

# MEMORANDUM OF AGREEMENT

THE NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION

## SWAIN COUNTY

This MEMORANDUM OF AGREEMENT is entered into between the North Carolina Sedimentation Control Commission (hereinafter, "Commission") and Swain County (collectively, "Parties") for the purpose of rescinding the Commission's delegation of authority to enforce the Sedimentation Pollution Control Act of 1973, N.C. Gen. Stat. Ch. 113A Art. 4 and any rules adopted pursuant to the Act (hereinafter collectively, "SPCA.")

### Part I. Existing Delegation

Swain County has an existing delegated local erosion and sedimentation control program (hereinafter, "local program") and an existing local sedimentation control ordinance that was initially approved by the Commission in 2001.

The Parties agree that under the existing delegated local program,

1. The Commission maintained concurrent jurisdiction with Swain County for land disturbing activities.
2. The Commission maintained exclusive jurisdiction to administer the SPCA for all land disturbing activities that are outlined in North Carolina General Statute § 113A-56.
3. Swain County is required to provide the following reports/information:
  - a. Monthly activity reports to the Commission in the form adopted by the Commission.

- b. Copy of Notices of Violation to the appropriate regional office of the Division of Energy, Mineral, and Land Resources.
  - c. Current contact information for their local program to the Division of Energy, Mineral, and Land Resources.
4. Swain County is required to undertake appropriate enforcement actions, including injunctive relief, or assessment of civil penalties for an initial penalty or a daily penalty for continuing violations.

#### Part II. Rescission of Delegation

By execution of this agreement, Swain County requests, and the Commission accepts, the rescission of the delegation of authority to Swain County under N.C. Gen. Stat. § 113A-60. The Commission and Swain County, hereby jointly acknowledge the rescission of the Commission's delegation of authority to administer the Sedimentation Pollution Control Act (SPCA), Chapter 113A, Article 4, within the jurisdiction of Swain County.

Upon repeal of its local sedimentation control ordinance, Swain County shall be divested of its authority to enforce its Sedimentation and Erosion Control Ordinance. All portions of Swain County lying within the territorial jurisdiction of another local erosion and sedimentation control program under N.C. Gen. Stat. § 113A-60 shall be subject to the jurisdiction of that local program. All portions of Swain County lying outside the jurisdiction of another local program shall be subject to the jurisdiction of the Division of Energy, Mineral, and Land Resources ("DEMLR") of the Department of Environmental Quality.

In order to effectuate the rescission, the Parties agree that Swain County shall:

1. Repeal its local sedimentation control ordinance and send a certified copy of the resolution repealing said ordinance to the Commission within 90 days of execution of this agreement.

2. At least thirty (30) days prior to the effective date of the repeal, notify in writing the DEMLR regional office of the effective date of the repeal.
3. Cooperate with the DEMLR Asheville Regional Office to transfer any approved erosion and sedimentation control plans and make available any information necessary for DEMLR's future enforcement of the SPCA within Swain County.
4. Report to the Commission on the completion of the repeal of its local ordinance and transition of enforcement of the SPCA from Swain County to DEMLR.

IN WITNESS HEREOF, the Parties enter into this Memorandum of Agreement, this the 21 day of February 2023.

SEDIMENTATION CONTROL COMMISSION

LOCAL PROGRAM

By: \_\_\_\_\_

Susan N. White

Chair

Dated: \_\_\_\_\_

By: Kevin Seagle

Kevin Seagle, Chairman

Swain County Board of Commissioners

Dated: 2/21/23

By: Kevin S. King

Kevin S. King

County Manager

Dated: 2/21/23

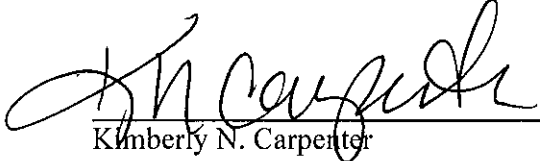
Approved as to Form

Approved as to Form

\_\_\_\_\_  
Sarah Zambon

Counsel to the Commission

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Kimberly N. Carpenter

Local Government Attorney

Dated: 3/16/23

**Appendix I.**

NORTH CAROLINA GENERAL STATUTES

***Sedimentation Pollution Control Act (Ch. 113A Art. 4)***

(selected statutes)

