

**DEPARTMENT OF ENVIRONMENTAL
QUALITY**

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

**SEDIMENTATION
CONTROL COMMISSION
MEETING**

**10:00 A.M.
Thursday
February 21, 2024**

**ONLINE MEETING via WebEX
In-Person Meeting:
Archdale BUILDING
Ground Floor Hearing ROOM**

**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 N. Salisbury Street
Raleigh North Carolina

This meeting will be held at the above location and via webinar.

February 21, 2024, 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 16, 2023

II. Action Items

- A. Johnston County Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the review of this program.
- B. Town of Clayton Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the review of this program.
- C. Jackson County Review – Ms. Davy Conners
Staff are presenting findings and recommending continuing the delegation of this program.
- D. Wake County Review – Ms. Davy Conners
Staff are presenting findings and recommending continuing the delegation of this program.

- E. Town of Southern Pines Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the review of this program.
- F. City of Charlotte Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the delegation of this program.
- G. Town of Waxhaw Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the review of this program.
- H. County of Lincoln Ordinance Review – Ms. Julie Coco
Staff are requesting formal review and approval of changes to the county's ordinance.

III. **Information Items**

- A. NCDOT Report – Ms. Julie Coco
Staff will report on any Trout Buffer Waivers received or ICAs issued by the Department of Transportation during the quarter.
- B. Commission Technical Committee Update – 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.
- G. Updates to the Memorandum of Agreement between Local Governments and the Commission – Ms. Sarah Zambon
Counsel will start a discussion to propose changes to this MOA that involve a transition plan for rescinding a program's delegation.

IV. **Conclusion**

- A. Remarks by Commission Members
- B. Remarks by Interim Director
- 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 Nov. 16, 2023

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
NOVEMBER 16, 2023
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on November 16, 2023, at 10:00 a.m. in person in the Ground Floor Hearing Room of DEQ's Archdale Building located at 512 N Salisbury St, Raleigh, and remotely. The following persons were in attendance (either in-person or remotely) for all or part of the meeting.

COMMISSION MEMBERS

Dr. Susan White (Chair)
Mr. Benjamin Brown (Vice Chair)
Mr. Michael Taylor
Mr. James Lamb
Dr. Richard McLaughlin
Ms. Emily Sutton
Ms. Marion Deerhake
Mr. Mark Taylor
Mr. Ryan Carter
Dr. Kenneth Taylor
Mr. Steven Wilson
Mr. David Beck

OTHERS

Toby Vinson, Acting Director and Program Operations Chief, DEMLR
Julie Coco, State Sedimentation Engineer, DEMLR
Graham Parrish, Assistant State Sedimentation Specialist, DEMLR
Rebecca Coppa, State Sedimentation Education Specialist, DEMLR
Davy Conners, Environmental Program Consultant, DEMLR
Laura Oleniacz, Public Information Officer, DEMLR
Paula Chappell, Notary Public, NCDEQ
Sarah Zambon, Commission Counsel, Attorney General's Office
Danielle Rudisill, Lincoln County
Megan Gilbert, Lincoln County
Kristine Leggett, NC General Assembly, Fiscal Research Division
Jessica Meed, NC General Assembly, Fiscal Research Division
Sean Hamel, NC General Assembly, Fiscal Research Division
Mike Thompson, Town of Cary
Will Feely, Town of Cary
Charles Brown, Town of Cary

Jeevan Neupane, Wake County
Karyn Pageau, Wake County
Scott Reams, Wake County
Michelle Russell, Wake County
Jeremy Goodwin, NCDOT
Ben DeWit, NCDOT
Corey N Clayton, NCDEQ DEMLR
Mike Wallace, NCDEQ DWR
David Joseph (DJ) Seneres, City of Archdale
Jay Wilson, City of Charlotte
Lauren Witherspoon, City of Raleigh
Victoria Hoyland, Buncombe County
William Guess, Buncombe County
Josh Canup, Rowan County
Zachary Lentz, NCDEQ DWR
Robert Freedland

PRELIMINARY MATTERS

Dr. Susan White called the meeting to order at 10:00 am.

Dr. White read Executive Order No. 1 regarding avoidance of conflict of interest. She asked if anyone has a known conflict of interest or potential conflicts. Dr. White stated she had a conflict of interest with the first action item, the 2024 Local Program Workshop, and will recuse herself from the discussion and vote.

Those in attendance introduced themselves.

Ms. Emily Sutton read the evaluation of the Statement of Economic Interest filed for the newest members, Mr. Ryan Carter and Dr. Kenneth Taylor. Mr. Carter and Dr. Taylor swore the oath of office, and the oaths were signed and notarized.

Dr. White asked for a motion to approve the minutes from the August 1, 2023, meeting. Dr. Kenneth Taylor moved to approve the minutes. Mr. Benjamin Brown made a second. The motion passed.

ACTION ITEMS

2024 and 2025 Local Program Workshops

Dr. White recused herself from this action item and Vice-Chair Ben Brown chaired this item. Ms. Rebecca Coppa gave an overview of the purpose of the two-year contract with the Water Resources Research Institute (WRI) for the Local Program Workshop in 2024 and 2025, announced the dollar amount proposed within the contract, and recommended allowing for use of the funds. Dr. Taylor made a motion to approve the recommendation made by the DEMLR

staff. Mr. Carter made a second. The motion passed. Dr. White did not participate in the discussion, nor did she vote on the motion.

Buncombe County Review

Ms. Davy Conners presented the findings from her review of this program. Staff's recommendation was to continue the county's delegation with review for a period of 9 months with a follow up report to be presented at the 2024 Q3 meeting. A discussion ensued. Ms. Sutton made a motion to approve the recommendation made by the DEMLR staff. Mr. David Beck made a second; the motion passed.

City of Archdale Follow Up Review

The City of Archdale was originally reviewed and presented to the commission during the May 23, 2023, SCC Q2 meeting, during which the commission voted to approve staff's recommendation of continuing the city's delegation with review for a period of 6 months with a follow up report to be presented at this meeting. Mr. Graham Parrish presented the findings from his follow up review of this program. Staff's recommendation was to continue the program's delegation. A discussion ensued. Dr. Richard McLaughlin made a motion to approve the recommendation made by the DEMLR staff. Mr. Michael Taylor made a second; the motion passed.

Town of Lake Lure Follow Up Review

The Town of Lake Lure was originally reviewed and presented to the commission during the May 23, 2023, SCC Q2 meeting, during which the commission voted to approve staff's recommendation of continuing the town's delegation with review for a period of 6 months with a follow up report to be presented at this meeting. Mr. Parrish presented the findings from his follow up review of this program. Staff's recommendation was to continue the program's delegation. Dr. White commended DEMLR staff and local programs on their continued efforts towards updating ESC ordinances to reflect changes in rules and regulations. Dr. White also stated she would like the commission to have a future discussion on whether to make the commission's recommendation for local programs to inspect their sites monthly be in writing. Mr. Brown made a motion to approve the recommendation made by the DEMLR staff. Mr. Carter made a second; the motion passed.

Town of Cary Follow Up Review

The Town of Cary was originally reviewed and presented to the commission during the May 23, 2023, SCC Q2 meeting, during which the commission voted to approve staff's recommendation of continuing the town's delegation with review for a period of 6 months with a follow up report to be presented at this meeting. Ms. Conners presented the findings from her review of this program. Staff's recommendation was to continue the program's delegation. A discussion ensued. Dr. McLaughlin stated that he would like the commission to consider making a recommendation for all local program staff to obtain ESC training. Dr. White agreed that there are best management practices that the commission and DEMLR staff could document in the future. Mr. Carter made a motion to approve the recommendation made by the DEMLR staff.

Mr. Beck made a second; the motion passed.

Lincoln County Review

Ms. Conners presented the findings from her review of this program. Staff's recommendation was to continue the program's delegation. A discussion ensued. Dr. McLaughlin stated that, for the projects DEMLR looks at during the review, he would like to know how frequently those sites have been inspected. Mr. Carter made a motion to approve the recommendation made by the DEMLR staff. Mr. Mark Taylor made a second; the motion passed.

County of Rowan Ordinance Review

Ms. Julie Coco provided an overview of the county's ordinance and reminded the commission that an informal review had been conducted during the August 1, 2023, SCC meeting. Ms. Sarah Zambon noted differences between the county's ordinance and the model ordinance, but that those differences have no legal concern. A discussion ensued. Dr. Kenneth Taylor moved to approve the ordinance. Mr. Carter made a second; the motion passed.

NCDOT Annual Program Review

Mr. Parrish presented the findings from his review of this program. Staff's recommendation was to continue delegation of the state program. A discussion ensued. Mr. Mark Taylor made a motion to approve the recommendation made by the DEMLR staff. Dr. McLaughlin made a second. Ms. Sutton made an amendment to the motion by making a formal request for the NCDOT Program to report back to the Commission on changes they have made to their reporting regarding compliance or remediation measures as an alternative to that included within Immediate Corrective Action reports. Those changes, as requested by the Commission, include but are not limited to data collected thus far that specifically counts and describes the impacts to Environmental Management Commission classified trout water buffers and other Environmentally Sensitive Areas associated with projects from the annual report. In addition, DEMLR staff are to provide recommendations for the NCDOT Program to the Commission from their most recent annual report. The Commission requests that the NCDOT Program report back to the Commission at the second quarterly meeting in May 2024. Mr. Beck made a second to the amended motion. The amendment and the motion passed.

INFORMATION ITEMS

NCDOT, DOH-NCDEQ, DEMLR Memorandum of Agreement

The new Memorandum of Agreement was presented to the Commission, though it was not in final form as parties were still reviewing the document. The Commission discussed the Memorandum with reflection on the current annual program review. The Chair requested that further discussion be held as an Information Item at the first quarter meeting in February of 2024.

Lincoln County Ordinance Review

Ms. Coco introduced the county's ordinance and proposed changes for an informal review by the members. A discussion ensued.

Commission Technical Committee Update

Mr. Mark Taylor, the Chair of the Committee, shared that the committee continues to meet monthly to review practice standards. The committee increased membership to 12 members; however, one member recently resigned. Dr. White commended Mr. Mark Taylor for his leadership on this technical committee and thanked the committee members for their time and efforts.

Legislative Updates

Ms. Coco reported on the status of bills in the legislature that affect the Sedimentation Program.

2024 Commission Meeting Dates

Commission meetings are scheduled for next year on the following dates: February 21st, May 23rd, August 1st, and November 21st, 2024. Dr. White encouraged commissioners to attend these meetings in person.

The Chair removed other items from the agenda due to time constraints.

CONCLUSION

Remarks by Chairman

Dr. White thanked Commission members for their participation in person and online, and the DEMLR staff for their organization.

Adjournment

The Chair adjourned the meeting at 3:05 pm.

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

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

Susan White (Chair)
Sedimentation Control Commission

II. Action Items

- A. Johnston County Review – Mr. Graham Parrish
- B. Town of Clayton Review – Mr. Graham Parrish
- C. Jackson County Review – Ms. Davy Conners
- D. Wake County Review – Ms. Davy Conners
- E. Town of Southern Pines Review – Mr. Graham Parrish
- F. City of Charlotte Review – Mr. Graham Parrish
- G. Town of Waxhaw Review – Mr. Graham Parrish
- H. County of Lincoln Ordinance Review – Ms. Julie Coco

Local Program Report to the SCC Johnston County Follow Up, February 21, 2024

On May 23, 2023, a report was presented to the Sedimentation Control Commission (SCC) based on the formal review of the Johnston County Erosion and Sedimentation Control Program conducted on March 14, 2023. The Commission voted to continue delegation with review of the County program for a period of 9 months with a follow up report to be presented during the 2024 Q1 meeting. The following issues and required corrective actions were noted during the initial review:

- 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 retained 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). When the landowner and financially responsible party differ, written consent from the landowner should be obtained and retained in the 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 within 15 days of receipt of a revised plan. G.S. 113A-61(b) and MOA Part III.C.1 & 3. Staff should ensure that plans are being reviewed and notice of the review decision is being sent within the statutory timeframes. The applicant has the right to appeal a disapproval or modification if written demand for a hearing is made within 15 days after receipt of written notice of the disapproval or modification. G.S. 113A-61(c). Notice of Disapproval and modifications should be sent with the ability to track when the applicant has received the notice to ensure any request for appeal has been made in accordance with the statutory timeframe.
- Plans should include all information necessary to ensure that they can be approved in accordance with 15A NCAC 04B.0107(a) & (c) and 15A NCAC 04B.0118(d)(1) pursuant to the basic plan objectives under 15A NCAC 04B.0106. Staff should ensure that plans include construction details and maintenance notes for all proposed measures prior to approving plans. To ensure that proposed measures are adequate for the respective drainage area, staff should require delineation of proposed drainage areas.
- The County shall employ a sufficient number of qualified personnel and provide adequate resources for plan review and compliance inspections. MOA Part III.A.3 & 4. The County will need to work towards increasing the full-time equivalents contributing to the program in order to increase inspection frequency and sufficiently monitor sites for compliance with the SPCA.

Summary of Continue Review Period:

Throughout the continued review period, DEMLR requested the County provide a project list, a copy of any enforcement documents issued, and inspection reports for various projects. The

County has provided follow-up regarding the issues noted during the initial review in March. During the continued review period from March through December 2023 the county conducted 256 plan reviews, issued 88 approvals and 165 disapprovals. When a plan was found to be inadequate, review comments and reasons the plan was not approvable were sent back to the applicant. For reporting purposes, when review comments were sent back to the applicant, the County counted it as a disapproval. However, an official notice of disapproval was not always being sent in this process. The County conducted 854 inspections during this period and issued 14 NOVs. The County also used their ability to issue a stop work order or place a hold on building permits or other developmental inspections 13 times.

DEMLR staff conducted a day of oversight inspections on 11/24/2023 and a formal follow up review on 1/29/2024. Throughout the continued review period, the County has worked to close completed projects off of their open projects list. The County currently reports that they have 208 open projects. At the time of the follow up review, staff indicated that this project count may not fully reflect the number of open erosion control plans due to the way the County has tracked projects in the past. DEMLR staff requested that the County obtain and maintain a complete and accurate accounting of open erosion control plans and approved acreage moving forward. The current jurisdiction of the County program covers all unincorporated areas of the County and within the corporate limits and ETJ of the Towns of Archer Lodge, Benson, Pine Level and Wilsons Mills. As part of the County's evaluation of the current and future workload they have decided to terminate their interlocal agreements granting them erosion and sediment control jurisdiction within the 4 municipalities that they are currently covering. These terminations become effective on April 1, 2024, at which time currently approved plans will be handed over to the DEMLR Raleigh Regional Office for inspections and enforcement moving forward. All new plans within these areas will be directed to DEMLR for review and approval following the above date. The new jurisdiction of the County program will only cover the unincorporated areas of the County. The County also indicated that they will be requesting 1 new position in the 24-25 FY Budget. However, the description of this position and amount of contribution to the ESC program has not yet been finalized.

The Following is a summary of a few projects reviewed during the continued review period and during the formal follow up review:

1. Norris Rd:

This project was reviewed during the initial review in March. At the time of the initial review, this site was out of compliance for minor offsite and a number of other corrective actions needed. Following the initial review, the county conducted 6 inspections on this project. The most recent inspection conducted on 1/4/2024 noted that the site was out of compliance needing to establish groundcover on completed lot pads, clean sediment off of the roads and maintain measures. On the day of the follow up review grading was still underway. The permanent primary orifice pipe and secondary spillways of the riser structures in the sediment basins had been installed and needed to be closed off to ensure that water did not bypass the skimmer device. This was also noted previously during the joint inspections conducted in November. Multiple stockpiles throughout the site needed to be stabilized if not actively being worked and silt fence installed around the toe of the piles. Sediment had accumulated on the internal roads and curb inlet

protection measures had not been installed along these sections. A copy of the approved plan and self-inspection records were not available onsite. Rills that had formed along slopes surrounding multiple basins needed to be repaired and then restabilized. Sediment had accumulated in the forebay of one of the basins and the forebay berm had begun to erode into the basin itself. Large rills had formed above the stormwater pipe discharging into the basin which would also need to be repaired. Completed lot pads and graded areas needed to be stabilized throughout the site. Grass had been established along the slopes of the berm along the entry road. No offsite sedimentation was noted. Overall, this site was out of compliance.

2. Novo Nordisk Early Grading Package:

This plan was recently reviewed and approved by the County. This project consists of 51.04 acres disturbed for industrial development and is located within the Upper Neuse Subbasin of the Neuse River Basin. The file for this project included the approved plan, design calculations, a copy of the property deed, the FRO form and previous inspection reports. The file also contained a letter of authorization from the landowner authorizing the FRP to “act as an agent” with respect to permitting associated with the project. It is recommended that moving forward letters of consent between landowners and FRPs specifically state the landowner is giving consent for the FRP to submit a plan to conduct the land-disturbing activity as stated in G.S. 113A-54.1(a). The County received the complete package for this project on 7/20/2023 and the comments sent back to the applicant on 8/18/2023. The plan was approved on 8/24/2023 following a resubmittal from the applicant. No official review decision was sent within 30 days of receiving the plan. This project also had a revised plan that expanded the limits of disturbance. This revised plan was received by the County on 10/16/2023 and review comments were sent back to the applicant on 11/7/2023. The Applicant responded on 11/9/2023 with additional information and the County issued the approval letter on 11/17/2023. No official review decision was sent within the appropriate 15-day timeframe for these revised plans. The approved plan appeared to be adequate. Specific maintenance notes for each proposed measure and a drainage area map was included in the plan. Construction on this project began in August of 2023 and the County had conducted 4 inspections prior to the follow up review. On the day of the follow up review, grading was underway, and the perimeter measures had been installed. Basins throughout the site appeared to be installed properly and the basin slopes had been stabilized. Diversion ditches had been matted and check dams had been installed. The construction entrance appeared to be maintained and functioning. Silt fence throughout the site appeared to be well maintained. Overall, this site was in compliance.

Conclusion:

Throughout the continued review period, the County provided inspection reports for a few additional projects as well. Only 3 inspections were conducted on Eatmon Landing Ph. 2 during the continued review period. Inspections were conducted on 4/25/2023, 7/25/2023 and 9/20/2023. The County also conducted 15 inspections on NW 13. Ph. 2 during this same period. Staff have worked to increase their inspection frequency and have made progress towards a monthly inspection frequency. The County is currently inspecting sites approximately every 2-3 months. A precise average inspection frequency is difficult to calculate without an accurate open project count. Through conversations with County staff, this current workload does not appear

to be sustainable in the long term. The County has decided to terminate their interlocal agreements as a step to decreasing the program's workload and staff have worked to close out completed projects from their project list. Staff also stated that an additional staff position would be requested in the upcoming fiscal year budget proposal. This potential position's contribution to the program has not yet been determined. The County will need to continue to show improvement in inspection frequency while still ensuring that thorough inspections are conducted and detailed reports are provided. The County has addressed many of the previously noted deficiencies. Staff stated that documentation of property ownership and a letter of consent, when applicable, is required prior to approval of an erosion and sediment control plan. The recently approved project file contained both items. Staff have ensured that plans include maintenance notes and a construction detail for all proposed measures. The County still needs to adjust the plan review process to ensure that an official review decision is being sent to the applicant within the appropriate statutory timeframe. During the initial review, the County was often sending a letter of disapproval when plans were found to be inadequate. These letters were not always being sent within the appropriate 30- and 15- day timeframes. Since the initial audit, the County has been sending review comments stating the reasons a plan was not approvable via emails. These emails did not always include an official review decision nor the required language notifying the applicant of their right to appeal the decision. Therefore, an official review decision was still not always being sent to the applicant within the appropriate timeframe. One of the other items noted during the initial audit was that the County was not sending their letters of disapproval with the ability to track receipt. The County responded to this item with a proposed procedure for issuing notices of disapproval via emails. DEMLR staff met internally with their legal counsel and concluded that the proposed procedure would not meet the requirements required of SPCA delegation to track receipt of notices of disapproval. DEMLR staff discussed with County staff during the follow up review that moving forward, in accordance with G.S. 113A-61, when a plan is found to be inadequate and is being disapproved, an official letter of disapproval which includes language notifying the applicant of their right to appeal the decision should be sent and these letters should be sent with the ability to track receipt by the applicant.

The County has addressed many of the deficiencies that were noted during the initial audit. The remaining deficiencies related to plan review timeframes and disapproval letters still need to be addressed. The County will need to make adjustments to the plan review process and continue to work to address staffing. The current inspection frequency, while it has improved over the last several months, is still inadequate to ensure that sites are remaining in compliance. In addition, the current workload being conducted by County staff does not appear to be sustainable in the long term. Additional actions will be required to ensure the County can fulfill and maintain the expectations of their delegated authority.

DEMLR staff recommend to continue delegation with review for an additional 6 months with a follow up report to be presented during the 2024 Q3 meeting. During this continued review period, the County would need to continue to work to address the current staffing level and ensure that the program is adequately staffed to provide sufficient resources for plan review and compliance inspections. The County will also need to make those final process changes to ensure that plan review decisions are being sent properly and within the appropriate timeframes.

This report has been prepared based on the initial review conducted on March 14, 2023, the continued review period, and the formal follow up review conducted on January 29, 2024. This report will be presented to the Sedimentation Control Commission during the 2024 Q1 meeting on February 21, 2024.

