

**DEPARTMENT OF ENVIRONMENTAL
QUALITY**

**DIVISION OF ENERGY, MINERAL,
AND LAND RESOURCES**

**SEDIMENTATION
CONTROL COMMISSION
MEETING**

**10:00 A.M.
Thursday
February 22, 2021**

ONLINE MEETING via WEBEX

**If you have any questions concerning this meeting, please contact
Julie Coco at (919) 707- 9215**

AGENDA

North Carolina Sedimentation Control Commission
Business Meeting

Ground Floor Hearing Room
Archdale Building
512 North Salisbury Street
Raleigh North Carolina

Though normally held at the above location, this meeting will be held via webinar.

February 22, 2022, 10:00 AM

The Elections and Ethics Enforcement Act mandates that the Chair inquire as to whether any member knows of any known conflict of interest or appearance of conflict with respect to matters before the Commission. Executive Order 34 requires any member to recuse herself or himself from voting on any matter before this Commission which would confer a financial benefit on the member. If any member knows of a conflict of interest, appearance of a conflict, or possible financial benefit please so state at this time.

Dr. Susan White, Chair, Presiding

I. Preliminary Matters

- A. Call to Order
- B. Recognition of Those Attending
- C. Swearing in of New Members, if Present
- D. Approval of Meeting Minutes from November 4, 2021

II. Action Items

- A. County of Macon Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the delegation of this program.
- B. City of High Point Review – Mr. Graham Parrish
Staff are presenting findings and recommending revoking the delegation of this program.
- C. City of Rocky Mount Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the review of this program.
- D. City of Greensboro Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the delegation of this program.

- E. City of Greenville Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the delegation of this program.
- F. Town of Knightdale Ordinance Review – Ms. Julie Coco
The Town is requesting formal approval of their ordinance and seeking delegation of authority for administering an erosion & sedimentation control program. Staff will introduce the ordinance.

III. **Information Items**

- A. NCDOT Report – Ms. Julie Coco
Staff will report on the Trout Buffer Waiver issued to the Department.
- B. Commission Technical Committee – Mr. Mark Taylor
The Committee Chair will provide an update on this committee's meetings.
- C. Land Quality Section Active Sediment Cases and Enforcement — Ms. Julie Coco
Staff will report on the status of Civil Penalty Assessments, action on Civil Penalty Assessments, and Judicial Actions.
- D. Education Program Status Report — Ms. Rebecca Coppa
Staff will report on Sediment Education Program activities.
- E. Sediment Program Status Report — Ms. Julie Coco
Staff will report on LQS's current statewide plan approval, inspection, and enforcement activities.
- F. Land Quality Section Report — Mr. Toby Vinson
Staff will provide a report on the current number of vacancies in the Section and other LQS activities.

IV. **Conclusion**

- A. Remarks by DEMLR Director
- B. Remarks by Commission Members
- C. Remarks by Chairman
- D. Adjournment

I. **Preliminary Matters**

A. Call to Order

B. Recognition of Those Attending

C. Swearing in of New Members, if Present

D. Approval of Meeting Minutes from November 4, 2021

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
NOVEMBER 4, 2021
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on November 4, 2021, at 10:00 a.m. via an online webinar. The following persons were in attendance via webinar for all or part of the meeting, with Commission members being present for the entire meeting:

COMMISSION MEMBERS

Dr. Susan White (Chair) – Left meeting early
Mr. Benjamin Brown
Mr. Mark Taylor
Mr. Michael Taylor
Ms. LaToya Ogallo (Vice-Chair)
Dr. Richard McLaughlin
Mr. Michael Willis
Ms. Susan Foster
Ms. Marion Deerhake
Mr. Hartwell Carson
Ms. Emily Sutton

OTHERS

Mr. Brian Wrenn, Director, DEMLR
Mr. Brad Cole, Regional Operations Chief, DEMLR
Mr. Toby Vinson, Program Operations Chief, DEMLR
Mr. Graham Parrish, State Assistant Sedimentation Specialist, DEMLR
Ms. Julie Coco, State Sedimentation Specialist, DEMLR
Ms. Rebecca Coppa, State Sedimentation Education Specialist, DEMLR
Mr. Zac Lentz, DEMLR-Winston Salem Regional Office
Ms. Tamera Eplin, DEMLR-Winston Salem Regional Office
Ms. Alaina Morman – DEMLR Stormwater
Ms. Sarah Zambon, Commission Counsel, Attorney General's Office
Mr. Tom Gerow, NCFS
Ms. Karyn Pageau, Wake County
Ms. Betsy Pearce, Wake County
Ms. Ashley Rodgers, Wake County
Mr. Jeevan Neupane, Wake County
Ms. Carrie Mitchell, Town of Wake Forest
Mr. Johnny Williams, Iredell County
Mr. Kirk Stafford, Town of Cary

Ms. Pat Donovan-Brandenburg, City of Jacksonville
Mr. Tracy Davis, ATS Environmental Solutions
Mr. David Harris, NCDOT REU
Mr. Robert Barrier, NCDOT REU
Mr. Lamar Sylvester, NCDOT
Mr. Gregory Ewanitz, Lennar Homes
Mr. W. Smith, Lennar Homes
Mr. Justin Pittman, Lennar Homes
Ms. Kathryn Cooper

PRELIMINARY MATTERS

Dr. White called the meeting to order at 10:03 am

Dr. White read Executive Order No. 1 regarding avoidance of conflict of interest.

Those in attendance introduced themselves. Dr. White announced any potential conflicts with the Commission members and reminded them to recuse themselves from any discussions related to those conflicts. Dr. White asked the members to turn on their cameras when speaking.

Mr. Mark Taylor was re-appointed to the commission on August 3, 2021. He took the oath of office at this meeting.

Dr. White asked for a motion to approve the minutes from the August 17, 2021, meeting. Mr. Mark Taylor asked for textual amendments to the minutes. Dr. McLaughlin moved to approve the minutes as amended. Mr. Mark Taylor made a second; the motion passed, and the minutes were approved as amended. Ms. Deerhake abstained from voting because she did not attend the August 17, 2021 meeting.

ACTION ITEMS

Modifications to the Remission Guidelines for the DEMLR

One recommendation was made to shorten the deadline for remission requests of a civil penalty from sixty days to thirty days per Session Law 2021-158 that amends sub-section (a) of General Statute 113A-64.2 of the Sedimentation Pollution Control Act of 1973. Mr. Carson made a motion to approve the recommendation made by Counsel. Dr. McLaughlin made a second; the motion passed.

Modifications to the Remission Guidelines for Local Government Erosion and Sedimentation Control Programs

One recommendation was made to shorten the deadline for remission requests of a civil penalty from sixty days to thirty days per Session Law 2021-158 that amends sub-section (a) of General Statute 113A-64.2 of the Sedimentation Pollution Control Act of 1973.

Mr. Carson made a motion to approve the recommendation made by Counsel. Ms. Sutton made a second; the motion passed.

City of Jacksonville Local Program Review

The recommendation was made to continue the city's delegation. Mr. Willis made a motion to approve the recommendation made by the DEMLR staff. Ms. Foster made a second; the motion passed.

Chair White left the meeting at 10:28 am and Vice-Chair Ogallo chaired the remainder of the meeting. Quorum was unaffected.

Iredell County Local Program Review

The recommendation was made to continue the county's delegation. Mr. Willis made a motion to approve the recommendation made by the DEMLR staff. Ms. Foster made a second; the motion passed.

Model Ordinance for Local Programs

Changes were requested to this ordinance due, in part, to amendments made to the Sedimentation Pollution Control Act of 1973. Mr. Willis made a motion to approve the recommendation made by the DEMLR staff. Mr. Brown made a second; the motion passed.

NCDOT Annual Program Review

Ms. Coco and Mr. Parrish presented the results of their findings and recommendations from the audit of transportation projects and practice standards as a part of this agency's delegated erosion and sedimentation control program. The recommendation was made to continue the state's delegation. Ms. Deerhake asked staff to consider reviewing the 1991 Memorandum of Agreement between DEMLR and the DOT for any needed updates. Vice-Chair Ogallo asked if there were differences in opinion between the two agencies as to when in-field revisions should be made in place of plan reviews. NCDOT staff stated that a process exists called "erosion control plan audit review" that may be initiated by field forces to discuss the need for plans to be re-evaluated. It was further noted that field staff positions have been upgraded to qualify them for conducting plan reviews, but that the central office was also available for plan reviews. DEMLR staff commented that plan revision requests were made in the field to DOT staff and that staff reviewed and approved those plans, but did not necessarily review the calculations used to support the design revision.

Mr. Willis made a motion to approve the recommendation made by the DEMLR staff. Mr. Michael Taylor made a second; the motion passed.

INFORMATION ITEMS

NCDOT Report

Ms. Coco reported on the Immediate Corrective Action Report issued to the Department of Transportation. Dr. McLaughlin asked about the ability to conduct inspections using drones.

Commission Technical Committee

Mark Taylor is the Chair for this committee. Multiple regularly scheduled as well as special topics meetings were held since the third quarter commission meeting in August. The last special topics meeting was held on November 1, 2021, to discuss procedures and expectations between DEMLR and this committee. The Committee Chair will relay that discussion to the remaining committee members.

Ad-hoc Committee Proposal

Hartwell Carson is the Chair for this committee. Three sub-committees have been formed: 1) Legislative Committee, 2) Local Programs Committee, and 3) Science and Technology Committee. These sub-committees will report to the larger committee.

Education Advisory Committee

Vice-Chair Ogallo opened a discussion on re-establishing this committee. Dr. McLaughlin provided some history. Vice-Chair Ogallo asked for additional nominations from those solicited approximately one year ago. Ms. Coppa requested that she also be notified of those nominations to compile them for the Commission Chair.

Land Quality Section Active Sediment Cases and Enforcement

Ms. Coco reported on the status of civil penalty assessments and judicial actions.

Education Program Status Report

In September, Ms. Coppa participated in a SciREN Virtual Teachers Event and presented on the Virtual DEQ Career Panel for the NC Governor's Page Program.

Additionally, Ms. Coppa and DWR's water educator began co-hosting bi-weekly Virtual Water Education Coffee Talks for formal and non-formal educators. The purpose of these coffee talks is to answer questions, showcase our education resources, facilitate networking, and discover or facilitate collaboration opportunities.

The Sediment Education Specialist also co-hosted a virtual Project WET workshop for educators in October.

Regarding workshops, the hybrid in-person and virtual 2021 NC Erosion & Sediment Control Workshop (formally called the E&SC Design Workshop) has been scheduled for December 2 at the McKimmon Center in Raleigh, and is being planned in coordination with SE-IECA and the NCSU Department of Crop and Soil Sciences. The 2022 Local Program Workshop and Awards Program has been scheduled for April 19 and 20 at the Union County Agricultural Center, and is being planned in coordination with the Water

Resources Research Institute (WRI).

Ms. Coppa also reminded Commissioners that if they want to submit articles to the December edition of the Sediments Newsletter to reach out to her.

Sediment Program Status Report

Ms. Coco reported on the Land Quality Section's statewide plan approvals, inspections, and enforcement activities. Numbers were available through the end of September.

Land Quality Section Report

Mr. Vinson discussed the vacancies within the Section and other programs within the Division.

Recent Legislative Changes and Potential Impacts to DEMLR and the Local Programs

Mr. Wrenn summarized recent amendments to the Sedimentation Pollution Control Act of 1973 under Session Laws 2021-121 and 2021-158 which affect both DEMLR staff and Local Programs.

Local Programs and Full-Time Equivalent Positions

Ms. Coco defined Full-Time Equivalent Positions and discussed DEMLR's use of those position numbers to evaluate a Local Program's ability to effectively operate their program.

