

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.