

Local Program Report to the SCC Haywood County, May 23, 2024

On April 2, 2024, personnel from NCDEQ, DEMLR conducted a formal review of the Haywood County Erosion and Sedimentation Control Program. The County was last reviewed and presented to the Sedimentation Control Commission (SCC) in November 2019. The county requires an erosion and sediment control plan for all projects disturbing ½ acre or more. Projects disturbing less than ½ acre are required to submit a “small lot plan” through the County Building Department. A small lot plan includes the financially responsible party (FRP) information, and acknowledgement of the FRP’s responsibilities to retain sediment even though an erosion and sediment control plan is not required. Jurisdiction of the program covers all unincorporated areas of the county and within the Towns of Clyde and Maggie Valley. The County has approximately 2 full-time equivalents (FTE) contributing to the program. During the previous year from March 2023 through February 2024 the County conducted 18 reviews or re-reviews, issued 17 approvals and 1 disapproval. During this same period the County conducted 316 inspections, issued 13 NOVs and no CPAs. The County has the ability to place a hold on the building permits and inspections as additional tools to bring sites back into compliance. The County has utilized these tools 13 times in the previous year. At the time of DEMLR’s review, the County had 18 open projects. DEMLR staff reviewed three project files and conducted site inspections on these projects. The following is a summary of the projects reviewed.

1. Springdale Driving Range Expansion

This project consists of 6.47 acres disturbed for commercial development and located within the Pigeon Subbasin of the French Broad River Basin. The project file contained the approved plan, a letter of approval, a copy of the property deed, the FRO form and previous inspection reports. The registered agent information for the FRP was not included on the FRO form. The proposed basin dimensions were noted on the plan; however, the design calculations were not included in the project file. Staff should ensure that design calculations are included with the erosion and sediment control plan and that measures are properly designed for the proposed drainage area. Specific maintenance notes for some proposed measures were not included in the approved plan. The County received the complete application package on 11/7/2022 and approved the plan on 11/16/2022. Construction on this project began in 2022 and the County issued an NOV on 1/24/2023 noting that areas had been disturbed outside of the approved limits of disturbance. The County coordinated with the Division of Water Resources and the U.S. Army Corp of Engineers to facilitate required revisions to the plans. The County received a set of revised plans on 3/29/2023. These plans were disapproved and the County continued to coordinate with DWR and USACE to ensure that all areas of concern were addressed. The County received a set of revised ESC plans including the relevant revisions approved by DWR and USACE on 7/27/2023 and issued the approval letter on 8/17/2023. It was also noted that these revisions included proposed impact to a trout buffer. It did not appear that a Trout Buffer Waiver from DEMLR had been obtained. State Staff discussed that the financial responsible party would need to submit an application for a waiver immediately. The County had issued 6 official inspection reports. They stated that a formal inspection report is not always generated following an inspection. County

staff will coordinate directly with the FRP and onsite contacts for minor repairs and maintenance needs and were not always issuing an inspection report when a site was found to be in compliance. On the day of the review, grading was underway. The silt fence had been installed improperly with the wire backing placed on the wrong side of the fence. It appeared that some rills had formed underneath the matting installed along one section of the stream bank. Recently graded slopes below the parking areas had been matted while slopes above still needed to be stabilized. Inlet protection measures appeared to be functioning. The section of stream restoration had been matted with coir fiber matting and live staking had been installed. However, these restoration measures did not appear to be the proper width from the stream and would need to be extended to meet the details of the approved plan. Minor sediment loss into the unnamed tributary running along one side of the site of approximately 5 gallons was noted. The sediment in the stream did not appear to have moved beyond the limits of disturbance of the site but would need to be removed and the areas disturbed stabilized in accordance with the stream restoration plan. It appeared that a strip along the adjacent power line had been disturbed as well. This area had not been included in the approved plan. The County issued a NOV to this site based on these findings. The County sent the NOV on 4/9/2024 and noted a compliance deadline of 5/13/2024 for all corrective actions to be completed.

2. Pisgah Rd. Retail Store:

This project consists of 2.6 acres disturbed for commercial development and is located within the Pigeon Subbasin of the French Broad River Basin. 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 approved plan for this project appeared adequate. However, specific maintenance notes for some proposed measures were not included in the approved plan. The County received the complete application on 7/24/2023 and issued the approval on 8/21/2023. Construction of this project began shortly afterwards. The County had issued 1 formal inspection report. Staff stated that more frequent inspections are conducted, but an official report is not always generated. No NOVs or CPAs had been issued to this project. On the day of the review, the building foundation was being poured. The perimeter silt fence appeared to be functioning; however, it had been installed using wooden stakes and was not trenched in properly. The construction entrance appeared to be functioning and maintained. A recently completed section of the roadside ditch had been matted with wattles installed while another section appeared to have recently been graded and needed to be stabilized if completed. Overall, this site was out of compliance, needing to reinstall silt fence per the construction detail in the approved plan. No offsite sediment was noted.