2022 Commission Meetings Schedule and Discussion of a Hybrid Meeting Model

Ms. Ogallo opened the floor for a discussion on options and format for future commission meetings. One member expressed an interest in a hybrid meeting format. Other members expressed a desire to return to in-person meetings. Several members suggested various times for the in-person meeting to start. One member suggested to have information items presented to them ahead of time as usual, but to defer a discussion on those items unless there is a need. DEMLR staff will discuss the feasibility of changing the meeting from the standard 10:00 AM start time and report back to the members.

CONCLUSION

Remarks by the Director –

DEQ Return to Office Schedules

On October 18, 2021, DEQ staff returned to full time in-office work. Some staff are allowed to telework up to 2 days per week with approval from their supervisor. Other staff can telework one day per week with approval. We continue to see an uptick in productivity and employee satisfaction by maintaining the telework option.

DEMLR Budget Predictions

Draft budgets and conversations with our legislative liaisons continue to hint at the possibility of budgetary increases for DEMLR. The main source would be through

potential fee increases proposed by House budget. Other opportunities may be available through infrastructure funding grants. However, nothing has been finalized at this time.

Plan Review Consistency

The DEMLR is planning a series of ESC plan review consistency workshops. The Regional Offices will be given the same plan to review with the task of developing a list of issues/comments to discuss with the group. Where differences in review comments or issues are identified, DEMLR Central Office staff will provide guidance to build consistency. We hope these workshops will improve consistency among regional offices as well as within regional offices. These workshops will be held on a quarterly basis over the next year.

Remarks by Commission Members – Mr. Carson thanked DEMLR staff and the NCDOT for their time today.

Remarks by the Chair –The Vice-Chair stated that she will send notice to the commission members reminding them about their ethics education requirement. She also thanked the members and staff for the work put into this meeting.

Adjournment – Vice-Chair Ogallo adjourned the meeting at approximately 2:42 pm.

Julie Coco, State Sediment Engineer
Division of Energy, Mineral, and Land
Resources

William Vinson, Jr.
Chief of Program Operations
Division of Energy, Mineral, and
Land Resources

Toya Ogallo, Vice-Chair
Sedimentation Control Commission

II. Action Items

- A. County of Macon Review – Mr. Graham Parrish
- B. City of High Point Review – Mr. Graham Parrish
- C. City of Rocky Mount Review – Mr. Graham Parrish
- D. City of Greensboro Review – Mr. Graham Parrish
- E. City of Greenville Review – Mr. Graham Parrish
- F. Town of Knightdale Ordinance Review – Ms. Julie Coco

Local Program Report to the SCC Macon County Continued Review, February 22, 2022

On August 17, 2021, a report was presented to the Sedimentation Control Commission (SCC) based on the formal review of Macon County's Erosion and Sedimentation Control Program conducted on July 6, 2021. The Commission voted to "Continue Delegation with Review for 6 months." During the July 6th review, the following issues and required actions that the program should implement to address said issues were noted:

Issues Noted:

- The number of inspections being reported is low in comparison to the number of active projects and previous inspection reports reviewed indicates a low inspection frequency of every 2-3 months.
- Self-inspection records and required permit documents are not being reviewed during site inspections.
- Plans are not always reviewed, and the applicant notified of the decision within the required timeframe. A copy of the Letter of Approval was missing from multiple files.
- A copy of the property deed was not kept in all project files.
- An individual representative was listed as the Financially Responsible Party on the FRO rather than the company/firm they represent.

Required Actions:

- Regular inspections should be conducted G.S. 113A-61.1(a), and reports generated monthly on all active sites.
- County staff should be checking for self-inspection records and required permit documentation during site inspections. Self-inspections should be conducted for initial installation or modification of any erosion and sedimentation control devices and practices described in the approved plan as well as during or after each of the phases of the approved plan. G.S. 113A-54.1(e) and 15A NCAC 04B.0131. Self-inspection records should be kept onsite along with the letter of approval and a copy of the approved plan. In addition, weekly and rain-event inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000.
- Documentation of land ownership must be obtained prior to approval of a plan. A copy of the property deed should be kept on file with each project. 15A NCAC 04B.0188(c). As a reminder, in cases where the applicant and the landowner differ, a letter of consent/landowner-builder agreement letter should be obtained stating that the applicant has the owner's consent to submit a plan and to conduct the land disturbing activity.
- 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. G.S. 113A-61(b) and MOA Part III.C.1 & 3. All Plan Review Decision letters should be kept in each project file.
- Ensure that the company or firm is the listed financially responsible party. An individual representative can sign the FRO form but should not be listed as the FRP. If the company

of firm is a sole proprietorship, the name of the owner or manager may be listed as the FRP.

Follow up:

During the period from July 2021 through December 2021, the County reported that they have 2 staff members which contribute 0.5 full time equivalents. During this period the County has conducted 8 reviews or re-reviews, issued 4 approvals and 4 disapprovals. The County conducted 56 inspections and issued 2 NOV's and 1 Stop Work Order. The County currently has 9 active projects. The County now requires a copy of the property deed as part of the erosion control package and is ensuring that plans are reviewed, and the applicant notified of the review decision within the required timeframe. County staff is ensuring that the company/firm is the listed Financially Responsible Party on the FRO Form rather than the individual representing the company/firm. The County has also worked to increase their inspection frequency and have been able to conduct inspections on a monthly basis during the continued review period. The following update is based on our initial review and inspections conducted by Macon County throughout the continued review period.

1. John Meshad Stream Restoration and Dam Construction:

During our initial review 7/6/2021, this site was found to be out of compliance for removing measures prior to disturbed areas upstream being stabilized and without approval from the County. Throughout the continued review period the County conducted periodic inspections to continue monitoring the establishment of vegetation. During an inspection conducted by the county on 9/22/2021 this site was found to be out of compliance again for the removal of a section of silt fence prior to the area being stabilized. The silt fence was reinstalled, and the area stabilized. The County closed this project out during its last inspection conducted on 11/6/2021 when it found this project to be complete and the site stabilized.

2. Community Bible Church:

During our initial review on 7/6/2021, this site was found to be out of compliance for failure to stabilize and failure to install or maintain measures. The County was informed that this project would be idle for an extended period and monitored to ensure that all areas of concern were addressed, and inactive areas had been stabilized. The County also requested a revised plan for the addition of a small sediment basin. During an inspection conducted on 9/10/2021, the County found that inactive areas had been stabilized and most corrective actions from the previous two inspection reports had been addressed. The County was still waiting for a revised plan prior to the addition of a skimmer basin. Once a revised plan was received and approved, the skimmer basin was installed. During its most recent inspection conducted on 12/21/2021 the County found this site to be out of compliance, needing to install a dissipater pad below one culvert and wattle check dams needing to be staked down properly. The County continues to monitor this site for stabilization as this site has remained inactive other than activities taken to bring the site into compliance. No offsite sedimentation has been noted by the County.

3. Panther Storage:

During our initial review on 7/6/2021, this site was found to be in compliance and was establishing permanent vegetation. The County closed this project upon finding that construction had been completed and the site stabilized during its final inspection conducted on 8/27/2021.

4. Hospice House:

This project consists of 1.93 acres disturbed for residential use. This site was not reviewed during our initial review on 7/6/2021. The County found this site to be out of compliance during an inspection conducted on 8/6/2021 for failure to maintain drop inlet protection and needing to post appropriate documentation onsite. During the following inspection conducted by the County on 9/15/2021, inlet protection had been maintained but documentation was still not properly posted onsite. The County noted that this site remained well maintained but was still missing required documentation and self-inspection records during inspections conducted during October and November. This site has since posted all required documentation, is maintaining self-inspection records properly and has remained in compliance. No offsite sedimentation has been noted by the County.

Conclusion:

During the continued review period, DEMLR staff has received periodic updates and inspection reports from the County and noted the improvements made by the program. The County has increased its inspection frequency to at least monthly and has adjusted its review checklist to ensure that all required documentation is retained in each project file. The County has also adjusted its procedure for plan reviews to ensure that the plans are reviewed, and the applicant is notified of the review decision within the required timeframes. County staff is now checking that all appropriate documentation is kept onsite during inspections. The County has demonstrated their ability to adequately implement the delegated program.

This report has been prepared based on the formal review of the Macon County Local Program conducted on July 6, 2021, and the continued review period. DEMLR staff recommends to “Continue Delegation” of the Macon County Erosion and Sedimentation Control Program.

This report will be presented to the Sedimentation Control Commission during its 2022 Q1 meeting on February 22, 2022.

Local Program Report to the SCC City of High Point Continued Reivew, February 22, 2022

On February 9, 2021, personnel from the NCDEQ Land Quality Section conducted a formal review of the City of High Point's locally delegated Erosion and Sedimentation Control program. Based on this review a report was presented to the Sedimentation Control Commission (SCC) on February 24, 2021. The Commission voted to "Continue Delegation with Review" for 6 months. DEMLR staff conducted a follow up review on July 21, 2021, and a follow up report was presented to the SCC on August 17, 2021. The Commission voted to "Continue Delegation with Review" for another 6 months. In addition to the formal review conducted in February and the follow-up visit conducted in July, DEMLR staff conducted periodic oversight inspections.

The following deficiencies were noted during our initial and follow up review:

- An individual representative was listed as the Landowner on the FRO Form and did not reflect the information on the property deed.
- The number of inspections being reported was low in comparison to the number of active projects and did not indicate a regular monthly inspection being conducted on each site. This was noted during the last formal audit in 2017 as well.
- The City should no longer accept clearing plans that allow tree clearing in preparation for land development prior to having an approved erosion and sedimentation control plan and temporary measures installed.
- The addition of a temporary full-time inspector during the months of May and June helped to distribute the workload and the City was able to conduct monthly inspections with their staff. However, with the temporary inspector no longer on staff, the current workload is not sustainable. The addition of two full-time inspectors with proper training should allow the program to distribute the workload and provide the City with an adequate staff to effectively monitor and enforce their delegated program.
- The City should continue to use the enforcement tools available to them when areas of continued non-compliance persist, reoccurring violations are found and especially in cases of off-site sedimentation.

Throughout the continued review periods, the City has been responsible for uploading inspection reports and enforcement documents for the projects reviewed during the February formal review and follow-up review in July. DEMLR staff conducted another follow up review on 1/25/2022. During this follow up we inspected 6 projects, 2 of which were previously reviewed. The following is a summary of the program's overall activity and some projects that have been reviewed throughout the continued review periods since our February 9th review.

Program Overview:

During the 2021 calendar year, the City of High Point has reported that they have received 106 new sedimentation control plans. The City reported that they have conducted 128 reviews or re-reviews, issued 45 approvals and 40 disapprovals. The City has conducted 801 inspections and issued 9 Notices of Violation (NOVs) and 3 Stop Work Orders (SWOs). The City had an average of 107 projects open throughout the year. The City hired 2 full time inspectors during the month of September and now have 5 staff members who contribute 4 full time equivalents

(FTE). The following is a summary of a few projects which have been reviewed throughout the continued review periods.

1. Rich Fork heights

This project consists of 42.3 acres disturbed for residential development. This project was first reviewed during our initial review on 2/9/2021 and found to be out of compliance at the time. This site remained out of compliance on 4/5/2021. The City found this site in compliance during the next inspection conducted on 5/5/2021. This site was found to be out of compliance during the following inspection conducted on 9/8/2021 for failing to maintain measures, needing to repair rills which had formed and to provide ground stabilization in recently completed areas and slopes where vegetation had died off. The site was out of compliance during an inspection conducted on 10/27/2021; however, the violations found during this inspection were not continuing from the month prior. During inspections conducted on 11/17/2021, 12/9/2021 and 1/3/2022, this site was found to be out of compliance for needing to repair silt fence outlets above the wetland areas, maintain inlet protection throughout, repair silt fence and stabilize completed or inactive areas. Rills were beginning to form and minor sedimentation offsite had occurred during the inspection conducted on 1/3/2022. The City gave a deadline of 1/15/2022 to address these continued violations and found this site in compliance on 1/19/2022.

