and Additional Violations (NOCAV) on 2/16/2021. Staff stated that the sediment loss had been cleaned up and the measures which lead to the loss had been repaired within the deadline set in the NOCAV. The site remained out of compliance until 6/22/2021 due to persistent internal measure maintenance and stabilization needs. Staff indicated that the developer worked with the program during this period as complications with staffing arose. Program staff continued to monitor the site and worked with the developer to ensure that no offsite losses occurred while

the site remained under notice. During our review, individual lot measures had been installed in one section while active grading was continuing in the other section. One basin appeared to have recently been disturbed and the skimmer and baffles removed. A large rill had formed above this basin which would need to be repaired and stabilized. The second basin appeared to be functioning properly, however the baffles could not be seen due to the water level from recent rain events. The diversion ditches directing water to the second basin had been stabilized and check dams were installed. Sediment had accumulated and overtopped the silt fence in one area with minor losses noted. Along the south side of the project rocks had fallen onto the silt fence which needed to be repaired. Completed lot pads and slopes throughout the site had been stabilized. A few inlet protection measures needed to be repaired while others throughout the site appeared well maintained and functioning. Following our review, the program issued an NOV to this site on 12/9/2022. Staff conducted a follow up inspection on 12/14/2022 and found that all corrective actions had been completed, offsite sediment had been removed and the site was in compliance.

2. Artreaux Apartments:

This project consists of 4.8 acres disturbed for residential development. The project file contained the approved plan, approval letter, design calculations, a copy of the property deed, a letter of consent from the landowner, previous inspection reports and the FRO form. The complete package was received on 9/22/2020 and went through 3 review cycles before being approved on 3/16/2021. Construction of this project began in July of 2021 and the program had conducted 10 inspections prior to our review. This project had not received any NOVs or CPAs prior to our review. During our review construction of the buildings and parking deck were underway. Perimeter silt fence was damaged throughout the site and tracking into the road was noted in several areas. Wattles had been placed around some curb inlets however, they did not protect the inlets from stockpiles which had been placed directly behind the curb. Other curb inlets throughout the site did not have measures installed per the approved plan. A construction entrance had not been installed for access to the parking deck area and tracking into the road was noted. Yard inlet protection measures needed to be maintained throughout the site. Following our review, the program issued an NOV to this site on 12/9/2022. Staff conducted a follow up inspection on 12/29/2022 and found that all corrective actions had been completed. Staff indicated that during this inspection, potential NCG01 violations were noted and discussed with onsite personnel.

3. Triad Ocular and Facial:

This project consists of 1.19 acres disturbed for commercial development. The project file contained the approved plan, approval letter, a copy of the property deed, previous inspection reports and the FRO form. The complete package was received on 11/12/2021 and underwent 3 review cycles before being approved on 3/28/2022. Construction of this project began in April of 2022 and the program had conducted 2 inspections prior to our review. This project had not received any NOVs or CPAs prior to our review. During our review an underground stormwater retention system was being installed and construction of the building was being completed. Signs of previous repairs to the perimeter silt fence below a retaining wall were noted, however the new silt fence had been installed with wooden stakes on the upstream side of the fence and

not per the approved construction detail. Silt fence along the front of the site needed to be repaired or replaced. It was noted that the construction entrance was functioning but would soon need maintenance to prevent future tracking into the road from occurring. Overall, this site was out of compliance needing to maintain measures to prevent potential future sediment loss from occurring in areas where silt fence was damaged or installed improperly.

Positive Findings:

During the review DEMLR staff noted a few positive aspects about the Winston-Salem/Forsyth County Erosion and Sediment Control Program including:

- In addition to NOVs and CPAs, the program can use SWOs and place a hold on building permits and various building inspections as additional tools to halt construction progress and bring sites into compliance.
- The program requires that all applicable 404/401 permits and certifications are obtained prior to issuing a grading permit.
- Preconstruction meetings are required for all projects.
- The program has a more restrictive criterion than the State as to when an approved ESC plan is required. An approved ESC plan is required for multi-family residential projects disturbing greater than 20,000 sq. ft. and all other non-exempt projects disturbing greater than 10,000 sq. ft. The program has also developed a Single-Family Development application for single family residential lot projects that are less than 1 acre and within a common plan of development. These projects are required to obtain coverage under the NCG01 permit and thus must also have an approved ESC plan.
- The program provides reference to the NCG01 permit and the process to obtain coverage within their letters of approval.