Local Program Report to the SCC Town of Clayton, February 21, 2024

On August 1, 2023, a report was presented to the Sedimentation Control Commission (SCC) based on the formal review of the Town of Clayton Erosion and Sedimentation Control program conducted on July 6, 2023. The Commission voted to “Continue Delegation with Review” for a period of 6 months the administration of the Sedimentation Pollution Control Act of 1973 to the Town of Clayton. A follow up report will be presented to the SCC during the 2024 Q1 meeting. The following corrective actions needed were noted during the initial review:

- The Town should ensure that both permanent and temporary seeding specifications are included within the plans prior to approval. Staff should also verify that the size of measures are reflected in the supporting design calculations. It is also recommended that both the skimmer and orifice size are depicted in the plan drawings and not only shown in the calculations table, even if the table is included in the plan set.
- Once a complete application is received, plans are to be reviewed and the person submitting the plan notified that it has been approved, approved with modifications, or disapproved within 30 calendar days of receipt of a new plan and within 15 calendar days of receipt of a revised plan. G.S. 113A-61(b) and MOA Part III.C.1 & 3. Staff should ensure that plans are being reviewed and notice of the official review decision is being sent within the statutory timeframes. The applicant has the right to appeal a disapproval or modification if written demand for a hearing is made within 15 days after receipt of written notice of the disapproval or modification. G.S. 113A-61(c). When a plan is found to be inadequate, notice of the plan disapproval should be sent. These notices should be sent with the ability to track when the applicant has received the notice.
- Erosion and sedimentation control plans shall be disapproved unless the application includes an authorized statement of financial responsibility and documentation of property ownership. 15A NCAC 04B.0118. Staff should ensure that the disturbed acreage shown on the proposed plan matches that on the FRO form and that all FRO forms are notarized.
- A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Commission within 30 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. G.S. 113A-64.2. The authority to receive, consider and resolve remission requests for civil penalties has been delegated to Local Programs by the Sedimentation Control Commission (SCC). If the local government and violator are unable to resolve the remission request, the request should be referred to the Civil Penalty Remissions Committee for a final agency decision. The Town should include language notifying a violator of their option to request remission and should include the appropriate waiver of the right to a contested case hearing form in all civil penalty assessment letters. A template for a civil penalty assessment letter, the waiver of the right to a contested hearing form, the Remission Authority Delegation from the SCC, and

the adopted Remission Guidelines for Local Programs can be found on the [Local Programs Reporting SharePoint site](#).

- During the initial review, a civil penalty issue by the Town in February 2023 was reviewed. The assessment document did not include language notifying the violator of their option to request remissions or the accompanying documentation as noted above. DEMLR staff discussed this process with Town staff at the time. The Town has not issued any Civil Penalties during the continued review period but should ensure that this language and documentation is included in future civil penalty assessments.

Summary of Continued Review Period:

During the continued review period, the Town has provided inspection reports and updates for various projects. The Town has also hired and began training a full-time field inspector. The Town has begun the process of updating the local ordinance to be in line with the most recent Model Ordinance and DEMLR staff have conducted joint inspections to provide oversight and some additional informal training. Town staff have also obtained the NCDOT Level II Erosion and Sediment Control, and the Stormwater Inspection and Maintenance Certifications. DEMLR staff conducted a day of joint inspections on 11/30/2023 and 12/7/2023 . A formal full-day follow up review was conducted on 2/2/2024. During the Continued Review period from August through December 2023, the Town reviewed or re-reviewed 34 plans and issued 7 approvals. The Town reports that 28 plan disapprovals were issued during this period. The Town is still reviewing plans and when found to be inadequate, sending review comments back to the applicant for them to address. Through this process, no official notice that the plan is being disapproved is sent. For reporting purposes, the Town counted each time a plan was reviewed, found to be inadequate and comments sent back to the applicant as a disapproval. The Town conducted 325 inspections and issued 7 NOVs. The Town is still contracting with a consulting engineering firm to conduct plan reviews while the Stormwater Engineer position remains vacant. Staff stated that this position was recently readvertised. At the time of the follow up audit, the Town reported having 56 open projects.

The following is a summary of a few projects reviewed throughout the continued review period and during the follow up review on 2/2/2024.

1. US 70 Outparcels (File Review Only):

This project was recently approved during the continued review period. A file review was conducted during the follow up audit on 2/2/2024. This project consists of 3.0 acres disturbed for commercial development in the Upper Neuse Subbasin of the Neuse River Basin. The project file contained the approved plan, a copy of the property deed, design calculations and the FRO form. Written consent from the landowner for the financially responsible party (FRP) to submit the ESC plan and conduct the land disturbing activity had not been obtained. The Town received the complete application for this project on 5/31/2023 and sent the first set of review comments back to the applicant on 7/13/2023. This review was not conducted within the 30-day review timeframe for new plans and no official review decision was sent to the applicant. This plan went through 3 additional review cycles before being approved on 12/1/2023. Not all subsequent review cycles were completed within the 15-day timeframe for revised plans and no official letter

of disapproval was sent when review comments were sent back to the applicant. The FRO form was notarized, and the disturbed acreage listed matched that which was shown on the plans. The Registered Agent information for the company listed as the FRP was missing. The approved plans were missing temporary and permanent seeding specifications.

2. Highgate Ph. 5 (Field Review):

This project was inspected during a joint inspection during the continued review period on 11/30/2023. The Town issued a NOV to this site on 12/13/2023, noting repairs needed on silt fence, the basin, and inlet protection devices. The NOV also noted that some inlet protection devices had not been installed, sediment was being tracked out of the site onto public roads and exposed slopes and graded areas were not being stabilized within the required timeframes. The Town conducted a follow up inspection on 1/5/2024 and noted that corrective actions were underway and nearing completion but that some inlet protection measures still needed repairs and some areas still needed to be stabilized. The NOV was lifted following an inspection on 2/1/2024. A site inspection was conducted during the follow up review on 2/2/2024. The lot pads had been graded and vegetation was establishing. The disturbed areas along the streets had been seeded and mulched with straw. Inlet protection measures and silt fence had been repaired and maintained throughout site. State staff agreed with Town staff's findings that all corrective actions from the NOV had been completed and the site was in compliance.

3. Southside Christian School:

This project was inspected during a joint inspection during the continued review period on 11/30/2023. The Town conducted inspections on this site on 12/12/2023, 12/20/2023, 1/4/2024, and 1/26/2024. This site was out of compliance during the most recent inspection conducted by the Town needing repairs to diversion ditches and check dams throughout the site and minor sediment loss at the silt fence outlet below the skimmer basin and sediment tracking onto the adjacent road. An inspection was conducted during the follow up review on 2/2/2024. An area adjacent to the site had recently been cleared and Town staff stated that when they asked the developer about this area they were told that it would be used to stockpile material. State staff discussed that this area was beyond the limits of disturbance and not otherwise permitted, a revised plan including this area would be needed. The previously noted sediment loss at the silt fence outlet below the skimmer basin had been retrieved. The diversion ditches had been matted and one ditch had been revised to ensure positive drainage to the basin. The skimmer basin itself appeared to be well-maintained. It appeared that due to the topography of the site a large portion of the drainage area was not being directed to the skimmer basin as designed. State staff discussed the need for a revised plan to show how the drainage area not being directed to the skimmer basin would be treated during this phase of construction. The construction entrance needed to be refreshed. Silt fence and silt fence outlets throughout the site appeared to be maintained or recently repaired. No offsite sediment was noted during the inspection. This site was out of compliance and a revised plan would need to be submitted, reviewed, and approved to address how the drainage areas will be treated during this intermediate phase of grading and to add the areas disturbed outside of the approved LOD.

4. The Walk at East Village Ph. 4:

This project was inspected during the follow up review on 2/2/2024. The Town recently issued an NOV to this site on 1/12/2024 for offsite sediment and failing to maintain measures. The found that all corrective actions had been completed and the NOV had been lifted during a follow up inspection on 1/30/2024. On the day of our review, the completed lot pads and areas below the retaining wall had been seeded and mulched with straw. The silt fence outlet that had previously been overwhelmed had been repaired and the sediment loss had been retrieved. The skimmer basin and inlet protection measures throughout the site appeared to be maintained. A rill had begun to form at the end of one of the retaining walls and needed to be repaired and then stabilized. Stable conveyance from the diversion ditch into the basin needed to be installed or the steep slope of the ditch that was cut into the basin should be reduced and then stabilized. The skimmer device appeared to be clogged and was not functioning. Individual lot measures had been installed on lots where homebuilding had begun, and crews were cleaning the internal streets while we were onsite. State staff agreed that all corrective actions noted on the NOV had been completed. Overall, this site was out of compliance for needing to ensure the skimmer device was functioning properly and for needing to establish stable conveyance from the diversion ditch into the basin. These areas were also noted by Town staff.

Conclusion:

Throughout the continued review period, the Town has provided follow up and inspection reports for various projects. The Town has onboarded a full-time erosion control inspector and continues to train them. This inspector has obtained the NCDOT's Level II Erosion and Sediment Control and Stormwater Inspection and Maintenance Certifications. The Town has inspected sites on a monthly frequency over the past 6 months. The Town is still contracting with a consulting firm to conduct plan reviews while the Stormwater Engineer position remains vacant. Staff stated that the position was recently reclassified and readvertised. Over the continued review period, the Town has issued NOVs when necessary to bring sites back into compliance. The new full time inspector has demonstrated a general understanding of erosion control practices and has continued to develop a technical understanding while onsite. Town staff are noting most of the items seen by State staff during inspections.

During the follow up review the project file for a recently approved plan was reviewed. The project file was missing a letter of consent from the landowner and the registered agent information on the FRO form. Temporary and permanent seeding specifications were still missing from the approved plan. During the follow up review DEMLR staff also reviewed a plan that had recently been disapproved. This plan included proposed measures shown outside of the limits of disturbance and was also missing the seeding specifications. Neither of these items were included in the consultant's review comments that were provided to the Town nor the Town's review comments letter that was sent to the applicant. The Town is still not always meeting the appropriate plan review timeframes and is not sending an official plan review decision when plans are found to be inadequate. Town staff should ensure that all necessary items and details are included in a plan prior to approval. The Town still needs to ensure that plan reviews and notice of the official plan review decision is being sent to the applicant within 30-days for new plans and 15-days for revised plans. When plans are disapproved, the notice of the disapproval should include official language stating such and that the applicant has the right to appeal the disapproval. Notice of disapprovals and approvals with modifications should be sent with the

ability to track receipt by the applicant. The applicant can make a written request appealing the disapproval or modifications within 15 days of receiving the notice and therefore the Town must be able to track when the applicant received the disapproval or modifications notice. It is also strongly recommended that Town staff meet with their consultant to discuss missing items from plans and to conduct periodic quality control reviews to ensure that plan reviews are being adequately conducted.

The Town has worked to address the inspection infrequency and has onboarded a full-time inspector. Staff noted most areas seen by State staff while onsite and will continue to develop their technical knowledge as time goes on. A number of deficiencies within the plan review process and project files were noted during the follow up review. These issues were noted during the initial audit in July and have yet to be addressed. Staff stated that once the vacant Stormwater Engineer position is filled, these issues would be able to be resolved quickly. However, this position has been vacant for an extended period of time and the Town must work to address these deficiencies immediately. The Town has developed a contract with a consultant to facilitate plan reviews while this position is vacant and must still meet all of the requirement and expectations as a locally delegated program.

DEMLR staff recommend to continue delegation with review for another 3 months with a follow up report to be presented to the SCC during the 2024 Q2 meeting. During this period, The Town must work to address the remaining deficiencies noted during the initial review, continued review period and the follow up review.

Local Program Report to the SCC Jackson County, February 21, 2023

On November 30, 2023, personnel from NCDEQ, DEMLR conducted a formal review of the Jackson County Erosion and Sedimentation Control Program. The County was last reviewed and presented to the Sediment Control Commission in April 2019. The County requires an erosion and sediment control plan for any projects disturbing 1 acre or greater. The jurisdiction of the program covers all areas of Jackson County including within all town corporate limits. The County has 6.5 staff who contribute to the program. From November 2022 through October 2023, the County conducted 12 plan reviews or re-reviews, issued 10 approvals and 2 disapprovals. During this period, the County conducted 739 inspections and issued 3 Notices of Violation, 0 Civil Penalties, and 68 Stop Work Orders. The County also has the authority to issue building permits and inspection holds and, over the past year, had issued 10. When plans are submitted to the County, they are reviewed and either approved or, if found to be inadequate, disapproved, with notification of the decision being sent to the applicant. The Letters of Disapproval were being sent with the ability to track receipt. Plans were being reviewed and review decisions were being sent to the applicant within the statutory timeframes. County staff stated they were inspecting sites on at least a monthly basis, and this was reflected in the project files DEMLR staff reviewed. At the time of the audit, the County had 34 open projects. DEMLR staff looked at four project files and conducted site inspections for three of those projects.

The following is a summary of projects reviewed:

1. Silver Run Reserve Meadow House and Pool (paperwork review only)

This project consists of 6.1 acres disturbed for commercial development and is located within the Seneca Subbasin of the Savannah River Basin. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports, property deed, and the financial responsibility/ownership (FRO) form. The County received the complete application for this project on November 8, 2022, and after two review cycles, approved it on January 4, 2023. A revised plan was submitted August 17, 2023, and was approved August 18, 2023. The County conducted the plan reviews and rendered its decisions within the appropriate timeframe. The approved plan appeared to be adequate. Construction on this project began in February 2023, and the County had conducted 9 inspections prior to our review, on about a monthly basis. No NOV or Civil Penalties had been issued for this project. A site inspection was not conducted on this project due to time constraints.

2. Chinquapin Packs Creek Road Construction

This project consists of 11.77 acres disturbed for residential development and is located within the Tuckasegee Subbasin of the Little Tennessee River Basin. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports, property deed, and the FRO form. The County received the complete application for this project on May 4, 2023, and approved it on May 16, 2023. The County conducted the plan review and rendered a decision within the appropriate timeframe. The limits of disturbance on the approved plan did

not include all areas to be disturbed. Construction on this project began in June 2023, and the County had conducted 6 inspections prior to our review. No NOV or Civil Penalties had been issued for this project. At the time of the audit, perimeter measures had been installed and a gravel road and bridges were being constructed. The slopes had recently been hydroseeded. Rock outlet protection needed to be installed at one slope drain and a silt fence outlet needed to be added as per the plan. One area had a hole in the silt fence that needed to be repaired. Overall, this site was in compliance with a few maintenance needs noted.

3. Chinquapin Wolf Lake Road Construction

This project consists of 2.95 acres disturbed for residential development and is located within the Seneca Subbasin of the Savannah River Basin. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports, property deed, and FRO form. The County received the complete application for this project on March 20, 2021, and approved it on April 19, 2021. The County conducted the plan review and rendered a decision within the appropriate timeframe. The approved plan appeared to be adequate. Construction on this project began in May 2021, and the County had conducted 31 inspections prior to our review. On June 27, 2022, the County issued this site a Notice of Violation for offsite sediment that had entered a stream and cited them for failure to follow approved plan, failure to provide groundcover, failure to protect property, failure to install and maintain erosion and sediment control measures, and failure to self-inspect. The County worked with the Division of Water Resources and the Army Corps of Engineers for cleanup. At the time of the audit, the road construction project was nearing completion. Slopes had been stabilized with vegetation. Cleanup from the 2022 sediment loss had been completed and riparian vegetation was established. A slope drain going into a sediment basin had erosion around it and needed to be maintained. Overall, this site was in compliance with a few maintenance needs noted.

4. LH Cedar Hill LT V2

This project consists of 1.95 acres disturbed for residential development and is located within the Seneca Subbasin of the Savannah River Basin. The project file contained the approved plan, revised plan, letters of approval, design calculations, previous inspection reports, property deed, and FRO form. The owner listed on the deed was not the same as the Financially Responsible Party on the FRO form, and a letter of consent between the landowner and the FRP was not obtained. The County stated that the individual landowner was also the owner of the business listed as the FRP, however, even in this case a letter of consent between the individual and the business is still required. The County received the complete application for this project on May 13, 2022, and approved it on May 17, 2022. The County conducted the plan review and rendered a decision within the appropriate timeframe. The approved plan appeared to be adequate. Construction on this project began in August 2022, and the County had conducted 15 inspections prior to our review. No NOV or Civil Penalties had been issued for this project. At the time of the audit, a gravel driveway had been installed and vertical construction of the house was underway. A sediment trap at the rear of the property had been installed at the request of the County. That trap needed to be stabilized and the outlet needed to have additional rock added for it to function as intended. Sediment accumulated along the silt fence needed to be removed

and the silt fence needed to be maintained. Overall, this site was in compliance with a few minor maintenance needs noted.

Positive Findings:

During the review DEMLR staff noted positive aspects about the Jackson County Local Erosion and Sedimentation Control Program including:

- The County requires a preconstruction meeting for all projects.
- For projects disturbing more than 5 acres, the County requires a security bond of \$2,000 per acre disturbed.
- County staff utilize the ability to place holds on various permits and construction inspections as additional tools to bring sites into compliance.
- If a project begins construction prior to an ESC plan being approved, the County doubles the permit fee, as a deterrent for working without an approved plan.

Issues Noted and Required Actions:

During the review DEMLR Staff found that the Jackson County Erosion and Sedimentation Control Program had deficiencies including:

- In one instance, written landowner consent was not obtained when the financially responsible party (FRP) and landowner differed.
- The limits of disturbance as shown on one of the plan sets did not include all areas to be disturbed.

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

- 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). The County should obtain a letter of consent when the landowner and FRP differ and retain this in the project file.
- The County should verify that all areas disturbed are included within the LOD on the plan.

Recommendations for Improvement:

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

- It is recommended that the County continue to monitor and provide guidance for NPDES violations including operating without a permit, improper concrete washout, and fuel containment onsite during inspections. Note possible NPDES violations and refer to the NCDEQ Asheville Regional Office when necessary.
- It is recommended that the County continue to cooperate and communicate with the NCDEQ Asheville Regional Office on any complaints received by the Regional Office.
- Updates from the 2021 Model Ordinances had not been included into the County’s ordinances such as sections which refer to the right to request remissions when issued a civil penalty. It is recommended to review the local ordinances to ensure that they are in

accordance with most recent state statutes and administrative codes and update template letters, as necessary, to reflect any changes.

Conclusion:

Overall, DEMLR found the Jackson County Locally Delegated Erosion and Sedimentation Control Program to be robust but had a few minor deficiencies. The County will need to obtain a letter of consent when the landowner and FRP differ and retain this in the project file. And the County will need to ensure that all areas to be disturbed are included within the “limits of disturbance” on the plan. When plans are submitted to the County, they are reviewed and either approved or, if found to be inadequate, disapproved, with notification of the decision being sent to the applicant. The Letters of Disapproval were being sent with the ability to track receipt. Plans were being reviewed and review decisions were being sent to the applicant within the statutory timeframes. County staff stated they were inspecting sites on at least a monthly basis, and this was reflected in the project files DEMLR staff reviewed. The County requires a preconstruction meeting for all projects and, for projects disturbing greater than 5 acres, requires a security bond of \$2,000 per acre disturbed. DEMLR recommends that the County update their local ordinance to reflect the most recent Model Ordinance. During the review, the County demonstrated a thorough understanding of the enforcement processes and tools which are delegated to them. The County will take additional action such as placing a hold on various construction inspections, building permits and final plat approval, when necessary, as incentives to bring sites into compliance. County staff noted all areas seen by DEMLR staff on site and demonstrated their ability to conduct adequate inspections. The County demonstrated their ability to effectively implement the local program’s delegated authority. DEMLR staff will recommend to “Continue Delegation” of the Jackson County locally delegated program.

This report has been prepared based on the formal review of the Jackson County Erosion and Sedimentation Control Program conducted on November 30, 2023, and will be presented to the Sedimentation Control Commission during its 2024 Q1 meeting on February 21, 2024.

Local Program Report to the SCC Wake County, February 21, 2023

On January 31, 2024, personnel from NCDEQ, DEMLR conducted a formal review of the Wake County Erosion and Sedimentation Control Program. The County was last reviewed and presented to the Sediment Control Commission in February 2020. The County requires an erosion and sediment control plan for projects disturbing greater than or equal to 1 acre and projects disturbing less than an acre that are part of a larger common plan of development. The jurisdiction of the program covers the unincorporated areas of Wake County and the Towns of Morrisville, Garner, Wendell, Rolesville, and Zebulon. The County has 10 staff who contribute to the program. From January 2023 through December 2023, the County conducted 770 plan reviews or re-reviews, issued 387 approvals and 383 disapprovals. When plans are submitted to the County, they are reviewed and either approved, approved with modifications, or if found to be inadequate, disapproved, with notification of the decision being sent to the applicant. The Letters of Disapproval were not being sent with the ability to track receipt. Decision letters needed to be updated to include all necessary language notifying the applicant of their right to appeal disapprovals and modifications and that approval of the plan is conditioned upon compliance with Federal and State water quality laws, regulations, and rules. Plans were being reviewed and review decisions were being sent to the applicant within the statutory timeframes. During the previous year, the County conducted 2,134 inspections and issued 54 Notices of Violation, 10 Civil Penalties, and 0 Stop Work Orders. The County also has the authority to issue building permits and inspection holds and, over the past year, issued 45. On average, the County is inspecting projects about once every three months, and this was reflected in the project files DEMLR staff reviewed. The County is aware that more regular inspections are needed, and staff have implemented a plan to increase inspection frequency that includes getting newly hired staff trained and requesting additional staff in next year's budget. At the time of the audit, the County had 675 open projects. DEMLR staff looked at four project files and conducted site inspections for three of those projects. All projects reviewed are located within the Upper Neuse Subbasin of the Neuse River Basin.

The following is a summary of projects reviewed:

1. Camberly Subdivision Ph 3 (paperwork review only)

This project consists of 2.53 acres disturbed for residential development. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports, and the financial responsibility/ownership (FRO) form. The FRO was missing the Registered Agent's information for the Financially Responsible Party (FRP). The property deed was missing from the project file. The County received the complete application for this project on August 27, 2020, and after two review cycles, approved it on October 8, 2020. The County conducted the plan reviews and rendered its decisions within the appropriate timeframe. Disapproval letters did not notify the applicant of their right to appeal and were not being sent with the ability to track receipt. The approval letter did not condition approval of the plan upon compliance with Federal and State water quality rules and regulations. The acreage listed on the approved plan

did not match the acreage on the FRO, but otherwise, the plan appeared to be adequate. Construction on this project began in December 2020, and the County had conducted 8 inspections prior to our review. An NOV had been issued to the site on June 26, 2023, and was fully resolved on September 1, 2023. No Civil Penalties had been issued for this project. A site inspection was not conducted on this project due to time constraints.