2. Keystone at Penny Road:

This project consists of 17.9 acres disturbed for residential development. This project was reviewed during the follow-up review on 7/21/2021 and was found to be out of compliance at the time. This site had significant sediment loss into a stream buffer and wetland areas. Two basins were not functioning properly, and diversion ditches had not been installed per the approved plan. As a result of this inspection, the City issued a SWO to this site on 7/28/2021. The SWO and inspection report noted that measures such as skimmer basins, diversion ditches, slope drains, silt fence and silt fence outlets needed to be installed or repaired. The SWO noted that sediment lost into the unnamed tributary should be removed under the guidance of the City and the Division of Water Resources. The City staff met with DWR staff and representatives of the Financially Responsible Party (FRP) on 8/8/2021 and then found the site to still be out of compliance during an inspection conducted on 8/16/2021. The City conducted another follow-up inspection on 9/14/2021 and found the site to still be out of compliance. One of the skimmer basins was still missing the skimmer device and the City had still not received a report of the evaluation of possible wetlands performed by an environmental consultant. This inspection report did note that the stream had been cleaned out as directed and disturbed areas had been seeded and strawed throughout the site. The City conducted a follow-up inspection on 10/7/2021 and found that all actions listed in the SWO had been taken except for delineation of wetlands areas as determined by the environmental consultant hired to evaluate possible wetlands. The City lifted the SWO on 10/19/2021. The City found this site to be out of compliance during the following inspection conducted on 12/14/2021 and noted that minor offsite sedimentation had occurred at a silt fence outlet and below a skimmer basin outlet. City staff noted that the skimmer device needed to be reinstalled and that a riprap pad and silt fence outlet below the skimmer outlet needed to be installed at one basin. Slope drains, inlet protection for the slope drains and baffles needed to be installed in another basins. During the most recent inspection conducted by the City on 1/5/2022, this site remained out of compliance and additional offsite sedimentation was noted. The same violations from the previous inspection report were noted along with failure to stabilize inactive areas. During the day of our follow-up review on 1/25/2022, this site

remained out of compliance. The skimmer device and slope drains noted on previous inspection reports had been installed; however, riprap dissipator pads at skimmer pipe outlets had not been installed and sediment was still being lost in one area. The baffles in one basin needed to be repaired and the emergency spillway liner needed to be resecured to the ground in another. The slope along the southwest side of the site had recently been graded and the perimeter diversion berm was no longer functioning properly, thereby increasing the potential for sediment loss. Diversion ditches throughout the site needed to be stabilized. State staff noted that this site has remained out of compliance for nearly the entire continued review period since the 7/21/2021 follow-up review with several violations being noted on multiple inspection reports.

3. Pegg Road Development:

This project consists of 17.4 acres disturbed for commercial development. This project was initially reviewed during our follow-up review on 7/21/2021. At that time this site was out of compliance needing to install one basin per the approved plan and repair another basin which was not dewatering properly. This site also needed to be stabilized within the required timeframes where grading had been completed or become inactive. As a result of this inspection, the City issued a SWO to this site on 7/23/2021. During a follow up inspection conducted on 7/29/2021, the City found that all corrective actions had been taken and the site was in compliance. The City lifted the SWO at this time. This site remained in compliance during the following two inspections conducted on 9/8/2021 and 9/29/2021 with some general maintenance needs noted. The City found this site out of compliance during its inspections conducted on 10/14/2021 and 10/21/2021 for failure to maintain measures and failure to provide ground cover on slopes. Silt fence along the road needed to be repaired, inlet protection maintained, and skimmer outlet pipes needed to be cleaned. During the following inspection on 11/4/2021 this site remained out of compliance and the City stated that if corrective actions were not taken by the next inspection on 11/18/2021, a NOV would be issued. The City found this site in compliance during its inspection conducted on 11/18/2021 and 12/9/2021. On 1/4/2022 City staff conducted an inspection of this site and found that one of the basins was being dewatered and was being pumped directly into the Storm Sewer, which eventually discharged into a nearby creek. City staff immediately halted pumping and reported this to DWR. It was also noted that completed areas had not been properly stabilized and measures throughout the site needed to be maintained. Following this inspection, the City issued this site an NOV on 1/10/2022. A follow up inspection conducted by the City on 1/13/2022 found this site to be in compliance. During our follow-up review on 1/25/2022, this site remained in compliance. The basin which had previously been dewatered was being converted into the permanent stormwater pond and the dewatering pump and silt bag were still onsite. The slopes of the larger basin had been seeded and mulched with straw and slopes throughout the site had been matted. Inlet protection devices throughout the site appeared to be maintained.

4. The Landing at Sycamore Creek

This project consists of 11 acres disturbed for residential development. This project was first reviewed during our follow-up on 1/25/2022. On the day of our 1/25/2022 follow-up review, this site was found to be out of compliance. Grading had been completed and most of the site had been stabilized. The right of way throughout the site had not been stabilized, rills had formed, and sediment was beginning to wash into the street. Sedimentation was occurring in one area where a temporary basin had been removed. The City previously found this site to be out of compliance during inspections conducted on 10/28/2021, 11/16/2021, 12/6/2021, 12/20/2021,

12/29/2021 and 1/20/2022. During a discussion on why this site had remained out of compliance for so long with sediment loss noted on the 12/6/2021 and following reports, City staff mentioned that the developer indicated they were waiting on the utility company to come in and install power before permanent stabilization was established. State staff reiterated that regardless of the status of utilities and the developers schedule, all inactive or completed areas must be temporarily stabilized within the required 7- or 14-day timeframes and violations noted in inspection reports should be promptly addressed. The City stated that they had met on site with the developer on 1/6/2022 and 1/20/2022 to discuss the violations and set a deadline for corrective actions to be completed by the end of January. Staff indicated that no work had occurred on the entire site since the 1/6/2022 inspection. The City issued an NOV upon finding that no corrective actions had been taken during a follow-up inspection conducted on 2/1/2022.

Conclusion:

During our initial formal review conducted on 2/9/2021 and follow-up on 7/29/2021, deficiencies were noted. The City has taken steps to address the deficiencies in the plan review process and documentation missing from project files. The City is no longer approving plans unless a copy of the property deed and a correctly filled out FRO Form have been submitted. The City is also no longer approving tree clearing plans and allowing disturbances to begin prior to a full Erosion and Sediment Control Plan being approved and implemented. In addition to the three formal reviews conducted, State staff also conducted three days of oversight inspections. Throughout the past year, State staff has requested information, updates, and documents from the City. Responses from the City during the first continued review period were delayed at times with deadlines not being met and State staff having to make multiple requests. Responses from the City during the recent months have been in a timely manner. The City hired two additional full-time inspectors, in September 2021, which has helped distribute the workload and has increased the inspection frequency, although the reported numbers reflect a current frequency of inspections on a project every 6-7 weeks. Following our initial review, the City stated that one of their inspectors had received their NCDOT Level II Erosion and Sediment Control Certification. City staff have participated in additional training opportunities such as the 2021 Local Program and Design Workshops. Through review of the City's inspection reports and oversight inspections conducted with State staff, City staff appear to be conducting adequate inspections and noting all violations and areas of concern while onsite. Inspection reports appear to accurately reflect the conditions of each site; however, these reports show a pattern of non-compliance and persisting violations. The City has issued a few SWOs and NOV's in the past year, yet developers under an NOV or SWO are not always responsive. The City stated that it is standard practice for an NOV to be issued upon the third non-compliant inspection report, yet there are multiple instances where this practice has not been used. The Keystone at Penny Road and the Landing at Sycamore Creek projects are two instances where sites have remained out of compliance and no further action has been taken by the City. While the City has addressed some deficiencies throughout the past year, there has been little improvement in the effectiveness of the overall program. Sites continue to remain out of compliance and non-responsive to inspection reports and NOV's.

This report has been prepared based on the initial formal review conducted on 2/9/2021, follow-up reviews conducted on 7/29/2021 and 1/25/2022, and the continued review periods in between. DEMLR staff recommends to "Revoke Delegation" of the City of High Point Erosion and Sedimentation Control Program.

This report will be presented to the Sedimentation Control Commission during its 2022 Q1 meeting on February 22, 2022.

Local Program Report to the SCC City of Rocky Mount, February 22, 2022

On November 23, 2021, personnel from the NCDEQ-DEMLR Land Quality Section conducted a formal review of the City of Rocky Mount Erosion and Sedimentation Control Program. The City of Rocky Mount was last reviewed in 2013. The City currently has 3 staff members which contribute approximately 1.5 full time equivalents to the erosion and sedimentation control program. The City requires an erosion and sedimentation control plan for projects disturbing greater than 1 acre within the City's corporate limits and extraterritorial jurisdiction. The City is not currently tracking the number of reviews and re-reviews but estimated approximately 50 had been conducted during the period from November 2020 through October 2021. During the same period the City has reported that they conducted 156 official inspections and had not issued any NOV's or CPAs. Once an application and plan are submitted, the City conducts a review and sends comments back when plans are found to be inadequate but are not notifying the applicant of the official review decision. City staff indicated that they typically will be on-site for other inspections or monitoring at least weekly and will comment on erosion and sedimentation control measure maintenance or repair needs at the time in addition to the official monthly inspections. The City has the ability to hold building permits and final subdivision plats as additional enforcement tools, although they are not currently tracking this usage. At the time of our review the City had 11 open projects. During our review of the program, we looked at three sets of approved plans and their files as well as inspected three job sites.

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

1. Stonewall Villas – Phase II:

This project consists of 18.85 acres disturbed for residential development. The project File contained the approved plan, letter of approval, design calculations, previous inspections and the FRO form. A copy of the property deed and a landowner/builder agreement letter were missing from the project file. The initial plan for this project was received on February 16, 2021 and was approved on April 9, 2021. The approved plans for this project appeared to be adequate. The City had conducted 6 official inspections on this project prior to the day of our review. No NOV's or CPAs had been issued to this project. The two most recent inspections conducted by the City were on October 14, 2021, and November 3, 2021. The City found this site to be out of compliance and needing to repair downed silt fence during the October inspection and then found that all areas had been addressed and the site was back into compliance by the November inspection. On the day of our review active grading was occurring in one section while home building was underway in another. The diversion ditches to the skimmer basins needed to be stabilized. Areas below the stable conveyances leading into the first basin had begun to erode and should be repaired and stabilized. This area should continue to be monitored and State staff suggested the use of an alternative conveyance such as a slope drains could be considered if erosion persisted. The construction entrance needed to be refreshed as sediment was beginning to be tracked onto the road but had not yet left the site. Individual lot silt fence had been damaged and needed to be repaired. City staff indicated that they currently were not conducting inspections on single lot construction once a final plat has been recorded. State staff explained that the responsibility to monitor for erosion and sedimentation control does not end with the

overall site development and the City should continue to monitor all land disturbing activities until a project has been permanently stabilized and can be closed out. The City had recently requested that wattles be installed as curb inlet protections in areas with active traffic. Wattles had been placed but did not completely protect the inlets. Drop inlet protections and perimeter silt fence in the active grading sections appeared to be well maintained. Overall, this site was out of compliance for failure to maintain measures, however no off-site sedimentation could be noted, and several measures were in good condition.

2. 7-Eleven:

This project consists of 1.83 acres disturbed for commercial use. The project file contained the approved plan, letter of approval, previous inspections and the FRO form. This plan did not require any additional design calculations. A copy of the property deed and a landowner/builder agreement letter were missing from the project file. The initial plan for this project was received on August 24, 2021 and was approved on September 21, 2021. The approved plan for this project appeared to be adequate. The City had conducted 1 inspection on October 3, 2021 prior to the day of our review. The City found this site to be in compliance during its inspection. No NOV's or CPAs had been issued to this project. On the day of our review demolition of an existing house had been completed and grading had yet to begin. City and State staff noted that silt fence was being used as drop inlet protection which was not per the approved detail that called for hardware cloth and rock. No off-site sedimentation was noted, and perimeter measures had been installed. Overall, this site was in compliance.

