

**DEPARTMENT OF ENVIRONMENTAL
QUALITY**

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

**SEDIMENTATION
CONTROL COMMISSION
MEETING**

**10:00 A.M.
Thursday
November 4, 2021**

ONLINE MEETING via WEBEX

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

AGENDA

North Carolina Sedimentation Control Commission
Business Meeting

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

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

November 4, 2021, 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 August 17, 2021

II. Action Items

- A. Modifications to the Remission Guidelines for the DEMLR and Local Government Erosion and Sedimentation Control Programs – Dr. Susan White
The Commission Chair will ask members to review and vote on one change to each of the two documents based on Session Law 2021-158.
- B. City of Jacksonville Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the delegation of this program.
- C. Iredell County Review – Mr. Graham Parrish
Staff are presenting findings and recommending continuing the delegation of this program.

- D. Model Ordinance for Local Programs – Ms. Julie Coco
Staff will present changes needed to this model ordinance based on recent statutory amendments to the Sedimentation Pollution Control Act.
- E. NCDOT Annual Program Review – Mr. Graham Parrish and Ms. Julie Coco
Staff are presenting the findings and recommending continuing the delegation of this program.

III. Information Items

- A. NCDOT Report – Ms. Julie Coco
Staff will report on the Immediate Corrective Action Reports issued by the Department.
- B. Commission Technical Committee – Mr. Mark Taylor
The Committee Chair will provide an update on this committee's meetings.
- C. Ad-Hoc Committee Update – Mr. Hartwell Carson
The Committee Chair will provide an update on this committee's meetings.
- D. The Education Advisory Committee – Dr. Susan White
The Commission Chair will open a discussion on re-establishing this advisory committee.
- E. 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.
- F. Education Program Status Report — Ms. Rebecca Coppa
Staff will report on Sediment Education Program activities.
- G. Sediment Program Status Report — Ms. Julie Coco
Staff will report on LQS's current statewide plan approval, inspection, and enforcement activities.
- H. 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.
- I. Recent Legislative Changes and Potential Impacts to DEMLR and the Local Programs – Mr. Brian Wrenn
The DEMLR Director will present Session Laws 2021-121 and 2021-158 that amended the Sedimentation Pollution Control Act of 1973, and discuss how those changes will potentially impact DEMLR staff and the Local Erosion & Sediment Control Programs including any changes in fees.
- J. Local Programs and Full-Time Equivalent Positions – DEMLR Staff

Staff will provide analysis on full-time equivalent positions from existing local program data and how that indicator may be used as one of many to evaluate a locally delegated government's ability to effectively operate their program.

K. 2022 Commission Meetings Schedule and Discussion of Hybrid Meeting Model –
Dr. Susan White

The Chair will discuss the possibility of a hybrid meeting model for the following dates:

- *February 22 (Q1)*
- *May 19 (Q2)*
- *August 18 (Q3)*
- *November 15 (Q4)*

IV. Conclusion

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

I. Preliminary Matters

A. Call to Order

B. Recognition of Those Attending

C. Swearing in of New Members, if Present

D. Approval of Meeting Minutes from August 17, 2021

MINUTES
NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION
AUGUST 17, 2021
GROUND FLOOR HEARING ROOM, ARCHDALE BUILDING
RALEIGH, NORTH CAROLINA

The North Carolina Sedimentation Control Commission met on August 17, 2021, at 10:00 a.m. via an online webinar. The following persons were in attendance via webinar for all or part of the meeting, with Commission members being present for the entire meeting:

COMMISSION MEMBERS

Dr. Susan White (Chair)
Mr. Benjamin Brown
Mr. Mark Taylor
Mr. Michael Taylor
Ms. LaToya Ogallo (Vice-Chair)
Dr. Richard McLaughlin
Mr. Michael Willis (not present at the beginning of the meeting)
Mr. Robert “Jason” Conner
Ms. Susan Foster

Marion Deerhake, Hartwell Carson and Emily Sutton were not present.

OTHERS

Mr. Brian Wrenn, Director, DEMLR
Mr. Brad Cole, Regional Operations Chief, DEMLR
Mr. Toby Vinson, Program Operations Chief, DEMLR
Mr. Graham Parrish, State Assistant Sedimentation Specialist, DEMLR
Ms. Julie Coco, State Sedimentation Specialist, DEMLR
Ms. Rebecca Coppa, State Sedimentation Education Specialist, DEMLR
Mr. Zac Lentz, DEMLR-Winston Salem Regional Office
Ms. Tamera Eplin, DEMLR-Winston Salem Regional Office
Ms. Sarah Zambon, Commission Counsel, Attorney General’s Office
Mr. Tom Gerow, NCFS
Ms. Karyn Pageau, Wake County
Mr. Jeevan Neupane, Wake County
Mr. Kirk Stafford, Town of Cary
Ms. Deb Johnson, Henderson County Site Development
Ms. Natalie Berry, Henderson County Site Development Director
Mr. Trevor Spencer, City of High Point
Ms. Sila Vlachou, City of High Point
Ms. Kathy Blake, City of High Point
Mr. Scott Ford, City of High Point

Mr. Kirk Stafford, Town of Cary
Mr. Patrick Mallet, Orange County
Mr. Joe Allen, Macon County
Mr. Phillip Bunton, Town of Knightdale Public Works Director
Mr. Ike Archer, Town of Knightdale Stormwater
Mr. Peter Kane, Legislative Affairs
Mr. Tracy Davis, ATS Environmental Solutions

PRELIMINARY MATTERS

Dr. White called the meeting to order at 10:02 am

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

Those in attendance introduced themselves. Dr. White announced any potential conflicts with the Commission members and reminded them to recuse themselves from any discussions related to those conflicts. Dr. White read the guidelines for participating in the webinar.

Dr. White asked for a motion to approve the minutes from the May 4, 2021, meeting. Ms. Ogallo moved to approve the minutes. Mr. Brown made a second; the motion passed, and the minutes were approved unanimously

ACTION ITEMS

Town of Weddington Local Program Review

The recommendation was made to continue the town's delegation. Dr. McLaughlin made a motion to approve the recommendation made by the DEMLR staff. Ms. Foster made a second; the motion passed. Mr. Willis did not respond to roll call vote.

City of High Point Local Program Review

The recommendation was made to continue the city's delegation under review for another six months. Mr. Mark Taylor made a motion to approve the recommendation made by the DEMLR staff. Ms. Foster made a second; the motion passed.

Henderson County Local Program Review

The recommendation was made to continue the county's delegation under review for another three months. Mr. Willis moved to continue the county's delegation without further review at this time. Staff stated they were in support of Mr. Willis' motion based on the comments provided from the local government. Ms. Ogallo made a second; the motion passed.

Macon County Local Program Review

The recommendation was made to continue the county's delegation under review for

another six months. Dr. McLaughlin moved to approve the recommendation made by the DEMLR staff. Mr. Mark Taylor made a second; the motion passed.

City of Wilson Local Program Review

The recommendation was made to place the program on probation for nine months. This would bring the program before the commission again at their second quarterly meeting of the year 2022. Ms. Foster moved to approve the recommendation made by the DEMLR staff; Dr. McLaughlin made a second. Mr. Mark Taylor stated that he thought that staff's recommendation would mean a one-year review. He moved to amend the motion to accept staff's recommendation but changed the probation period to eight months. Ms. Ogallo made a second; the motion for the amendment passed. The members then voted on the motion initially made by Ms. Foster; that motion passed.

INFORMATION ITEMS

Town of Knightdale Ordinance Review

Ms. Coco presented a draft of the town's ordinance for the members to review as part of an informal request by the town. Comments were provided to town staff.

Commission Technical Committee

Mark Taylor is the Chair for this committee. He mentioned that the meeting schedule has been set for the third Thursday of the month. Some topics are planned for referral to the new ad-hoc committee. The more technical topics included requested updates to the Erosion and Sediment Control Planning and Design Manual. The committee did have one special meeting in early July to prioritize the topics presented. During the regular meeting on July 15, 2021, the committee elected Ms. Karyn Pageau as the committee's vice-chair. Mr. Taylor and Ms. Coppa (DEMLR staff) worked to divide tasks into four workgroups with two committee members each. In addition, a presentation from Division of Water Quality staff may be held during the September meeting. The next meeting is scheduled for August 19, 2021, via Cisco WebEx online webinar. Meetings are open to the public and must adhere to the NC Open Meetings Law.

Land Quality Section Active Sediment Cases and Enforcement

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

Education Program Status Report

Ms. Rebecca Coppa reported on Sediment Education Program activities. This included presentations to 8th graders as part of the SciMatch Program and the co-hosting of multiple virtual Project WET workshops with fellow educators. The 2021 NC Erosion & Sediment Control Workshop (formerly called the E&SC Design Workshop) is scheduled for December 2nd in Raleigh. This workshop is being planned in coordination with the Southeast Chapter of the IECA and the NCSU Department of Crop and Soil Sciences. The 2022 Local Program Workshop and Awards Program has been scheduled for April 19th and 20th in Union County. This workshop is being planned in coordination with the

WRRI. Volume 24, Number 1 of the SEDIMENTS newsletter was published in July. Ms. Coppa is continuing to solicit commission members to write articles for this newsletter.