2. Hollybrook Athletic Club

This project consists of 1.7 acres disturbed for commercial development. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports, property deed, and the FRO form. The owner listed on the FRO was not the same as the Financially Responsible Party, and a letter of consent between the landowner and the FRP was not obtained. The County received the complete application for this project on October 25, 2021, and approved it on November 23, 2021. The County conducted the plan review and rendered a decision within the appropriate timeframe. The approval letter did not condition approval of the plan upon compliance with Federal and State water quality rules and regulations. Construction on this project began in February 2022, and the County had conducted 5 inspections prior to our review. No NOV or Civil Penalties had been issued for this project. At the time of the audit, vertical construction was nearing completion and landscaping and sodding of exposed areas was underway. Inlet protection measures needed to be reinstalled in some areas of the site, and weep holes that had been installed bypassing inlet protection measures needed to be removed. The area around the pool needed to be stabilized. Silt fence outlets near the west end of the project needed additional stone. And minor sediment tracking was observed leaving the site into the neighboring subdivision. Overall, this site was out of compliance with a few maintenance needs noted.

3. Belle Grove Subdivision

This project consists of 31.85 acres disturbed for residential development. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports, and FRO form. The FRO was missing the Registered Agent's information for the FRP. The owner listed on the FRO was not the same as the FRP, and a letter of consent between the landowner and the FRP was not obtained. The property deed was missing from the project file. The County received the complete application for this project on May 12, 2022, and after 4 review cycles, approved it on September 7, 2022. The County received a revised plan with updated ownership on October 3, 2023, and approved it the same day. The County conducted the plan reviews and rendered decisions within the appropriate timeframe. Disapproval letters did not notify the applicant of their right to appeal and were not being sent with the ability to track receipt. The approval letter did not condition approval of the plan upon compliance with Federal and State water quality rules and regulations. The acreage listed on the approved plan did not match the acreage on the FRO and approval letter, but otherwise, the plan appeared to be adequate. Construction on this project began in October 2023, and the County had conducted 2 inspections prior to our review. No NOV or Civil Penalties had been issued for this project. At the time of the audit, mass grading of the site was underway. Grading for the road installation had removed most of the diversion ditches, which needed to be reinstalled per the plan. The construction entrance needed to be refreshed. Silt fence outlets needed additional stone. Basin outlets

needed to have stable conveyance between riprap at the basin outlet and the silt fence outlet. Slope drains into the basin needed rock protection. The southwest basin needed repairs to function according to the plan. Overall, this site was out of compliance.

4. Layhill Estates Lots

This project consists of 1.96 acres disturbed for residential development. The project file contained the approved plan, revised plan, letters of approval, design calculations, previous inspection reports, and FRO form. The owner listed on the FRO was not the same as the Financially Responsible Party, and a letter of consent between the landowner and the FRP was not obtained. The property deed was missing from the project file. The County received the complete application for this project on April 16, 2019, and after 2 review cycles, approved it on May 15, 2019. The County conducted the plan review and rendered a decision within the appropriate timeframe. The disapproval letter and approval with modification letter did not notify the applicant of their right to appeal and were not being sent with the ability to track receipt. The letter of approval with modifications used the language “conditioned approval” for modifications and did not condition approval of the plan upon compliance with Federal and State water quality rules and regulations. The limits of disturbance on the approved plan did not include all areas shown on the plan to be disturbed. Construction on this project began in January 2021, and the County had conducted 4 inspections prior to our review. No NOV or Civil Penalties had been issued for this project. At the time of the audit, the site had been inactive for the previous year. The road had been installed and the site had been stabilized. Additional groundcover was needed to stabilize slopes and ditches. Stone on inlet protection measures needed to be refreshed. Silt fence outlets throughout the site needed additional stone, especially those along the stream. A small amount of sediment and gravel was observed outside the LOD and needed to be removed and the area restabilized. A stable conveyance from the basin to the silt fence outlet needed to be installed. Baffles needed to be reinstalled in the basin. Overall, this site was out of compliance.

Positive Findings:

During the review DEMLR staff noted positive aspects about the Wake County Local Erosion and Sedimentation Control Program including:

- The County requires a preconstruction meeting for all projects. Staff stated that they require proof of coverage under the NCG01 permit at the preconstruction meeting.
- County staff utilize the ability to place holds on various permits and construction inspections as additional tools to bring sites into compliance.
- Approval by the County is required prior to the removal of any sediment basin.
- The County requires a certificate of compliance prior to grading other than the installation of ESC measures.
- The County has provided outreach and education to developers including hosting a webinar training for applicants on common plan review and documentation issues. They have since made a recording of this webinar available online.

- The County has developed standard lot plans for single family lots and construction details available online for applicants and has recently added maintenance notes to all the details.
- A QA/QC position has been created to ensure the County is acting consistently in enforcement actions across inspectors.
- County staff lead meetings with other local government programs in the area.

Issues Noted and Required Actions:

During the review DEMLR Staff found that the Wake County Erosion and Sedimentation Control Program had deficiencies including:

- Written landowner consent was not obtained when the financially responsible party (FRP) and landowner differed.
- Staff appeared to be verifying property ownership during plan review; however, copies of property deeds were not being retained in the project file.
- When plans are submitted to the County, they are reviewed and either approved, approved with modifications, or if found to be inadequate, disapproved, with notification of the decision being sent to the applicant.
 - Letters of Disapproval were not being sent with the ability to track receipt.
 - Letters of Disapproval and Approval with Modifications were missing necessary language informing the applicant of their right to appeal the decision within 15 days of receipt.
 - Letters of Approval with Modifications were using the language “conditioned approval” instead of approved with modifications.
 - Letters of Approval were missing necessary language informing the applicant that the approval of the plan is conditioned upon compliance with Federal and State water quality laws, regulations, and rules.
- The limits of disturbance (LOD) as shown on the of the plan sets did not include all areas to be disturbed for some of the projects. Additionally, for some of the projects, the acreage to be disturbed on the plans did not match the acreage on the FRO and approval letter.

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

- 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. § 113A-54.1(a). County staff stated that they have recently updated their procedures to require a letter of consent, when needed. The County should obtain a letter of consent when the landowner and FRP differ and retain this in the project file.
- Documentation of land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.018(c). County staff stated that they have recently updated their procedures to require submittal of the deed as part of the application. The County should retain this documentation in the project file and verify it with the FRO.

- The County should update the decision letter templates and procedures to reflect the following:
 - Letters of Disapproval should be sent with the ability to track when the applicant has received the notice to ensure any request for appeal has been made in accordance with the statutory timeframe.
 - Letters of Disapproval and Approval with Modifications should include language notifying applicants of their right to appeal the decision. § 113A-61 (c).
 - Letters of Approval with Modifications should use the term “modifications” instead of “conditioned approval.” § 113A-61 (b).
 - Letters of Approval should include language informing the applicant that the approval of the plan is conditioned upon compliance with Federal and State water quality laws, regulations, and rules. § 113A-61 (b1). Template letters with references to the NCAC and state statute can be found on our [Local Program SharePoint Reporting site](#).
- The County should verify that all areas disturbed, including all ESC measures, are within the LOD on the plan. And the County should verify that the acreage to be disturbed on the plans is the same as the acreage on the FRO and approval letter.

Recommendations for Improvement:

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

- It is recommended that the County continue to monitor and provide guidance for NPDES violations including operating without a permit, improper concrete washout, and fuel containment onsite during inspections. Note possible NPDES violations and refer to the NCDEQ Raleigh Regional Office when necessary.
- Updates from the 2021 Model Ordinances had not been included into the County’s ordinances such as sections which refer to the right to request remissions when issued a civil penalty. It is recommended to review the local ordinances to ensure that they are in accordance with most recent state statutes and administrative codes and update template letters, as necessary, to reflect any changes.
- On average, the County is inspecting projects about once every three months, and this was reflected in the project files DEMLR staff reviewed. The County is aware that more regular inspections are needed and is implementing a plan to increase inspection frequency that includes getting newly hired staff trained, increasing efficiency by creating a separate stormwater team, and requesting an additional four ESC inspection staff and three administrative staff in next year’s budget. Wake County staff stated that a written recommendation from the SCC for Local Program inspection frequency would be helpful. DEMLR staff agree with the assessment that additional staff will help maintain the program’s effectiveness, especially given the increase in development in the County. It is recommended that the County continue to seek ways to address inspection frequency to ensure the program is sufficiently monitoring projects for compliance with the SPCA and sediment rules.

Conclusion:

Overall, DEMLR found the Wake County Locally Delegated Erosion and Sedimentation Control Program to be robust but had a few deficiencies. The County will need to update its procedures to ensure that: a letter of consent is obtained when the landowner and FRP differ, information on the FRO form is complete and accurate, and the property deed is obtained and retained in the project file. When plans are submitted to the County, they are reviewed and either approved, approved with modifications, or if found to be inadequate, disapproved, with notification of the decision being sent to the applicant. The Letters of Disapproval will need to be sent with the ability to track receipt. Decision letters will need to be updated to include all necessary language. Plans were being reviewed and review decisions were being sent to the applicant within the statutory timeframes. The County will need to ensure that all areas to be disturbed are included within the “limits of disturbance” on the plan and verify that the acreage to be disturbed on the plans is the same as the acreage on the FRO and approval letter. The County requires a preconstruction meeting for all projects, approval prior to removing basins, and a certificate of compliance prior to mass grading. The County has offered education and outreach opportunities to its regulated community and to other Local Programs. DEMLR recommends that the County update their local ordinance to reflect the most recent Model Ordinance. Additionally, DEMLR recommends that the County continue to implement measures to address inspection frequency to ensure the program sufficiently monitors projects for compliance with the SPCA. During the review, the County demonstrated a thorough understanding of the enforcement processes and tools which are delegated to them. The County will take additional action such as placing a hold on various construction inspections, building permits and final plat approval, when necessary, as incentives to bring sites into compliance. County staff noted all areas seen by DEMLR staff on site and demonstrated their ability to conduct adequate inspections. The County demonstrated their ability to effectively implement the local program’s delegated authority. DEMLR staff will recommend to “Continue Delegation” of the Wake County locally delegated program.

This report has been prepared based on the formal review of the Wake County Erosion and Sedimentation Control Program conducted on January 31, 2024, and will be presented to the Sedimentation Control Commission during its 2024 Q1 meeting on February 21, 2024.

Local Program Report to the SCC Town of Southern Pines, February 21, 2024

On November 1, 2023, personnel from NCDEQ, DEMLR conducted a formal review of the Town of Southern Pines Erosion and Sedimentation Control Program. The Town of Southern Pines Program was last formally reviewed on 9/17/2017. The Town requires a Major Erosion Control Plan for all projects disturbing 30,000 sq. ft. or more, and a Minor Erosion Control Plan if a project is disturbing less than 30,000 sq. ft. and is located within a common plan of development. The Town also requires an Erosion Control Compliance Form for any project disturbing less than 30,000 sq. ft. but is not located within a common plan of development. A minor erosion control plan requires the financially responsible party information, a standard lot layout plan with measures and construction details. The Town has developed a standard plan set that can be used for these. An erosion control compliance form requires similar information to a minor erosion control plan. Jurisdiction of the program covers the Town's corporate limits and extraterritorial jurisdiction (ETJ). The program consists of 3 staff who contribute approximately 1.50 full time equivalents (FTE). During the previous year from October 2022 through September 2023, the Town reported they conducted 66 plan review or re-reviews, issued 18 plan approvals, 48 disapprovals and conducted 615 inspections. When a plan is found to be inadequate, the Town is sending review comments back to the applicant, however no official disapproval letter is being sent at the time. The Town is documenting inspection findings within an internal spreadsheet for each project, however, staff stated that formal inspection reports were not being generated unless an NOV was being issued. During the previous year, the Town issued 7 NOVs, 0 CPA, and issued 1 SWO. The Town also has the ability to place a hold on building permits or building inspections and have utilized this tool once in the previous year. The Town requires that a preconstruction meeting be held for all projects and the grading permit is only issued once the initial ESC measures have been installed and received approval from the Town inspector.

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

1. Water Works Ph. 1:

This project consists of 6.28 acres disturbed for commercial development and is located within the Upper Cape Fear subbasin of the Cape Fear River Basin. The project file contained the approved plan, letter of approval, a copy of the property deed, and the FRO form. The complete application was initially received by the Town on 5/30/2022 and was approved on 11/1/2022. The Town conducted 2 review cycles prior to approving the plan. The Town found that the plan was adequate and noted that the plan was approved in August 2022 but did not send the official letter of approval until the entire development package was approved on 11/1/2022. When the plan was found to be inadequate, review comments were sent back to the applicant, however, no official disapproval letter was issued. Notification of the review decision was not issued within the statutory timeframe. Specific maintenance notes for all proposed measures and seeding specifications were missing from this plan. The dissipator pad of the underground stormwater control measure (SCM) outlet was shown outside of the limits of disturbance and a specific construction sequence regarding the removal of the temporary basin and installation of the underground SCM was not included in the approved plan. The Town had conducted 48

inspections prior to our review; however, an official report had not been generated for each inspection. A NOV was issued to this project on 8/22/2023 for offsite sediment into an adjacent wetland area. The Town notified DWR of this loss at the time. Staff stated that they worked with the developer as they transitioned between contractor forces following the NOV. The Town found that the required repairs had been completed during an inspection on 10/2/23, however, DWR had not yet provided guidance and the lost sediment had yet to be retrieved. The Town lifted the NOV at the time and noted that DWR would still need to provide direction on cleanup efforts. DEMLR and Town staff discussed needing to not lift an NOV until all corrective actions have been completed. During our review the underground SCM had been installed, construction of the building and grading for the sewer line installation was underway. A large stockpile of material was placed along the top of the site and needed to be stabilized or protective measures be installed. The temporary skimmer basin had been removed as the underground SCM was installed. DEMLR and Town staff discussed the need to provide alternative measures sufficient to treat the drainage area or sufficient stabilization prior to when basins are allowed to be removed. A revised plan was needed to address the need for sufficient measures to adequately treat the drainage area during this phase of construction. Overall, this site was out of compliance. No signs of additional offsite sedimentation had been noted.

Following the audit, the Town began sending formal inspection reports at least monthly and whenever a site is out of compliance. The Town conducted an inspection on 12/11/2023 and found that items noted during the audit had not all been resolved. The Town conducted a follow up inspection on 1/2/2024 and noted that the previously noted corrective actions had still not been completed. The Town issued an NOV on 1/5/2024. During the most recent follow up inspection conducted on 1/12/2024, staff noted that stabilization efforts throughout the site were underway; however, a number of corrective actions had yet to be completed. This site remained out of compliance and under the NOV.

2. Morganton Park South Phase 1:

This project consist of 28.0 acres disturbed for commercial development and is located within the Lumber subbasin of the Lumber River Basin. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed and the FRO form. The landowner and Financially Responsible Party differed and written consent from the landowner had not been obtained. The complete application was initially received on 12/23/2021 and underwent 6 review cycles before being approved on 11/9/2022. Review comments were sent to the applicant during each review cycle, but the official review decision was not sent within the statutory timeframe. The approved plan appeared to be adequate. Construction on this project began in December of 2022 and the Town had conducted 26 inspections prior to our review. However, an official inspection report was not always generated. No NOVs or CPAs had been issued to this project prior to our review. On the day of our review vertical construction was underway and the parking lot area was being prepped for paving. A large stockpile was located at one corner of the site and silt fence needed to be installed surrounding the pile until it could be removed. The large sediment basin was being converted to the permanent SCM. The contractor was utilizing a pump to dewater the basin but was not using a silt bag to filter the pumped discharge. Inlet protection measures throughout the site needed to be maintained. Inlet protection measures that had been removed for paving of the parking lot needed to be

reinstalled once paving was completed. Overall, this site was out of compliance. No signs of offsite sediment were noted.

The Town has provided official inspection reports following the initial audit. The Town conducted an inspection on 12/14/2023 and 1/4/2024. During the most recent inspection report, the site was found to be in compliance and noted that the construction entrance would soon need to be maintained.

3. Fort Bragg Federal Credit Union:

This project consists of 1.88 acres disturbed for commercial development and is located within the Lumber subbasin of the Lumber River Basin. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed and the FRO form. The complete application was initially received on 7/21/2023 and was approved on 8/22/2023. Notification of the official review decision was not sent within the statutory timeframe. The approved plan appeared to be adequate from a design standpoint, however, some items such as the silt fence and limits of disturbance were drawn at a scale which made it difficult to distinguish from each other when printed. Town staff typically conducts their plan reviews digitally and has the ability to zoom in on the plan sheets during review. Staff should also consider the scale items are drawn at and how items will appear when plans are printed out and being utilized in the field. Construction on this project began in September of 2023 and the Town had conducted 3 inspections prior to our review, however official inspection reports were not always generated. On the day of our review grading was underway and the retaining wall onsite had recently been completed. The skimmer basin appeared to have been installed properly and wattle silt fence outlets had been installed. The diversion ditch along the retaining wall had not yet been installed. Overall, this site was in compliance. No signs of offsite sediment were noted.

Following the audit, the Town has conducted 2 formal inspections on 12/13/2023 and 1/10/2024. The site was found to be in compliance during both inspections.

Positive Findings:

During the review DEMLR staff noted positive aspects about the Town of Southern Pines Erosion and Sedimentation Control Program including:

- The Town requires a preconstruction meeting for all approved projects.
- The Town provides reference to the NCG01 permitting process within their letters of approval.
- The Town has a more restrictive criterion than the State as to when an ESC plan is required. A major plan is required for all projects disturbing 30,000 sq. ft. or more and a minor plan is required for projects disturbing less than 30,000 sq. ft. within a common plan of development. For projects disturbing less than 30,000 sq. ft. that are not within a common plan of development, the Town requires an Erosion Control Compliance form.
- The Town can use Stop Work Orders and place a hold on various building inspections as additional tools to bring sites back into compliance.

Issues Noted and Required Actions:

During the review DEMLR staff found that the Town of Southern Pines Erosion and Sedimentation Control Program had deficiencies including:

- Once a complete application was received, the Town reviewed the plans and would send review comments to the applicant when plans were found to be inadequate. The Town was also not always sending the letter of approval once the ESC plan was found to be adequate but rather would wait until the overall development plan was approved before sending the erosion control plan approval letter. Through the current plan review process, an official review decision was not always being sent within the statutory timeframe.
- Written landowner consent was not always obtained when the financially responsible party (FRP) and landowner differed.
- Seeding specifications and specific maintenance notes for some proposed measures were not included in all plans. One plan contained items, such as silt fence and the limits of disturbance, drawn at a scale which made distinguishing between them difficult when printed out as a full-size plan set.
- The Town is conducting frequent inspections and documenting their findings within an internal log. Official inspection reports are only being generated if an NOV is to be issued.
- Certain sections of the local ordinance are devoid or no longer adhere to the most recent state statutes and administrative code.

The Town shall implement the following changes to correct the deficiencies found during the 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 within 15 days of receipt of a revised plan. G.S. 113A-61(b) and MOA Part III.C.1 & 3. Staff should ensure that the plans are reviewed and notice of the review decision is being sent within the statutory timeframes.
- 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). When the landowner and FRP differ, written consent from the landowner shall be obtained and retained in the project file.
- Plans should include all information necessary to ensure that they can be approved in accordance with 15A NCAC 04B.0107(a) & (c) and 15A NCAC 04B.0118(d)(1) pursuant to the basic plan objectives under 15A NCAC 04B.0106. Staff should ensure that plans include all the necessary details and specifications. Staff should also ensure that all items of the plan are drawn at a scale that is clearly visible when printed.
- The Town should document inspections in writing, including electronic documents. Inspection reports shall include, at a minimum, all information in the model sedimentation inspection report developed by the Commission. MOA Part III.D.2 & 3. A Template Inspection Report, along with other template documents can be found on the [Local Programs Reporting SharePoint site](#).
- The Local ordinance 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 has approved a Model Ordinance

which can be found on the [NC DEQ Erosion and Sedimentation Control Local Programs Website](#). Staff shall coordinate with DEMLR staff during the updating process and provide a draft of proposed updates to DEMLR staff by July 1, 2024.

Conclusion:

During the review, DEMLR staff noted the Town of Southern Pines locally delegated erosion and sedimentation control program had a few deficiencies. The Town will need to adjust the plan review process to ensure that landowner consent is obtained when the landowner and FRP differ and that all necessary items are included in a plan. The Town should also ensure that notice of the official review decision is sent within the statutory timeframes. When plans are found to be inadequate, the plan should be disapproved, and notice of the disapproval should be sent with the ability to track the receipt by the applicant. The applicant has the ability to appeal an approval with modification or disapproval if written request for a hearing is made within 15 days of receiving notice of the modification or disapproval. Once a plan is found to be adequate the letter of approval should be sent to the applicant. The Erosion and Sediment Control Approval cannot be withheld due to ongoing other departmental reviews. The Town is conducting frequent inspections and tracking their findings using an internal log. Official inspection reports are not being generated unless a NOV was to be issued. Staff will need to begin generating official inspection reports and distribute them to the financially responsible party. Official inspections should be conducted at least monthly to remain in compliance with the Sedimentation Control Commission's expectations. The Town can utilize additional tools such as Stop Work Orders and placing a hold on building permits and inspections in order to bring sites into compliance. The Town also has a stricter criterion than the State as to when an Erosion Control Plan is required. Town staff have obtained NCDOT Erosion and Sediment Control Certifications and have continuously reached out to Central Office with questions as they arose over the past year. Staff demonstrated a general knowledge of erosion control plan design and implementation but would benefit from additional guidance and training. Staff should continue to reach out to the Central and Regional offices for guidance, work to address the noted deficiencies and continue to train new staff.