3. Olde Mill Stream – Phase I:

This project consists of 18 acres disturbed for residential use. 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 initial plan for this project was received on May 15, 2019 and approved on December 17, 2019. The initial plan for this project was found to be inadequate and comments were sent back to the designer but again no official notification of the disapproval was sent to the applicant. The approved plan for this project appeared to be adequate. The City had conducted 12 inspections prior to the day of our review. The most recent inspection by the City was conducted on July 21, 2021. Following this inspection, the final subdivision plat was recorded and the City has no longer been monitoring this project. No NOV's or CPAs had been issued to this project. On the day of our review, lots were active with home building. The temporary groundcover on inactive lots had started to die off and areas were beginning to erode and scour. Prior to the final plat being recorded, the temporary skimmer basins were either removed or converted to the permanent stormwater control measure. These conversions and removals had been conducted prior to the areas draining to them being permanently stabilized. Perimeter measures were still installed and appeared to be functioning. Silt fence and construction entrances were installed on most of the active lots. Silt sacks were installed in curb inlets throughout the site and appeared to be functioning properly. State staff reiterated the responsibility of the local program to continue monitoring sites including individual lot construction until sites are permanently stabilized. No off-site sedimentation could be noted. Overall, this site was out of compliance for failing to maintain measures and inadequate groundcover.

Positive Findings:

During our review we found a few positive aspects about the City of Rocky Mount Local Erosion and Sedimentation Control Program including:

- The City requires proposed laydown area, stockpile, and concrete washout locations to be shown on the plans.
- The City requires a preconstruction meeting for all projects which require an approved erosion and sedimentation control plan.
- The City requires that the two NPDES NCG01 plan sheets are included in the Erosion and Sedimentation Control Plan set prior to approval.
- Reference to the NCG01 permitting process is included in the erosion and sedimentation control approval letter.

Issues Noted and Required Actions:

During our review we found that the City of Rocky Mount Local Erosion and Sedimentation Control Program had deficiencies including:

- Plans are being reviewed and comments sent back to the designer when found to be inadequate; however, official notification of the plan review decision is not being given to the applicant within 30 days of receipt of new plans and 15 days for revised plans.
- A copy of the property deed is not being kept on file and a landowner/builder agreement is not being obtained when the landowner and financially responsible party (FRP) differ.
- Once a subdivision final plat has been recorded and the development has moved into the individual lot construction, or the homebuilding phase, the City is no longer monitoring for erosion and sedimentation control and is not conducting regular inspections.
- Certain sections within the local ordinance are devoid or no longer adhere to the most recent state statutes or state administrative code pertaining to that which constitute your delegation authority for erosion and sedimentation control. The City does not appear to have amended its local ordinance since 2013.
- One responsibility of a locally delegated Erosion and Sedimentation Control Program is to track and report the program's monthly activity numbers using the Local Program SharePoint Site. The previous year's numbers reported appear to be inaccurate or incomplete.

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

- 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 15 days for a revised plan. G.S. 113A-61(b). Once a plan/application is found to be inadequate a letter of disapproval should be sent to the applicant. Letter of Disapproval templates can be found on the Local Program SharePoint site.
- 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 obtained and kept 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). A letter of agreement or landowner/builder agreement should be obtained prior to approval of a plan when the landowner and FRP differ.

- The City should continue to monitor and enforce the provisions of the SPCA, NCAC and local ordinance on all projects until the site has been permanently stabilized and the project can be closed out. Individual lot development still constitutes a land disturbing activity which should be monitored and regularly inspected.
- Local ordinances should reflect the law under G.S. 113A-50 through 65 and Chapter 04 of Title 15A of the NC Administrative Code (NCAC). The Sedimentation Control Commission (SCC) provides a Model Ordinance for all local programs which is available on the NC DEQ Erosion and Sedimentation Control website. Changes to your local ordinance which conform to the current Model Ordinance do not have to be brought back before the SCC for approval. Any substantive changes not reflected in the Model Ordinance will have to be approved by the SCC.
- The numbers which were reported on the SharePoint site through the 3rd Quarter of 2021 did not reflect the numbers reported during the formal review of the program. The definitions for each reporting category can be found on the SharePoint site. Monthly numbers should be reported for each calendar quarter following the end of said quarter and should accurately and completely represent the programs activity for each month.

Recommendations for Improvement:

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

- 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 DEQ Raleigh Regional Office.
- Update all letters and forms to reflect the latest language and references to the NCAC, SPCA and Local Ordinances once updated. Template letters and forms with the most up to date references to the NCAC and State Statutes can be found on our Local Program SharePoint site.
- A set of Standard Operating Procedures outlining the responsibilities of each staff position along with different aspects of the program would be beneficial. Guidance documents such as these would aid in training new staff or in cases where different staff may have to perform duties which are not their regular responsibility due to extended absences or staff turnover.

Conclusion:

During our review we found that the City of Rocky Mount staff demonstrated their knowledge and ability to conduct adequate plan reviews and site inspections. The program did have a number of deficiencies, including missing required documentation in multiple project files and not meeting statutory timeframes for review and notification in all cases. While the City is reviewing plans and sending back comments when found to be inadequate, the City is not issuing official notice of the review decision within the required timeframe. The City indicated that they are on-site at least weekly for other duties and may address erosion and sedimentation control areas of concerns any time they are noted but will not necessarily conduct a full official inspection and subsequent report until the monthly inspection is due. This is a good practice as

consistent and frequent communication with the contractors and developers is a powerful tool in being proactive and preventing major issues. This was evident through the sites we inspected, while there were maintenance needs and some reminders that were given, no off-site sedimentation nor signs of previous measure failures or losses could be noted. The City, however, is not continuing to monitor subdivision developments once the final plat is recorded and the subsequent individual lot development has begun. This practice can cause premature removal or conversion of erosion and sedimentation control measures and has led to a lack of monitoring projects which are still active and open but have moved into another phase or type of construction. All projects should continue to be monitored until permanent stabilization has been established and the project is closed out. The City will need to implement a few policy changes in order to meet all the responsibilities of its delegation and requirements under the SPCA and NCAC. The City would benefit from additional oversight and guidance while the required actions above are implemented.

This report has been prepared based on the formal review of the City of Rocky Mount Local Program conducted on November 23, 2021. DEMLR staff recommends to “Continued Delegation with Review” for 3-months with a follow-up report to be presented to the Sedimentation Control Commission (SCC) during the 2022 Q2 meeting.

This report will be presented to the Sedimentation Control Commission during its 2022 Q1 meeting on February 22, 2022.

Local Program Report to the SCC City of Greensboro, February 22, 2022

On December 14, 2021, personnel from the NCDEQ Land Quality Section, conducted a formal review of the City of Greensboro Erosion and Sedimentation Control Program. The City of Greensboro was last reviewed on 5/24/2017. The City has 3 staff members that currently contribute 3 full time equivalents to the erosion control program. The City requires an erosion and sediment control plan for all projects disturbing greater than 1 acre. A plan is also required for projects located within a watershed critical area (WCA) if the project will take place on highly erodible soils with a “k” factor greater than 0.36, will include a pond or retention structure or is located within Tier 1 or Tier 2 of the WCA. Jurisdiction of the program covers all areas within the City of Greensboro corporate limits. During the period from November 2020 through October 2021, the City conducted 139 plan reviews or re-reviews, approved 62 plans, and disapproved 77. During the same period, the City conducted 1540 inspections, issued 16 NOV's and 2 Stop Work Orders. No CPAs were issued. The City indicated that they can and do place holds on building inspections, certificates of occupancy and other permits as enforcement tools when needed. The City requires a preconstruction meeting for all projects with an approved erosion and sediment control plan. At the time of the review the City had 164 open projects. During our review of the program, we looked at the project files and conducted inspections on three open projects.

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

1. Simply Southern Warehouse:

This project consists of 5.68 acres disturbed for industrial development. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports and the FRO form. A copy of the property deed was missing from the project file. The plan for this project went through two review cycles with the revised plan received on 6/3/2021 and was indicated as approved in the City files on 6/15/2021. However, the approval letter for this plan was not sent until 8/20/2021. The City explained that once this erosion and sediment control plan was reviewed and approved, other aspects of the project did not have final approval from all other City departments. The approval letter was not sent until all other aspects of the project had been approved by the other departments and the Technical Review Committee. The approved plan appeared to be adequate. The City had conducted 4 inspections prior to the day of our review. The City found this site to be out of compliance during its most recent inspection conducted on 11/29/2021 needing to maintain measures and to provide groundcover for inactive areas. On the day of our review, building foundations had recently been poured and the surrounding area was actively being graded. The proposed drive around the rear of the site and retaining wall location adjacent the skimmer basin had recently been graded and would need to be restabilized once completed. A few drop inlet protections had been removed for grading and paving and would need to be reinstalled once the area had been completed. The skimmer basin appeared to not be dewatering properly and would need to be maintained to ensure proper functioning. Recently graded slopes had been tracked properly and inactive or completed areas appeared to have been properly stabilized. Overall, this site was in compliance with some general maintenance needs including maintaining the skimmer to ensure proper dewatering. No offsite sedimentation was noted.

2. Pompano Townhomes:

This project consists of 3.84 acres disturbed for residential development. 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. This project underwent multiple review cycles with the final revised plan received by the City on 2/15/2021 and the letter of approval sent on 2/23/2021. The approved plan appeared to be adequate. The City had conducted 8 inspections prior to the day of our review. This site was found to be in compliance during the most recent inspection conducted by the City on 12/2/2021. No NOVs or CPAs had been issued to this site. On the day of our review, utilities were being in the process of being installed. A diversion ditch above a slope adjacent the skimmer basin had been recently installed and matted. The slope had also recently been seeded and mulched with straw. Inlet protections along the entrance drive had either been removed or overtopped and needed to be reinstalled or maintained. One section of silt fence had accumulated sediment at the toe of this slope and would need cleaned out and maintained before the next rain event to prevent potential loss into the adjacent wetlands area. The inlet pipe to the skimmer basin needed to have a rock dissipator pad or other means of stable transition installed to protect against end-cutting and rills forming down the bank of the basin. The diversion ditch in the rear of the site was stabilized with grass. A stockpile in the rear corner of the site was unprotected and would either need to be stabilized or removed. Overall, this site was found to be out of compliance needing to maintain the silt fence in areas, stabilize the basin inlet and reinstall inlet protection devices along the drive. No offsite sedimentation was noted.

3. Liberty Road Self Storage:

This project consists of 2.37 acres disturbed for commercial development. The project file contained the approved plan, design calculations, previous inspection reports, and the FRO form. A copy of the property deed was missing from the project file. This project underwent multiple review cycles with the final revised plan received by the City on 4/12/2021 and the letter of approval sent on 4/20/2021. The approved plan appeared to be adequate. The City had conducted 8 inspections prior to the day of our review. This site was found to be out of compliance during the most recent inspection conducted by the City on 11/23/2021 for failure to follow the approved plan and insufficient measures. No NOVs or CPAs had been issued to this site. On the day of our review, sewer and stormwater systems had been recently installed and tied in. The area disturbed by these installations had been regraded, silt fence reinstalled and areas below silt fence had been seeded and mulched with straw. The diversions ditches conveying water to the skimmer basin had been disturbed and reinstalled. One diversion outlet was short circuiting the first baffle and needed to be relocated and then restabilized. Inlet protection measures throughout the site appeared to be installed correctly and well maintained. Overall, this site was in compliance but did have some general maintenance needs throughout. No offsite sediment was noted.

Positive Findings:

During our review we found a few positive aspects about the City of Greensboro Local Erosion and Sedimentation Control Program including:

- The City has a stricter criterion than the State when requiring an erosion and sediment control plan. They require plans for all projects which will disturb greater than 1 acre but also projects within a WCA if it is located on highly erodible soils, will include a pond or retention structure, or will take place within Tier 1 or Tier 2 of the WCA.
- The City requires a preconstruction meeting for all projects.