Sediment Program Status Report

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

NCDOT Report

Ms. Coco reported on the Immediate Corrective Action Reports and the one Trout Buffer Waiver issued to the Department of Transportation.

Land Quality Section Report

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

Q4 November and Future Commission Meetings

The Chair questioned the members as to their preference for holding an in-person meeting in November (Q4). The Commission discussed but there was no resolution at this time.

Ad-hoc Committee Proposal

Since Mr. Carson was not present, this item was postponed until the next meeting.

CONCLUSION

Remarks by the Director –

COVID Update

Over the last 3 months, the Division has been planning for the return to in-office work. However, the recent surge in the Delta variant has delayed those plans. Staff continue to telework and social distance when in the office. The Department has recently implemented requirements to provide proof of vaccination or submit to weekly COVID testing. Face coverings are required for unvaccinated staff and strongly recommended for those who are vaccinated. Despite the continued struggles with the pandemic, DEMLR staff continue to be highly productive and responsive. It is expected that future work environments beyond the pandemic will include telework options for DEMLR staff.

Budget Update

The House and Senate budget proposals have been released. The House budget proposed an increase in sediment fees from \$65 per acre to \$150 per acre while the Senate budget proposal only proposed a study of permitting fees increases. The Division is obviously hopeful that the fee increases will remain part of any final budget that is approved. Revenue generated by the fee increases would be used to add staff in our regional offices who are facing increasing project loads with insufficient staff numbers.

HB489

The Senate will be voting on HB489 today. HB489 proposes a variety of changes to the delegated local program requirements. Of note are restrictions on the fees that a local program can charge for a single family lot that is less than an acre and on the application materials that local programs can require for single family lots less than an acre. We have some concerns regarding the financial viability of some local programs should this bill pass the Senate. The bill could cause confusion among the regulated community regarding application requirements in situations where single family lots less than an acre are under a common plan of development, and which require an NCG01 Construction Stormwater Permit.

Coastal Habitat Protection Plan Amendment

A draft amendment to the Coastal Habitat Protection Plan (CHPP) was released in early August. The amendment referenced continued collaboration with DEMLR to reduce sediment inputs from land disturbing activities regulated by DEMLR. The amendment included a goal to develop a workgroup by 2022 tasked with determining “the baseline use of BMPs related to water quality within the submerged aquatic waterbody regions and develop a plan to increase their use by 50 percent.” Recent meetings of the CTC and the Ad Hoc Committee included discussions that would be relevant to this workgroup and its goal.

Remarks by Commission Members – Mr. Mark Taylor spoke on a benchmark for the number of local government full-time equivalent staff positions needed to effectively operate a program and guidance on issuing Notices of Violation. He thinks it should be based on population. He would now like to hear about this as an information item.

Remarks by the Chair –The Chair expressed her appreciation for DEMR staff, the members, and guests for their service and contributing knowledge to the commission.

Adjournment – Dr. White adjourned the meeting at approximately 1:21 pm.

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

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

Dr. Susan White, Chair
Sedimentation Control Commission

II. **Action Items**

- A. Modifications to the Remission Guidelines for the DEMLR and Local Government Erosion and Sedimentation Control Programs – Dr. Susan White
- B. City of Jacksonville Local Program Review – Mr. Graham Parrish
- C. Iredell County Local Program Review – Mr. Graham Parrish
- D. Model Ordinance for Local Programs – Ms. Julie Coco
- E. NCDOT Annual Program Review – Mr. Graham Parrish and Ms. Julie Coco

NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION

**REMISSION GUIDELINES FOR THE DIVISION OF ENERGY, MINERAL, AND
LAND RESOURCES (“DEMLR”)**

Step 1: Petitioner submits remission request to SCC via DEMLR, within ~~sixty-three (63)~~ sixty-three (63) days of receipt of the Notice of Assessment, in accordance with N.C. Gen. Stat. § 113A-64.2(a).

Commented [ZS1]: Based on Session Law 2021-158.
Applies to penalties assessed on or after October 1, 2021

Step 2: The DEMLR staff sends Petitioner a letter acknowledging receipt of the remission request, and includes the following:

1. A request for additional financial information, if Petitioner checked box (e) on the Justification for Remission Request Form;
2. Request for any other supporting documentation; and
3. Deadline for Petitioner to submit additional requested information.

Step 3: The DEMLR Director considers the remission request, including any information submitted by petitioner in support of the remission request.

The DEMLR Director shall consider the factors listed in N.C. Gen. Stat. § 113A-64.2(b) in determining its recommendation.

The DEMLR Director shall make its recommendation consistent with the limitations in N.C. Gen. Stat. § 113A-64.2(b), (c), (d), and (e).

Step 4: The DEMLR Director sends Petitioner a letter with the Director’s initial recommendation. It is recommended that the letter be sent by certified mail or any other method providing delivery confirmation.

The letter shall include a “*Request for Oral Presentation*” form, and the letter shall notify Petitioner of the following:

1. Petitioner may pay the penalty, or the modified penalty if applicable.
2. If Petitioner chooses to pay the penalty, send payment within thirty (30) days of receipt of the letter.
3. How to submit payment (how check should be made payable and where to send)
4. Petitioner may request a payment plan, and who to contact with a request.
5. If Payment is not received or a payment plan is not set up within thirty (30) days of receipt of the letter, the request for remission and supporting documents and the DEMLR Director’s recommendation and supporting documents will be forwarded to the SCC Civil Penalty Remissions Committee for a Final Agency Decision.

- a. Where the penalty has been modified, the letter shall include notice that if the remission request proceeds to the SCC Civil Penalty Remissions Committee, the Committee may affirm the full original amount of the penalty.
6. If Petitioner desires to make an oral presentation to the SCC Civil Penalty Remissions Committee, Petitioner must complete and return the enclosed "Request for Oral Presentation" form within thirty (30) days of receipt of the letter.
7. Provide the address for where to mail the "Request for Oral Presentation" form.
8. The SCC Chairperson will review the request for oral presentation and the documents in the matter, and if the Chairperson determines there is a compelling reason to require an oral presentation, DEMLR staff will notify Petitioner of the date, time, and place that Petitioner's oral presentation can be made.
9. If Petitioner does not request an oral presentation, the final decision on Petitioner's request for remission will be made by the SCC Civil Penalty Remissions Committee based on the written record.

Step 5: If Petitioner requests to make an oral presentation:

1. DEMLR staff sends a copy of the request for oral presentation and the documents in the matter to the SCC Chairperson, and the SCC counsel.
2. SCC Chairperson will notify DEMLR staff whether the request for oral presentation will be allowed.
3. SCC Chairperson determines when the SCC Civil Penalty Remissions Committee will hear the Petitioner's oral presentation.
 - a. To be considered for the next scheduled meeting of the Civil Penalty Remissions Committee, the SCC Chairperson must receive the request at least thirty (30) days before the next scheduled meeting of the Committee.
 - b. Requests will be heard in the order received, up to a number determined by the SCC Chairperson in consultation with the chairperson of the Civil Penalty Remissions Committee.
4. DEMLR staff sends Petitioner a letter notifying Petitioner of the date, time, and place the Petitioner's oral presentation can be made. It is recommended that the letter be sent by certified mail or any other method providing delivery confirmation.

Step 6: If Petitioner does not request to make an oral presentation:

1. If Petitioner does not pay or enter into a payment plan within the time allowed, and the Director of DEMLR and the Petitioner are unable to resolve the matter and the Director determines the matter is at an impasse, DEMLR staff notifies the

SCC Chairperson that the matter is at an impasse and that the Director is forwarding the remission request to the SCC Civil Penalty Remissions Committee for a final agency decision.

2. SCC Chairperson determines when the SCC Civil Penalty Remissions Committee will consider the remission request.
 - a. To be considered for the next scheduled meeting of the Civil Penalty Remissions Committee, the SCC Chairperson must receive the request at least thirty (30) days before the next scheduled meeting of the Committee.
 - b. Requests will be heard in the order received, up to a number determined by the SCC Chairperson in consultation with the chairperson of the Civil Penalty Remissions Committee.

Step 7: DEMLR staff delivers the written record, including the remission request and the DEMLR Director's recommendation, to the SCC Civil Penalty Remissions Committee at least two (2) weeks before the scheduled meeting of the Committee.

Confidential materials, including but not limited to those containing personally identifying information ("PII") or financial records, shall only be provided to the Civil Penalty Remissions Committee members, and only in accordance with procedures that protect the confidentiality of the information, by providing confidential materials to the Civil Penalty Remissions Committee members in a hard copy format.