**§ 113A-54. Powers and duties of the Commission.**

(d) In implementing the erosion and sedimentation control program, the Commission shall:

- (1) Assist and encourage local governments in developing erosion and sedimentation control programs and, as a part of this assistance, the Commission shall develop a model local erosion and sedimentation control ordinance. The Commission shall approve, approve as modified, or disapprove local programs submitted to it pursuant to G.S. 113A-60.

**§ 113A-56. Jurisdiction of the Commission.**

(a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:

- (2) Conducted by the State.
- (3) Conducted by the United States.
- (4) Conducted by persons having the power of eminent domain other than a local government.
- (5) Conducted by a local government.
- (6) Funded in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any other State agency that has submitted an erosion and sedimentation control program to be administered by it, if the program has been approved by the Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments that administer a delegated erosion and sedimentation control program over all other land-disturbing activities. In addition to the authority granted to the Commission in G.S. 113A-60(c), the Commission has the following authority with respect to a delegated erosion and sedimentation control program:

- (1) To review erosion and sedimentation control plan approvals made by a delegated erosion and sedimentation control program and to require a revised plan if the commission determines that a plan does not comply with the requirements of this Article or the rules adopted pursuant to this Article.
- (2) To review the compliance activities of a delegated erosion and sedimentation control program and to take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action.

(1973, c. 392, s. 7; c. 1417, s. 4; 1987, c. 827, s. 130; 1987 (Reg. sess., 1988), c. 1000, s. 4; 2002-165, s. 2.5; 2006-250, s.2.)

**§ 113A-60. Local erosion and sedimentation control programs.**

- (a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related activities. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article. Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.
- (b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of this Article and rules adopted pursuant to this Article.
- (c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. [f the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

(d) A local government may submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for the administration and enforcement of all other components of the erosion and sedimentation control program and the requirements of this Article. The local government may adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control program. An ordinance adopted by a local government that establishes a limited program shall conform to the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. The local government shall establish and collect a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be an amount equal to eighty percent (80%) of the amount established by the Commission pursuant to CJS. 113A-54.2(a) plus any amount that the local government requires to cover the cost of inspection and program administration activities by the local government. The total fee shall not exceed one hundred dollars (\$ 100.00) per acre. A local government that administers a limited erosion and sedimentation control program shall pay to the Commission the portion of the fee that equals eighty percent (80%) of the fee established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and enforcement of other components of the erosion and sedimentation control program. Fees paid to the Commission by a local government shall be deposited in the Sedimentation Account established by G.S. 113A-54.2(b). A local government that administers a limited erosion and sedimentation control program and that receives an erosion control plan and fee under this subsection shall immediately transmit the plan to the Commission for review. A local government may create or designate agencies or subdivisions of the local government to administer the limited program. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration of the limited program. The resolutions establishing any joint limited program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission. Subsections (b) and (c) of this section apply to the approval and oversight of limited programs.

(e) Notwithstanding G.S. 113A-61.1, a local government with a limited erosion and sedimentation control program shall not issue a notice of violation if inspection indicates that the person engaged in land disturbing activity has failed to comply with this Article, rules adopted pursuant to this Article, or an approved erosion and sedimentation control plan. The local government shall notify the Commission

if any person has initiated land-disturbing activity for which an erosion and sedimentation control plan is required in the absence of an approved plan. If a local government with a limited program determines that a person engaged in a land-disturbing activity has failed to comply with an approved erosion and sedimentation control plan, the local government shall refer the matter to the Commission for inspection and enforcement pursuant to G.S. 113A-61.1.

(1973, c. 392, s. 11; 1993 (Reg. Sess., 1994), c. 776, s. 7; 2002-165, s. 2.8; 2006-250, s. 3.)