- The City requires that any 404/401 permits be submitted prior to approval of the erosion and sediment control plan or submit a phased plan showing the areas which are not allowed to be disturbed until the relevant water quality permits are obtained and presented to the City.
- The City requires the two NPDES plan sheets be included, and proposed stockpile and concrete washout locations be shown on all plan sets prior to approval.
- The City provides reference to the NCG01 permit process and the NCG01 Fact Sheet with their approval letters.

Issues Noted and Required Actions:

During our review we found that the City of Greensboro Erosion and Sedimentation Control Program had deficiencies including:

- Documentation of land ownership was not kept in all project files.
- A plan had been reviewed and approved but notification of the review decision had not been issued to the applicant within the required timeframe.
- The City is not requiring a landowner/builder agreement when the Landowner and Financially Responsible Party differ.
- Letters of Disapproval are not being sent with the ability to track when the applicant receives the letter.

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

- Documentation of land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.0188(c). A copy of the property deed should be kept in each 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 15 days for a revised plan. G.S. 113A-61(b). Notification of all plan review decisions should be sent to the applicant within the required timeframe.
- 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 and to conduct the land-disturbing activity. G.S. 113A-54.1(a). A letter of consent or Landowner/Builder agreement should be obtained when the landowner and the financially responsible party differ.
- The disapproval of a proposed erosion and sedimentation control plan entitles the person submitting the plan to a public hearing if the person submits written demand for a hearing within 15 days after receipt of written notice of the disapproval. G.S. 113A-61(c). The City should send all notices of disapproval with the ability to confirm receipt via Certified Mail or other means pursuant to G.S. 1A-1 Rule 4.

Recommendations for improvement:

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

- Certain sections within your ordinance are outdated and should be updated to reflect the most recent state statutes and administrative code pertaining to that which constitute your delegation authority for erosion and sedimentation control. The Commission recently

approved an updated Model Ordinance at their November 2021 meeting. This can be found on the NC DEQ Erosion and Sedimentation Control website.

- Update all template letters and inspection reports to reflect the most current references to the North Carolina Administrative Code and your local ordinance once it is updated. Template letters and Inspection Reports with the most recent references to the NCAC rules and State Statutes can be found on our Local Program Reporting SharePoint site.
- Continue to monitor and provide guidance for NPDES violations including operating without a permit, improper concrete washout, and fuel containment on site during inspections. Note possible NPDES violations and refer to the NCDEQ Winston-Salem Regional Office when necessary.

Conclusion:

During our formal review of the City of Greensboro Erosion and Sedimentation Control Program we found a few deficiencies. The City will need to begin sending all notifications of a plan disapproval with the ability to confirm the date which the notification was received by the applicant as they have the right to appeal these decisions if requested within a certain time. The City will also need to notify the applicants that the erosion and sediment control plan has been approved within the appropriate timeframes, regardless of the status of other department reviews. City staff noted all areas noted by State staff while conducting site inspections. The City also has demonstrated its ability to utilize additional enforcement tools such as stop work orders, building permit holds and working across other City departments to stop construction progress until all erosion and sediment control concerns have been addressed. City staff demonstrated their knowledge, experience, and ability to effectively implement the local program's delegated authority.

This report has been prepared based on the formal review of the City of Greensboro local program conducted on December 14, 2021. DEMLR staff recommends to "Continue Delegation" of the City of Greensboro Locally delegated Erosion and Sedimentation Control Program.

This report will be presented to the Sedimentation Control Commission during its 2022 Q1 meeting on February 22, 2022.

Local Program Report to the SCC City of Greenville, February 22, 2022

On January 13, 2022, personnel from the NCDEQ Land Quality Section, conducted a formal review of the City of Greenville Erosion and Sedimentation Control Program. The City of Greenville was last reviewed on 8/3/2017. The City has 7 staff that currently contribute approximately 1.75 full time equivalents to the erosion control program. The City requires an erosion and sediment control plan for all projects disturbing greater than 1 acre. Jurisdiction of the program covers all areas within the City of Greenville corporate limits and extraterritorial jurisdiction. During the 2021 calendar year the City conducted 97 plan reviews or re-reviews, approved 54 plans and disapproved 43. The City indicated that a plan disapproval is counted for the purposes of their reporting when a plan is reviewed and found to be inadequate. In these cases, the City is sending their review comments back to the applicant but do not include an official notification of disapproval. During the calendar year the City conducted 434 inspections and issued 2 NOVs. No CPAs or Stop Work Orders were issued during this time. The City stated that they do have the ability to place a hold on building permits as an additional enforcement tool to bring a site into compliance, however they have not found it necessary to use in the past year. The City requires a preconstruction meeting for all projects with an approved erosion and sediment control plan. At the time of the review the City had 117 open projects. During our review of the program, we looked at the project files and conducted inspections on three open projects.

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

1. Hardee Village:

This project consists of 5.09 acres disturbed for residential development. The project file contained the approve plan, letter of approval, design calculations, previous inspection reports and the FRO form. A copy of the property deed was missing from the project file. The initial plan for this project was received by the City on 5/6/2021 and underwent 3 review cycles. The final revised plan was received by the City on 7/7/2021 and the letter of approval sent on 7/8/2021. As the City conducted reviews of this plan and found it to be inadequate, comments with items needing to be addressed prior to approval were sent to the applicant but no official letter of disapproval was sent. The approved plan appeared to be adequate. Construction of this project began in August of 2021 and the City had conducted 3 inspections prior to the day of our review. No NOVs or CPAs had been issued to this site. The City found this site to be in compliance during its most recent inspection conducted on 12/6/2021. On the day of our review buildings were being framed and surrounding areas had been disturbed by framing equipment. Silt fence had recently been repaired or replaced throughout the site. Rills were starting to form along the banks of the skimmer basin and would need to be repaired and stabilized. The rock dissipater pad below the inlet to the basin appeared to have been blown out during recent rain events and also needed to be repaired to prevent future scouring and end-cutting. The disturbed areas in the roadside ditches had been matted and wattles installed. The construction entrance and inlet protections throughout the site appeared to be well maintained. Overall, this site was in compliance with a few general maintenance needs noted. No offsite sedimentation was noted.

2. Circle K - Greenville:

This project consists of 2.50 acres disturbed for commercial development. The project file contained the approved plan, letter of approval, previous inspection reports and the FRO form. This plan did not require any additional design calculations. A copy of the property deed was missing from the project file. The plan for this project was received by the City on 12/20/2020 and underwent 3 review cycles. The final revised plan was received by the City on 5/4/2021 and the letter of approval sent on 5/6/2021. Again, when this plan was found to be inadequate, the City sent comments back to the applicant but did not send a letter of disapproval. The approved plan appeared to be adequate. Construction of this project began in September of 2021 and the City had conducted 2 inspections prior to the day of our review. No NOV's or CPAs had been issued to this site. The City found this site to be in compliance during its most recent inspection conducted on 12/7/2021. On the day of our review, parking areas were being prepared for paving and the phase 1 construction entrance was being removed as the project transitioned to the next phase of construction. The new construction entrance had been installed and appeared to be functioning, however stone may need to be refreshed soon. One short section of silt fence was down and needed to be repaired along the northeast perimeter. This project contained a permanent underground stormwater retention device which had been completed and inlet protections throughout the site had been installed and appeared to be well maintained. Overall, this site was in compliance with some general maintenance needs noted. No offsite sedimentation was noted.

3. First United Pentecostal Church Sanctuary:

This project consists of 2.70 acres disturbed for commercial development. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports and the FRO form. A copy of the property deed was missing from the project file. The plan for this project was initially received by the City on 2/28/2020 and underwent 2 review cycles. The final revised plan was received by the City on 10/5/2020 and the letter of approval sent on 10/9/2020. Again, when this plan was found to be inadequate, the City sent comments back to the applicant but did not send a letter of disapproval. The approved plan appeared to be adequate. Construction of this project began in May of 2021 and the City had conducted 4 inspections prior to our review. No NOV's or CPAs had been issued to this site. This site was found to be in compliance during the most recent inspection conducted by the City on 11/29/2021. On the day of our review the new structure was being framed. Minor sediment had been tracked onto the sidewalk and parking lot surrounding the building foundation from equipment being used during framing. A reminder that these areas would need to be cleaned and stabilized once the disturbance was completed was noted. A few inlet protection devices in a recently graded area had been installed using improper stone and would need to be replaced and reinstalled per the approved plan. The perimeter silt fence downstream of disturbed areas and all other inlet protection devices throughout the site had been installed properly. The skimmer basin had been installed and appeared to be maintained. It appeared that fresh topsoil and spoil had been recently stockpiled next to an existing stabilized stockpile. This new stockpile should also be protected with silt fence and stabilized while inactive. Contractors worked to minimize disturbed areas while progressing through the construction sequence per the approved plan. Overall, this site was in compliance with some maintenance needs and general reminders noted. No offsite sedimentation was noted.

Positive Findings:

During our review we found a few positive aspects about the City of Greenville Local Erosion and Sedimentation Control Program including:

- The City requires a preconstruction meeting for all projects.
- The City requires that any 404/401 permits be submitted prior to approval of the erosion and sediment control plan.
- The City provides reference to the NCG01 permit process and the NCG01 Fact Sheet with their approval letters.
- The City requires that proposed laydown areas, stockpiles and concrete washout locations be shown on plans when applicable.

Issues Noted and Required Actions:

During our review we found that the City of Greenville Erosion and Sedimentation Control Program had deficiencies including:

- Documentation of land ownership was not kept in the project files which we reviewed.
- While the City is reviewing plans within the appropriate timeframe and sending comments back to the applicant when plans are found to be inadequate, no official notification of the plan review decision or Letter of Disapproval is being sent.

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

- Documentation of land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.0188(c). A copy of the property deed should be kept in each project file. City staff indicated that a copy of the property deed had recently been added to the requirements for a complete application.
- 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 15 days for a revised plan. G.S. 113A-61(b). Official notification of the plan review decisions should be sent to the applicant within the required timeframes and letters of disapproval should be sent with the ability to track and confirm when the applicant received the notice. The letter of disapproval should include the comments the City currently sends when a plan is found to be inadequate.

Recommendations for improvement:

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

- Certain sections within your ordinance are outdated and should be updated to reflect the most recent state statutes and administrative code pertaining to that which constitute your delegation authority for erosion and sedimentation control. The Commission recently approved an updated Model Ordinance at their November 2021 meeting. This can be found on the NC DEQ Erosion and Sedimentation Control website.
- Update all template letters and inspection reports to reflect the most current references to the North Carolina Administrative Code and your local ordinance once it is updated.

Template letters and Inspection Reports with the most recent references to the NCAC rules and State Statutes can be found on our Local Program Reporting SharePoint site.

- Monitor for NPDES violations including operating without a permit, improper concrete washout, and fuel containment on site during inspections. Note possible NPDES violations and refer to the NCDEQ Washington Regional Office when necessary.
- Recommend that the NPDES Plan sheets titled “Ground Stabilization and Materials Handling” and “Inspection, Recordkeeping and Reporting” be included on plans prior to approval. Both sheets can be found on the [DEMLR Stormwater Program Website](#) and must be posted onsite to comply with the NCG01 permit issued by the State.