DEMLR staff shall make all non-confidential materials available to the public on the SCC's website prior to the Civil Penalty Remissions Committee meeting.

The written record should include, but is not limited to, the following:

1. Summary sheet and timeline listing the following:
 - a. Case background and assessment
 - i. Date submitted plan approved;
 - ii. Inspection date(s);
 - iii. Violation(s) found;
 - iv. NOV date(s), and when NOV(s) delivered per proof of service;
 - v. Violator response to NOV, if any;
 - vi. CPA date, and when CPA delivered per proof of service; and
 - vii. CPA details: Penalty amounts and corresponding violations.
 - b. Remission request timeline details
 - c. Whether violator requested an oral presentation.
 - d. Whether violator has been assessed CPAs for previous violations.
2. Inspection report(s)
3. Pictures taken and considered in assessment of the penalty
4. NOV(s) and proof of service

5. CPA and proof of service
6. Other relevant information
7. The remission request includes:
 - a. Signed remission request waiver of right to an administrative hearing and stipulation of facts;
 - b. Completed justification for remission request; and
 - c. All supporting documentation submitted by Petitioner at any time during the remissions process.
8. The DEMLR Director's recommendation for enforcement includes:
 - a. Recommendation letter and delivery confirmation if available; and
 - b. All supporting documentation.
9. The request for oral presentation, if applicable

Step 8: SCC Civil Penalty Remissions Committee considers the remission request and hears oral presentations (if applicable).

1. Oral presentation on the issuance of the penalty and the DEMLR Director's recommendation shall be made by DEMLR.

Step 9: SCC Civil Penalty Remissions Committee issues a Final Agency Decision based upon the written record and any oral presentations (if applicable). The SCC Civil Penalty Remissions Committee shall consider the factors in N.C. Gen. Stat. § 113A-64.2(b).

1. Counsel to the SCC drafts the Final Agency Decision for signature.

Step 10: Final Agency Decision served on Petitioner.

1. Counsel to the SCC sends the Final Agency Decision to the Petitioner by certified mail or other service in accordance with Rule 4 of the Rules of Civil Procedure, with a cover letter notifying Petitioner that:
 - a. Petitioner may seek judicial review in Superior Court by filing a petition within thirty (30) days of receipt of the written copy of the Final Agency Decision.
 - i. A written copy must be served upon DEQ General Counsel
 - ii. Request to also serve a copy upon counsel to the SCC
 - b. If Petitioner does not seek judicial review, payment must be submitted to the Department within thirty (30) days of receipt of the written copy of the Final Agency Decision.
 - i. How to make payment
 - ii. How check made payable
 - iii. Where to send payment

- c. If Petitioner fails to pay the penalty within thirty (30) days of receipt of the Final Agency Decision, the Department will seek to collect the amount due through a civil action in Superior Court.

Effective: February 20, 2020 [Amended November .,2021](#)

Dr. Susan White, Chair
North Carolina Sedimentation Control Commission

NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION

**REMISSION GUIDELINES FOR LOCAL GOVERNMENT EROSION AND
SEDIMENTATION CONTROL PROGRAMS**

These guidelines are intended to assist Local Government Erosion and Sedimentation Control Programs in the processing and referring of civil penalty remission requests to the North Carolina Sedimentation Control Commission.

Step 1: Petitioner submits remission request to SCC via the local government that issued the CPA, within ~~sixty-three~~ 360 days of receipt of the Notice of Assessment, in accordance with N.C. Gen. Stat. § 113A-64.2(a).

Commented [ZS1]: Based on Session Law 2021-158.
Applies to penalties assessed on or after October 1, 2021

Step 2: The local government staff sends Petitioner a letter acknowledging receipt of the remission request, and includes the following:

1. A request for additional financial information, if Petitioner checked box (e) on the Justification for Remission Request Form;
2. Request for any other supporting documentation; and
3. Deadline for Petitioner to submit additional requested information.

The local government staff sends DEMLR staff a copy of the acknowledgment letter sent to Petitioner, for DEMLR's records.

Step 3: The local government considers the remission request, including any information submitted by petitioner in support of the remission request.

The local government shall consider the factors listed in N.C. Gen. Stat. § 113A-64.2(b) in determining its recommendation.

The local government shall make its recommendation consistent with the limitations in N.C. Gen. Stat. § 113A-64.2(b), (c), (d), and (e).

Step 4: The local government sends Petitioner a letter with its initial recommendation. It is recommended that the letter be sent by certified mail or any other method providing delivery confirmation.

The letter shall include a "Request for Oral Presentation" form, and the letter shall notify Petitioner of the following:

1. Petitioner may pay the penalty, or the modified penalty if applicable.

2. If Petitioner chooses to pay the penalty, send payment within thirty (30) days of receipt of the letter.
3. How to submit payment (how check should be made payable and where to send).
4. If allowed by the local government, that Petitioner may request a payment plan, and who to contact with a request.
5. If Payment is not received or a payment plan is not set up within thirty (30) days of receipt of the letter, the request for remission and supporting documents and the local government's recommendation and supporting documents will be forwarded to the SCC Civil Penalty Remissions Committee for a Final Agency Decision.
 - a. Where the penalty has been modified, the letter shall include notice that if the remission request proceeds to the SCC Civil Penalty Remissions Committee, the Committee may affirm the full original amount of the penalty.
6. If Petitioner desires to make an oral presentation to the SCC Civil Penalty Remissions Committee, Petitioner must complete and return the enclosed "Request for Oral Presentation" form within thirty (30) days of receipt of the letter.
7. Provide the address for where to mail the "Request for Oral Presentation" form.
8. The SCC Chairperson will review the request for oral presentation and the documents in the matter, and if the Chairperson determines there is a compelling reason to require an oral presentation, DEMLR staff will notify Petitioner of the date, time, and place that Petitioner's oral presentation can be made.
9. If Petitioner does not request an oral presentation, the final decision on Petitioner's request for remission will be made by the SCC Civil Penalty Remissions Committee based on the written record.

Step 5: If Petitioner requests to make an oral presentation:

1. The local government forwards the written record, including the request for oral presentation, to DEMLR staff, for a final agency decision by the SCC Civil Penalty Remissions Committee.
 - a. Details for what the written record should include, but is not limited to, are provided below in Step 7.
2. To be considered for the next scheduled meeting of the Civil Penalty Remissions Committee, the local government must forward the request for oral presentation and the complete documentation package to DEMLR staff at least forty-five (45) days before the next scheduled meeting of the Committee. In its discretion, the Committee may choose to hear the request at a later date.
3. Upon DEMLR's receipt of the request for oral presentation and complete documentation package from the local government:

- a. DEMLR staff sends a copy of the request for oral presentation and the documents in the matter to the SCC Chairperson, and the SCC counsel.
 - b. SCC Chairperson will notify DEMLR staff whether the request for oral presentation will be allowed.
 - c. SCC Chairperson determines when the SCC Civil Penalty Remissions Committee will hear the Petitioner's oral presentation.
 - i. To be considered for the next scheduled meeting of the Civil Penalty Remissions Committee meeting, the SCC Chairperson must receive the request from DEMLR staff at least thirty (30) days before the next scheduled meeting of the Committee.
 - ii. Requests will be heard in the order received, up to a number determined by the SCC Chairperson in consultation with the chairperson of the Civil Penalty Remissions Committee.
4. DEMLR staff sends Petitioner a letter acknowledging receipt of the remission request from the local government, and notifying Petitioner of the date, time, and place the Petitioner's oral presentation can be made. It is recommended that the letter be sent by certified mail or any other method providing delivery confirmation.

Step 6: If Petitioner does not request to make an oral presentation:

1. If Petitioner does not pay or enter into a payment plan (if allowed by the local government) within the time allowed, and the local government and the Petitioner are unable to resolve the matter and the local government determines the matter is at an impasse, the local government forwards the written record to DEMLR staff for a final agency decision by the SCC Civil Penalty Remissions Committee:
 - a. Details for what the written record should include, but is not limited to, are provided below in Step 7.
2. To be considered for the next scheduled meeting of the Civil Penalty Remissions Committee, the local government must forward the complete documentation package to DEMLR staff at least forty-five (45) days before the next scheduled meeting of the Committee. In its discretion, the Committee may choose to hear the request at a later date.
3. Upon DEMLR's receipt of the complete documentation package from the local government:
 - a. DEMLR staff notifies the SCC Chairperson of the remission request.
 - b. SCC Chairperson determines when the SCC Civil Penalty Remissions Committee will consider the remission request.
 - i. To be considered for the next scheduled meeting of the Civil Penalty Remissions Committee meeting, the SCC Chairperson must receive

the request from DEMLR staff at least thirty (30) days before the next scheduled meeting of the Committee.

- ii. Requests will be heard in the order received, up to a number determined by the SCC Chairperson in consultation with the chairperson of the Civil Penalty Remissions Committee.