3. Johnathon Creek Subdivision:

This project consists of 5.15 acres disturbed for residential development and is located within the Pigeon Subbasin of the French Broad River Basin. The project file contained the approved plan, letter of approval, a copy of the property deed, and the FRO form. The approved plan for this project was for lot development only and appeared to be adequate. The County received the complete application on 3/6/2024 and issued the letter of approval on 3/11/2024. The County had not conducted any inspections on this project prior to the day of the review. On the day of the review, disturbance of individual lots had begun. Silt fence and construction entrances had

been installed on individual lots. Curb inlet protection measures had been installed along the active areas. A few drop inlet protection measures behind the first row of lots would need to be maintained prior to the surrounding lots being disturbed. The areas surrounding these drop inlets and the remaining inactive lots appeared to be stabilized. Overall, this project was in compliance. No offsite sediment loss was noted.

Positives Findings:

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

- The County has a more restrictive criterion than the State as to when an ESC plan is required. Plans are required for all project disturbing ½ acre or more. Projects disturbing less than ½ acre are required to submit a “small lot plan” where they provide the responsible party information and acknowledge their responsibility to retain sediment on their site.
- The County can place a hold on various development inspections and issue Stop Work Orders as additional tools to bring sites back into compliance.
- The County requires an erosion and sediment control bond for projects greater than 5 acres.
- The County recently updated their local ordinance in accordance with recent Model Ordinance changes.

Deficiencies Noted and Corrective Actions Needed:

During the review DEMLR staff found that the Haywood County Erosion and Sedimentation Control Program had a few deficiencies and will need to implement the following changes:

- The registered agent information for the company listed as the FRP was missing on the FRO form for another project.
 - When the FRP is a company or firm, their registered agent information should be included on the FRO form. This applies to both in- and out-of-state companies.
- Maintenance notes for some proposed measures were not included in all approved plans.
 - Specific maintenance notes for each proposed measure should be included within each approved plan.
- The County stated that they are conducting inspections at least monthly on projects disturbing greater than ½ acre but are not always generating an official inspection report. Staff will often communicate any minor repairs or maintenance needs through a phone call to the onsite contact or FRP. Staff also stated that they typically would not generate a report if the site was found to be in compliance.
 - The County should document inspections using an official inspection report. An official inspection should be conducted periodically and regularly. (MOA Part III (D)) The Commission has established that an inspection frequency of at least monthly should be conducted on all projects. Staff should document

their inspection findings at least monthly for each project and issue an official inspection report, even if the site is found to be in compliance.

Recommendations for Improvement:

DEMLR staff have also noted a few recommendations that would help to improve the program:

- Staff appear to be monitoring for potential NPDES violations and provide guidance to contactors onsite. Staff should continue to monitor for potential violations and provide guidance to contractors while conducting inspections. Refer potential violations to the Asheville Regional Office when necessary.
- The County is aware of the high quality, specifically designated trout waters within their jurisdiction, and works to ensure that the design standards for these areas are being met when reviewing plans. The County requires a larger plan review fee for projects with trout waters on site. It is recommended that the County continue to put an emphasis on protecting these areas. DEMLR encourages staff to note the need to obtain a Trout Water Buffer Waiver from DEQ and direct applicants to the DEMLR Asheville Regional Office if necessary.

Conclusion:

During the review, DEMLR staff noted the Haywood County locally delegated erosion and sedimentation control program had a few deficiencies. Staff should ensure that the registered agent information is provided on the FRO form if the FRP is a company of firm. The County should also ensure that specific maintenance notes are included in the plans for all proposed measures. One project file did not include the design calculations. The skimmer basin dimensions were included on the plan; however, staff should ensure that these calculations are included in the application submittal and retained in the project file. Design calculations were included in other project files. Documentation of property ownership was obtained and retained in each project file. Plans were reviewed and notification of the plan review decision was sent within the appropriate timeframes. When a plan is disapproved, notice of the disapproval is being sent with the ability to track receipt. The County requires an erosion and sediment control plan for all projects disturbing greater than ½ acre and requires a “Small Lot Plan” for projects disturbing less than ½ acre. Staff stated that inspections are conducted on each project monthly, but a formal inspection report is not always generated. Moving forward staff will need to document inspection findings, even when the site is found to be in compliance. Staff noted all areas seen by State Staff while conducting site inspections. The County has updated their local ordinance in accordance with the most recent model ordinance. Overall, the County has demonstrated their ability to effectively implement the Local Program’s delegated authority.

DEMLR staff recommend to “Continue Delegation” of the Haywood County Erosion and Sedimentation Control Program. This report has been prepared based on the formal review of the Haywood County Sedimentation Control Program conducted on April 2, 2024, and will be presented to the SCC during its 2024 Q2 meeting on May 23, 2024.