Following the audit on November 1, 2023, the Town has begun sending formal inspection reports at least monthly for all projects. Town staff continue to conduct inspections more frequently and will issue reports when sites are found out of compliance and at least monthly moving forward. Town staff have also begun the process of updating the local ordinance.

DEMLR Staff recommend to "Continue Delegation with Review" for a period of 3 months with a follow up report to be presented during the 2023 Q2 meeting. This report has been prepared based on the formal review of the Town of Southern Pines Erosion and Sedimentation Control Program conducted on November 1, 2023, and will be presented to the Sedimentation Control Commission during its 2024 Q1 meeting on February 21, 2024.

Local Program Report to the SCC City of Charlotte, February 21, 2024

On December 12, 2023, personnel from NCDEQ, DEMLR conducted a formal review of the City of Charlotte Erosion and Sedimentation Control Program. The City was last reviewed and presented to the Sedimentation Control Commission in May 2019. The City requires an erosion and sediment control plan for projects disturbing 1 acre or greater. The jurisdiction of the program covers the City of Charlotte corporate limits and extraterritorial jurisdiction (ETJ). The City has approximately 8.5 full time equivalents (FTE) contributing to the program. During the previous year from December 2022 through November 2023, the City conducted 1249 plan reviews or re-reviews, issued 919 approvals and 330 disapprovals. During this same period the City conducted 5186 inspections, issued 47 NOVs and 32 CPAs. Staff stated that they also have the ability to place a hold on Certificates of Occupancy if a site has outstanding erosion control issues that need to be addressed. Building permits are issued by the County and the City stated that they are planning to coordinate with the County to potentially develop a process where additional enforcement tools such as the ability to place holds on building permits and other development inspections may be used. When plans are submitted to the City, they are reviewed and either approved, or if found to be inadequate, comments on why the plan is not approvable are sent to the applicant. In this case, the City was counting these as plan disapprovals but was not always sending an official disapproval notice in accordance with the statutory requirements. The City recently began sending an official notice of disapproval via email when plans are found to be inadequate. These notices are not being sent with the ability to track receipt by the applicant. The applicant has the right to appeal a disapproval if the applicant makes a written request within 15 days of receiving the notice of disapproval, therefore the City must be able to track when the applicant receives the notice. At the time of DEMLRs audit, the City had 489 open projects. DEMLR staff looked at four project files and conducted site inspections on two projects.

The following is a summary of projects reviewed:

1. Atando:

This project consists of 6.15 acres disturbed for residential development and is located within the Lower Catawba Subbasin of the Catawba River Basin. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports, the FRO form and the Letter of Consent from the landowner. Documentation of property ownership was not retained within the project file. City staff stated that the deed book and page information is required on the FRO form and staff verify this information using the local GIS system but are not retaining a copy of the deed within the file. The City received the complete application on 12/22/2021 and issued the approval letter on 3/17/2022. The City conducted 3 review cycles during this period. Each review cycle begins when the complete package is received and ends when the City has reviewed the erosion control plan and sent review comments back to the applicant or issued the letter of approval. When the plan was found to be inadequate, review comments were sent back to the applicant; however, an official disapproval notice was not issued. The approved plan appeared to be adequate from a design standpoint; however, specific maintenance notes were not included for all proposed measures. No NOVs or CPAs had been issued to this site prior to

the date of our review. Construction of this project began in May 2022 and the City had conducted 14 inspections prior to our review. The last two inspections conducted by the City were on 11/22/2023 and 12/04/2023. At the time of the audit, vertical construction of one section of lots had been completed and stabilized. New silt fence had been installed between the completed section and sections being actively graded to prevent sediment moving onto the completed areas. The underground retention system had been installed, and the City had recently given approval to install a skimmer device inside the underground system to ensure surface dewatering and then removal of the temporary skimmer basin. The drainage area would then be directed to and treated through the underground detention system. Curb inlet protection devices had been installed and overall, appeared to be maintained. Stockpiles and idle areas throughout the site had been covered with seed and straw or hydroseeded. Some sediment on internal roads was visible and, although minimal, tracking on to the adjacent public road was noted. Overall, City staff appeared to conduct an adequate inspection and noted all areas seen by State staff. This site was out of compliance at the time of the audit due to the minimal tracking offsite.

The City conducted a follow up inspection on 1/25/2024 and found that all corrective actions noted during the audit had been completed and the site was in compliance.

2. Grier Meadows:

This project consists of 28.53 acres disturbed for residential development and is located within the Rocky Subbasin of the Yadkin Pee Dee River Basin. The project file contained the approved plan, letter of approval, design calculations, a survey with owner information shown, previous inspection reports and the FRO form. The City received the complete application on 2/26/2020 and went through 5 review cycles before approving on 9/28/2021. When the plan was found to be inadequate, review comments were sent back to the applicant. No official disapproval notice was sent in accordance with the statutory requirements. The approved plan appeared to be adequate from a design standpoint; however, specific maintenance notes were not included for each proposed measure. No NOVs or CPAs had been issued to this project prior to the day of the review. Construction on this project began in October 2021 and the City had conducted 21 inspections prior to the audit. The last two inspections conducted by the City were on 10/10/2023 and 11/09/2023. At the time of the audit, individual lot construction was beginning. Silt fence had been installed around the active lots and trenching for silt fence installation was underway on additional lots. Skimmer basins throughout the site had been installed and appeared to be functioning. Some sections of the perimeter silt fence had undermined, and minor sediment loss was noted just beyond these sections. It appeared that accumulated sediment in the diversion ditch along the back of some lots had had been spread out to allow for drying before removing as maintenance of these areas were underway. Maintenance of the inlet protection devices and check dams along this ditch had been recently completed or were underway. Signs of previous sediment loss and the repairs were noted at one of the silt fence outlets. The south side of the site was transitioning to the next phase and installing a new skimmer basin. Baffles had been installed, and the berm and side slopes of the basin had been covered with seed and straw mulch. The skimmer device had not yet been installed. Recently completed or newly inactive areas had been hydroseeded and inactive areas appeared to be stable throughout the site. Overall, this site was out of compliance with minor

areas of sediment loss and a number of repairs and maintenance needs. City staff appeared to conduct an adequate inspection and noted all areas seen by State staff.

The City has provided follow up on this site as well. A follow up inspection was conducted on 1/5/2024 when staff met with the site contractor onsite to discuss a timeline for repairs. Staff noted the remaining corrective actions needed and set a compliance deadline of 2 weeks to complete all corrective actions. Staff have scheduled a follow up inspection for 1/26/2024.

3. Verizon Mecklenburg North: (File Review Only)

This project consists of 11.39 acres disturbed for commercial development and is located within the Rocky Subbasin of the Yadkin Pee Dee River Basin. The project file contained the approved plan, letter of approval, design calculations, previous inspection reports and the FRO form. Documentation of property ownership was not retained in the project file. The landowner of record and the Financially Responsible Party had been listed as an individual rather than the company they were representing. The deed reference listed on the FRO form was not the current deed. Staff should ensure that documentation of property ownership is obtained prior to approving any plan and retain a copy of this documentation in each project file. The City received the complete package for this project on 2/9/2022 and went through 4 review cycles before being approved on 5/18/2022. When the plan was found to be inadequate, review comments were sent back to the applicant. No official disapproval notice was issued in accordance with the statutory requirements. The approved plan appeared to be adequate from a design standpoint; however, specific maintenance notes were not included for each proposed measure. No NOVs or CPAs had been issued to this project prior to the day of the review. Construction on this project began in July 2022 and the City had conducted 13 inspections prior to the audit. The last two inspections conducted by the City were on 7/24/2023 and 8/28/2023. Due to time constraints, a field inspection was not conducted on this project.

4. Fuller: (File Review Only)

This project consists of 2.19 acres disturbed for industrial development and is located within the Upper Catawba Subbasin of the Catawba River Basin. 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 not retained in the project file. An individual was listed as the FRP rather than the company they represented on the FRO Form. The City received the complete package for this project on 10/10/2022 and went through 7 review cycles before being approved on 9/11/2023. When the plan was found to be inadequate, review comments were sent back to the applicant. However, an official disapproval notice was not always issued in accordance with the statutory requirements. The City has recently begun including official disapproval notice language within their review comments emails that are sent to the applicant through the City's electronic permitting system. The approved plan appeared to be adequate from a design standpoint; however, specific maintenance notes were not included for each proposed measure. No NOVs or CPAs had been issued to this project prior to the day of the review. Construction on this project began in October 2023 and the City had conducted 4 inspections prior to the audit. The last two inspections conducted by the City were on 10/31/2023 and 11/28/2023. Due to time constraints, a field inspection was not conducted on this project.

Positive Findings:

During the review DEMLR Staff noted positive aspects about the City of Charlotte local Erosion and Sedimentation Control Program including:

- The City requires a preconstruction meeting for all projects.
- The City can place a hold on the issuance of a Certificate of Occupancy if there are outstanding ESC issues that need to be addressed. Staff also stated that they intend to discuss the possibility of developing additional enforcement tools with the County.
- The City has developed a certification program in conjunction with the County to provide training for construction site self-inspectors and other interested participants. This program is meant to ensure that certified individuals are recognized as having achieved the minimum competency requirements as outlined in the City's ordinance.
- The City implements "Enhanced Erosion Control Requirements" within the Goose and McDowell Creek watershed areas, critical and protected watershed districts, and land within 500 feet of listed 303(d) streams. These requirements include the use of high hazard silt fence with wire backing and stone entrenchment along wetlands, streams, lakes and other water bodies, a more restrictive timeframe for ground stabilization, matting of diversions and interior basin slopes, a larger basin design volume requirement, and others.

Issues noted and Required Actions:

During the review DEMLR Staff found that the City of Charlotte Erosion and Sedimentation Control Program had deficiencies including:

- A deed book and reference page is required information on the City's FRO form; however, this information was not accurate on one approved plan. Documentation of property ownership, such as a copy of the property deed, was not always being retained in the project file.
- When plans are submitted to the City, they are reviewed and either approved or, if found to be inadequate, review comments are sent back to the applicant. At the time that the projects reviewed during the audit went through the plan review process, the City was not sending an official notice of disapproval. Now, when plans are reviewed and found to be inadequate, an email with the official disapproval language is sent through the City's electronic permitting system. These notices are not being sent with the ability to track receipt by the applicant and are not always being sent within the appropriate statutory timeframes.
- An individual was listed as the financially responsible party (FRP) on the FRO form rather than the company/firm they represented.
- Maintenance notes for some proposed measures were missing from approved plans.

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

- Documentation of land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.018(c). A copy of the property deed or other form of documentation should be

retained within each project file. It is the responsibility of the FRP to update the City of any changes to the FRO form and provide supporting documentation.

- 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 within 15 days of receipt of a revised plan. G.S. 113A-61(b) and MOA Part III (C). Staff should ensure that an official review decision is being sent to the applicant within the appropriate statutory timeframe. When plans are being disapproved, these notices should be sent with the ability to track receipt by the applicant as they have the right to appeal the decision if a request for a hearing is made within 15 days of receiving the notice of disapproval. The City has recently begun including the official disapproval language via emails sent through the City's electronic permitting system. These notices must be sent with the ability to track receipt. When a revised plan is resubmitted after being disapproved, the plan should be reviewed, and the official review decision sent to the applicant within the 15-day timeframe.
- If the financially responsible party is a company/firm, an individual with signatory authority should sign the FRO form on behalf of the company/firm; however, the company/firm should be listed as the financially responsible party. The City should use the Secretary of State's website to verify the Financially Responsible Party information when applicable.
- Plans should include all information necessary to ensure that they can be approved in accordance with 15A NCAC 04B.0107(a) &(c) and 15A NCAC 04B.0118(d)(1) pursuant to the basic plan objectives under 15A NCAC 04B.0106. Staff should ensure that plans include specific maintenance notes for all proposed measures prior to approving plans. These can be incorporated into the construction details or notes throughout the plan.

Recommendations for improvement:

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

- While the City can hold the issuance of Certificates of Occupancy until any outstanding erosion control concerns have been addressed, the City does not currently have the ability to place holds on building inspections or permits as those are issued by the County. As evidenced by other local programs, utilization of additional enforcement tools such as these have proven to be effective in maintaining or bringing a site back into compliance quickly. City staff indicated that they have initiated discussions with the County to explore the use of these tools. It is highly encouraged that, if feasible for both the County and City programs, the City and County develop procedures to have these additional tools available for use.
- The Sedimentation Control Commission has developed a memorandum of agreement (MOA) between themselves and locally delegated programs. This MOA outlines the responsibilities and expectations of both the Commission and the locally delegated program. It is highly encouraged that the City enter into this MOA with the Commission.
- The City appears to be monitoring for some potential NPDES violations while conducting their inspections. Staff should continue to monitor and provide guidance for potential

NPDES violations including operating without a permit, improper concrete washouts, and fuel containment on site during inspections. Note potential violations and refer them to the NCDEQ Mooresville Regional Office when necessary.

Conclusion:

Overall, DEMLR found the City of Charlotte Locally Delegated Erosion and Sedimentation Control Program to be robust but had a few deficiencies. The City will need to ensure that the information on the FRO form is complete and accurate. An individual with signatory authority should sign the FRO form on behalf of the company or firm they are representing but the company or firm should be listed as the Financially Responsible Party. Documentation of property ownership should be retained in each project file. The City conducts plan reviews once a complete package has been received and sends comments back to the applicant if the plan is inadequate. In general, these comments have been sent back to the applicant within 30 days of receiving the complete package for the initial review cycle; however, previously no official disapproval notice was being sent through this process and therefore the statutory timeframe for an official review decision was not always being met. The City has recently adjusted their process, to include language notifying the applicant the plan has officially been disapproved. The City needs to ensure that these notices are being sent with the ability to track receipt by the applicant and that any subsequent revised plans are reviewed, and the official review decision is sent within the 15-day timeframe. The City has developed an inspector certification program and implements “Enhanced Erosion Control Requirements” within critical areas within their jurisdiction. The City is in the process of updating their local ordinance to reflect the most recent general statutes and administrative codes. Staff demonstrated a comprehensive understanding of erosion control design, plan review and noted all areas seen by State Staff during site inspections. The City can place a hold on the issuance of a Certificate of Occupancy if outstanding erosion control items have not yet been addressed and staff have indicated that they are investigating developing additional enforcement tools. The City has a thorough understanding of their delegated enforcement tools and has utilized these over the past year. The City has demonstrated their ability to effectively implement the local program’s delegated authority. DEMLR staff recommend to “Continue Delegation” of the City of Charlotte Erosion and Sedimentation Control Program.

This report has been prepared based on the formal review of the City of Charlotte Erosion and Sedimentation Control Program conducted on December 12, 2023, and will be presented to the Sedimentation Control Commission during its 2024 Q1 meeting on February 21, 2024.

Local Program Report to the SCC Town of Waxhaw, February 21, 2024

On January 11, 2024, personnel from NCDEQ, DEMLR conducted a formal review of the Town of Waxhaw Erosion and Sedimentation Control Program. The Town was initially delegated by the Sedimentation Control Commission (SCC) in November of 2016. The jurisdiction of the program covers the Town of Waxhaw corporate limits. The Town requires an erosion and sediment control plan for commercial, industrial or subdivision projects disturbing greater than 12,000 sq. ft. and non—subdivision residential projects disturbing greater than an acre. For projects disturbing less than those thresholds, the Town requires a “Compliance Form” which captures the owner and financially responsible party(FRP) information, a general sketch plan of erosion control measures to be used and notifies the FRP of their responsibility to install and maintain measures sufficient to retain sediment at their site. The town has 2 staff who contribute approximately 1 full time equivalent (FTE) position to the program. During the 2023 calendar year, the Town conducted 14 plan reviews or re-reviews. The Town approved 5 plans and disapproved 9 plans. During this period, the Town was reviewing plans and sending a letter with reasons the plan was not able to be approved back to the applicant. These instances were being counted as disapproval, but an official disapproval notice was not always being sent to the applicant with the appropriate language or within appropriate timeframe to meet statutory requirements. During the 2023 calendar year, the Town conducted 153 “official” inspections. Staff stated that an “official” inspection was conducted on active projects at least each month, but that they were often onsite weekly. Staff stated that findings from “official” inspections were not always being documented using a formal inspection report. Emails with corrective actions or concerns were sometimes sent to the financially responsible party. At the time of DEMLR’s audit, the Town had 20 approved projects. Town staff stated that there had been approximately 10 inches of rain within the two weeks prior to the review, including 2 inches two days prior to the review. DEMLR staff looked at four project files and conducted site inspections on three projects.

The following is a summary of projects reviewed:

1. Blythe Mills Townhomes:

This project consists of 18 acres disturbed for residential development and is located within the Lower Catawba Subbasin of the Catawba River Basin. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, the FRO form, and previous inspection reports. The Town received the complete application on 6/15/2022 and issued a letter of disapproval on 6/20/2022. This letter of disapproval did not include language notifying the applicant of their right to appeal the decision. This letter of disapproval was sent with the ability to track receipt by the applicant. The Town received the complete revised plan package on 9/18/2023 and approved the plan on 9/26/2023. The letter of approval was not dated and was missing language conditioning the approval upon the applicant’s compliance with State and Federal Water Quality laws, rules, and regulations. Both plan reviews were completed, and notification of the review decision was sent within the appropriate timeframes. Specific maintenance notes for some proposed measures were not included in the approved plan. No NOV’s or CPAs had been issued to this project prior to the review. Construction on this project

began in November of 2023 and only 1 formal inspection report was retained in the project file. Staff stated that additional inspections had been conducted but were not always documented through a formal inspection report but rather through email correspondence with the plan holder. Some of these emails were retained in the project file. At the time of the audit, grading was underway and the initial phase erosion control measures were being installed. The slope drain in one of the completed basins had been placed in between the second and third baffles and needed to be moved to the bay furthest from the skimmer device. Installation of the third basin was underway. Staff stated that the contractor had worked to grade the basin and install the skimmer device but was unable to get the baffles installed before the recent rain events. Minor sediment loss was noted at the silt fence outlet adjacent to this basin. The silt fence and outlet at this location appeared to have been repaired or maintained and was functioning on the day of our review. The diversion ditch from the skimmer outlet needed to be regraded and stabilized. This would help reduce the potential for sediment overwhelming the downstream silt fence outlet during future rain events. Minor sediment loss was also noted just beyond one of the silt fence outlets in the northwest corner of the site. Sediment loss at both locations needed to be retrieved and the disturbed areas stabilized. Construction materials and vehicles were being staged along an old roadbed adjacent to the project site until these areas were completed. Staff stated that the adjacent landowner had given permission to use these areas temporarily. However, these areas were not included within the approved limits of disturbance. All construction materials, vehicle storage and parking areas should be included within the limits of disturbance. These materials and vehicles needed to be removed and placed onsite and the areas disturbed, restabilized or a revised plan showing the usage of these areas should be obtained. Check dams had been installed in the diversion ditches throughout the site and seed and straw had been spread across inactive areas. Overall, silt fence and silt fence outlets throughout the site appeared to be maintained. However, this site was out of compliance with minor sediment loss noted in two locations and disturbances beyond the approved limits of disturbance.

2. Madison Park:

This project consists of 13.53 acres disturbed for commercial development and is located within the Lower Catawba subbasin of the Catawba River Basin. The project file contained the approved plan, letter of approval, design calculations, a copy of the property deed, the FRO form and previous inspection reports. The Town received the complete application for this project on 5/9/2022 and was approved on 6/8/2022. The letter of approval included some modifications that were required to be made to the plans. In instances such as this, an approval with modifications should have been issued. Letters of approval with modifications should include language stating the official review decision, modifications required, and should notify the applicant of their right to appeal the required modifications. These should also be sent with the ability to track receipt by the applicant. Specific maintenance notes for some proposed measures were not included in the approved plan. Construction on this project began in June of 2023 and the Town had conducted approximately 22 inspections prior to our review. Only 2 official inspection reports were included in the project file, the remaining inspection findings were documented through email discussions with the plan holder. No NOVs or CPAs had been issued to this site prior to the review. On the day of the review, grading was underway and retaining walls throughout the site had been installed. A couple of sections of silt fence below the wall

needed to be repaired. There were multiple stockpiles onsite; if these were not actively being worked, silt fence should be installed surrounding the 3 down slope sides and the piles stabilized within the appropriate timeframes. Minor rills had formed during the recent rains and would need to be repaired. Inlet protection devices throughout the site were maintained and appeared to be functioning. The construction entrance was installed and maintained. No signs of offsite sediment were noted. Overall, this site was in compliance with some minor maintenance needed.

3. 300 North Broad St. Townhomes

This Project consists of 1.97 acres disturbed for residential development and is located within the Lower Catawba Subbasin of the Catawba River Basin. The project file contained the approved plan, letter of approval, design calculations, the FRO form and previous inspection reports. Documentation of property ownership was not retained in the project file and the registered agent information for the financial responsible party was missing from the FRO form. The Town received the complete application for this project on 8/29/2019 and issued the approval letter on 2/17/2020. The Town conducted 3 review cycles during this period. When the plan was found to be inadequate, the Town provided a letter stating that the plan was not approved and listed the reasons why. These letters did not include the language stating the official review decision as disapproved nor language notifying the applicant of their right to appeal the decision. Specific maintenance notes for some proposed measures were not included in the approved plan. The project file contained 8 previous inspection reports. Staff stated that construction of this project began in the middle of 2020 and that regular inspections were conducted at least monthly and often more frequently, but a formal inspection report was not always completed. No NOVs or CPAs had been issued to this site prior to the review. On the day of the review, the internal road and construction of one of the Townhomes had been completed. The completed areas below the finished building were being permanently stabilized and landscaped. Perimeter silt fence appeared to be maintained. Additional silt fence had been installed surrounding the remaining building pads and appeared to be maintained. The slope above the remaining building pads had been matted. Seed and straw had been spread along other inactive areas. Inlet protection measures throughout the site appeared to be maintained. Silt fence outlets along the front of the remaining building pads needed to be maintained with additional stone. No signs of offsite sediment were noted. Overall, this site was in compliance with a few minor maintenance needs noted.