4. DEMLR staff sends Petitioner a letter acknowledging receipt of the remission request from the local government, and notifying Petitioner that the SCC Civil Penalty Remissions Committee will consider the remission request and will issue a Final Agency Decision based on the written record. It is recommended that the letter be sent by certified mail or any other method providing delivery confirmation.

Step 7: DEMLR staff delivers the written record, including the remission request and the local government's recommendation, to the SCC Civil Penalty Remissions Committee at least two (2) weeks before the scheduled meeting of the Committee.

Confidential materials, including but not limited to those containing personally identifying information ("PII") or financial records, shall only be provided to the Civil Penalty Remissions Committee members, and only in accordance with procedures that protect the confidentiality of the information, by providing confidential materials to the Civil Penalty Remissions Committee members in a hard copy format.

DEMLR staff shall make all non-confidential materials available to the public on the SCC's website prior to the Civil Penalty Remissions Committee meeting.

The written record should include, but is not limited to, the following:

1. Summary sheet and timeline listing the following:
 - a. Case background and assessment
 - i. Date submitted plan approved;
 - ii. Inspection date(s);
 - iii. Violation(s) found;
 - iv. NOV date(s), and when NOV(s) delivered per proof of service;
 - v. Violator response to NOV, if any;
 - vi. CPA date, and when CPA delivered per proof of service; and
 - vii. CPA details: Penalty amounts and corresponding violations.
 - b. Remission request timeline details
 - c. Whether violator requested an oral presentation.
 - d. Whether violator has been assessed CPAs for previous violations.
2. Inspection report(s)
3. Pictures taken and considered in assessment of the penalty
4. NOV(s) and proof of service

5. CPA and proof of service
6. Other relevant information
7. The remission request includes:
 - a. Signed remission request waiver of right to an administrative hearing and stipulation of facts;
 - b. Completed justification for remission request; and
 - c. All supporting documentation submitted by Petitioner at any time during the remissions process.
8. The local government's recommendation for enforcement includes:
 - a. Recommendation letter and delivery confirmation if available; and
 - b. All supporting documentation.
9. The request for oral presentation, if applicable

Step 8: SCC Civil Penalty Remissions Committee considers the remission request and hears oral presentations (if applicable).

1. Oral presentation on the issuance of the penalty and the local government's recommendation should be made by the local government that issued the penalty.
2. If the local government requests, and DEMLR agrees, DEMLR may make the presentation on behalf of the local government.
3. In its discretion, the Committee may hear any recommendation by DEMLR staff as to the request, in DEMLR's role as supporting staff for the SCC.

Step 9: SCC Civil Penalty Remissions Committee issues a Final Agency Decision based upon the written record and any oral presentations (if applicable). The SCC Civil Penalty Remissions Committee shall consider the factors in N.C. Gen. Stat. § 113A-64.2(b).

1. Counsel to the SCC drafts the Final Agency Decision for signature.

Step 10: Final Agency Decision served on Petitioner.

1. Counsel to the SCC sends the Final Agency Decision to the Petitioner by certified mail or other service in accordance with Rule 4 of the Rules of Civil Procedure, with a cover letter notifying Petitioner:
 - a. Petitioner may seek judicial review in Superior Court by filing petition within thirty (30) days of receipt of the written copy of the Final Agency Decision.
 - i. A written copy must be served upon DEQ General Counsel
 - ii. Request to also serve a copy upon counsel to the SCC
 - b. If Petitioner does not seek judicial review, payment must be submitted to the local government within thirty (30) days of receipt of the written copy of the Final Agency Decision.

- i. How to make payment
 - ii. How check made payable
 - iii. Where to send payment
- c. If Petitioner fails to pay the penalty within thirty (30) days of receipt of the Final Agency Decision, the local government will seek to collect the amount due through a civil action in Superior Court.

Effective: February 20, 2020

Dr. Susan White, Chair
North Carolina Sedimentation Control Commission

Local Program Report to the SCC City of Jacksonville, Continued Review Follow-up

On May 4, 2021, a report was presented to the Sedimentation Control Commission based on the formal review of the City of Jacksonville Erosion and Sedimentation Control Program conducted on March 25, 2021. The Commission voted to “Continue Delegation with Review for 6 months.” During the March 25th review, the following issues and required actions that the program should implement to address said issues were noted:

Previous Issues Noted:

- While the plans were reviewed, the applicant was not always notified of the plan review decision within the 30-day time frame. Comments were sent back to the designer when plans were found to be inadequate, but official notice of disapproval of the current submitted plan was not being made within the required timeframe.
- A copy of the property deed and the design calculations were not included in every project file.
- A landowner-builder consent agreement was not obtained when the landowner and financially responsible party (FRP) differ.

Required Actions:

- Once a complete application is received, plans are to be reviewed, and the applicant 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. When disapproving a plan, a formal disapproval letter should be sent out within 30 days of receiving the complete application via Certified Mail. All decision letters should acknowledge the date when the complete application or revised plan was received.
- Documentation of land ownership must be obtained prior to approval of a plan. A copy of the property deed should be kept on file with each project. 15A NCAC 04B.0188(c). When plans are submitted as a whole package and then split for the respective department reviews, a copy of all relevant plan items including the measure design calculations, narrative, existing conditions, deed, etc. should be kept in the E&SC file as well as kept with any other departments.
- 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 for and conduct the land-disturbing activity. G.S. 113A-54.1(a). A letter of consent/landowner-builder agreement letter should be obtained in all cases where the party conducting the land disturbance and landowner of record differ.

Follow-Up Update:

During the Continued Review period from May 2021 through September 2021, the City conducted 9 plan reviews, issued 3 approvals and 6 disapprovals. During this period the City conducted 221 inspections and has not issued any NOV’s or CPAs. The City currently has 7 staff which contribute 4 full time equivalents to the erosion control program and 11 open projects.

Following our initial review, the City has begun to require a copy of the property deed and a letter of consent/landowner-builder agreement, if applicable, be submitted as part of the complete application. The City is now sending out official letters of disapproval within 30-days of receiving the complete application when a plan is reviewed and found to be inadequate. All relevant application items are being kept in the E&SC file as well as with any other department files when applications are submitted as a package and must be split for different departments to review. DEMLR staff has conducted oversight inspections with City staff throughout the review period and received periodic updates from the City.

The following is a short update based on the inspections conducted by the City following the site inspection conducted on the day of the March review and updates given by City and DEMLR staff.

1. Springfield Park Apartments:

This project consists of 10.5 acres disturbed for residential development. This project was found to be out of compliance on the day of the March 25th review for failure to maintain perimeter measures, failure to provide groundcover on inactive or completed areas and minor sediment loss into the roadside ditch where water line boring had recently been conducted. City staff found that all areas of concern were addressed during the next inspection. Throughout the Continued Review period City inspectors found this site to be out of compliance at times for measures needing maintenance. No sediment loss was noted at any time during this time. A recent inspection conducted by the City on August 4, 2021, found this site to be out of compliance needing maintenance on inlet protections throughout, and slopes near the inlet to a basin needing to be repaired and stabilized. The following inspection conducted on August 16, 2021, found all corrective actions had been addressed and the site to be in-compliance.

2. MSA Expansion:

This project consists of 7.1 acres disturbed for industrial development. This project was found to be out of compliance on the day of the March 25th review for failure to provide adequate groundcover throughout the site and failure to install and maintain measures. The City continued to monitor this site, noting maintenance and stabilization needs as they were observed by inspectors. This project has since completed construction and the City is now monitoring for permanent vegetation to be established before releasing the project. On the most recent inspection conducted on October 6, 2021, the site was found to have approximately 55% vegetation density and sections of silt fence needed to be maintained.

3. Gateway Marketplace:

This project consists of 27.4 disturbed acres for commercial development. This project was under an NOV during the day of the March 25th review for failure to stabilize one small area along the front ditch line of the project. During the initial review, construction for this project had been completed. The City continued to monitor this project and work with the Property Manager and contractor to address the area of concern. This site remained out of compliance until August. Due to the Covid-19 complications and the changes in the contractor working on the project and no signs of sediment loss during this time, the City did not pursue further enforcement. The City denied an ESC plan submitted for further development on this parcel due to the open NOV. After which, the FRP hired a new contractor to address the areas of concern.

The City found this site to be in compliance during an inspection conducted on August 23, 2021. During an inspection conducted by the City on September 28, 2021, the sod used to stabilize the slope had slid down and rills were starting to form. The City found this area to had been addressed during the following inspection conducted on October 20, 2021. The slope had been repaired, seeded, and matted.

4. East Carolina Dental:

This is a commercial development project. This project was not reviewed during our initial March 25th review. The City found this site to be out of compliance during an inspection conducted on June 9, 2021 for maintenance needed on perimeter silt fence. The City found these areas to be addressed during a follow up inspection conducted on June 16, 2021. Overall, inspection reports for this project showed compliance and quick response to areas of concern noted by the City.