Issues noted and Required Actions:

During the review DEMLR staff found that the Winston-Salem/Forsyth County Erosion and Sediment Control Program had a few deficiencies including:

- The program is not accurately reporting their monthly activities regarding plan reviews. With the program's current electronic permitting system, the number of plan reviews and re-reviews, approval and disapprovals are not being tracked adequately. During the review process of the projects noted above, the plans were reviewed, and comments sent through the permitting system when the plan was found to be inadequate. No official written notice of disapproval was sent.
- The letter of approval issued by the program does not include a statement conditioning the approval upon the applicant's compliance with federal and state water quality laws, regulations, and rules.
- The program currently does not require that all temporary measures are removed prior to closing a project out.

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

- The program should adjust their tracking to include the number of reviews and re-reviews that are conducted. Tracking should also ensure that the number of plans which are approved and disapproved within each month are being accurately reported. Program staff stated that starting in the summer of 2022, official notice of plan disapproval was being sent out when plans were found to be inadequate. This adjustment was made to ensure that the timeframe and plan review decision notice requirements of G.S. 113A-61(b) are being met.
- The program should update its letter of approval to include language that shall condition approval of the erosion and sedimentation control plan upon the applicant's compliance with federal and state water quality laws, regulations, and rules pursuant to G.S. 113A-61(b1).
- Projects should not be closed out prior to the completion of all phases of the project. Phases of the project are specified in 15A NCAC 04B.0131 and include "the completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures". The program should be contacted for approval of the removal of measures once permanent stabilization has been established. Projects should be closed out once all temporary measures have been removed and the site permanently stabilized.

Recommendations for improvement:

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

- Certain sections within the local ordinance are devoid or no longer adhere to the most recent statutes and administrative code. The program has begun the process of updating the local ordinance pursuant to the current Model Ordinance. As a reminder, if any updates will substantively deviate from the model ordinance, the updated ordinance must be approved by the Sedimentation Control Commission (SCC). The updated ordinance must be adopted by the local government prior to a formal review and approval from the SCC. It is recommended that if a formal review is required, the local program seek an informal review by the SCC prior to adopting the updated ordinance at the local level.
- The program is requiring that projects obtain coverage under the NCG01 permit when applicable and will not issue the grading permit until the Certificate of Coverage is provided. It is recommended to monitor and provide guidance for NPDES violations including improper concrete washout and fuel containment on site during inspections. Note possible violations and refer to the Winston-Salem Regional Office.

Conclusion:

During the review DEMLR staff found that the Winston-Salem/Forsyth County locally delegated Erosion and Sediment Control Program had a few deficiencies. The program will need to ensure that its monthly activity reports are being tracked accurately. The program is not currently tracking the number of plan reviews and disapprovals and the number of plan approvals does not appear to be accurately reported for each month. The programs current tracking should be adjusted to ensure that the number of plan reviews and re-reviews, plan

approvals, and plan disapprovals are accurate. The program has recently adjusted the plan review process to include the issuance of a written notice of disapproval and are sending these notices with the ability to track receipt by the applicant. This adjustment was made after the projects we reviewed had been approved. The Program issued NOVs to two sites following our review and provided follow up reports to State staff. Corrective actions had been completed and both sites were found to be in compliance within the deadline specified within the NOV. The program has demonstrated their understanding and willingness to use the enforcement tools available to them to bring sites into compliance. The approved plans we reviewed appeared to be adequate. Staff noted all areas seen by State staff during site inspections. The program has started the process of updating the local ordinance in accordance with the most recent Model Ordinance. The program demonstrated their knowledge and ability to effectively implement the local program's delegated authority. DEMLR staff recommends to Continue Delegation of the Winston-Salem/Forsyth County locally delegated program.

This report has been prepared based on the formal review of the Winston-Salem/Forsyth County Erosion and Sediment Control Program conducted on December 7, 2022 and will be presented to the Sedimentation Control Commission during its 2023 Q1 meeting on February 21, 2023.