

Local Program Report to the SCC Town of Clayton Follow Up, May 23, 2024

On February 21, 2024, a report was presented to the Sedimentation Control Commission (SCC) based on the formal review of the Town of Clayton Erosion and Sedimentation Control Program Conducted on July 6, 2023, the subsequent 6-month Continued Review Period, and a formal follow up review conducted on February 2, 2024. The Commission voted to Continue Delegation with Review with a follow up report to be presented during the 2024 Q2 meeting on May 23, 2024. During this 3-month continued review period, the Town needed to address the remaining deficiencies listed below which were noted during the initial and follow-up reviews.

- The Town should ensure that both permanent and temporary seeding specifications are included within the plans prior to approval. Staff should also verify that the size of measures are reflected in the supporting design calculations and that all proposed measures are shown within the limits of disturbance.
- 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 calendar days of receipt of a new plan and within 15 calendar days of receipt of a revised plan. Staff should ensure that plans are being reviewed and notice of the official review decision is being sent within the statutory timeframes. When a plan is found to be inadequate, notice of the plan disapproval should be sent. These notices should be sent with the ability to track as to when the applicant has received the notice.
- Erosion and sedimentation control plans shall be disapproved unless the application includes an authorized statement of financial responsibility and documentation of property ownership. 15A NCAC 04B.0118. Staff should ensure that the disturbed acreage shown on the proposed plan matches that on the FRO form and that all FRO forms are notarized. When the Financially Responsible Party is a company/firm, the registered agent information should be included on the FRO form.

Follow Up:

During the continued review period, the Town has provided inspection reports and updates for various projects. The Town has provided the project file for a recently approved and disapproved plan. The Town has stated their coordination with their contracted consultants to ensure that items such as seeding specifications are included and that all proposed measures are shown within the LOD. During the continued review period from February through April 2024, the Town conducted 13 plan review or re-reviews and issued 2 approvals and 9 disapprovals. For the purposes of reporting, a plan disapproval is counted when a plan is found to be inadequate and review comments are sent back to the applicant. Through the Town's current process, official notice of a plan disapproval is not being sent. During this period, the Town conducted 244 inspections and issued no NOVs or CPAs. As of May 1, 2024, the Town reported 64 open projects.

Pecan Lane Lots 1-3:

This project was approved during the continued review period. This project consisted of 3.49 acres disturbed for residential development and is located within the Upper Neuse Subbasin of the Neuse River Basin. The complete application for this project was initially received by the Town in October 2023 and went through 3 review cycles before being approved on April 22, 2024. When the plan was found to be inadequate, the Town sent comments on items that need to be addressed. A notice of the official review decision was not sent back to the applicant during these review cycles and therefore the review timeframes were not being met. The project file contained the approved plan, letter of approval, a copy of the property deed and the FRO form. The registered agent information for the FRP was not included on the FRO form. The approved plan included temporary and permanent seeding specifications and specific maintenance notes for all proposed measures. All proposed measures were shown within the limits of disturbance and the approved plan appeared adequate.

Clayton Dental:

This project was reviewed and disapproved during the continued review period. This project consists of a proposed 2.14 acres disturbed for commercial development and is located within the Upper Neuse Subbasin of the Neuse River Basin. The plan for this project has undergone 3 review cycles so far. When this plan is reviewed and found to be inadequate an email with the review comments is sent back to the applicant. These emails do not include the necessary language notifying the applicant of the official review decision, the applicant's right to appeal the disapproval and are not being sent with the ability to track receipt. Review comments were last sent to the applicant on 2/21/2024.

Conclusion:

The Town has worked with their contracted consultant to address the seeding specifications and other items that were previously missed during plan reviews. However, the Town has still not addressed the deficiencies in the plan review process. Plans are being reviewed and then review comments are sent to the applicants, but no official review decisions are being rendered until a plan is found to be approvable. Once a complete package is received, the plans must be reviewed and notice of the official review decision must be sent to the applicant within 30 days for new plans and 15 days for revised plans. If no official review decision is rendered within the appropriate timeframe, then the project is automatically deemed approved. The Town needs to ensure that when a plan is found to be inadequate, a formal notice of the disapproval is sent stating that the plan is disapproved and includes the reasons for the disapproval. The applicant has the right to appeal a disapproval if written request is made within 15 days of receiving the notice of disapproval. For this reason, notices of disapproval must be sent with the ability to track receipt. The deficiencies in the plan review process were noted during the initial audit on 7/6/2023 and again during the first formal follow up review conducted on 2/2/2024. It was also noted that the registered agent information for the FRP was not included in the FRO form of the recently approved plan. The need to obtain this information was noted and discussed during the follow up on 2/2/2024. Staff stated that they had discussed items that were previously missed during plan reviews with the contracted consultant and the recently approved plan included these items. The approved plan appeared to be adequate. The Town has also updated the local ordinance in accordance with the most recent Model Ordinance.

The Town still needs to address the following deficiencies in the plan review process and missing information on the FRO forms:

- 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 calendar days of receipt of a new plan and within 15 calendar days of receipt of a revised plan. Staff should ensure that plans are being reviewed and notice of the official review decision is being sent within the appropriate timeframes. When a plan is found to be inadequate, notice of the plan disapproval should be sent. These notices should be sent with the ability to track as to when the applicant has received the notice. These notices should also include language notifying the applicant of their right to appeal the disapproval.
- When the Financially Responsible Party is a company/firm, the registered agent information should be included on the FRO form.

DEMLR staff recommend placing the Town of Clayton Erosion and Sedimentation Control Program on Probation with a follow up report to be presented to the SCC during the 2024 Q3 meeting on August 1, 2024.

This report has been prepared based on the initial formal review conducted on 7/6/2023, the subsequent 6-month continued review period, the formal follow up review conducted on 2/2/2024, and the subsequent 3-month continued review period. This report will be presented to the SCC on May 23, 2023.