Conclusion:

During the continued review period, DEMLR staff has received periodic updates from the City and noted the improvements made by the program. The City of Jacksonville has taken steps to address the deficiencies found and implement some of the recommendations made by DEMLR staff during the March 25, 2021, review. The City is now sending official letters of disapproval when plans are found to be inadequate. A copy of the property deed and a landowner/builder consent agreement, when applicable, are now required as part of the application packet and a copy of all application documents are being kept in the ESC file in cases where multiple departments require the documents for review. DEMLR staff has conducted oversight inspections with City staff and found that inspections were being conducted properly. City staff has made the necessary changes to address the deficiencies noted during the initial review and demonstrated their knowledge and ability to effectively implement the local program's delegated authority.

Based on the formal review conducted on March 25, 2021, and the Continued Review period, DEMLR staff recommends to "Continue Delegation" of the City of Jacksonville Local Erosion and Sedimentation Control Program. This report will be presented to the Sedimentation Control Commission (SCC) on November 4, 2021.

Local Program Report to the SCC Iredell County, Continued Review Follow-up

On May 4, 2021, a report was presented to the Sedimentation Control Commission based on the formal review of the Iredell County Erosion and Sedimentation Control Program conducted on April 8, 2021. The Commission voted to “Continue Delegation with Review for 6 months.” During the April 8th review, the following issues and required actions that the program should implement to address said issues were noted:

Previous Issues Noted:

- The number of monthly inspections conducted has dropped since September of 2020. Though this was attributed to staff turnover and illness, site inspections had not returned to an adequate frequency at the time of the review.
- Self-Inspection records and permit documents are not being reviewed during site inspections.
- Lack of knowledge of whether a stream is considered jurisdictional as well applicability of 404/401 permits, or Riparian Buffer Authorization. Staff does require that 404/401 permits be obtained or a declaration stating that no 404/401 permits are required, be presented at the preconstruction meeting or prior to disturbing land in the subject area on projects where jurisdictional waters are clearly delineated by the designer.
- Very few plan disapprovals are being issued; conditional approvals are being issued during plan reviews as “Approval with Modifications.” Some of these “modifications” are for documentation that is needed upon plan application but instead are being requested prior to breaking ground and after a letter of certificate of approval has been issued.
- NOV/Penalty assessment document has conflicting language regarding deadline for payments or appeals. One paragraph states a 15-day deadline, while another states a 30-day deadline for payment. Penalties assessed still included “Staff investigative costs” in the total penalty calculation.

Required Actions:

- Regular inspections should be conducted. §113A-61.1(a). Reports should be generated when inspections are conducted.
- County staff should be checking for self-inspection records and required permit documentation during their site inspections. Self-inspections should be conducted for initial installation or modification of any erosion and sediment control devices and practices described in the approved plan as well as during or after each of the phases of the approved plan. §113A-54(e) and 15A NCAC 04B.0131. In addition, weekly and rain-event inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG010000.
- Staff should be verifying the waterbodies listed on the plans when they are received, and ensure they are properly labeled on all plans prior to approval. All applicable State and Federal permits and certifications should be presented to the County prior to land disturbance commencing in subject areas. If land disturbance is allowed to start on other

sections of a site, the area not to be disturbed should be clearly marked on the plans and in the field until all applicable 404/401 permits and certifications are in hand.

- The only conditional approval allowed is that of compliance with federal and state water quality laws. §113A-54.1(a). No other conditional terms may be offered when issuing a letter or certificate of plan approval. Approvals with Modifications are not conditioned approvals and should not be used as such.
- Staff investigative costs can no longer be included in the penalty total. This consideration in calculation penalty amounts has been removed from Title 15A of the NC Administrative Code, Chapter 04B.
- Update all template letters to reflect the most current references to the North Carolina Administrative Code. Plan approval letters should be updated with the most recent reference to the NCG01 permit process through the State Website when required and since preconstruction meetings are no longer required to be shown on the plans, the last sentence of your approval letters regarding these meetings should be removed. 15A NCAC 04B.0120(d).

Follow-Up Update:

During the period from May 2021 through September 2021, the County has conducted 55 plan reviews/re-reviews, approved 51, disapproved 4 and conducted 414 inspections. The County issued 4 NOVs, 1 CPA and 9 Stop Work Orders/ Permit or Inspection holds. The County currently has 188 open projects. The County reported that they currently have 2 Full Time Equivalent Staff for the erosion control program and have hired a third full time staff member who will start in late October. The County has updated the template language in their Letters of Approval, Disapproval and NOVs to reflect the most up to date administrative code. The County is currently working to update their Local Ordinance per the 2020 Model Ordinance. During the Continued Review period, DEMLR staff has worked with County staff to conduct oversight inspections as well as observe and provide guidance during plan reviews.

The following is a short update based on the inspections conducted by the County following the site inspections conducted on the day of the April 8th review and updates given by County and DEMLR Staff.

1. The Revere at Mooresville:

This project consists of 30.0 acres disturbed for residential development. This project was found to be out of compliance the day of the April 8th review for the clean water diversion not being properly stabilized, rills forming, exposed stockpiles located directly above the clean water diversion ditch and basins needing to be cleaned out or installed properly per the approved plan. On April 15, 2021, the county conducted a follow-up inspection and found that progress had been made to address issues noted during the initial review, but the site remained out of compliance until all areas had been addressed. The County found this site to be in compliance with minor maintenance needs on its next inspection on May 18, 2021. This site continued to be in compliance with general maintenance needs noted on subsequent inspections. The most recent inspection conducted by the County on October 11, 2021, noted the need to reseed areas of the clean water diversion ditch where vegetation has died off, maintain a few inlet protections and a reminder to stabilize a basin once conversion to its post-construction sizing was completed.

2. Late Apex Storage:

This project consists of 6.1 disturbed acres for commercial development. This project was found to be out of compliance the day of the April 8th review for off-site sedimentation which had occurred in the rear of the site and was beginning to encroach on a stream buffer.

Construction on this project had been completed and the landscaping was being installed during our initial review. On April 15, 2021, the County conducted a follow-up inspection and found this site to be in compliance. The areas of sediment loss had been cleaned up and were being re-stabilized. Silt fence and outlet protections had been replaced or repaired. The remainder of the site was being permanently stabilized. The County found this project to be in-compliance during subsequent inspections and have continued to monitor for permanent vegetation before the project can be closed out.

3. Pine Street Townhomes:

This project consists of 7.0 acres disturbed for residential development. This project was found to be out of compliance the day of the April 8th review for minor off-site sedimentation below one basin and the skimmer being buried in mud and unable to function properly. During the following inspection conducted by the County on May 18, 2021, this project was found to have addressed all areas and was in-compliance. On the most recent inspection conducted by the County on October 11, 2021, this project was out of compliance for failure to maintain measures and inadequate temporary stabilization. County staff noted a silt fence stone outlet above a stream which needed immediate maintenance and silt sack curb inlet protections which needed to be installed, perimeter slopes needing to be stabilized where work had been completed and self-inspection records being incomplete. No off-site sedimentation was noted during this inspection.

4. Mill One:

This project consists of 2.5 acres disturbed for residential development. This project was not reviewed during our April 8th review. DEMLR staff conducted an oversight inspection with county staff on this site on August 19, 2021. The County had received a complaint of a large slope failure into an adjacent park from this project. Prior to the August 19th inspection the majority of the offsite impact had been removed. Maintenance needs on measures throughout the site were noted along with the need to finish repairing and stabilizing the failed slopes. Staff also determined that waste piles had been removed from the project and placed on another site which was not included in the approved plan. The County sent an NOV and assessed a civil penalty on August 27, 2021, for violations found during the August 19th inspection. The County conducted a follow-up inspection on September 28, 2021 and found that all areas of non-compliance from the NOV had been addressed. The County found this site to be in compliance during its most recent inspection on October 13, 2021.

Conclusion:

During the continued review period, DEMLR staff has received periodic updates from the County and noted the improvements made by the program. The County has taken steps to correct the deficiencies found during the April 8th review and has begun to implement some of the recommendations DEMLR staff made. The County has updated their template letters and is working to update their Local Ordinance per the 2020 Model Ordinance. The County is verifying that streams and water bodies are properly labeled and delineated during plan review and that all applicable water quality permits are being obtained. The addition of a third inspector will further

aid in distributing the program's workload. DEMLR staff has seen the improvement over the past few months through the inspection reports, updates provided by the County, and through multiple oversight inspections and plan reviews. County staff has shown their knowledge of erosion and sedimentation control practices and policies and their ability to effectively implement the local program's delegated authority.

Based on the formal review conducted on April 8, 2021, and the Continued Review period, DEMLR staff recommends to "Continue Delegation" of the Iredell County Local Erosion and Sedimentation Control Program.