Conclusion:

During our formal review of the City of Greenville Erosion and Sedimentation Control Program we found a few deficiencies. The City will need to begin sending official letters of disapproval along with the comments they are currently sending when plans are found to be inadequate. Letters of disapproval should also be sent with the ability to confirm the date which the notification was received by the applicant, as they have the right to appeal these decisions if requested within a certain time from receipt. City staff stated that they have the ability to place holds on building permits or other approvals as additional enforcement tools. A copy of the property deed was not present in the three projects which we reviewed; however, the City stated that this had been recently added as a requirement for a plan application to be considered complete and ready for review. While some maintenance needs and repairs were noted, overall, all three sites inspected during our review were found to be in compliance and showed no signs of previous major violations or sediment losses, indicating a pattern of compliance. While conducting the site inspections during the review, City staff noted all areas also noted by State staff. The City also stated that they were in the process of filling an open position which would contribute some additional time to the Erosion and Sedimentation Control Program. City staff demonstrated their knowledge, experience, and ability to effectively implement the local program’s delegated authority.

This report has been prepared based on the formal review of the City of Greenville local program conducted on January 13, 2022. DEMLR staff recommends to “Continue Delegation” of the City of Greenville Erosion and Sedimentation Control Program.

This report will be presented to the Sedimentation Control Commission during its 2022 Q1 meeting on February 22, 2022.

Local Program Review Recommendation Levels

Local Program reviews consist of a one-day visit to the local government. The review focuses on both in-office administration and in the field site inspections. During the in-office portion of the review, DEMLR staff review project files for appropriate documentation and discusses typical practices and procedures of the program administration. During the field portion of the review, DEMLR staff observe program staff while they conduct a typical site inspection. Projects to be reviewed are selected by DEMLR staff on the day of the review. Project selection is made with the goal of selecting a representative sample that varies in project purpose, disturbed acreage, current construction phase and site location. Program reviews are meant to determine the ability of program staff to adequately monitor and enforce the provisions of the SPCA of 1973.

Level 1 – Continue Delegation: No oversight is needed; overall, the program is successfully implementing their requirements.

Level 2 – Continue Delegation with Review: Periodic oversight and follow-up from our review is needed; DEQ, DEMLR staff will communicate more frequently with the local program on its requirements or may request documentation of program actions to review for adherence to the SPCA. This may include submittals of inspection reports, decision letters, or enforcement documents. The DEMLR may choose to conduct a second in-person review(s) based on recommendations given from the first review.

Level 3 – Place on Probation: Frequent oversight and follow-up from our review is needed; DEMLR staff will communicate more frequently with the local program on its requirements or may request documentation of program actions to review for adherence to the SPCA. Plan reviews or inspections may be required to be conducted with assistance from DEMLR regional staff. Enforcement documents may be required to be reviewed by DEMLR central office staff prior to (or subsequent to, if time is of the essence) their delivery to the financially responsible party or his designee. The DEMLR will conduct a second in-person review(s) based on recommendations given from the first review.

Level 4 – Revoke Delegation: This recommendation would remove the authority of a local program to implement the requirements of the SPCA. Implementation, including enforcement, of the SPCA would fall under the jurisdiction of the DEQ or another local program.



TOWN OF KNIGHTDALE

950 Steeple Square Court
Knightdale, NC 27545
KnightdaleNC.gov

ORDINANCE #21-12-15-001 Erosion and Sedimentation Control

AN ORDINANCE TO PROVIDE FOR THE CONTROL OF SOIL EROSION AND SEDIMENTATION.

NOW, THEREFORE, BE IT ORDAINED by the Town of Knightdale hereby adopts the following ordinance.

SECTION 1 Title

This ordinance may be cited as the Town's Soil Erosion and Sedimentation Control Ordinance.

SECTION 2 Purpose

This ordinance is adopted for the purposes of:

- (a) regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and
- (b) establishing procedures through which these purposes can be fulfilled.

SECTION 3 Definitions

As used in this ordinance, unless the context clearly indicates otherwise, the following definitions apply:

- (a) Accelerated Erosion - means any increase over the rate of natural erosion as a result of land-disturbing activity.
- (b) Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- (c) Adequate Erosion Control Measure, Structure, or Device - means one which controls the soil material within the land area under responsible control of the person

conducting the land-disturbing activity.

- (d) Affiliate – means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.
- (e) Approving Authority – means the Division or other State or a local government agency that has been delegated erosion and sedimentation plan review responsibilities in accordance with the provisions of the Act.
- (f) Being Conducted - means a land-disturbing activity has been initiated and not deemed complete by the Approving Authority.
- (g) Borrow - means fill material that is required for on-site construction that is obtained from other locations.
- (h) Buffer Zone - means the strip of land adjacent to a lake or natural watercourse.
- (i) Coastal Counties - means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.
- (j) Commission - means the North Carolina Sedimentation Control Commission.
- (k) Completion of Construction or Development - means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.
- (l) Department - means the North Carolina Department of Environmental Quality.
- (m) Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.
- (n) Discharge Point or Point of Discharge - means that point where runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.
- (o) District - means the Wake County Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.
- (p) Energy Dissipator - means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.
- (q) Erosion - means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.
- (r) Ground Cover - means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

- (s) High Quality Waters - means those classified as such in 15A NCAC 02B .0224, which is herein incorporated by reference including subsequent amendments and additions.
- (t) High Quality Water (HQW) Zones –means, for the Coastal Counties, areas within 575 feet of High Quality Waters; and for the remainder of the state, areas within one mile and draining to HQW's.
- (u) Lake or Natural Watercourse – means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond.
- (v) Land-disturbing Activity - means any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.
- (w) Local Government - means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.
- (x) Natural Erosion - means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
- (y) Parent – means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (z) Person - means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- (aa) Person Conducting the Land-Disturbing Activity - means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- (bb) Person Who Violates or Violator, as used in G.S. 113A-64, means: any landowner or other person who has financial or operational control over the land-disturbing activity; or who has directly or indirectly allowed the activity, and who has failed to comply with any provision of the Act, the rules of this Chapter or any order or local ordinance adopted pursuant to the Act as it imposes a duty upon that person.
- (cc) Plan - means an erosion and sedimentation control plan.
- (dd) Sediment - means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.
- (ee) Sedimentation - means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or

into a lake or natural watercourse.

- (ff) Siltation - means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.
- (gg) Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.
- (hh) Stormwater Runoff - means the runoff of water resulting from precipitation in any form.
- (ii) Subsidiary – means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
- (jj) Ten-Year Storm - means a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
- (kk) Tract - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
- (ll) Twenty-five Year Storm - means a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
- (mm) Uncovered - means the removal of ground cover from, on, or above the soil surface.
- (nn) Undertaken - means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.
- (oo) Velocity - means the speed of flow through a cross section perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.
- (pp) Waste - means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.

SECTION 4

Scope and Exclusions

Geographical Scope of Regulated Land-Disturbing Activity. The erosion and sedimentation control regulations of this ordinance shall apply to all land disturbing activities defined in section 4.c located within the territorial jurisdiction of the Town, and to the extraterritorial jurisdiction of the Town as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.

- (a) Applicability. Excluding the exceptions noted in section 4.b, the erosion and sedimentation control regulations of this article shall apply to all disturbances of land equal to or greater than one acre, and to land disturbances of less than one acre that are part of a larger common plan of development or sale, without limitation a subdivision.
- (b) Exclusions from Regulated Land-Disturbing Activity. Notwithstanding the general applicability of this ordinance to all land-disturbing activity, this ordinance shall not apply to the following types of land-disturbing activity:
 - (1) Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - (i) forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
 - (ii) dairy animals and dairy products.
 - (iii) poultry and poultry products.
 - (iv) livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - (v) bees and apiary products.
 - (vi) fur producing animals.
 - (vii) mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.
 - (2) An Activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract.
 - (3) An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
 - (4) A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

- (5) An activity which is essential to protect human life during an emergency.
- (6) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- (7) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2
- (c) Plan Approval Requirement for Land-Disturbing Activity. No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a Plan approval therefor from the Town.
- (d) Protection of Property - Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.
- (e) More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.
- (f) Plan Approval Exceptions. Notwithstanding the general requirement to obtain a Plan approval prior to undertaking land-disturbing activity, a Plan approval shall not be required for land-disturbing activity that does not exceed one (1) acre and is not part of a larger common plan of development. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.
- (g) Compliance Regardless of Land Disturbance Permit Requirements
Erosion control devices must be installed to prevent any offsite sedimentation for any construction site regardless of the size of the land disturbance. Land-disturbing activity for which a Land Disturbance Permit is not required must still comply with the erosion and sedimentation control regulations of this article, unless specifically excluded in this section.

SECTION 5 Mandatory Standards for Land-Disturbing Activity

No land-disturbing activity subject to the control of this ordinance shall be undertaken except in accordance with the following mandatory standards:

- (a) Buffer zone
 - (1) Standard Buffer. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity.
 - (i) Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to

- be located on, over, or under a lake or natural watercourse.
- (ii) Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- (b) Graded Slopes and Fills. The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.
 - (c) Fill Material. Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is permitted by the Department's Division of Waste Management to operate as a landfill. Not all materials described in Section .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.
 - (d) Ground Cover. Whenever land-disturbing activity that will disturb more than one (1) acre, or less than one acre as part of a larger common plan of development, is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in Section 8(c)(4), provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 90 calendar days following completion of construction or development.
 - (e) Prior Plan Approval. No person shall initiate any land-disturbing activity subject to this ordinance unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with and approved by the Town. An erosion and sedimentation control plan may be filed less than 30 days prior to initiation of a land-disturbing activity if the plan is submitted under an approved express permit program. The land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved. The Town shall forward to the Director of the Division of Water Resources a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.
 - (1) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

SECTION 6

Erosion and Sedimentation Control Plans

- (a) Plan Submission. A Plan shall be prepared for all land-disturbing activities that will result in the disturbance of land equal to or greater than one (1) acre, or that will result in the land disturbance of less than one (1) acre if part of a larger common plan of development or sale, including without limitation a subdivision.

- (b) Financial Responsibility and Ownership. Plans shall be disapproved unless accompanied by an authorized statement of financial responsibility and documentation of property ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of (1) the person financially responsible, (2) the owner of the land, and (3) any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the Plan, the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance. Except as provided in subsections (c) or (k) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.
 - (1) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

- (c) Environmental Policy Act Document. Any Plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The Town shall promptly notify the person submitting the Plan that the 30-day time limit for review of the Plan pursuant to this ordinance shall not begin until a complete environmental document is available for review.

- (d) Content. The Plan required by this section shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the Town on request.

- (e) Timeline for Decisions on Plans. The Town will review each complete Plan submitted to them and within 30 days of receipt thereof will notify the person submitting the Plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a complete Plan within 30 days of receipt shall be deemed approval. The Town will review each revised Plan submitted to them and within 15 days of receipt thereof will notify the person submitting the Plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a revised Plan within 15 days of receipt shall be deemed

approval.

- (f) Approval. The Town shall only approve a Plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The Town shall condition approval of Plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The Town may establish an expiration date, not to exceed three (3) years, for Plans approved under this ordinance whereby no land-disturbing activity has been undertaken.
- (g) Disapproval for Content. The Town may disapprove a Plan or draft Plan based on its content. A disapproval based upon a Plan's content must specifically state in writing the reasons for disapproval.
- (h) Other Disapprovals. The Town shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Town may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under subsection (i) of this section upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:
 - (1) Is conducting or has conducted land-disturbing activity without an approved plan or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice.
 - (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due.
 - (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article.
 - (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the Town pursuant to subsection (j) of this section, the local government shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The Town shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of Section 16(a), the applicant may appeal the local government's disapproval of the plan directly to the Commission.

For purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

- (i) Transfer of Plans. The Town administering an erosion and sedimentation control program may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.
 - (1) The Town may transfer a plan if all of the following conditions are met:

- (i) The successor-owner of the property submits to the local government a written request for the transfer of the plan including a copy of the current owner corporation's dissolution or other records to support the assertion that the current rights holder is no longer in business or has abandoned the project, and an authorized statement of financial responsibility and ownership.
 - (ii) The Town finds all of the following:
 - a. The plan holder is one of the following:
 - 1. A natural person who is deceased.
 - 2. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - 3. A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 - 4. A person who has sold the property on which the permitted activity is occurring or will occur.
 - b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - c. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - d. There will be no substantial change in the permitted activity.
 - (2) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
 - (3) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
 - (4) Notwithstanding changes to law made after the original issuance of the plan, the Town may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Town from requiring a revised plan pursuant to G.S. 113A-54.1(b).
- (j) Notice of Activity Initiation. No person may initiate a land-disturbing activity before notifying the agency that issued the Plan approval of the date that land-disturbing activity will begin.
- (k) Preconstruction Conference. Prior to any land disturbing activity, a preconstruction conference shall be held on site.
- (l) Display of Plan Approval. A Plan approval issued under this Article shall be prominently displayed until all construction is complete, all temporary measures have been removed, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.
- (m) Required Revisions. After approving a Plan, if the Town, either upon review of such Plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the Town shall require a revised Plan. Pending the preparation of the revised Plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved Plan, the Town determines that the Plan is inadequate to meet the requirements of this ordinance, the Town may require any revision of the Plan that is

necessary to comply with this ordinance.

- (n) Amendment to a Plan. Applications for amendment of a Plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the Town, the land-disturbing activity shall not proceed except in accordance with the Plan as originally approved.
- (o) Failure to File a Plan. Any person engaged in land-disturbing activity who fails to file a Plan in accordance with this ordinance, or who conducts a land-disturbing activity except in accordance with provisions of an approved Plan shall be deemed in violation of this ordinance.
- (p) Self-Inspections. The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). In addition, weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000. The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.
Where inspections are required by Section 6(r) of this Ordinance or G.S. 113A-54.1(e), the following apply:
 - (1) The inspection shall be performed during or after each of the following phases of the plan;
 - (i) initial installation of erosion and sediment control measures;
 - (ii) clearing and grubbing of existing ground cover;
 - (iii) completion of any grading that requires ground cover;
 - (iv) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
 - (v) transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item (iii) of this Item.
 - (2) Documentation of self-inspections performed under Item (1) of this Rule shall include:
 - (i) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
 - (ii) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
 - (iii) The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the

inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. The person responsible for conducting these inspections shall have or obtain at least one NCDOT recognized Erosion and Sedimentation Control Certification. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.

- (iv) A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

SECTION 7 Basic Control Objectives

An erosion and sedimentation control Plan may be disapproved if the Plan fails to address the following control objectives:

- (a) Identify Critical Areas - On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
- (b) Limit Time of Exposure - All land-disturbing activities are to be planned and conducted to limit exposure to the shortest time specified in G.S. 113A-57, the rules of this Chapter, or as directed by the Approving Authority.
- (c) Limit Exposed Areas - All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- (d) Control Surface Water - Surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- (e) Control Sedimentation - All land-disturbing activity is to be planned and conducted to prevent off-site sedimentation damage.
- (f) Manage Stormwater Runoff - Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

SECTION 8

Design and Performance Standards

- (a) Except as provided in Section 8(b)(2) and Section 8(c)(1) of this ordinance, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the latest edition of the USDA, Natural Resources Conservation Service's "National Engineering Field Handbook", or other acceptable calculation procedures.
- (b) HQW Zones. In High Quality Water (HQW) zones the following design standards shall apply:
- (1) Limit on Uncovered Area. Uncovered areas in HQW zones shall be limited at any time to a maximum total area of twenty acres within the boundaries of the tract. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and a more conservative design than the Twenty-five Year Storm.
 - (2) Maximum Peak Rate of Runoff Protection. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed and constructed to provide protection from the runoff of the twenty-five year storm which produces the maximum peak rate of runoff as calculated according to procedures in the latest edition of the United States Department of Agriculture Natural Resources Conservation Service's "National Engineering Field Handbook" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
 - (3) Sediment Basin Design. Sediment basins within HQW zones shall be designed and constructed according to the following criteria:
 - (i) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;
 - (ii) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
 - (iii) have a minimum surface area of 325 square feet per cfs of the Twenty-five Year Storm (Q25) peak flow;
 - (iv) have a minimum dewatering time of 48 hours;
 - (v) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.

Upon a written request of the applicant, the Director may allow alternative design and control measures in lieu of meeting the conditions required in subparagraphs (3)(ii) through (3)(v) of this sub-section if the applicant demonstrates that meeting all of those conditions will result in design or operational hardships and that the alternative measures will provide an equal or more effective level of erosion and sediment control on the site. Alternative measures may include quicker application

of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.

- (4) Grade. Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other forms of ditch liners proven as being effective in restraining accelerated erosion. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

SECTION 9 Storm Water Outlet Protection

- (a) Intent. Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity.
- (b) Performance standard. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - (1) the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
 - (2) the velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If condition (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by 10%.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<u>Material</u>	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5

Graded, silt to cobbles (Colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source - Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

- (c) Acceptable Management Measures - Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Town recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:
- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
 - (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
 - (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
 - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
 - (5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
- (d) Exceptions - This rule shall not apply where it can be demonstrated to the Town that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

SECTION 10 Borrow and Waste Areas

If the same person conducts the land-disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land-disturbing activity, unless the borrow or waste activity is regulated under the Mining Act of 1971, G.S. 74, Article 7, or is a landfill regulated by the Division of Waste Management. If the land-disturbing activity and any related borrow or waste

activity are not conducted by the same person, they shall be considered by the Approving Authority as separate land-disturbing activities.

SECTION 11 Access and Haul Roads

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

SECTION 12 Operations in Lakes or Natural Watercourses

Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize changes in the stream flow characteristics.

SECTION 13 Responsibility for Maintenance

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this ordinance or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

SECTION 14 Additional Measures

Whenever the Town, determines that accelerated erosion and sedimentation continues despite the installation of protective practices, they shall direct the person conducting the land-disturbing activity to take additional protective action necessary to achieve compliance with the conditions specified in the Act or its rules.

SECTION 15 Fees

The Town may establish a fee schedule for the review and approval of Plans.

SECTION 16 Plan Appeals

- (a) Except as provided in Section 16(b) of this ordinance, the appeal of a disapproval or approval with modifications of a Plan shall governed by the following provisions:
 - (1) The disapproval or modification of any proposed Plan by the Town shall entitle the person submitting the Plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.

- (2) A hearing held pursuant to this section shall be conducted by the Development Review Committee within 30 days after the date of the appeal or request for a hearing.
 - (3) The Development Review Committee shall make recommendations to the governing body of the Town, within 30 days after the date of the hearing on any Plan.
 - (4) The Governing Body of the Town will render its final decision on any Plan within 30 days of receipt of the recommendations from the agency conducting the hearing.
 - (5) If the Town upholds the disapproval or modification of a proposed Plan following the hearing, the person submitting the Plan shall then be entitled to appeal the Town's decision to the Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d)
- (b) In the event that a Plan is disapproved pursuant to Section 6(j) of this ordinance, the applicant may appeal the Town's disapproval of the Plan directly to the Commission.

SECTION 17 Inspections and Investigations

- (a) Inspection. Agents, officials, or other qualified persons authorized by the Town, will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required in the Plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each Plan.
- (b) Willful Resistance, Delay or Obstruction. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the Town, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
- (c) Notice of Violation. If the Town determines that a person engaged in land-disturbing activity has failed to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to this ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance. If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the Town shall deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program on behalf of the Approving Authority , referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. If the Town is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the

notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

- (d) Investigation. The Town shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and who presents appropriate credentials for this purpose to enter at reasonable times, any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.
- (e) Statements and Reports. The Town shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

SECTION 18 Penalties

(a) Civil Penalties

- (1) Civil Penalty for a Violation. Any person who violates any of the provisions of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The maximum civil penalty amount that the Town may assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).
- (2) Civil Penalty Assessment Factors. The governing body of the Town shall determine the amount of the civil penalty based upon the following factors:
 - (i) the degree and extent of harm caused by the violation,
 - (ii) the cost of rectifying the damage,
 - (iii) the amount of money the violator saved by noncompliance,
 - (iv) whether the violation was committed willfully, and
 - (v) the number and severity of prior violations received by the permittee and record of the violator in complying or failing to comply with this ordinance.
- (3) Notice of Civil Penalty Assessment. The governing body of the Town shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4. A notice of assessment by the Town shall direct the violator to either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the Town as directed in 11.2(E) of the Town's UDO or file a

request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based.

- (4) Final Decision: The final decision on contested assessments shall be made by the governing body of the Town in accordance with Section 12.2(e) of the Town's UDO.
- (5) Appeal of Final Decision. Appeal of the final decision of the governing body of the Town shall be to the Superior Court of the county where the violation occurred. Such appeals must be made within 30 days of the final decision of the governing body of the Town.
- (6) Remission of Civil Penalties. A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Town within 60 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. The following factors shall be considered in determining whether a civil penalty remission request will be approved:
 - (i) Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.
 - (ii) Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
 - (iii) Whether the violation was inadvertent or a result of an accident.
 - (iv) Whether the petitioner had been assessed civil penalties for any previous violations.
 - (v) Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
 - (vi) The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.
- (7) Collection. If payment is not received within 60 days after it is due, the Town may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested and a remission that is not requested is due when the violator is served with a notice of assessment. An assessment that is contested or a remission that is requested is due at the conclusion of the administrative and judicial review of the assessment.
- (8) Credit of Civil Penalties. The clear proceeds of civil penalties collected by the Town under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the Town may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State

Budget and Management on an annual basis, based upon the computation of actual collection costs by the Town for the prior fiscal year. In any event, the cost percentage shall not exceed twenty percent (20%) of the total penalties collected.

- (b) Criminal Penalties. Any person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued by the Commission or a local government, or who knowingly or willfully initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in G.S. § 113A-64.

SECTION 19 Injunctive Relief

- (a) Violation of Local Program. Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the Town, or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the Town, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.
- (b) Abatement of Violation. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this ordinance.

SECTION 20 Restoration After Non-Compliance

The Town, may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57 (3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this ordinance.

SECTION 21 Severability

If any section or section or sections of this ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

SECTION 22 Effective Date

This ordinance becomes effective on February 22nd, 2022.

This the 15th day of December, 2021.

BY: 
Jessica Day, Mayor

ATTEST: 
Heather Smith, Town Clerk

III. Information Items

A. NCDOT Report – Ms. Julie Coco

B. Commission Technical Committee – Mr. Mark Taylor

C. Land Quality Section Active Sediment Cases and Enforcement – Ms. Julie Coco

D. Education Program Status Report – Ms. Rebecca Coppa

E. Sediment Program Status Report – Ms. Julie Coco

F. Land Quality Section Report – Mr. Toby Vinson

ROY COOPER

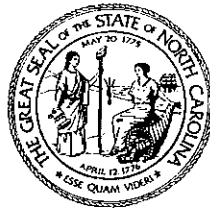
Governor

ELIZABETH S. BISER

Secretary

BRIAN WRENN

Director



NORTH CAROLINA
Environmental Quality

December 16, 2021

Mr David McHenry
North Carolina Department of Transportation
Division 14 Environmental Supervisor
253 Webster Road
Sylva, NC 28779

Subject: Trout Buffer Zone Waiver
Haywood Bridge 3 – Chinquapin
TB-HAYWO-2022-002
Haywood County

Dear Mr McHenry:

This office has received your plan for construction of a bridge and roadway approaches at Chinquapin in Haywood County. Your plan was submitted to this office for approval because of the proposed encroachments into the buffer zone of designated trout waters. In accordance with NCGS 113A-57(1) and Title 15A NCAC 4B .0125(c) this letter will serve as written approval to encroach on the buffer zone of the East Fork of the Pigeon River which is class WS-III, Trout. This authority has been delegated to me by Brian Wrenn, Director, Division of Energy, Mineral and Land Resources, in accordance with NCGS 143B-10. The following conditions will apply to this approval:

1. This approval is based on the revised plans received December 6, 2021.
2. All plantings within the buffer shall be in accordance with the Riparian Planting Plan.
3. Contact the North Carolina Wildlife Resources Commission (NCWRC) to determine if a moratorium between October 15 and April 15 is applicable.