4. Old Town Village: (Project File Review Only)

This project consists of 9.96 acres disturbed for residential development and is located within the Lower Catawba Subbasin of the Catawba River Basin. The project file contained the approved plan, letter of approval, a copy of the property deed, the FRO form and previous inspection reports. The Town received the complete application on 9/24/2021 and issued the approval letter on 5/25/2022. The Town conducted 2 review cycles during this period. When the plan was found to be inadequate, the Town sent review comments back to the applicant via email. No official review decision was sent to the applicant within this process. Specific maintenance notes were not included for each proposed ESC measure in the approved plan. Construction on this project started in October of 2023 and 1 formal inspection report was retained in the project file.

Numerous emails noting required maintenance or repairs were retained in the project file. No NOVs or CPAs had been issued to this project prior to the review.

Positive Findings:

During the review DEMLR Staff noted positive aspects about the Town of Waxhaw local Erosion and Sedimentation Control Program including:

- The Town requires a preconstruction meeting for all projects.
- The Town has updated their local ordinance in accordance with the most recent Sedimentation Control Commission approved Model Ordinance.
- The Town has a stricter criterion than the State as to when an Erosion and Sediment Control Plan is required. An approved plan is required for commercial, industrial or subdivision projects disturbing greater than 12,000 sq. ft. and non—subdivision residential projects disturbing greater than an acre. The Town also requires an erosion control “Compliance Form” for all projects that do not exceed the approved plan requirement threshold. This form collects the FRP and landowner information, a sketch plan of proposed erosion control measures and notifies the applicant of their responsibility to retain sediment on their project site.
- The Town has the ability to place a hold on building permits or inspections or issue Stop Work Orders as additional tools to bring sites into compliance. Staff stated that while these tools are available, they have not been utilized over the past few years.
- The Town has developed a set of standard construction details that are to be included for each proposed measure within the set of plans. Having a standard Town set helps to ensure consistency across plans and projects.

Issues noted and Required Actions:

During the review DEMLR Staff found that the Town of Waxhaw Erosion and Sedimentation Control Program had deficiencies including:

- Documentation of Property ownership was not retained in each project file.
- The registered agent information on the Town’s FRO form should be updated to clarify that the registered agent information is required if the FRP is a company or firm.
- When plans are submitted to the Town, they are reviewed and either approved or, if found to be inadequate, review comments are sent back to the applicant. The Town issued letters of disapproval for some projects that were reviewed during the audit; however, these letters did not always contain language stating the official review decision or notice of the applicants right to appeal. Staff stated that these disapproval letters were previously being sent via certified mail, but the Town had recently switched to issuing these letters via email. Through this process, notification of the official review decision was not always being sent back to the applicant within the appropriate timeframes.
- One of the projects reviewed had been issued a letter of approval and this letter included some modifications that needed to be made to the plan. When a plan is found to be approvable but has some minor modifications that are needed, the plan should be approved with modifications and the decision letter should include all the necessary language for an approval with modifications. Letters of approval were also missing

language conditioning the approval on the applicant's compliance with Federal and State Water Quality Laws. These letters were also not always dated.

- Inspections reports are not always completed following an inspection conducted by the Town. Town staff stated that inspections are often conducted weekly or more frequently but are not always documented through an official inspection report. Email correspondence between Town staff and the plan holder regarding needed maintenance or repairs on site were available in some project files. Staff also stated that when a site was found to be in compliance an inspection report was not completed.
- Maintenance notes for some proposed measures were missing from approved plans.

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

- Documentation of land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.018(c). A copy of the property deed or other form of documentation of property ownership should be retained within each project file.
- The Town should update their FRO form to clarify that the registered agent information is required whenever a company/firm is the FRP. Staff should also verify the company/firm information with the business registration on the NC Secretary of State website. https://www.sosnc.gov/online_services/search/by_title/Business_Registration
- 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 within 15 days of receipt of a revised plan. G.S. 113A-61(b) and MOA Part III (C). Staff should ensure that an official review decision is being sent to the applicant within the appropriate statutory timeframe. When plans are being disapproved or approved with modifications, these notices should include language stating the official review decision and notifying the applicant of their right to appeal the decision. Since the applicant can appeal these decisions if a written request is made within 15 days of receiving the official review decision, the Town should resume sending these notices with the ability to track receipt by the applicant. Letters of approval should also include language conditioning the approval upon the applicant's compliance with Federal and State water quality laws, regulations, and rules. G.S. 113A-61(b1). All plan review decision letters should be dated.
- The Town shall document in writing, including electronic document, and report shall include at a minimum, all information in the model sedimentation inspection report developed by the Commission. MOA Part III.D.2 & 3. Town staff stated that an inspection report would be filled out during all inspections moving forward.
- Plans should include all information necessary to ensure that they can be approved in accordance with 15A NCAC 04B.0107(a) &(c) and 15A NCAC 04B.0118(d)(1) pursuant to the basic plan objectives under 15A NCAC 04B.0106. Staff should ensure that plans include specific maintenance notes for all proposed measures prior to approving plans. These can be incorporated into the Town's standard construction details or included within the notes of the plan.

Recommendations for improvement:

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

- It is recommended that the Town monitor for and provide guidance regarding potential NPDES violations while conducting their inspections. Potential violations including but not limited to operating without obtaining coverage under the NCG01 Construction Stormwater permit, improper concrete washout and improper fuel containment on site can be brought to the FRP attention. If necessary, refer potential violations to the NCDEQ Mooresville Regional Office.
- The Town is requiring the two NPDES plan sheets to be included in the erosion and sediment control plans. It is recommended that NCG01 related actions, such as obtaining the NCG01 Certificate of Coverage and the eNOT process, be specified within the construction sequence of plans as well.

Conclusion:

Overall, DEMLR found the Town of Waxhaw Locally Delegated Erosion and Sedimentation Control Program had a few deficiencies. The Town will need to ensure that all the appropriate language is included in the official plan review decision notices and that these notices are sent within the appropriate 30- and 15-day timeframes. All letters should be dated as the day they are sent and letters of approval with modifications and letters of disapproval should be sent with the ability to track receipt by the applicant. The Town will also need to ensure that inspections are adequately documented through official inspection reports. When sites are found to be in compliance, an inspection report should still be completed. Staff stated that an inspection was conducted on all projects at least monthly but often weekly and staff was often onsite more frequently than that. The Town will need to update their FRO form and ensure that all of the FRP information is included and accurate before approving a plan. Documentation of property ownership also needs to be retained within the project file. Overall, the plans appeared to be adequate. Staff appeared knowledgeable and aware of design considerations that may be of concern when reviewing a plan. While onsite, Town staff noted all areas seen by State staff. The Town has the ability to utilize additional enforcement tools to bring sites back into compliance, such as stop work orders or placing holds on building permits. Town staff appear to have a firm technical understanding of the erosion and sediment control plans and what to look for while conducting site inspections. The Town will need to make the administrative adjustments noted above during the plan review process and start documenting inspections consistently.

Following the audit, the Town has provided some follow up. The Town has developed a formal inspection report and states that the report will be issued following formal inspections at least monthly and when sites are found to be out of compliance. Staff have forwarded a copy of the inspection reports from their inspections conducted in late January. Staff also stated that the FRO form has been updated and language conditioning plan approval on federal and state water quality laws has been added to the letters of approval.

DEMLR staff recommend "Continue Delegation with Review" of the Town of Waxhaw Erosion and Sedimentation Control Program for a period of 3 months, with a follow up report to be presented to the SCC during its 2024 Q2 meeting.

This report has been prepared based on the formal review of the Town of Waxhaw Erosion and Sedimentation Control Program conducted on January 11, 2024, and will be presented to the Sedimentation Control Commission during its 2024 Q1 meeting on February 21, 2024.

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 Sedimentation Pollution Control Act of 1973 (SPCA). While these levels of recommendation provide guidance as to the expectations of Local Programs, recommendations made by DEMLR staff seek to appropriately reflect the findings of the review but may not necessarily be sequential from one review period to the next. Furthermore, examples are provided which list some of the program requirement deficiencies noted during a review. The finding of one or more deficiencies does not necessitate this specific recommendation level nor does the absence of one or more examples guarantee a higher recommendation level.

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

Level 2 – Continue Delegation with Review: At this level, the program may need clarification on certain provisions of the SPCA or limited guidance on their ordinance and practices. The program needs clarifications or guidance in one or more areas:

- **Procedures and Records** - This includes the handling of paperwork or submittal requirements for applicants, application review response and notification requirements, on-site records review, or the development of their local ordinance. Staff may need guidance on reporting their program-related activities to the DEQ-DEMLR regularly and accurately with few omissions. The program may not be aware of the latest laws and rules regarding erosion and sedimentation control.
- **Staffing** – The program typically employs a sufficient number of qualified personnel to administer their program requirements expediently and effectively. This is based in part on the size of the jurisdiction or the number of acres the program has to monitor.
- **Plan Reviews** - Program staff demonstrate adequate knowledge of erosion and sedimentation control designs and plan requirements, but may be lacking in some areas. Plan approvals are generally being conditioned upon compliance with state and federal water quality laws or

rules, but staff may need assistance with permit coordination. Staff may need reminding that once a complete application is received, plan reviews are to be conducted and a decision sent to the applicant within the time period specified under Part III.C of their Memorandum of Agreement and General Statute 113A-61 (b).

- **Site Monitoring** – Program staff demonstrate adequate knowledge of plan reading and the ability to determine if erosion control measures are functioning as designed under the approved plan while in the field, but may be lacking in some areas. Staff also demonstrate the ability to detect significant deviations from an approved plan, and the ability to clearly articulate the appropriate corrective actions needed to gain compliance with the SPCA, but may be lacking in some areas. Inspection reports may be missing the minimum information in which to properly evaluate a land disturbing activity. Site inspections may not always be conducted periodically and regularly with sufficient frequency to effectively monitor compliance with the SPCA, its code, or the local ordinance. Self-inspection records may not be frequently available nor properly documented, and staff have not informed the responsible part(ies) of this deficiency. Notices of Violation may be inconsistently or infrequently issued when the Financially Responsible Party has failed to comply with the SPCA, its code, or the local ordinance; such notices shall consist of and be delivered in accordance with General Statute 113A-61.1(c) and its amendments.

Of the above program requirements, few to some adjustments are needed to the program's administration to correct deficiencies or the adjustments needed are minor to moderate in scope. The program is generally adhering to the responsibilities found in their memorandum of agreement, the SPCA or its code, but is in need of clarifications or guidance to fulfill those requirements. The review period is recommended based on the number or scope of adjustments needed.

Examples of program requirements that are not being met or that require clarification or limited guidance beyond the initial review period include:

- Documentation of land ownership was not obtained prior to approval of the plan and retained in the project file.
- Once a complete application is received, the plan was reviewed, but the person submitting the plan is not notified that it has been approved, approved with modifications, or disapproved within 30 days of receipt of a new plan. An official Notice of Disapproval must be sent within 30 days of receiving the complete application when plans are found to be inadequate.
- Self-inspection records are not being reviewed when onsite, or a review of those records shows them to be incomplete, and the program is not notifying those responsible for the self-inspections of the deficiency.

- Inspection staff are unaware that a second construction entrance with no protection against sedimentation is being used and failed to include it on the inspection report.

The list above is not a comprehensive list of program requirement deficiencies which may be noted during a review. The finding of one or more of the above deficiencies does not necessitate this specific recommendation level nor does the absence of one or more of the above examples guarantee a higher recommendation level.

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 based on recommendations given from the first review.

Level 3 – Place on Probation: At this level, the program has little understanding of the SPCA or their ordinance, or may be unwilling to assume responsibility for administration and enforcement of its program. The program needs significant guidance on their ordinance or practices. The program needs significant guidance in one or more areas:

- **Procedures and Records** - This includes the handling of paperwork or submittal requirements for applicants, application review response and notification requirements, on-site records review, or the development of their local ordinance. Staff may need guidance on reporting their program-related activities to the DEQ-DEMLR regularly and accurately with few omissions. The program is not aware of the latest laws and rules regarding erosion and sedimentation control.
- **Staffing** – The program may be employing an insufficient number of qualified personnel to administer their program requirements expediently and effectively. This is based in part on the size of the jurisdiction or the number of acres the program has to monitor.
- **Plan Reviews** - Program staff may be lacking adequate knowledge of erosion and sedimentation control designs and plan requirements. Plan approvals may be infrequently conditioned upon compliance with state and federal water quality laws or rules, and staff may need assistance with permit coordination. Once a complete application is received, plan reviews are infrequently or not at all being conducted and a decision sent to the applicant within the time period specified under Part III.C of their Memorandum of Agreement.
- **Site Monitoring** – Program staff may be lacking adequate knowledge of plan reading and the ability to determine if erosion control measures are functioning as designed under the approved plan while in the field. Staff may also be lacking in the ability to detect significant deviations from an

approved plan, and the ability to clearly articulate the appropriate corrective actions needed to gain compliance with the SPCA. Inspection reports may be missing the minimum information in which to properly evaluate a land disturbing activity. Site inspections may not always be conducted periodically and regularly with sufficient frequency to effectively monitor compliance with the SPCA, its code, or the local ordinance. Self-inspection records may not be frequently available nor properly documented, and staff have not informed the responsible part(ies) of this deficiency. Notices of Violation may be inconsistently, infrequently, or not at all being issued when the Financially Responsible Party has failed to comply with the SPCA, its code, or the local ordinance; such notices shall consist of and be delivered in accordance with General Statute 113A-61.1(c) and its amendments.

Of the above program requirements, many adjustments are needed to the program's administration to correct deficiencies, or the adjustments needed are major in scope. The program is generally not adhering to the responsibilities found in their memorandum of agreement, the SPCA or its code, and is in need of significant guidance to fulfill those requirements. The review period is recommended based on the number or scope of adjustments needed.

Examples of program requirements that are not being met or that require significant guidance beyond the initial review period include:

- Program staff are unresponsive to requests made by auditors as a result of investigations made into their program responsibilities.
- The Program may demonstrate an unwillingness to administer their delegated authority in a manner to ensure adherence to the Local Ordinance, the SPCA and its code.
- Plans are being approved without regard to work requirements within a jurisdictional stream or riparian buffer and/or without including the required timelines for ground cover as necessary to satisfy requirements under their delegation authority.
- Approved plans are missing a construction sequence.
- Plans are not being reviewed and applicants are not being properly notified of the review decision within the required timeframes, as mentioned above.
- Inspections are not being conducted periodically and with sufficient frequency to ensure compliance with the SPCA and its code.
- Violations and their corresponding corrective actions are not being presented to the Financially Responsible Party in the form of inspection reports, or inspection reports do not accurately reflect the conditions and violations found onsite during inspections.

- When violations are not being addressed, or when land is being disturbed without measures or without a plan that would otherwise be required, Notices of Violations are not being sent or there is no follow-up to the notices.

The list above is not a comprehensive list of program requirement deficiencies which may be noted during a review. The finding of one or more of the above deficiencies does not necessitate this specific recommendation level nor does the absence of one or more of the above examples guarantee a higher recommendation level.

Frequent oversight and follow-up from our review is needed; DEMLR staff will communicate more frequently with the local program on its requirements and may request documentation of program actions to review for adherence to the SPCA. DEMLR staff will notify the local government's council or board of commissioners of their status while on probation. 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 their designee. The DEMLR will conduct a second in-person review 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. DEMLR staff will notify the local government's council or board of commissioners of the recommendation to revoke the program. At this level, the program has failed to administer and enforce the program requirements per the SPCA, its code, or the memorandum of agreement as outlined above. Further guidance from DEMLR staff would prove ineffective. Implementation, including enforcement, of the SPCA would fall under the jurisdiction of the DEQ or another local program.



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**AN ORDINANCE AMENDING CHAPTER 152 OF
THE LINCOLN COUNTY CODE OF ORDINANCES**

WHEREAS, N.C. General Statute §153A-49, a county may adopt and issue a code of its ordinances; and

WHEREAS, Lincoln County has established and adopted the Lincoln County Soil Erosion and Sedimentation Control Ordinance which is codified as Chapter 152 of the Lincoln County Code of Ordinances; and

WHEREAS, the purpose of the Lincoln County Soil Erosion and Sedimentation Control Ordinance has been adopted to (1) regulate 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 (2) establish procedures through which these purposes can be fulfilled; and

WHEREAS, pursuant to N.C.G.S. §113A-60, a local government may adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs; and

WHEREAS, pursuant to N.C.G.S. §113A-60(a), the ordinance shall at least meet but *may exceed* the minimum requirements of Article 4 of Chapter 113A of the North Carolina General Statutes; and

WHEREAS, the current ordinance language needs to be updated to correspond with all updated State laws and regulations; and

WHEREAS, the amendments to the Lincoln County Code of Ordinances set forth in this ordinance are policy neutral.

NOW, THEREFORE, BE IT ORDAINED that:

SECTION 1. CHAPTER 152 IS DELETED IN ITS ENTIRETY AND REPLACED AS FOLLOWS:

§ 152.01. TITLE.

This chapter may be cited as the "Lincoln County Soil Erosion and Sedimentation Control Ordinance."

§ 152.02. PURPOSE.

This chapter 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.

§ 152.03. DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCELERATED EROSION. Any increase over the rate of natural erosion as a result of land-disturbing activity.

ACT. The North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

ADEQUATE EROSION CONTROL MEASURE, STRUCTURE, OR DEVICE. One which controls the soil material within the land area under responsible control of the Person conducting the land-disturbing activity.

AFFILIATE. A Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another Person.

APPROVING AUTHORITY. The Department 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.

BEING CONDUCTED. A land-disturbing activity has been initiated and not deemed complete by the Approving Authority.

BOARD. The Environmental Review Board as established by the joint resolution of the Lincolnton Mayor, Lincolnton City Council, and the Lincoln County Board of Commissioners, together with any amendments thereto.

BORROW. Fill material that is required for on-site construction that is obtained from other locations.

BUFFER ZONE. The strip of land adjacent to a lake or natural watercourse.

CERTIFICATE OF OCCUPANCY. The document required by the State Building Code certifying that a new building shall not be occupied or a change made in occupancy, nature or use of a building until after all required building and services systems have been inspected for compliance with the technical codes and other applicable laws and ordinances and released by the Lincoln County Department of Development Services.

COMMISSION. The North Carolina Sedimentation Control Commission.

COMPLETION OF CONSTRUCTION OR DEVELOPMENT. No further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

DEPARTMENT. The North Carolina Department of Environmental Quality.

DIRECTOR. The Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.

DISCHARGE POINT OR POINT OF DISCHARGE. The point where runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.

DISTRICT. The Lincoln Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

ENERGY DISSIPATOR. 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.

EROSION. The wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.

GROUND COVER. Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

HIGH QUALITY WATERS. Those classified as such in 15A NCAC 02B .0224, which is herein incorporated by reference including subsequent amendments and additions.

HIGH QUALITY WATER (HQW) ZONES. Areas within one mile and draining to HQWs.

LAKE OR NATURAL WATERCOURSE. Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond.

LAND-DISTURBING ACTIVITY. 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.

LOCAL GOVERNMENT. 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.

NATURAL EROSION. The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

PARENT. An affiliate that directly, or indirectly through one or more intermediaries, controls another Person.

PERSON. 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.

PERSON CONDUCTING THE LAND-DISTURBING ACTIVITY. 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.

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.

PLAN. An erosion and sedimentation control plan.

SEDIMENT. 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.

SEDIMENTATION. 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.

SILTATION. 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.

STORM DRAINAGE FACILITIES. The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.

STORMWATER RUNOFF. The runoff of water resulting from precipitation in any form.

SUBSIDIARY. An affiliate that is directly, or indirectly through one or more intermediaries, controlled by another Person.

TEN-YEAR STORM. 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.

TRACT. All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

TWENTY-FIVE YEAR STORM. 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.

UNCOVERED. The removal of ground cover from, on, or above the soil surface.

UNDERTAKEN. 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.

VELOCITY. 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.

WASTE. Surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.

WATER SUPPLY WATERSHED. Any water supply watershed protection area regulated with various controls within the jurisdictional boundaries of Lincoln County or the City of Lincolnton.

WETLANDS. Land having vegetative, soil and hydrologic characteristics to be regulated by Sections 401 and 404 of the Federal Clean Water Act, as defined by the United States Army Corp of Engineers and the State Division of Water Quality.

§ 152.04. SCOPE AND EXCLUSIONS.

(A) **Geographical Scope of Regulated Land-Disturbing Activity.** This chapter shall apply to land-disturbing activity within the territorial jurisdiction of the City of Lincolnton, including the extraterritorial jurisdiction of the City of Lincolnton (as applicable) and Lincoln County as allowed by agreement between the local governments, the extent of annexation or other appropriate legal instrument or law.

(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:

- (a) forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
- (b) dairy animals and dairy products.
- (c) poultry and poultry products.
- (d) livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
- (e) bees and apiary products.
- (f) fur producing animals.
- (g) 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) ***Erosions and sedimentation control measures.*** All land-disturbing activities, including those that disturb less than one (1) acre, shall provide adequate erosion control measures, structures, or devices in accordance with this chapter.
- (D) ***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 from Lincoln County, that meets any of the following criteria:

(1) Uncovers one (1) acre or more; and/or

(2) Any non-residential land disturbance of 20,000 square feet or greater requiring a building permit.