This report will be presented to the Sedimentation Control Commission (SCC) on November 4, 2021.

MODEL LOCAL ORDINANCE

SOIL EROSION and SEDIMENTATION CONTROL

Revised November 2021

SEDIMENTATION CONTROL COMMISSION

RALEIGH, NORTH CAROLINA

11/4/2021

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ORDINANCE NO. _____

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

NOW, THEREFORE, BE IT ORDAINED by the (Governing Body) of the (City), (Town), (County) hereby adopts the following ordinance.

SECTION 1 Title

This ordinance may be cited as the (city), (town), (county) Soil Erosion and Sedimentation Control Ordinance.

SECTION 2 Purpose

This ordinance is adopted for the purposes of:

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

SECTION 3 Definitions

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

- (a) Accelerated Erosion - means any increase over the rate of natural erosion as a result of land-disturbing activity.
- (b) Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- (c) Adequate Erosion Control Measure, Structure, or Device - means one which controls the soil material within the land area under responsible control of the Person conducting the land-disturbing activity.
- (d) Affiliate – means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another Person.

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

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

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

SECTION 4 Scope and Exclusions

- (a) Geographical Scope of Regulated Land-Disturbing Activity. This ordinance shall apply to land-disturbing activity within the territorial jurisdiction of the (city), (town), (county) and to the extraterritorial jurisdiction of the (city), (town), (county) as allowed by agreement between 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:
 - (i) forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
 - (ii) dairy animals and dairy products.
 - (iii) poultry and poultry products.
 - (iv) livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - (v) bees and apiary products.
 - (vi) fur producing animals.
 - (vii) mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.

 - (2) An Activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract.

 - (3) An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.

- (4) A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
 - (5) An activity which is essential to protect human life during an emergency.
 - (6) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
 - (7) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2
- (c) Plan Approval Requirement for Land-Disturbing Activity. No Person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a Plan approval from the (city)(town)(county).
 - (d) Protection of Property - Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.
 - (e) More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.
 - (f) Plan Approval Exceptions. Notwithstanding the general requirement to obtain a Plan approval prior to undertaking land-disturbing activity, a Plan approval shall not be required for land-disturbing activity that does not exceed _____ acre in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

SECTION 5 Mandatory Standards for Land-Disturbing Activity

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

- (a) Buffer zone
 - (1) Standard Buffer. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity.

- (i) Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
 - (ii) Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- (2) Trout Buffer. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal.
 - (i) Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
 - (ii) Trout Buffer Measurement. The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank to the nearest edge of the disturbed area.
 - (iii) Limit on Land Disturbance. Where a temporary and minimal disturbance has been permitted as an exception to the trout buffer, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent (10%) of the total length of the buffer zone within the tract to be disturbed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.
 - (iv) Limit on Temperature Fluctuations. No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations in the trout waters, as set forth in 15 NCAC 2B.0211 "Fresh Surface Water Classification and Standards."
- (b) Graded Slopes and Fills. The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be

demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.

- (c) Fill Material. Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is permitted by the Department's Division of Waste Management to operate as a landfill. Not all materials described in Section .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.
- (d) Ground Cover. Whenever land-disturbing activity that will disturb more than _____ acre is undertaken on a tract, the Person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in Section 8(c)(4), provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 90 calendar days following completion of construction or development.

[NOTE: ONE ACRE OR LESS SHALL BE SPECIFIED IN THE ABOVE PARAGRAPH.]

- (e) Prior Plan Approval. No Person shall initiate any land-disturbing activity that will disturb more than _____ acre on a tract unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with and approved by the (city)(town)(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.

[NOTE: ONE ACRE OR LESS SHALL BE SPECIFIED IN THE ABOVE PARAGRAPH. LOCAL PROGRAMS MAY HAVE PERMITS WHICH ALLOW FOR LAND DISTURBING ACTIVITIES TO BE INITIATED SUBSEQUENT TO BOTH A PLAN APPROVAL AND THE LOCAL PERMIT BEING ISSUED. IN THIS CASE, THE ABOVE SENTENCE WILL NEED TO BE REVISED OR EXPANDED.]

The (city)(town)(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.

SECTION 6

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 will disturb more than ____ acre on a tract. The Plan shall be filed with the (city)(town)(county); a copy shall be simultaneously submitted to the ____ Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity.

[NOTE: ONE ACRE OR LESS SHALL BE SPECIFIED IN THE ABOVE PARAGRAPH. THE LAST SENTENCE IN PARAGRAPH (a) DEALING WITH PLAN SUBMISSIONS MAY BE DELETED IF SUBMISSIONS TO THE SOIL AND WATER CONSERVATION DISTRICTS ARE NOT REQUIRED UNDER PARAGRAPH (f) BELOW.]

- (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) 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 (city)(town)(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.

- (e) Content. The Plan required by this section shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the (city)(town)(county) on request.
- (f) Soil and Water Conservation District Comments. The District shall review the Plan and submit any comments and recommendations to the (city)(town)(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 the (city)(town)(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.

[NOTE: PARAGRAPH (f) MAY BE DELETED WITH CONSENT FROM THE SEDIMENTATION CONTROL COMMISSION.]

- (g) Timeline for Decisions on Plans. The (city)(town)(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. The (city)(town)(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.
- (h) Approval. The (city)(town)(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. The (city)(town)(county) shall condition approval of Plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The (city), (town), (county) may establish an expiration date, not to exceed three (3) years, for Plans approved under this ordinance whereby no land-disturbing activity has been undertaken.
- (i) Disapproval for Content. The (city)(town)(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.
- (j) Other Disapprovals. The (city)(town)(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. The (city)(town)(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:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice.
- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due.
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article.
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

Commented [CJ1]: Should this not be replaced by a semi-colon with the word "or" ? I read as one or more conditions could apply and not all conditions need apply. Maybe it is understood ?

In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the (city)(town)(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. The (city)(town)(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 Section 16(a), the applicant may appeal the local government's disapproval of the plan directly to the Commission.

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

- (k) Transfer of Plans. The (city)(town)(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) The (city)(town)(county) may transfer a plan if all of the following conditions are met:
 - (i) The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and documentation of property ownership.
 - (ii) The (city)(town)(county) finds all of the following:
 - a. The plan holder is one of the following:
 1. A natural person who is deceased.
 2. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.

3. A Person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 4. A Person who has sold the property on which the permitted activity is occurring or will occur.
 - b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - c. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - d. There will be no substantial change in the permitted activity.
- (2) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
 - (3) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
 - (4) Notwithstanding changes to law made after the original issuance of the plan, the (city)(town)(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 the (city)(town)(county) from requiring a revised plan pursuant to G.S. 113A-54.1(b).
- (l) 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.
 - (m) Preconstruction Conference. When deemed necessary by the Approving Authority, a preconstruction conference may be required and noted on the approved plan.
 - (n) 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.
 - (o) Required Revisions. After approving a Plan, if the (city)(town)(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, the (city), (town), (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, the (city)(town)(county) determines that the Plan is inadequate to meet the requirements of this ordinance, the (city, (town), (county) may require any revision of the Plan that is necessary to comply with this ordinance.
 - (p) Amendment to a Plan. Applications for amendment of a Plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the

(city)(town)(county), the land-disturbing activity shall not proceed except in accordance with the Plan as originally approved.

- (q) 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.
- (r) Self-Inspections. The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). In addition, weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000. The Person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

Where inspections are required by Section 6(r) of this Ordinance or G.S. 113A-54.1(e), the following apply:

- (1) The inspection shall be performed during or after each of the following phases of the plan:
 - (i) initial installation of erosion and sediment control measures;
 - (ii) clearing and grubbing of existing ground cover;
 - (iii) completion of any grading that requires ground cover;
 - (iv) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
 - (v) transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or Person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item (iii) of this Item.
- (2) Documentation of self-inspections performed under Item (1) of this Rule shall include:
 - (i) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
 - (ii) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
 - (iii) The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the

inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. 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.

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

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.

SECTION 7 Basic Control Objectives

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

- (a) Identify Critical Areas - On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
- (b) Limit Time of Exposure - All land-disturbing activities are to be planned and conducted to limit exposure to the shortest time specified in G.S. 113A-57, the rules of 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.

SECTION 8 Design and Performance Standards

- (a) Except as provided in Section 8(b)(2) and Section 8(c)(1) of this ordinance, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the latest edition of the ~~USDA~~ **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 Standards for The Upper Neuse River Basin (Falls Lake Watershed)

In addition to any other requirements of State, federal, and local law, land-disturbing activity in the watershed of the drinking water supply reservoir that meets the applicability requirements of Session Law 2009-486, Section 3. (a), shall meet all of the following design standards for sedimentation and erosion control:

- (1) Erosion and sedimentation control measures, structures, and devices 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 nrcs.usda.gov or according to procedures adopted by any other agency of the State or the United States.
- (2) Sediment basins shall be planned, designed, and constructed so that the basin will have a settling efficiency of at least 70 percent for the 40-micron size soil particle transported into the basin by the runoff of the two-year storm that 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 the State or the United States.
- (3) Newly constructed open channels shall be planned, 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 steeper side slopes or where the side slopes are stabilized by using mechanical devices, structural devices, or other ditch liners sufficient to restrain accelerated erosion. The angle for side slopes shall be sufficient to restrain accelerated erosion, as determined by the Approving Authority, based on soil conditions.