The contact information is:

Andrea Leslie
Mountain Habitat Conservation Coordinator NC Wildlife Resources Commission
20830 Great Smoky Mountain Expressway
Waynesville, NC 28786
828-558-6011; 828-400-4223 (cell)



North Carolina Department of Environmental Quality | Division of Energy, Mineral and Land Resources
Asheville Regional Office | 2090 U.S. Highway 70 | Swannanoa, North Carolina 28778
828.296.4500

www.ncwildlife.org

4. This approval does not absolve the permittee from compliance with the surface water quality turbidity standard. More protective erosion and sedimentation control measures may be required to comply with this water quality standard. If any work is proposed in a stream a 401/404 permit may be required.

Your cooperation in protecting our environment is most appreciated. If you have any questions about this approval, please contact me at Stan.Aiken@ncdenr.gov or (828) 296-4610.

Sincerely,



Stanley E. Aiken, PE_{GA}
Regional Engineer
Land Quality Section

Enclosure: Guidelines for Riparian Buffer Restoration

ec: Brian Wrenn, Director, DEMLR (brian.wrenn@ncdenr.gov)
Julie Coco, PE, State Sediment Specialist (julie.coco@ncdenr.gov)
Landon Davidson, PG, Division of Water Resources (landon.davidson@ncdenr.gov)

Active Sediment Case Report as of February 8, 2022

Case#	Violator (Name of Case)	County	Date of Assessment	Penalty Assessment Amt	Final Amt Paid	Comments
20-017	Tardiff Property	McDowell	N/A	N/A	N/A	Injunction issued 10/2 Consent Judgement issued 12/30/20
20-019	G&H Hauling, LLC	Brunswick	30-Oct-20	\$25,000.00		Under payment plan
20-022	Blue Ridge Mountain Sky, LLC	Polk	16-Dec-20	\$25,000.00		Settlement Agreement drafted 12/13/21
20-023	Blue Ridge Mountain Sky, LLC	Polk	N/A	N/A		Injunction filed 11/5/20 Consent Judgement signed 2/25/21 Motion to Show Cause signed 12/13/21
21-003	Southwest Cabarrus Elementary School	Cabarrus	22-Sep-21	\$69,130.00		
21-009	Northgate Golden Valley	Rutherford				Drafting penalty
21-012	SFTEN, LLC	Pender	23-Jul-21	\$5,000.00	\$5,000.00	Closed
21-014	Dump & Go, Inc.	Cumberland	03-Nov-21	\$5,000.00		Drafting injunction
21-015	Wachhund Land Co., LLC	Transylvania				Drafting SWO, penalty
21-016	H&H Constructors of Fayetteville, LLC	Brunswick				Drafting penalty

N.C. SEDIMENTATION CONTROL COMMISSION ENFORCEMENT REPORT

by the OFFICE OF THE ATTORNEY GENERAL

2/8/2022

Status of Cases	4/19/2021	8/2/2021	10/21/2021	2/8/2022
1. LQS Drafting CPA	0	0	1	3
2. CPAs Out to Violator (30-day)	2	0	1	0
3. CPAs Prepared by LQS Under Review	1	2	1	4
4. CP Remission Requests Under Review	0	0	0	0
5. CP Remission Decisions	2	2	0	1
6. Cases Pending in OAH	1	1	1	2
7. Cases Awaiting Final Agency Decision	0	0	0	0
8. Cases Pending in General Courts of Justice				
a. Judicial Review	0	0	0	0
b. Injunctions	2	1	1	1
c. Pre-Judgement Collections	0			0
d. Post-Judgement Collections	0			0
e. Federal Cases	1	1	1	1
9. Cases in Bankruptcy Proceedings	0	0	0	0
10. *Cases where CPA Being Paid by Installment	0	0	0	0
11. Cases to be Closed	0			0
TOTALS:	9	7	6	12
Action Since Prior Quarterly Report:				
New Cases Received by AGO	2			1
Cases Closed by AGO	0			0

Education Program Status Report

Presentations/Exhibits

- Attended NC State's ASABE (American Society of Agricultural and Biological Engineers) Fall Career Fair on 11/6/21 with 3 other DEQ-DEMLR employees.
- Virtually visited the Natural Resources Class (~12 students) at JT Williams Secondary Montessori School on 11/12/21 with Chris Graybeal of DEQ-DEMLR's Mooresville Regional Office.
- Virtually visited a 5th grade classroom of ~20 students at Dillard Drive Magnet Elementary on 11/18/21 and 11/19/21 to discuss where we find water in different ecosystems. Conducted a follow-up in-person outdoor visit with the Dillard Drive Magnet Elementary 5th grade class on 11/21/21 to discuss how humans can impact the water in our ecosystems.
- Distributed education materials via an expo table at the NCASWCD Annual Meeting on 1/10/22 & 1/11/22.
- Moderated the 1/19/22 DEQ WOW Stormwater Webinar
- Guest lectured at NCSU with Julie Coco, DEQ's State Sedimentation Engineer, on 2/20/22
- As of February, DEQ-DWR's water educator, Lauren Daniel, and I started back up our now monthly Virtual Water Education Coffee Talks for formal and non-formal educators. The purpose of these coffee talks are to answer questions, showcase our education resources, facilitate networking, and discover/facilitate collaboration opportunities.

Workshops

The 2022 Local Program Workshop and Awards Program has been scheduled for April 19 & 20 at the Union County Agricultural Center, and is being planned in coordination with the Water Resources Research Institute (WRI).

SCC members, if you would like to participate in the 2022 Local Program Workshop email the Sediment Education Specialist.

Contract Administration

The contract between DEMLR and WRI for the 2022 Local Program Workshop and Awards Program has been submitted for processing.

Updates

The E&SC website pages are continuously being updated as needed.

If you would like to contribute an article or suggest a topic for the June edition of the Sediments Newsletter email the Sediment Education Specialist.

LAND QUALITY REGIONAL PROGRAM MONTHLY ACTIVITY REPORT

State Total FY 2021-2022 through:

January

Activity	WIRO	WIRO	ARO	ARO	WARO	WARO	WSRO	WSRO	RRO	RRO	FRO	FRO	MRO	MRO	TOTALS
	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	Month	YTD	
C. Letters of Deficiency	0	1	0	0	0	0	0	1	0	0	0	0	0	0	2
D. Cases Referred for Enforcement	0	0	0	0	0	1	0	0	0	0	0	1	0	0	2
3. Dam Safety	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
A. Letters of Deficiency	0	0	3	8	0	0	0	0	0	0	3	16	2	2	26
B. Enforcement Requests	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4. Stormwater	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
A. Notices of Violation (Total)	0	14	0	2	0	0	0	1	2	12	0	0	0	3	32
B. Notices of Deficiency (Total)	0	5	0	0	0	0	0	3	0	4	0	2	0	0	14
C. NOVs to Repeat Violators	0	0	0	1	0	0	0	2	0	1	0	0	0	0	4
D. Cases Referred for Enforcement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
LOCAL PROGRAMS															
1. Local Ordinance Reviews	0	0	0	1	1	2	1	5	0	3	0	0	0	0	11
2. Local Programs Aided (hours)	0	0	7	31	0	0	0	35	11	68	0	0	5	32	166
DREDGE & FILL APPLICATIONS	0	53	0	0	5	45	0	1	0	0	0	0	7	54	153
CUSTOMER SERVICE															
Technical Assistance (Aided Hours)	279	1858	163	1053	190	1316	146	495	48	258	25	376	66	589	5944.34
Pre-Application Meetings	115	660	3	39	17	143	6	38	1	6	0	94	6	87	1067

Monthly Activity Report

Activity Definitions

PLAN/APPLICATION REVIEW

1. **New Sedimentation Control Projects Rec'd** – The number of *complete* packages for a project that were received (FR/O form, plans, fee, landowner agreement and/or calculations, if either required). These are projects which have been assigned a new project identification number.
2. **New Sedimentation Plan Reviews** – The number of plan reviews that resulted in issuance of letters of approval and/or letters of disapproval (i.e., review > disapproval > resubmittal > approval = 2 reviews). It should not include preliminary or cursory reviews conducted by technicians that are followed by a detailed review by the ARE and/or RE. This number should be unique to the Project ID, and not to the reviewer.
3. **Sedimentation Plan EXPRESS Reviews** - Of the NEW plans that were reviewed, this item reflects the number of those that were express reviews. This number should always be equal to or less than the number reported under Item 2.
4. **New Sedimentation Plan Disapprovals** - Regular or express plans reviewed and disapproved for the first time. It should not include preliminary or cursory reviews conducted by technicians that are followed by a detailed review by the ARE and/or RE.
5. **Revised Sedimentation Plans Received** - Total number of previously reviewed regular and express plans received this month. It should not include preliminary or cursory reviews conducted by technicians. The same Project ID can be counted multiple times.
6. **Revised Sedimentation Plan Reviews** – Total number of regular and express plans revised and reviewed this month. It should not include preliminary or cursory reviews conducted by technicians. The same Project ID can be counted multiple times.
7. **Revised Sedimentation Plan Disapprovals** – Total number of **revised** regular or **revised** express plans reviewed that were disapproved. The same Project ID can be counted multiple times.
8. **Unreviewed E&SC Plans – End of Month** – The number of complete plans received for the month that have not yet been reviewed. This includes any plans received near the end of the month.

9. **E&SC Plan Reviews > 30 days** – The number of new projects that took more than 30 days from receipt to approve or disapprove. The goal is zero days.

10. **Revised Plan Reviews > 15 days** – Revisions to projects submitted that have not been reviewed within 15 days of receipt. The goal is zero days.

MONITORING

1. **Sedimentation Inspections (Total)** – The total number of inspections conducted under the sedimentation program. This number should always be greater than the sum of A through D. Two inspectors together looking at one project equals one inspection.
 - A. **Landfills** – Inspections conducted at landfill sites
 - B. **DOT Contract** – Inspections conducted on NCDOT projects under a contract (TIP Projects) and any supplemental agreements.
 - C. **DOT Force Account** – Inspections conducted on NCDOT projects under force accounts. These types of arrangements involve notices to contractors to perform extra or altered work not covered by the original contract or by supplemental agreements.
 - D. **Complaints** – Inspections conducted on behalf of citizen complaints. The number of contacts that require field review to determine necessary actions or applicability. Those occurrences that only require office telephone interpretation of the law, rules, and/or procedures are not to be included.

ENFORCEMENT

1. **Sedimentation**
 - A. **Notices of Violation (Total)** – The total number of notices issued under the sedimentation program. This includes first-time and repeat violators.
 - B. **NOVs to Repeat Violators** – Of the total above, this item represents the number of notices issued to repeat violators. This number should always be equal to or less than the number reported under Item A.
 - C. **Cases Referred for Enforcement** – The number of projects that have been issued case numbers (LQS-####-###).

LOCAL PROGRAMS

1. **Local Ordinance Reviews** – The total number of formal reviews of local programs that are reported to the Sedimentation Control Commission through the Raleigh Central Office.
2. **Local Programs Aided (hours)** – The total number of hours spent by staff in informal review of local programs and the total number of hours spent working with local programs on specific projects and program administration (i.e., plan reviews, site inspections, enforcement assistance, presentations, training, etc.)

Land Quality Section Report – February 22, 2022

Vacancies Related to E&SC

Org Unit Desc	Location	Position Description
ENR SO ASEN EML DO LQ CO WinstonSalem RO	Winston Salem Regional Office	Environmental Specialist II
ENR SO ASEN EML DO LQ CO WinstonSalem RO	Winston Salem Regional Office	Engineer I
ENR SO ASEN EML DO LQ CO Mooresville RO	Mooresville Regional Office	Engineer I