(E) **Permit Requirement.** Any land disturbance 1,000 square feet or greater, not meeting the requirements as set forth in Sections (D)(1) and (D)(2) of this subsection, but requiring a building permit must complete an erosion and sediment control application.

(F) **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.

(G) **More Restrictive Rules Shall Apply.** Whenever conflicts exist between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.

(H) **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 meet the requirements as set forth in Sections (D)(1) or (D)(2) of this subsection. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

§ 152.05. 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.

(A) **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.

(B) **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 shall meet the requirements for a Plan Approval (as defined herein), 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.* Whenever land-disturbing activity shall meet the requirements for a Plan Approval (as defined herein), no Person shall initiate any land-disturbing activity unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with and approved by Lincoln County. 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, and a pre-construction conference has been held with Lincoln County.

Lincoln County 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.

(F) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

§ 152.06. EROSION AND SEDIMENTATION CONTROL PLANS.

(A) *Plan Submission.* A Plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity meets the requirements set forth in **§ 152.04(D)(1) or (2)**. The Plan shall be filed with Lincoln County, and a copy shall be simultaneously submitted to the Lincoln Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity.

(B) *Financial Responsibility and Ownership.* Plans may 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.

(C) 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.

(D) Two copies of the plan shall be filed with the Lincoln County Department of Soil and Water. A copy of the approved plan shall be maintained on the job site for the duration of the job. A plan approval issued under this chapter shall be prominently displayed until all construction is complete, 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.

(E) Efforts should be made to prevent the uncovering of more than 20-acres at any one time. If more than 20 acres are to be uncovered at any one time, Plan shall contain the following additional information:

- (1) The method of limiting time of exposure and amount of exposed area to achieve the objectives of this chapter;
- (2) A cut/fill analysis that shows where soil will be moved from one area of the Tract to another as ground elevation is changed;
- (3) Construction sequence and construction phasing to justify the time and amount of exposure;
- (4) Techniques to be used to prevent sedimentation associated with larger disturbed areas; and
- (5) Additional erosion control measures, structures, and devices to prevent sedimentation.

(F) ***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 county 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.

(G) The land-disturbing activity described in the Plan shall not result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.

(H) The land-disturbing activity described in the plan shall not result in a violation of any local ordinance, law, rule or regulation, including, but not limited to, zoning, tree protection, stream, lake and watershed buffers and floodplain regulations.

(I) **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 Lincoln County on request.

(J) **Soil and Water Conservation District Comments.** The District shall review the Plan and submit any comments and recommendations to Lincoln County within 20 days after the District received the Plan, or within any shorter period of time as may be agreed upon by the District and Lincoln County. Failure of the District to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the Plan.

(K) **Timeline for Decisions on Plans.** Lincoln County 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. Lincoln County 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.

(L) **Approval.** Lincoln County 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. Lincoln County shall condition approval of Plans upon the applicant's compliance with federal and state water quality laws, regulations and rules.

(M) **Disapproval for Content.** Lincoln County 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.

(N) **Other Disapprovals.** Lincoln County 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. Lincoln County may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under subsection (K) of this section upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(I) 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 Lincoln County 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. Lincoln County 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 §152.17(A) of this chapter, the applicant may appeal the county'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 (2) years prior to the application date.

(O) *Transfer of Plans.* The county 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) Lincoln County may transfer a plan if all of the following conditions are met:

(a) The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and documentation of property ownership.

(b) Lincoln County finds all of the following:

i. 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.

- ii. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
- iii. The successor-owner is the sole claimant of the right to engage in the permitted activity.
- iv. 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, Lincoln County 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 Lincoln County from requiring a revised plan pursuant to G.S. 113A-54.1(b).

(P) **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.

(Q) **Preconstruction Conference.** If a Plan approval is required under this chapter, the person conducting the land-disturbing activity or an agent of that party shall contact the Soil and Water Department of Lincoln County, at least 48 hours before commencement, of the land-disturbing activity. The purpose of the preconstruction conference is to arrange an on-site meeting with the Soil and Water Department to review and discuss the approved Plan and the proposed land-disturbing activity.

(R) **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.

(S) **Required Revisions.** After approving a Plan, if Lincoln County, 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, Lincoln County 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, Lincoln County determines that the Plan is inadequate to meet the requirements of this ordinance, Lincoln County may require any revision of the Plan that is necessary to comply with this ordinance.

(T) **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 Lincoln County, the land-disturbing activity shall not proceed except in accordance with the Plan as originally approved.

(U) **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.

(V) **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;
 - (a) initial installation of erosion and sediment control measures;
 - (b) clearing and grubbing of existing ground cover;
 - (c) completion of any grading that requires ground cover;
 - (d) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
 - (e) 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 subsection shall include:
 - (a) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
 - (b) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps;

(c) 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>. Any relevant licenses and certifications may also be included. 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.

(d) 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.

(W) **Plan Cancellations.** Plans for which land-disturbing activity has not commenced within two (2) years from the initial Plan approval are void.

Except as may be required under federal law, rule or regulation, no periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.

§ 152.07. 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 N.C.G.S. §113A-57, the rules of the aforementioned 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 upgrade 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.

§ 152.08. DESIGN AND PERFORMANCE STANDARDS.

(A) Except as provided in subsections (B)(2) and (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 United States Department of Agriculture (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.

(C) *Design and Performance Standards for Land-Disturbing Activities of 20 Acres or Greater*. In addition to any other requirements of State, federal, and local law, land-disturbing activity of 20-acres or more within Lincoln County, or the City of Lincolnton, shall meet all of the following additional design standards for sedimentation and erosion control:

(1) Sediment basins shall be planned, designed, and constructed to provide protection from the runoff of the 25-year storm that produces the maximum peak rate of runoff as calculated according to procedures set out in the latest edition of the United States Department of Agriculture Natural Resources Conservation Service's "Engineering Field Handbook" found through nres.usda.gov or according to procedures adopted by any other agency of the State or the United States.

(2) Construction entrances shall be planned, designed and constructed at a minimum length of one-hundred (100) feet.

(3) Sediment Fence (Silt Fencing) used along all watercourses shall be planned, designed and constructed as double-row high hazard or super silt fence.

§ 152.09. 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.):

MATERIAL	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. Lincoln County 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 Lincoln County that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

§ 152.10. **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.

§ 152.11. **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.

§ 152.12. **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.

§ 152.13. **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.

§ 152.14. ADDITIONAL MEASURES.

Whenever Lincoln County 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.

§ 152.15. FEES.

Lincoln County has established a fee schedule for the review and approval of Plans. The Fees required to be paid under this Chapter shall be determined by the then-current Lincoln County Fee Schedule. All fees shall be due and payable at the submittal of a Plan.

§ 152.16. ENVIRONMENTAL REVIEW BOARD.

(A) *Creation.* There has previously been established and created, and is hereby re-established, as the Environmental Review Board that is charged with the duties as provided for in this chapter. The Environmental Review Board shall consist of the following members:

- (1) One (1) person appointed by the City of Lincoln;
- (2) The President of the County Home Builders Association, or his or her designee;
- (3) Chairperson of the County Soil and Water Conservation District, or his or her designee;
- (4) Chairperson of the County Natural Resource Committee, or his or her designee;
- (5) Two (2) persons appointed by the Board of Commissioners, with one being a professional environmental biologist; and
- (6) A professional engineer registered under the provision of G.S. Chapter 89C, appointed by the Board of Commissioners.

(B) *Appointments.* The Environmental Review Board members appointed by the Board of Commissioners shall serve a term of three years and until their successors are appointed and duly qualified. A member may be appointed for up to two consecutive three-year terms.

(C) *Fees.* The Environmental Review Board shall make fee recommendations to the Board of Commissioners for all fees enforced hereunder.

(D) **Other Duties and Responsibilities.** The Environmental Review Board shall hear and decide appeals from any decision or determination made by the Erosion Control Specialist in the enforcement of this chapter and other duties as directed by the Board of Commissioners.

§ 152.17. PLAN APPEALS.

(A) Except as provided in subsection (B) herein, the appeal of a disapproval or approval with modifications of a Plan shall be governed by the following provisions:

(1) The disapproval or modification of any proposed Plan by the Lincoln County Soil and Water Department, 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 Lincoln County Environmental Review Board within 30 days after the date of the appeal or request for a hearing.

(3) The Lincoln County Environmental Review Board will render its final decision on any Plan within 10 days of the hearing.

(4) If the Lincoln County Environmental Review Board upholds the disapproval or modification of a proposed Plan following the hearing, the Person submitting the Plan shall then be entitled to appeal that 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 §152.06(N) of this chapter, the applicant may appeal Lincoln County's disapproval of the Plan directly to the Commission.

§ 152.18. INSPECTIONS AND INVESTIGATIONS.

(A) **Inspection.** Agents, officials, or other qualified persons authorized by Lincoln County, 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 Lincoln County, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

(C) **Notice of Violation.** If Lincoln County 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, Lincoln County 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. 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.* Lincoln County 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.* Lincoln County 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.

(F) *Violation.* Whenever a violation of this chapter occurs or is alleged to have occurred, any person may file a written complaint. Any written complaint stating fully the cause and basis there of shall be filed with the Soil and Water Department who shall properly record the complaint, investigate and take action as provided by this chapter.

(G) *Certificate of Occupancy.* With regard to the development of any Tract that is subject to this chapter, the Lincoln County Department of Development Services shall not issue a certificate of occupancy where any of the following conditions exist:

- (1)** There is a violation of this chapter with respect to the Tract;
- (2)** If there remains due and payable to the county civil penalties that have been levied against the person conducting the land-disturbing activity for violation(s) of this chapter. If a penalty is under appeal, the Erosion Control Specialist may require the amount of the fine, and any other amount that the person would be required to pay under this chapter if the person loses the appeal, be placed in a refundable account or surety prior to issuing the certificate of occupancy;
- (3)** The requirements of the plan have not been completed and the building for which a certificate of occupancy is requested is the only building then under construction on the Tract;
- (4)** On the Tract, which includes multiple buildings on a single parcel, the requirements of the plan have not been completed and the building for which a certificate of occupancy is requested is the last building then under construction on the Tract; and/or

(5) On a Tract, which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the plan have not been completed with respect to the parcel for which the certificate of occupancy is requested.

Notwithstanding the provisions of this subsection, the Building and Land Development Department may issue a temporary certificate of occupancy where divisions (3), (4), or (5) above apply and where the person conducting the land-disturbing activity is making substantial progress towards completing the requirements of the plan.

Lincoln County may issue a stop-work order and /or suspension of building permits if a land-disturbing activity is being conducted in violation of this chapter or of any rule adopted or order issued pursuant to this chapter.

§ 152.19. 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 Lincoln County 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. Repeat Violations. Repeat violators may be charged by a multiple of the base penalty determined herein. The penalty for a repeat violator may be doubled for each previous time that the repeat violator has been notified of a violation of this chapter, or any other soil erosion and sedimentation control ordinance within the State of North Carolina, within two (2) years prior to the current violation. However, in no case may the penalty exceed the maximum allowed by this chapter.

3. Civil Penalty Assessment Factors. The Lincoln County Soil and Water Department 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 prior record of the violator in complying of failing to comply with this ordinance.

4. Notice of Civil Penalty Assessment. The Lincoln County Soil and Water Department 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 Lincoln County shall direct the violator to either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with Lincoln County (based upon the procedures herein), or file a request with Lincoln County Soil and Water Department for remission of the assessment within 30 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.

5. Final Decision. The final decision on contested assessments shall be made by the Lincoln County Environmental Review Board in accordance with this chapter.

6. Appeal of Final Decision. Appeal of the final decision of Lincoln Environmental Review Board shall be to the Lincoln County Superior Court. Such appeals must be made within 30 days of the final decision of the Lincoln County Environmental Review Board.

7. Remission of Civil Penalties. A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Lincoln County Environmental Review Board within 30 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.

8. Collection. If payment is not received within 30 days after it is due, Lincoln County 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.

9. Credit of Civil Penalties. The clear proceeds of civil penalties collected by Lincoln County under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by Lincoln County 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 Lincoln County for the prior fiscal year.

(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.

§ 152.20. INJUNCTIVE RELIEF.

(A) *Violation of Local Program.* Whenever the County has reasonable cause to believe that any Person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by Lincoln County, 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 Lincoln County, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of Lincoln County by the County Attorney.

(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 chapter.

§ 152.21. RESTORATION AFTER NON-COMPLIANCE.

Lincoln County may require a Person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by N.C.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.

§ 152.22. 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 2. This ordinance shall become effective the 1st day of January, 2024.

Adopted this the 18th day of December, 2023.



Carrol D. Mitchem, Chairman
Lincoln County Board of Commissioners

(SEAL)

ATTEST:



Jennifer M. Farmer
Clerk to the Board of Commissioners

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

G. Updates to the Memorandum of Agreement between Local Governments and the Commission – Ms. Sarah Zambon

North Carolina Department of Transportation Roadside Environmental Unit Erosion & Sedimentation / Stormwater Report

ICA

Immediate Corrective Action

This project does not comply with the North Carolina Erosion and Sedimentation Control laws. Immediate Corrective Action is needed to resolve the situation to full compliance with the Law: (T15A: 04B.0000).

Project Information

Inspection Date: 12/13/2023 **Evaluator:** Reid Whitehead
Project #: 36030.3.GV4 **TIP #:** I-4700 **Contract #:** C204266
Division #: 13 **County:** Buncombe
Project Type: Contract **Engineer:** Buncombe I-4700 I-26 Widening
Project Length: 7.49 **Disturbed Acres:** 10
River Basin: French Broad **HQW Zone:** NO **Trout Zone:** NO
Location Description: I-26 from NC-280 (Exit 40) to I-40

Project Evaluation

Report Type: Routine ICA ICA Ex 1st ICA Ex 2nd CICA - SWO
 PCN ECPAR

Length	Section	Installation of BMPs	Maintenance of BMPs	Effectiveness of BMPs	Plan Implementation	Overall Project Evaluation
0.5	Permitted Area(s)	8	8	8	8	8
6.0	Remainder of Project	8	8	8	8	8
0.1	Urgent Action Items	7	6	6	8	6

Grading Scale: 0 - 6 = Immediate Corrective Action Required, 7 = Fair, 8 = Good, 9 = Very Good, 10 = Excellent

Remarks and Recommendations:

Inspection was started and completed on Wednesday 12/13/2023. Inspection was done with Rick Cunningham - Erosion Inspector and partially with Miguel Granados-FluorUnited. I spoke with Luke Middleton-Resident Engineer and Justin James Asst. Resident Engineer by phone during the inspection.

Grading is underway.

Please continue NPDES inspections.

General Note - When EC measures need to be removed for grading recommend planning what EC measures are going to be reinstalled with the operation inspector and the timeline for reinstallation before removal.

General Note - When major EC measures such as basins need to be impacted by grading recommend consulting the project EC inspector and the Assistant Resident before impacting so that I can be consulted before the impact.

General Note - Basins (storage) should remain installed until permanent cover is growing. The dimensions may need to change. The size might be able to change. Complete elimination is not what is intended in the EC plan if the basin is on the final EC plan.

General Note - Please make sure to install the PAM measures shown in the EC plan

General note EC Measure Clean Out - When maintaining EC measures recommend not placing the cleaned out material near the EC measures where it can wash back in. Recommend instead removing to an approved WA or protected stockpile.

General Note - When active grading is underway and an area on the project is transitioning from the C&G EC plan to the Final EC plan recommend checking the Final EC plan for EC measures and installing a similar number of measures as temporary EC measures even though these measures may need to be installed at the end of one day and removed the next day to continue grading.

Wednesday 12-13-2023

An ICA is being issued for the Urgent Items in this inspection.

Recommend suspension of work on the project except for off-site sediment cleanup and repair/maintenance of erosion and sediment control items until all Urgent Items have been addressed.

These areas will be reviewed again in 5 working days. If it repairs are made sooner reinspection can occur earlier than 5 working days.

Urgent Action Item(s):

The project received 3 inches of rain over the weekend.

Approximately L-station 1052+00 to 1053+50 Lt.

I was notified of a loss of sediment from project beyond the right of way on Monday afternoon 12-12-2023. I am not sure of the exact amount of loss but judging by what they have been able to remove so far it is close to 45 cubic yards of material.

Part of the loss was into wetlands.

Run-off from the paved area between the Blue Ridge Parkway and the Biltmore Access Rd. gained too much speed on the grade.

The installed diversions above the endbent failed during the rain event and part of the embankment at the new Endbent was washed out.

Skimmer Basin 20.3B located just below the endbent embankment on the right side of Biltmore Access Rd. had just been cleaned out last week and the diversion to the basin had been reinstalled.

The diversion washed out during the rain event and the run-off did not go into the basin it flowed down Biltmore Access Rd. and beyond the right of way onto Biltmore Access Rd. and into the wetlands on either side of Biltmore Access Rd.

Run-off and sediment eventually over-whelmed the silt fence on the left side of Biltmore Access Rd. opposite the basin and knocked it down. This is one of the areas where sediment was lost into the wetland.

There is an existing private crosspipe under Biltmore Access Rd. beyond the right-of-way. When sediment ran down the road it went through this pipe and into the wetlands on the left side of Biltmore Access Rd.

There is a special sediment control fence outlet in the silt fence on the left side of the access rd. between the area where the silt fence failed and the existing crosspipe. This measure failed during the rain event and this is another area where sediment was lost into the wetlands.

Run-off flowed down the Biltmore Access until there was a lowpoint on the right side of the road and sediment was lost into this wetland.

The Contractor has been working on cleanup since Monday but has not made sufficient progress in cleanup and repair.

Recommend adding sufficient forces to cleanup the remaining areas quickly and to maintain/reinstall EC measures.

About one third of the impacted wetlands have been cleaned up. Recommend removing additional material in these areas. I do not believe sufficient material has been removed.

Recommend cleanup of the remaining impacted wetlands and reseeding with Wetland seedmix and mulching. The Biltmore Access Rd. is still full of sediment. Recommend cleanup of the material in the road and addition of gravel to the road.

Recommend reestablishing the diversion to Skimmer Basin 20.3B. This diversion failed during the rain event over the weekend. Recommend making it much more robust.

Recommend repair of the silt fence opposite the basin that was overwhelmed during the rain event.

Recommend repair of the special sediment control fence outlet in the silt fence along the access road that failed during the rain event.

Recommend maintenance of the checks in the ditch below the skimmer basin outlet.

Since run-off from the pavement between the Blue Ridge Parkway and the endbent overwhelmed the diversions above the endbent work area, recommend installing and keeping installed long sandbag checks/diversions installed on the paved areas to slow run-off.

Recommend removing the the sandbag checks/diversions to work and reinstalling. Recommend checking to make sure these are installed before every forecast rain event.

Recommend reinstallation of the diversions above the endbent work area.

Recommend reinstalling a slope drain down the slope from the median to Biltmore Access Rd. approximately L-station 1052+00 Med.

Approximately L-station 1167+00 to 1168+50 Rt.

I was notified of a loss of sediment from project beyond the right of way into the JS paralleling the project on Monday afternoon 12-12-2023. Project staff estimated the loss to be 4 cubic yards of material.

The berm at the top of the fillslope at approximately station 1168+50 Rt. failed sometime during the rain event.

There was a slope drain installed. The failure in the berm happened up station from the slope drain.

This is an area with two rows of silt fence.

Run-off from the berm failure flowed down the first row of silt fence until it went under the silt fence.

The run-off then flowed down the second row of silt fence until it went through the silt fence/special sediment control fence outlet.

The contractor has cleaned up the material in the JS.

There is still material on the bank of the JS in the flowpath from the silt fence to the JS.

Recommend cleanup of this material and stabilization of the area.

The upper silt fence has been maintained. Recommend adding more outlets in this silt fence.

The lower silt fence closer to the JS has not been maintained yet. Some of the silt fence that is down was knocked down by foot traffic from cleanup efforts.

There are still a couple of rill washes in the slope between the upper and lower silt fence.

Recommend repair of these washes.

Recommend maintenance/repair of the silt fence and the silt fence outlet.

The contractor has put holes in the side of the box on the on the roadway side of the berm and installed a Type C Inlet Protection with a stone diversion to the drop inlet.

Recommend adding a couple of slope drains to the berm in-addition to this measure.

Recommend stabilizing the berm and fillslope.

Approximately L-station 888+75 Lt. a small amount of sediment has gotten into the JS. Recommend removal.

There are special sediment control fence checks at the outlets of the ditches on either side of the JS. These measures get flooded during larger rain events. Recommend maintenance/removal of the Special Sediment Control Fence Outlets at JS. If removal is done recommend restabilizing the streambanks above water with stone.

There is sediment on the silt fence on the roadway side of the rip rap ditchline just above the outlet of the rip rap ditchline that empties into the JS from the South.

Recommend removal of this sediment and removal of the silt fence and special sediment control fence outlet in the silt fence above the rip rap ditch and replacing this perimeter section with a long Temporary Rock Silt Check, Type A outlet in the silt fence.

Approximately L-station 919+00 Lt. There is a wash under the special sediment control fence outlet above the pipe outlet. Recommend repair of wash and removal of the Special Sediment Control Fence Outlet and replacing it with a Temporary Rock Silt Check, Type A outlet in the silt fence.

The stone stabilization at pipe outlet is full of sediment. This sediment was almost lost off of the project.

Recommend removal of sediment and installation of the Temporary Rock Silt Check, Type A outlet at the end of the stone per EC plan.

Approximately L-station 916+75 Lt. the Type C Drop Inlet Protection is damaged and 2 sides of the protection are full of sediment. Recommend maintenance/repair.

There is also a wash in the berm in this same area. Recommend repair of the berm or installation of a stabilized outlet in the berm.