- (4) For an area of land-disturbing activity where grading activities have been completed, temporary or permanent ground cover sufficient to restrain erosion shall be provided as soon as practicable, but in no case later than seven calendar days after completion of grading. For an area of land-disturbing activity where grading activities have not been completed, temporary ground cover shall be provided as follows:
- (i) For an area with no slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 14 calendar days.
 - (ii) For an area of moderate slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 10 calendar days. For purposes of this Item, "moderate slope" means an inclined area, the inclination of which is less than or equal to three units of horizontal distance to one unit of vertical distance.
 - (iii) For an area of steep slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of seven calendar days. For purposes of this Item, "steep slope" means an inclined area, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance.

SECTION 9 Storm Water Outlet Protection

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

If condition (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed

to withstand the expected velocity anywhere the velocity exceeds the “prior to development” velocity by 10%.

Maximum Permissible Velocities Table

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

<u>Material</u>	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (Colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

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

- (c) Acceptable Management Measures - Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The (city)(town)(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 the (city), (town), (county) that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

SECTION 10 Borrow and Waste Areas

If the same Person conducts the land-disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land-disturbing activity, unless the borrow or waste activity is regulated under the Mining Act of 1971, G.S. 74, Article 7, or is a landfill regulated by the Division of Waste Management. If the land-disturbing activity and any related borrow or waste activity are not conducted by the same Person, they shall be considered by the Approving Authority as separate land-disturbing activities.

SECTION 11 Access and Haul Roads

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

SECTION 12 Operations in Lakes or Natural Watercourses

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

SECTION 13 Responsibility for Maintenance

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

SECTION 14 Additional Measures

Whenever the (city)(town)(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.

SECTION 15 Fees

The (city)(town)(county), may establish a fee schedule for the review and approval of Plans.

[NOTE: THE LOCAL PROGRAM SHALL CONSIDER THE ADMINISTRATIVE AND PERSONNEL COSTS INCURRED FOR REVIEWING THE PLANS AND FOR COMPLIANCE RELATED ACTIVITIES.]

[NOTE: UNDER G.S. §113A-60(a), THE FEE FOR A SINGLE-FAMILY LOT IN A RESIDENTIAL OR COMMON PLAN OF DEVELOPMENT THAT IS LESS THAN ONE ACRE CANNOT EXCEED \$100.00 PER LOT.]

SECTION 16 Plan Appeals

- (a) Except as provided in Section 16(b) of this ordinance, the appeal of a disapproval or approval with modifications of a Plan shall be governed by the following provisions:
 - (1) The disapproval or modification of any proposed Plan by the (city)(town)(county), 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 (city)(town)(county), (appropriate local agency), within _____ days after the date of the appeal or request for a hearing.

- (3) The agency conducting the hearings shall make recommendations to the governing body of the (city)(town)(county), within ____ days after the date of the hearing on any Plan.
- (4) The Governing Body of the (city)(town)(county), will render its final decision on any Plan within ____ days of receipt of the recommendations from the agency conducting the hearing.
- (5) If the (city)(town)(county) upholds the disapproval or modification of a proposed Plan following the hearing, the Person submitting the Plan shall then be entitled to appeal the (city)(town)(county)'s decision to the Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d)

[NOTE: THE APPEALS PROCEDURES ABOVE ARE INCLUDED ONLY TO ENSURE THAT EACH LOCAL ORDINANCE CONTAINS PROCEDURES FOR APPEALS. THE PROCEDURE SHOULD BE WRITTEN TO CONFORM TO APPLICABLE EXISTING PROCEDURES, OR AS CREATED FOR THE ADMINISTRATION OF THE ORDINANCE.]

- (b) In the event that a Plan is disapproved pursuant to Section 6(j) of this ordinance, the applicant may appeal the (city)(town)(county)'s disapproval of the Plan directly to the Commission.

SECTION 17 Inspections and Investigations

- (a) Inspection. Agents, officials, or other qualified persons authorized by the (city), (town), (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 the (city), (town), (county), while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
- (c) Notice of Violation. If the (city)(town)(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, the (city)(town)(county) shall ~~deliver the notice of violation in person and shall~~ offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program on behalf of the Approving Authority, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. ~~If the (city)(town)(county) is unable to deliver the notice of violation in person within 15 days following discovery of the violation,~~ the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

- (d) Investigation. The (city)(town)(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. The (city)(town)(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.

SECTION 18 Penalties

- (a) Civil Penalties
 - (1) Civil Penalty for a Violation. Any Person who violates any of the provisions of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The maximum civil penalty amount that the (city)(town)(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).

[NOTE: UNDER G.S. §113A-61.1(d), DAMAGE OR DESTRUCTION OF A SILT FENCE OCCURRING DURING LAND-DISTURBING ACTIVITIES OR CONSTRUCTION ON A DEVELOPMENT PROJECT SHALL NOT BE ASSESSED A CIVIL PENALTY PROVIDED THAT THE SILT FENCE IS REPAIRED OR REPLACED WITHIN THE COMPLIANCE PERIOD/DEADLINE NOTED IN THE INSPECTION REPORT OR NOTICE OF VIOLATION. ENSURE VIOLATORS HAVE AN OPPORTUNITY TO CORRECT THESE VIOLATIONS. THIS STATUTE DOES NOT APPLY TO OFF-SITE SEDIMENT THAT OCCURS DUE TO THE SILT FENCE NOT BEING IN PLACE, BUT MERELY DAMAGE TO THE SILT FENCE ITSELF.]

- (2) Civil Penalty Assessment Factors. The governing body of the (city)(town)(county) 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.

- (3) Notice of Civil Penalty Assessment. The governing body of the (city)(town)(county) shall provide notice of the civil penalty amount and basis for assessment to the Person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4. A notice of assessment by the (city)(town)(county) shall direct the violator to either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the (city)(town)(county) (as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program), or file a request with the ~~Sedimentation Control Commission~~ (city, town, county commission/board) 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.

- (4) Final Decision: The final decision on contested assessments shall be made by the governing body of the (city)(town)(county) in accordance with (the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program.)

- (5) Appeal of Final Decision. Appeal of the final decision of the governing body of the (city)(town)(county) shall be to the Superior Court of the county

where the violation occurred. Such appeals must be made within 30 days of the final decision of the governing body of the (city)(town)(county).

- (6) Remission of Civil Penalties. A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the (city, town, county commission/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.

[NOTE: THE PETITIONER HAS THE BURDEN OF PROVIDING INFORMATION CONCERNING THE FINANCIAL IMPACT OF A CIVIL PENALTY ON THE PETITIONER AND THE BURDEN OF SHOWING THE PETITIONER'S FINANCIAL HARDSHIP. THE CITY/TOWN/COUNTY COMMISSION OR BOARD MAY REMIT THE ENTIRE AMOUNT OF THE PENALTY ONLY WHEN THE PETITIONER HAS NOT BEEN ASSESSED CIVIL PENALTIES FOR PREVIOUS VIOLATIONS AND PAYMENT OF THE CIVIL PENALTY WILL PREVENT PAYMENT FOR NECESSARY REMEDIAL ACTIONS. THE CITY/TOWN/COUNTY COMMISSION OR BOARD MAY NOT IMPOSE A PENALTY UNDER THIS SECTION THAT IS IN EXCESS OF THE CIVIL PENALTY IMPOSED BY THE LOCAL PROGRAM.]

[NOTE: THE FOREGOING PROCEDURES ARE OFFERED AS GUIDANCE TO LOCAL GOVERNMENTS TO ENSURE THAT CIVIL PENALTIES ARE ACCOMPANIED BY REMISSION REQUESTS AND APPEAL PROCEDURES, INCLUDING HEARING OPPORTUNITIES. REFER TO THE REMISSION

GUIDELINES FOR LOCAL GOVERNMENT EROSION AND SEDIMENT CONTROL PROGRAMS FOR THE FULL PROCEDURE.]

- (7) Collection. If payment is not received within 30 days after it is due, the (city)(town)(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.
- (8) Credit of Civil Penalties. The clear proceeds of civil penalties collected by the (city)(town)(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 the (city)(town)(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 the (city)(town)(county) for the prior fiscal year.

[IN ANY EVENT, THE COST PERCENTAGE SHALL NOT EXCEED TWENTY PERCENT (20%) OF PENALTIES COLLECTED.]