Sediment from the loss reached the perimeter silt fence. It is not high on the silt fence but it did wash South and reached the end of the silt fence but did not go around it.

Recommend either extending the silt fence curved into the slope or installing an endpoint protection at the end of the silt fence.

Approximately L-station 1118+75 Med. a small amount of 57 stone has gotten into the JS at the inlet of the

diversion pipe. Recommend removal of this stone from the JS and removal of the source of 57 stone. This work was getting ready to be done while I was at the site.

Approximately L-station 891+00 Med. the Type C Drop Inlet Protection turnout is damaged. Recommend repair.

Approximately L-station 914+50 Lt. the Type C Drop Inlet Protection turnout is damaged. Recommend repair.

Approximately L-station 931+60 Med. the Type C Drop Inlet Protection turnout is damaged. Recommend repair.

Approximately L-station 934+20 Med. the Type C Drop Inlet Protection turnout is damaged. Recommend repair.

Approximately L-station 940+20 Med. the Type C Drop Inlet Protection turnout is damaged. Recommend repair.

Approximately L-station 952+50 Med. the Type C Drop Inlet Protection turnout is full with sediment to the top of the 57 stone on 2 sides. Recommend maintenance.

Approximately L-station 1087+50 Rt. the Type C Drop Inlet Protection needs cleanout. The berm diverting run-off to the drop inlet has been washed around. Recommend cleanout of the drop inlet and repair of the diversion berm.

Action Item(s):

Approximately L- station 835+10 to 841+00 Lt. the JS now flows in the new pipe system. Recommend installing the rip rap ditchline shown in the plans.

Approximately L- station 835+10 to 837+00 Lt. recommend installing ditch checks in the flowpath above the drop inlet with the Type A Inlet Protection installed until the rip rap ditchline in the plans can be installed.

Approximately L- station 839+00 to 841+00 Lt. part of the the silt fence has been impacted by construction activity. Recommend maintenance of the silt fence.

Approximately L- station 841+00 Lt. the old pipe that previously carried the JS has been removed. Recommend stabilization of the fillslope where it was removed until the rip rap ditchline can be installed.

Approximately L- station 847+20 Lt. there are 2 smaller disturbed areas on the ditch back slope. Recommend stabilization to meet the NPDES cover requirement before the timelimit is reached.

Approximately L- station 849+00 Lt. there are disturbed areas on the shoulder. Recommend stabilization to meet the NPDES cover requirement before the timelimit is reached.

Approximately Y13RPA- 17+00 to 18+00 Rt. recommend reshaping/maintenance of the installed checks in the ditchline North of Silt Basin, Type B 5.2B. Recommend adding an additional check closer to the basin and making it a PAM measure per EC plan.

Approximately L- station 864+00 to 868+00 Med. there is a gravel flowpath in-between the new concrete pavement and the current I-26W lane. The velocity checks that were previously installed were removed to installed drainage. Recommend reinstalling velocity checks to keep the run-off slowed down.

Approximately L- station 869+00 L. there is slope drain into the permanently stabilized ditchline that could still function. It has been blocked by a gravel berm. Recommend making an opening in the gravel berm so run-off can reach the the ditch and be removed from the work area.

Approximately L- station 877+00 to 879+00 Lt. the dirt berm at the top of the fillslope/edge of gravel is disturbed. Recommend stabilization to meet the NPDES cover requirement before the timelimit is reached.

Approximately L- station 883+00 to 884+75 Lt. recommend reestablishing/adding the turnouts in the berm into the ditchline above the large check at the inlet of the rip rapped ditchline to get runoff into the ditchline and out

of the roadbed.

Approximately L- station 892+00 to 892+75 Lt. the dirt berm at the top of the fillslope/edge of gravel is disturbed. Recommend stabilization to meet the NPDES cover requirement before the timelimit is reached.

Approximately L- station 896+00 Med. the roadbed on the I-26E side of the drop inlet has been cutdown so that this side of the drop inlet cannot function. Run-off can enter the box from the other sides. The inlet protection was damaged on the roadbed side where the box cannot function. Recommend removal of the damaged side of the drop inlet protection.

Approximately L- station 900+00 to 902+00 Lt. there is a bare area between old I-26E and the future I-26E. This areas has been previously stabilized but has been disturbed again. Recommend stabilization of this area to meet the NPDES cover requirement.

Approximately L-station 914+50 to 916+75 Lt. there is a wash in the flowpath between the 2 drop inlets. Recommend installation of checks flowpath to slow down the run-off.

Approximately L-station 929+00 Med. the matted ditch frontslope was disturbed to install the shoulder berm gutter outlet with dissipater. Recommend restabilization of this area.

Approximately L-station 931+60 Med. the matted ditch frontslope was disturbed to install the shoulder berm gutter outlet into the side of the box. Recommend restabilization of this area.

Approximately L-station 934+20 Med. the matted ditch frontslope was disturbed to install the shoulder berm gutter outlet into the side of the box. Recommend restabilization of this area.

Approximately L-station 940+20 Med. the matted ditch frontslope was disturbed to install the shoulder berm gutter outlet into the side of the box. Recommend restabilization of this area.

Approximately L-station 943+50 Med. the matted ditch frontslope was disturbed to install the shoulder berm gutter outlet with dissipater. Recommend restabilization of this area.

Approximately L-station 948+75 Lt. the fillslope was disturbed to install the shoulder berm gutter outlet with dissipater. The perimeter silt fence had previously been removed because the slope was stable. Recommend reinstallation of the perimeter silt fence.
The site has been mulched.

Approximately L-station 947+50 Med. a box has been installed. It is not active yet. Recommend installing an inlet protection or blocking the top with a plate or plywood to keep sediment out of box so it does not need cleanout before making it active.

Approximately L-station 951+00 to 960+00 Med. large areas of the cutslope between I-26E and I-26W have been disturbed. Recommend stabilization to meet the NPDES cover requirement before the timelimit is reached.

Approximately L-station 951+00 to 953+00 Med. recommend installing checks in the flowpath per EC plan. These can be removed to work but should be reinstalled especially before forecast rain events.

Approximately L-station 951+50 Med. there are 2 boxes that have had silt fence installed around them to keep them non-functional. Silt fence should not be used to keep boxes non-functional. Recommend installing an inlet protections or blocking the tops with a plate or plywood to keep sediment out of the boxes instead of using silt fence.

Approximately L-station 956+00 Med. the sandbag check in the ditchline needs cleanout. Recommend maintenance of the check dam.

Approximately L-station 972+00 to 978+00 Lt. there is a disturbed flowpath between the remaining existing pavement and the gravel stabilized lane that is starting to wash. Recommend adding velocity checks to this flowpath.

Approximately L-station 976+00 to 977+00 Med. the slope between I-26W and I-26E and the shoulder have been disturbed to install a box and pipe. Recommend stabilization to meet the NPDES cover requirement before the timelimit is reached.

Approximately L-station 978+00 to 980+00 Med. the shoulder has been disturbed. Recommend stabilization to meet the NPDES cover requirement before the timelimit is reached.

Approximately L-station 979+00 Lt. the slope drain inlet protection is missing the 57 stone. Recommend adding the 57 stone per detail.

Approximately L-station 986+50 Lt. the fillslope was disturbed to install the shoulder berm gutter outlet with dissipater. Recommend stabilization of the disturbed area to meet the NPDES cover requirement before the timelimit is reached.

Approximately L-station 1000+50 to 1002+00 Lt. recommend stabilization of the disturbed dirt berm to meet the NPDES cover requirement before the timelimit is reached.

Approximately L-station 1000+60 Lt. a new slope drain has been installed through the berm and down the fillslope.

Recommend adding the anchor stakes per detail.

A wattle has been installed on the bare soil at the inlet of the slope drain as the inlet protection. Recommend adding matting under the wattle per detail.

Approximately L-station 1002+50 Lt. there is wash through the gravel berm. Recommend repair of the berm or installation of a turnout measure.

Approximately L-station 1083+50 to 1084+25 Rt. recommend stabilization of the disturbed areas on the shoulder to meet the NPDES cover requirement before the timelimit is reached.

Approximately L-station 1091+00 to 1093+00 Rt. a wash is starting in the flowpath on the right side of the access rd. Recommend installation of checks flowpath to slow down the run-off.

Approximately L-station 1094+00 Rt. sediment has built up on the diversion berm to the drop inlet protection. Recommend removal of the sediment from the berm.

Approximately L-station 1095+00 Rt. the check in the flowpath in front of the retaining wall near the Northern end it needs routine cleanout. Recommend maintenance of the check dam.

Approximately L-station 1105+75 Med.-Rt. the Type C inlet protection has sediment of the face of the 57 stone. Recommend maintenance of the device.

Approximately L-station 1111+50 Med.-Rt. the turnout check is over 50% full of sediment. Recommend maintenance of the turnout device.

Approximately L-station 1154+00 to 1155+00 Rt. there are 2 or 3 new small disturbed stockpiles on the shoulder. Recommend stabilization to meet the NPDES cover requirement before the timelimit is reached.

Approximately L-station 1182+75 to 1183+25 Rt. the checks in the ditchline have been removed to install the rip rapped ditchline. This work was underway during the inspection. Recommend installing the checks shown in the rip rapped ditchline in the final EC plan once the rip rapped ditchline has been installed.

If the rip rapped ditchline is not completed by the forecast rain event for Sunday, recommend reinstalling the C&G checks in the flowpath.

Approximately L-station 1183+75 Rt. wattles have been used as a drop inlet protection but have not been fastened down. Recommend installing a Type C Drop Inlet Protection instead.

Approximately L-station 1184+00 to 1193+00 Rt. there is a ditchline between the cutslope and the shoulder berm gutter. Part of it has been matted already and part of it is not matted. The previously installed checks were removed to install matting.

Recommend adding PAM checks to the matted section of ditchline per Final EC plan.

Recommend completing matting of the bare ditchline and installing PAM checks per Final EC plan or reinstalling C&G checks in the bare ditch before the next forecast rain event which Sunday 1-17-2023.

Approximately L-station 1193+50 to 1194+00 Rt. the shoulder and part of the fillslope are disturbed. Recommend stabilization to meet the NPDES cover requirement before the timelimit is reached.

Approximately L-station 1207+00 to 1209+00 Rt. there are a couple of sections of silt fence that have fallen off of the posts. Recommend tying the silt fence back up.

Approximately L-station 1207+25 to 1207+75 Rt. there is sediment in the shoulder berm gutter. Recommend cleanup of the sediment.

As work continues, contractor should continue efforts to install and maintain erosion control devices in a timely manner, as per specification, and as per erosion control plans.

Groundcover should be provided to any areas that will remain idle for 7 or 14 days or more, including stockpiles and waste areas.

Continue NPDES inspections weekly and within 24 hours after a 0.5 inch or greater rain event.

Please continue NPDES inspections daily at the French Broad River.

Urgent items should be completed within 24 hours after any storm event or as soon as conditions allow.

North Carolina Department of Transportation Roadside Environmental Unit Erosion & Sedimentation / Stormwater Report



Project Information

Inspection Date: 12/21/2023 Evaluator: Reid Whitehead
 Project #: 36030.3.GV4 TIP #: I-4700 Contract #: C204266
 Division #: 13 County: Buncombe
 Project Type: Contract Engineer: Buncombe I-4700 I-26 Widening
 Project Length: 7.49 Disturbed Acres: 10
 River Basin: French Broad HQW Zone: NO Trout Zone: NO
 Location Description: I-26 from NC-280 (Exit 40) to I-40

Project Evaluation

Report Type: Routine ICA ICA Ex 1st ICA Ex 2nd CICA - SWO
 PCN ECPAR

Length	Section	Installation of BMPs	Maintenance of BMPs	Effectiveness of BMPs	Plan Implementation	Overall Project Evaluation
0.5	Permitted Area(s)	8	8	8	8	8
6.0	Remainder of Project	8	8	8	8	8

Grading Scale: 0 - 6 = Immediate Corrective Action Required, 7 = Fair, 8 = Good, 9 = Very Good, 10 = Excellent

Remarks and Recommendations:

Inspection was started and completed on Thursday 12/21/2023. Inspection was done with Rick Cunningham - Erosion Inspector and Miguel Granados-FluorUnited.

The ICA is lifted.
 Cleanup is complete in the areas of loss.
 Urgent EC measures in need of repair have been maintained.
 Diversions have been reinstalled and additional diversions have been added.

The routine items have been addressed.

Grading is underway.

Please continue NPDES inspections.

General Note - When EC measures need to be removed for grading recommend planning what EC measures are going to be reinstalled with the operation inspector and the timeline for reinstallation before removal.

General Note - When major EC measures such as basins need to be impacted by grading recommend consulting the project EC inspector and the Assistant Resident before impacting so that I can be consulted before the impact.

General Note - Basins (storage) should remain installed until permanent cover is growing. The dimensions may need to change. The size might be able to change. Complete elimination is not what is intended in the EC plan if the basin is on the final EC plan.

General Note - Please make sure to install the PAM measures shown in the EC plan

General note EC Measure Clean Out - When maintaining EC measures recommend not placing the cleaned out material near the EC measures where it can wash back in. Recommend instead removing to an approved WA or protected stockpile.

General Note - When active grading is underway and an area on the project is transitioning from the C&G EC plan to the Final EC plan recommend checking the Final EC plan for EC measures and installing a similar number of measures as temporary EC measures even though these measures may need to be installed at the end of one day and removed the next day to continue grading.

Thursday 12-21-2023

Action Item(s):

Approximately L- station 835+00 Lt. the installed Rock Inlet Sediment Trap, Type A on the drop inlet was impacted on the rip rap ditchline side when rip rap ditchline installation was started. Recommend repair of this side of the drop inlet protection as quickly as possible but especially before the next forecast rain event.

Approximately L- station 835+10 to 841+00 Lt. rip rap ditchline installation was underway during the inspection. The stone in the rip rap ditchline is being installed too high. Run-off would flow on the outside of the ditchline. The ditchline should be undercut deeper so the stone and the outer edge of the ditchline are even so that the run-off can get into and flow in the stone stabilized ditchline. Recommend installing the stone lower so the ditchline it can function as designed. Recommend installing the silt fence shown in the Final EC plan along the new stone stabilized ditchline as soon as possible to keep sediment out of the stone.

Approximately Y13RPA- 17+00 to 18+00 Rt. recommend reshaping/maintenance of the installed checks in the ditchline North of Silt Basin, Type B 5.2B. Recommend adding an additional check closer to the basin and making it a PAM measure per EC plan. This item is scheduled to be completed today.

Approximately L- station 883+00 to 884+75 Lt. recommend reestablishing/adding the turnouts in the berm into the ditchline above the large check at the inlet of the rip rapped ditchline to get runoff into the ditchline and out of the roadbed. This item is scheduled to be completed today.

Approximately L-station 1083+50 to 1084+25 Rt. recommend stabilization of the disturbed areas on the shoulder to meet the NPDES cover requirement before the timelimit is reached. This work is scheduled for later today.

Approximately L-station 1182+75 Rt. the rip rap ditchline has been completed. Checks have been installed in the rip rap ditchline. The Temporary Rock Silt Check, Type A shown in the Final EC plan has not been reinstalled yet. Recommend reinstallation.

As work continues, contractor should continue efforts to install and maintain erosion control devices in a timely manner, as per specification, and as per erosion control plans. Groundcover should be provided to any areas that will remain idle for 7 or 14 days or more, including stockpiles and waste areas.

Continue NPDES inspections weekly and within 24 hours after a 0.5 inch or greater rain event. Please continue NPDES inspections daily at the French Broad River. Urgent items should be completed within 24 hours after any storm event or as soon as conditions allow.

North Carolina Department of Transportation
 Roadside Environmental Unit
 Erosion & Sedimentation / Stormwater Report

ICA

Immediate Corrective Action

This project does not comply with the North Carolina Erosion and Sedimentation Control laws. Immediate Corrective Action is needed to resolve the situation to full compliance with the Law: (T15A: 04B.0000).

Project Information

Inspection Date: 01/08/2024 Evaluator: Lee Sheppard
 Project #: 34400.3.4 TIP #: R-2233BB Contract #: C204397
 Division #: 13 County: Rutherford
 Project Type: Contract Engineer: Marion Resident Engineer's Office
 Project Length: 5.00 Disturbed Acres: 16
 River Basin: Broad HQW Zone: NO Trout Zone: NO
 Location Description: US-221 South of US-74 Business to North of SR 1366 Roper Loop Rd.

Project Evaluation

Report Type: Routine ICA ICA Ex 1st ICA Ex 2nd CICA - SWO
 PCN ECPAR

Length	Section	Installation of BMPs	Maintenance of BMPs	Effectiveness of BMPs	Plan Implementation	Overall Project Evaluation
0.0	Permitted Sites 1, 4 and 16	8	6	6	6	6
0.0	Clearing and Grubbing Operations	6	6	6	6	6

Grading Scale: 0 - 6 = Immediate Corrective Action Required, 7 = Fair, 8 = Good, 9 = Very Good, 10 = Excellent

ICA Comments:

An ICA is being issued due to the lack of implementing EC device installation and failure to properly maintain devices to control and prevent sediment loss in a timely manner at some locations. Silt loss has occurred in permitted site locations and it is not evident that the corrective action is adequate enough to prevent further sediment loss.

Remarks and Recommendations:

Inspection was done with project personnel and I spoke with Travis H by phone. Project encountered +/-1.5 inches of rain on Saturday the 6th. Sediment losses were present in some permitted locations. I was informed that an NPDES inspection was performed on Sunday the 7th. No documentation was recorded however on the NPDES records for priority of urgent corrective actions.

Immediate corrective action needed to address the following:

-From approximately 741+00 - 752+00 including -Y25REV- has recently been cleared and grubbed containing

some locations lacking any perimeter EC devices. All of -Y25REV- was cleared and grubbed towards the end of last week. The project encountered +/- 1.5 inches of rain on Saturday the 6th. With rain in the forecast, better implementation of installing at least the perimeter EC per plan sheet EC-4 and 4A should have been taken prior to rain event. Clearing and grubbing an area of this size should not progress when there are not plans to install EC devices ahead of rain events or idle timeframes. These locations are well over 1 acre in size with steep grades present.

Installation of EC devices per EC 4A needs to begin at this time along -Y25REV- including TSDs, TDs, rock checks, and basin ID 4A.1. No devices were installed upon inspection of this area. At some point during the day the perimeter silt fence was installed.

Installation of the remaining EC devices to include perimeter silt fence, TSDs, TDs, and rock checks on the right and left side of -L3- per EC-4 needs to begin due to the area being cleared and grubbed at this time.

-An area on the north end of the project well in excess of 1 acre containing steep grades has also been cleared and grubbed recently at approximately 942+00 to -Y11-. At the time of inspecting this location no installation of EC devices was present. Heavy rain has been in the forecast predicted for Tuesday the 9th. Perimeter silt fence installation did begin at approximately 2:00 pm, about the same time I inspected this location. This area was cleared and grubbed over this past weekend. At this time due to this location being cleared and grubbed, installation of EC devices per EC-18 and applicable ones on EC-32 along -Y11- needs to begin including TSDs, TDs, rock checks, and basin IDs 18.1 and 32.1.

Clearing and grubbing an area of this size should not progress if EC devices cannot be installed in a timely manner ahead of rain events.

-A sediment loss into the JS at permitted site #1 had occurred from the rain event over the past weekend. The amount of loss noticed appeared to be less than a 5 gallon bucket at the time of inspection. Most of the sediment appears to have come from the new drainage structures that empty at this location. Some also may have come from undermining the silt fence and SSCF adjacent to the JS. Runoff has made its way around the rock pipe inlet protection at STR 689 with some sediment noticed inside the inlet. Sediment is present inside the surrounding catch basins that all drain into this system eventually emptying into the JS including STRs 692, 693 and 694. Sediment is collected against most of the inlet protections in this location. With the additional heavy rain in the forecast for the 9th, additional sediment loss most likely will occur.

By approximately 3:30 pm no corrective action for maintaining devices had been taken in this location with heavy rain forecasted for the 9th.

Sediment needs to be removed from the JS. Sediment inside the catch basins needs to be removed, all inlet protections need to be repaired and maintained, and the silt fence and SSCF near the JS needs to be maintained and repaired. Sediment loss needs to be reported to DEQ agencies if sediment loss is determined to be greater than a 5 gallon bucket.

-A sediment loss into the JS at permitted site #4 had occurred at the outlet of Culvert #1 from the rain event over the past weekend. The SDO sediment control fences are full of sediment with visible sediment collected in the flood plain bench riprap and JS. Due to time restraints, I did not walk down stream to judge the amount of sediment loss. Much of the sediment collected against the SSCF on the left side facing downstream is from runoff coming out of the riprap lined ditch not entering STR 814. It has bypassed the devices and undermined the geotextile lined berm that runs down to the SSCF SDO. Some bays of the nearby skimmer basins are full of sediment.

By approximately 3:30 pm no corrective action had taken place at this location with heavy rain forecasted for the 9th.

Sediment loss needs to be reported to DEQ agencies if not already done so per the NPDES permit.

Sediment needs to be removed from the JS and flood plain bench. Repair needs to begin to maintain devices for preventing additional loss. Silt cleanout in the adjacent basins needs to begin as soon as conditions allow.

-A temporary stream crossing installed in the JS, which leads to permitted site #16, was installed by unapproved best management practices and visible sediment was noticed in JS. This is the location of the planned jack and bore. The riprap backfill of the temporary pipe was capped with soil material and covered with geotextile. Some of the soil material underneath the geotextile has washed into the JS. Some sections of the small stream banks are bare soil and disturbed. The temporary silt fence that was installed lacks outlets, does not contain the entire disturbed area, and one side has material more than half way up on the fence. At the time of inspection at this location, no corrective action had taken place with heavy rains forecasted for the 9th.

The sediment noticed in the JS looked to be about a 5 gallon bucket amount but I was unable to inspect the outlet end of the existing pipe that empties into site #16 on the west side of US 221 due to time restraints. With the rain forecasted, the potential for additional loss is present.

If sediment loss is determined to be greater than a 5 gallon bucket amount, the loss needs to be reported to DEQ agencies if not already done so.

Soil material should not be used for backfill when constructing temporary stream crossings. Correction needed to remove the soil material from the temporary crossing-refer to NCDOT Best Management Practices Manual for correct installation.

Sediment in the JS needs to be removed. Additional installation of silt fence with outlets needs to be installed. The bare soil section of the stream bank needs to be stabilized. Excessive backfilled material against the silt fence needs to be removed.

-Some urgent corrective actions were present at the Culvert #4 location at the time of the inspection. There was one SDO outlet in the silt fence near basin ID 4.5 that allows runoff to undermine between the hardware cloth and silt fence. This is directly adjacent to the JS. The silt fence at the outlet of basin ID 4.5 does not contain all disturbed areas and lacks an outlet for runoff exiting the basin. Corrective action needed to maintain and correct these devices.

The remaining TSDs and TDs per EC-4 need to be constructed to direct runoff into basin IDs 4.5 and 4.6 A&B as designed. All of this area has been cleared and grubbed.

At the time of inspection of this location no corrective action had taken place.

A follow up review will be conducted within 5 working days.

NPDES Permit Requirements:

- Corrective actions should be described on the SDO sheet and the E&SC Device sheet under 'Corrective Actions Taken'.
- Records need to be signed.
- Inspect E&SC / Stormwater devices at least once every 7 days and within 24 hrs. of 1.0" rainfall or greater.
- Maintain an on-site rain gauge or use the MPE Rainfall Website.
- Maintain rainfall log with amounts & dates. Any rainfall amount should be recorded for each day regardless if it is 1.0 inch or greater.
- Maintain an up to date set of as-built EC plans.
- Maintain records on site for review by Department & Regulatory personnel.

As work continues, contractor should continue efforts to install and maintain erosion control devices in a timely manner, as per specifications, and as per erosion control plans. Groundcover should be provided to any areas that will remain idle for 7 or 14 days or more, including borrow/waste/staging areas.

North Carolina Department of Transportation
Roadside Environmental Unit
Erosion & Sedimentation / Stormwater Report

ICA EX 1st

Immediate Corrective Action Extension (First Issuance)

This project does not comply with the North Carolina Erosion and Sedimentation Control laws. Immediate Corrective Action is needed to resolve the situation to full compliance with the Law: (T15A: 04B.0000).

Project Information

Inspection Date: 01/17/2024 Evaluator: Lee Sheppard
 Project #: 34400.3.4 TIP #: R-2233BB Contract #: C204397
 Division #: 13 County: Rutherford
 Project Type: Contract Engineer: Marion Resident Engineer's Office
 Project Length: 5.00 Disturbed Acres: 15
 River Basin: Broad HQW Zone: NO Trout Zone: NO
 Location Description: US-221 South of US-74 Business to North of SR 1366 Roper Loop Rd.

Project Evaluation

Report Type: Routine ICA ICA Ex 1st ICA Ex 2nd CICA - SWO
 PCN ECPAR

Length	Section	Installation of BMPs	Maintenance of BMPs	Effectiveness of BMPs	Plan Implementation	Overall Project Evaluation
0.0	Permitted Area(s)	8	6	6	6	6

Grading Scale: 0 - 6 = Immediate Corrective Action Required, 7 = Fair, 8 = Good, 9 = Very Good, 10 = Excellent

ICA EX 1st Comments:

ICA is being extended due to some immediate and/or urgent corrective actions still in progress.

Remarks and Recommendations:

Inspection was done with project personnel, Resident Engineer, and contractor personnel. Since the date of the ICA inspection on 1/8/24, the project has encountered additional rain events in excess of 1.0 inch per event. One event was heavy intensity, greater than 5 inches in less than a 24-hour period. Additional sediment losses occurred in addition to the ones documented on the 1/8/24 ICA report. All work other than erosion control action has been suspended by the Resident Engineer's Office in accordance with 108-7 of the Standard Specifications effective 1/9/24. Contractor has engaged in corrective actions and continues to.

Locations of Immediate Corrective Action remaining include:

-Permitted Site #11 approximately 969+00 LT-L3-, small amounts of sediment and #57 stone needs to be removed from the JS. The perimeter EC devices and SSCF SDOs that surround the outlet of the new drainage system need to be repaired. A failure in the 1/4" hardware cloth and some undermining of the drainage pipe outlet caused the loss into the JS. Contractor anticipated that this repair would be complete by

the end of the day- Wednesday 1/17/24.

-Approximately 965+00 LT-L3-, silt remains in the riprap dissipator basin needing removal, repairs to the SSCF and silt fence needs to be completed, and the fill slope needs stabilization. The section of slope that isn't matted continues to wash in this location resulting in sediment loss. The most recent loss at this location was small and removal beyond the SDO is complete. This area leads to the JS of Permitted Site #11.

-Permitted Site #5 approximately 815+00 LT-L3- still contains sediment in the JS needing removal and repairs to all surrounding EC devices in this location need to be complete. A basin side slope failure and overwhelming of the SDOs was the most recent cause of the sediment loss in this location during the heavy intensity rain event. The new run of storm drainage pipe (STR 915) also was compromised contributing to the failure and loss. We discussed additional EC device installation for addressing this location to possibly include an earthen dam with skimmer at the low point of this drainage area. Repairing the compromised storm drainage and directing the upper side runoff into this system should also help this location. The EC design is for the CWD ditches and treated runoff from skimmer basin right of L3 to enter this system which should relieve the overall impact of all the runoff leaving the site where is currently is now which overwhelms the devices. Refer to detail in the front section of the EC plans for constructing the earthen dam skimmer if utilized.

-Permitted Site #4 Culvert #4 location- repairs are ongoing. Sediment collected in the riprap flood plain bench and #57 stone in the JS needs removal. Repairs to the EC devices and SDOs that surround the inlet and outlet of the culvert needs to be completed. Silt cleanout in the basins is still needed. Contractor is beginning to utilize a vac truck system for this removal but was froze up during this inspection. Repairs and silt cleanout to the EC devices located in the ditch line where STR 819 is are still needed. Removal of silt that has collected along the wattle barriers is needed. Contractor hasn't been able to access all of this location with machinery due to wet and unsafe conditions.

-Permitted Site #1 approximately 779+00 LT-L3- additional sediment has collected in the JS but this was due to a naturally occurring slope failure at the riprap dissipator basin. This occurred during the heavy intensity rain event and was a section of slope that was not disturbed by construction. No failure of EC devices resulted in this slope failure. Resident's Office has been in contact with Division Environmental for addressing corrective action within permit obligations to repair this location.

-Corrective actions/efforts are documented on the NPDES records. Continue to document and complete the Date Corrected sections as items are addressed.

An additional inspection will be conducted towards the beginning of next week.

NPDES Permit Requirements:

- Corrective actions should be described on the SDO sheet and the E&SC Device sheet under 'Corrective Actions Taken'.
- Records need to be signed.
- Inspect E&SC / Stormwater devices at least once every 7 days and within 24 hrs. of 1.0" rainfall or greater.
- Maintain an on-site rain gauge or use the MPE Rainfall Website.
- Maintain rainfall log with amounts & dates. Any rainfall amount should be recorded for each day regardless if it is 1.0 inch or greater.
- Maintain an up to date set of as-built EC plans.
- Maintain records on site for review by Department & Regulatory personnel.

As work continues, contractor should continue efforts to install and maintain erosion control devices in a timely manner, as per specifications, and as per erosion control plans. Groundcover should be provided to any areas that will remain idle for 7 or 14 days or more, including borrow/waste/staging areas.

North Carolina Department of Transportation
 Roadside Environmental Unit
 Erosion & Sedimentation / Stormwater Report



Project Information

Inspection Date: 01/22/2024 Evaluator: Lee Sheppard
 Project #: 34400.3.4 TIP #: R-2233BB Contract #: C204397
 Division #: 13 County: Rutherford
 Project Type: Contract Engineer: Marion Resident Engineer's Office
 Project Length: 5.00 Disturbed Acres: 15
 River Basin: Broad HQW Zone: NO Trout Zone: NO
 Location Description: US-221 South of US-74 Business to North of SR 1366 Roper Loop Rd.

Project Evaluation

Report Type: Routine ICA ICA Ex 1st ICA Ex 2nd CICA - SWO
 PCN ECPAR

Length	Section	Installation of BMPs	Maintenance of BMPs	Effectiveness of BMPs	Plan Implementation	Overall Project Evaluation
0.0	Permitted Area(s)	8	8	8	8	8
5.0	Remainder of Project	8	8	8	8	8
	Silt Removal from Basins	8	7	7	8	7

Grading Scale: 0 - 6 = Immediate Corrective Action Required, 7 = Fair, 8 = Good, 9 = Very Good, 10 = Excellent

Comments:

The ICA is lifted.
 Cleanup efforts have been underway since all other work was suspended by the Resident Engineer, and most repairs are complete. Some locations at Culvert #1 have remained too wet and frozen to complete silt removal from skimmer basins. Plans remain to address these actions as soon as conditions allow.

Remarks and Recommendations:

Inspection was done with project personnel and contractor personnel.

Permitted Site #1 (Culvert #1 location):

-Silt cleanout/removal from basin ID 8.6, 8.9, and 8.8 is needed as soon as conditions allow. Contractor explained that the slopes in this area have remained too wet to safely utilize excavators for silt removal. A vac truck system has been used as another attempt for removing silt but due to recent temperatures below freezing, this has been unsuccessful as well. Contractor still plans to attempt the vac truck system this week with warmer temperatures now present, and proposed the idea of installing some additional Type B basins in the ditchlines above these skimmer basins and re-routing some of the slope drains to the new Type basins to catch silt in the meantime. This sounds like a good proposal- recommend doing.

-Some additional silt needs to be cleaned out from the riprap flood plain benches at the inlet and outlet of the culvert. Contractor stated they would immediately address this.

-Additional silt removal off of the wattle barriers is needed in some locations.

-Installing another row of wattle barrier below the section of slope that needs retracking, above the culvert outlet, would be beneficial until final repairs to the slope can be performed.

Permitted Site #5 approximately 814+00 thru 816+00:

-Some small amounts of additional sediment was noticed needing removal from the JS. Assistant Resident and I noticed these spots together and contractor immediately addressed during the inspection. Contact Division Environmental for any additional needed removal.

-Recommend installation of silt fence along the edges of the new earthen berm spillway to help direct runoff into the new basin and reduce the amount of potential silt washing towards the last SDO Type A rock check. Recommend matting as much of the area surrounding the new basin as possible as temporary ground cover and stabilization. Install baffles in the earthen berm skimmer basin if possible.

-Approximately 965+00- basin ID 19.2 needs silt cleanout. This area has also remained too wet and recently frozen for contractor to perform removal. The basin is approximately half full of silt and is impeding the functioning of the skimmer itself. Silt removal is needed as soon as conditions allow. Removing enough silt surrounding the skimmer would at least help in the skimmer being able to function. Repositioning all slope drains to the bay furthest from the skimmer is also needed.

For the unstable sections of slope above basin 19.2, recommend installation of additional silt fence or wattle barrier below the parts that aren't matted to catch additional sediment and prevent it from overwhelming the other silt fence and SSCF that surrounds the riprap dissipator basin. Retracking the slope and seeding/matting would be the best stabilization once conditions allow. Matting the unstable section as they are now as a temporary preventative measure may be beneficial to help reduce additional washing and rilling until the final repair can be made. Matting would have to be stapled to the existing contours of the slope to be effective.

-Ensure all corrective actions are documented on NPDES records with the dates corrected and continue inspections.

-I was informed Tuesday morning, the 23rd, that contractor did begin additional silt removal from the basins noted above and where successful in attempts of accessing with machinery.

NPDES Permit Requirements:

- Corrective actions should be described on the SDO sheet and the E&SC Device sheet under 'Corrective Actions Taken'.
- Records need to be signed.
- Inspect E&SC / Stormwater devices at least once every 7 days and within 24 hrs. of 1.0" rainfall or greater.
- Maintain an on-site rain gauge or use the MPE Rainfall Website.
- Maintain rainfall log with amounts & dates. Any rainfall amount should be recorded for each day regardless if it is 1.0 inch or greater.
- Maintain an up to date set of as-built EC plans.
- Maintain records on site for review by Department & Regulatory personnel.

As work continues, contractor should continue efforts to install and maintain erosion control devices in a timely manner, as per specifications, and as per erosion control plans. Groundcover should be provided to any areas that will remain idle for 7 or 14 days or more, including borrow/waste/staging areas.

Active Sediment Case Report as of February 1, 2024

Case#	Violator (Name of Case)	County	Date of Assessment	Penalty Assessment Amt	Final Amt Paid	Comments
21-014	Dump & Go, Inc.	Cumberland	03-Nov-21	\$5,000.00		Injunctive relief requested 3/22 NOVs issued 5/21/21 & 6/16/21 NOCV issued 6/13/22 Complaint amended as to defendant. Motion to Show Cause pending.
21-015	Wachhund Land Co., LLC	Transylvania	28-Nov-22	\$25,000.00		CPA rescinded
22-001	Wayfarers Cove and Marina Beach, LLC	Pamlico	12-Oct-22	\$25,000.00		Final Agency Decision Letter issued. Settlement Agreement/Payment Schedule in force.
23-001	Parker Leland, LLC	Brunswick	24-Jul-23	\$25,000.00		
23-002	Hawthorne Headwaters Apartments, LLC	Pender	11-Aug-23	\$5,000.00		
23-003	Partin Solar	Surry	04-Jan-24	\$268,730.00		Awaiting applicant on penalty; injunction forthcoming

N.C. SEDIMENTATION CONTROL COMMISSION ENFORCEMENT REPORT

by the OFFICE OF THE ATTORNEY GENERAL

2/1/2024

Status of Cases	5/5/2023	7/17/2023	10/30/2023	2/1/2024
1. LQS Drafting CPA	2	1	0	0
2. CPAs Out to Violator (30-day)	0	1	0	1
3. CPAs Prepared by LQS Under Review	4	3	5	2
4. CP Remission Requests Under Review	0	0	2	2
5. CP Remission Decisions	0	0	0	0
6. Cases Pending in OAH	0	0	0	0
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	2	2	2
c. Pre-Judgement Collections	0	0	0	0
d. Post-Judgement Collections	0	0	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	1	0	0	0
TOTALS:	0	10	8	8
Action Since Prior Quarterly Report:				
New Cases Received by AGO				
Cases Closed by AGO				

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.)

Education Program Status Report

Presentations/Exhibits

- Attended, moderated, and presented the welcome at the NC E&SC Workshop on December 6, 2023.
- Exhibited at the annual S&WCD Conference/Expo on January 8 & 9, 2024.
- Attended Zebulon Magnet Elementary School's STEM Expo for 3rd – 5th grades on 11/9/23. The Enviroscope was presented, and STEM and environmental careers discussed.
- Partnered with Janina Millis, DAQ's educator, to present to Connections Academy Middle School 6th, 7th, and 8th grade students on 11/15/23. The Enviroscope was presented.
- Presented to Pickett Elementary's 4th grade students on 11/17/23. The Enviroscope was presented in addition to conducting a stormwater and erosion walk around their campus and doing a movement activity to demonstrate runoff.
- Presented to Envision Science Academy's 6th grade science classes and 7th grade Environmental STEAM class on 12/12/23. The Enviroscope was presented as well as conducting a sediment jar and soil texturing by feel activities. The Project WET activity Sum of All Parts was done with the 7th grade class.
- Hosted a DEQ Environmental Education workshop in collaboration with the DAQ air quality educators, the Geological Survey's educator, and DEACs's educator for formal and nonformal educators on 1/24/24 at Blue Jay Point County Park. Presented the Enviroscope, demonstrated several activities, and distributed information about water, soil, and erosion education available from DEQ.
- Presented to four of Trinity Middle School's 8th grade classes on 1/26/24. The Enviroscope was presented in addition to the Project WET activity Sum of All Parts.
- Presented to three of Trinity Middle School's 8th grade classes on 1/29/24. The Enviroscope was presented in addition to the Project WET activity Sum of All Parts.
- Presented to one of Zebulon Magnet GT Elementary School's third grade classes on the Enviroscope and impacts of stormwater on 1/31/24.
- Participated in Garner's Ground Hog Day at White Deer Park on 2/1/24. Presented the Enviroscope for all ages, and set-up a construction sand table and had coloring pages for young participants. Also provided informational resources and handouts for older participants.
- Continued to co-host monthly Water Education Coffee Talks with DWR's water educator, Lauren Daniel, 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 hybrid in-person and virtual NC E&SC Workshops (formally the E&SC Design Workshop) was held on December 6, 2023, in Raleigh at the McKimmon Center. Approximately 114 participants attended the full day in-person workshop and 58 attended the half day virtual workshop. The NC E&SC Workshop was planned in partnership with the Southeast Chapter of

Feb 21, 2024

the International Erosion Control Association and the NCSU Department of Crop & Soil Science.

The 2024 Annual Local Programs Workshop is being planned for April 23 & 24 at the Sturgeon City Education Center in Jacksonville, NC. The Local Program Workshop is being planned in partnership with the Water Resources Research Institute (WRRI).

Contract Administration

A contract proposal between DEMLR and WRRI has been submitted and is currently being processed for approval. The contract includes support for the 2024 and 2025 Annual Local Program Workshop and Awards Luncheon.

Updates

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

If you or a colleague would like to contribute an article or suggest a topic for the summer edition of the Sediments Newsletter, email the Sediment Education Specialist!

LAND QUALITY REGIONAL PROGRAM MONTHLY ACTIVITY REPORT

State Total FY 2023-2024 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	
PLAN/APPLICATION REVIEW															
1. New Sedimentation Control Projects Rec'd	2	109	0	104	0	115	0	209	33	251	0	208	0	186	1182
2. New Sedimentation Plan Reviews	0	148	0	124	13	218	0	195	25	200	13	210	0	184	1279
3. Sedimentation Plan EXPRESS Reviews	2	19	0	19	0	11	0	2	5	66	0	39	0	14	170
4. New Sedimentation Plan Disapprovals	0	2	0	33	0	4	0	52	11	71	1	27	0	87	276
5. Revised Sedimentation Plan Received	0	43	0	62	0	19	0	110	10	120	0	72	0	193	619
6. Revised Sedimentation Plan Reviews	0	76	0	63	1	32	0	109	14	125	1	67	0	188	660
7. Revised Sedimentation Plan Disapprovals	0	0	0	23	0	0	0	11	3	26	0	11	0	41	112
8. Unreviewed E&SC Plans - End of Month	0	0	0	40	0	89	0	133	0	0	0	0	0	223	485
9. E&SC Plan Reviews > 30 Days	0	0	0	0	0	0	0	0	0	0	0	3	0	12	15
10. Revised Plan Reviews > 15 Days	0	0	0	0	0	2	0	0	0	7	0	0	0	8	17
MONITORING															
1. Sedimentation Inspections (Total)	0	837	4	426	142	1089	142	1089	118	728	21	854	0	1188	6211
A. Landfills	0	7	0	0	0	0	0	0	0	1	0	5	0	6	19
B. DOT Contract	0	0	0	0	0	0	0	0	0	1	0	2	0	0	3
C. DOT Force Account	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
D. Complaints	0	21	3	89	3	14	3	14	15	83	1	40	0	97	358
ENFORCEMENT															
1. Sedimentation															
A. Notices of Violation (Total)	0	9	0	179	6	50	6	6	3	28	0	2	0	27	301
B. NOVs to Repeat Violators	0	0	0	27	0	6	0	0	0	8	0	0	0	2	43
C. Cases Referred for Enforcement	0	2	0	0	0	0	0	0	0	1	0	0	0	0	3
LOCAL PROGRAMS															
1. Local Ordinance Reviews	0	0	0	1	0	0	0	0	2	10	0	0	0	0	11
2. Local Programs Aided (hours)	0	3	0	8	0	0	0	60	19	87.5	0	6	0	0	164.5
CUSTOMER SERVICE															
Technical Assistance (Aided Hours)	0	1254	0	565	167	1311	0	0	67	403	13	300	0	3	3836
Pre-Application Meetings	0	406	0	5	18	128	0	0	0	2	0	43	0	0	584

Land Quality Section Report - February 21, 2024

Organizational Description / Location	Classification
ENR SO ASEN EML DO LQ CO Asheville Regional Office	Engineer I
ENR SO ASEN EML DO LQ CO Asheville Regional Office	Environmental Specialist I
ENR SO ASEN EML DO LQ CO Mooresville Regional Office	Engineer I
ENR SO ASEN EML DO LQ CO Mooresville Regional Office	Environmental Specialist I
ENR SO ASEN EML Directors Office, Raleigh - Archdale	Environmental Division Director
ENR SO ASEN EML DO LQ CO Raleigh Regional Office	Environmental Specialist I
ENR SO ASEN EML DO LQ CO Raleigh Regional Office	Engineer II
ENR SO ASEN EML DO LQ CO Washington Regional Office	Environmental Specialist I
ENR SO ASEN EML DO LQ CO Wilmington Regional Office	Environmental Specialist I
ENR SO ASEN EML DO LQ CO Wilmington Regional Office	Environmental Specialist I
ENR SO ASEN EML DO LQ CO Wilmington Regional Office	Engineer II
ENR SO ASEN EML DO LQ CO WinstonSalem Regional Office	Engineer II
ENR SO ASEN EML DO LQ CO WinstonSalem Regional Office	Engineer I
ENR SO ASEN EML DO LQ CO WinstonSalem Regional Office	Environmental Specialist II
ENR SO ASEN EML DO LQ CO WinstonSalem Regional Office	Environmental Specialist II