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

SECTION 19 Injunctive Relief

- (a) Violation of Local Program. Whenever the governing body has reasonable cause to believe that any Person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the (city)(town)(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 the (city)(town)(county), for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.
- (b) Abatement of Violation. Upon determination by a court that an alleged violation

is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this ordinance.

SECTION 20 Restoration After Non-Compliance

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

SECTION 21 Severability

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

SECTION 22 Effective Date

This ordinance becomes effective on _____.

[IN ESTABLISHING AN EFFECTIVE DATE, THE LOCAL GOVERNMENT SHOULD CONSIDER THE NEED FOR LEAD-TIME TO ORIENT AND EDUCATE THOSE AFFECTED BY FULL IMPLEMENTATION OF THE ORDINANCE.]



2021

NCDOT

Erosion and Sedimentation Control Program
Annual Report



NCDOT EROSION AND SEDIMENTATION CONTROL PROGRAM 2021 ANNUAL REPORT

NCDOT EROSION AND SEDIMENTATION CONTROL PROGRAM

In 1991 the NC Sedimentation Control Commission reviewed the NC Department of Transportation's efforts to comply with the Sedimentation Pollution Control Act of 1973 and the subsequent 1974 NCDOT Delegated Erosion and Sedimentation Agreement.

Based on the review, the 1974 agreement was updated. The revised agreement was submitted to, and approved by the Sedimentation Control Commission on February 25, 1991 and functions as the core of the current NCDOT program.

Within NCDOT, the Roadside Environmental Unit (REU) monitors the delegated authorities. This includes design, review, monitoring and training for all aspects of the Erosion and Sedimentation Control Program. Improvements in technology and NCDOT research have in turn improved design standards and techniques for erosion and sedimentation control.

This annual report outlines and highlights the work implemented and accomplished in 2020-2021. It is important to note that this is an overview of the NCDOT Erosion and Sedimentation Control Program and provides a summarization of the programs overall content.

EXECUTIVE SUMMARY

The executive summary reflects the work accomplished over the past year from July 1, 2020 to June 30, 2021. Project information is based on the total number of projects that were awarded for construction plus the number of projects that were actively under construction during this time period.

EROSION CONTROL PLAN DESIGN / REVIEW JULY 2020 - JUNE 2021

NCDOT is delegated the authority to review and approve erosion and sedimentation control plans for its land disturbing activities. The following is a summary of the projects that required an approved erosion and sedimentation control plan.

Project Type	Erosion Control Plans Design / Review
Contract Construction Projects	77
NC Turnpike Authority Projects	1
Division Construction/Bridge/Maintenance Projects	88
Vertical Construction Projects	0
Total Plans Designed/Reviewed	166

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COMPLIANCE REVIEWS

JULY 2020 - JUNE 2021

The following is a summary of the compliance reviews that were performed for active land disturbing projects during the period of July 1, 2020 to June 30, 2021. The compliance reviews were conducted by the Roadside Environmental Unit's Field Operations Section across fourteen Highway Divisions.

Project Type	Compliance Reviews	ICA Issued	Projects Receiving ICA	Projects Receiving CICA	NOV Issued By Land Quality
Contract Construction Projects	2,813	6	6	0	0
NC Turnpike Authority Projects	66	0	0	0	0
Maintenance Projects	111	0	0	0	0
Vertical Construction Projects	15	0	0	0	0
Rail Division Projects	13	0	0	0	0
Bridge Maintenance Projects	280	0	0	0	0
Resurfacing Projects	90	0	0	0	0
Total	3,388	6	6	0	0

- Contract Construction Projects: Defined as a project that has been let to a private contractor for any land disturbing activity that exceeds one acre. Contract construction projects are advertised and awarded either from Raleigh or from the local Division.
- NC Turnpike Projects: The North Carolina Turnpike Authority is now part of NCDOT Division of Highways. Since it was originally added to the Department's delegation, it's projects have been tracked separately from Contract Construction projects.
- Maintenance Projects: Projects include all land disturbing activities associated with the construction or maintenance of the secondary road system of North Carolina. Work is conducted by state forces or small business contracts.
- Vertical Construction Projects: Projects include the construction of facilities associated with the NC Department of Transportation. The contracts are developed by the General Services Section of NCDOT
- Rail Division Projects: Projects include the construction of railway corridors and bridges associated with NC DOT Rail Division.
- Bridge Maintenance Projects: Projects include small bridge replacement and pipe culvert replacement. Work is conducted by state forces or small business contracts.
- Resurfacing Projects: Projects include the resurfacing of existing roadways which require shoulder reconstruction.

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Based on a random selection by DEMLR, the following projects were chosen for review. Projects are reviewed jointly by NCDOT and DEMLR staff to determine the overall program performance.

Division	County	TIP #	Route	Length
1	Northampton	State Forces	Pipe replacement on SR 1541 Burnt Bridges Road	0.1
2	Craven/ Carteret	R-1015	US 70 from North of Pine Grove to North of the Carteret County Line (Havelock Bypass)	10.4
3	New Hanover	U-4751	SR 1409 Military Cutoff Road Extension	4.2
4	Wayne	U-2714	US 117 alternate from US 70 Bypass to SR 1571 in Goldsboro	1.55
5	Wake	I-5700	I-40 and Airport Blvd and Auxiliary Lane on I-40 WB from Airport Blvd to I-540	0.8
6	Robeson		Bridge 239 over Burn Swamp on SR 1515 Union Chapel Road	0.1
7	Guilford	U-2581BA	US 70 from West of SR 3045/SR 2819 to East of SR 2826	1.49
8	Chatham/Lee	B-4968	Bridge 10 over Deep River on US 15-501 and NC 87	0.9
9	Rowan		Bridge 64 over Beaverdam Creek on SR 1952 Godbey Road	0.13
9	Rowan		Bridge 255 over Grants Creek on SR 1503 Grace Church Road	0.1
10	Anson	B-5371	Bridge 234 over Cabbage Branch on SR 1637 Jacks Branch Road	0.1
11	Wilkes	BR-0125	Bridge 663 over East Prong Roaring River on SR 1002 Traphill Road	0.23
11	Wilkes	BR-0124	Bridge 166 over West Prong Roaring River on SR 1745 Shumate Mountain Road	0.12
12	Iredell	I-3819B, U-6039	I-40/I-77 Interchange	4.0
13	Buncombe/ Henderson	I-4700	I-26 from NC 280 to I-40	7.49
14	Clay	A-0011C	NC 69 from the Georgia State Line to US 64 (Hayesville Bypass)	3.8

NCDOT EROSION AND SEDIMENTATION CONTROL PROGRAM 2021 ANNUAL REPORT

NON COMPLIANT POLICIES AND PROCEDURES

The Department's delegation agreement with the Sedimentation Control Commission allows for the Department to review sediment and erosion control plans, and to perform compliance inspections for projects under the operational control of the Department. Although the SCC delegates compliance inspection to the Department, it did not grant enforcement authority. Since the Department can not issue a fine to itself, a series of policies and procedures were developed to correct compliance issues with highway and maintenance construction projects. The following summarizes the processes involved to ensure the Department's projects are in compliance.

Daily Project Inspection:

Project personnel inspect and monitor the construction of a project on a daily basis and record daily activities and rainfall amounts. In the event that a compliance issue develops, the project personnel in conjunction with the contractor will address the issue and corrective actions are made. If the corrections are deemed severe by the project engineer then operations on the project are ceased until all the compliance issue is rectified.

Monthly Project Inspection:

Roadside Environmental Field Operations performs a secondary level of compliance inspections on land disturbing projects to determine if the sediment and erosion control plans are implemented accordingly and that the necessary maintenance is occurring. Permit conditions are evaluated and jurisdictional areas inspected for compliance. NPDES documentation is reviewed and noted if any deficiencies are identified. If the compliance inspection identifies a situation that is not being corrected or can be corrected in a timely manner then an ICA (Immediate Correction Action) notice is issued. The ICA alerts NCDOT Management of an issue that needs immediate attention. The project personnel is then charged with correcting the situation as directed by the Chief Engineer. A follow up inspection is then made to determine that the situation was corrected and the steps that were take to prevent a reoccurrence.

The ICA notice is supported by the policies and procedures outlined by the Chief Engineer. The policy outlines the steps that will be taken and the consequences associated with failing to comply. Notification and subsequent reports on projects that have received and ICA are distributed to the Chief Engineer, Division Engineer, Regional DEMLR Engineer, State Sediment Engineer, and the State Roadside Environmental Engineer. A final report is prepared and delivered to the Chief Engineer describing what happened to cause the ICA and what steps were taken by the Division to ensure future compliance.

CERTIFICATION

The Biological & Agricultural Engineering and Soil Science Departments at N.C. State University are partnering with NCDOT to offer an Erosion and Sediment Control/Storm water Certification Program. The certification program provides the required personnel training to ensure compliance with erosion and sediment control/storm water provisions on NCDOT projects.

NCDOT requires all contractors and consultants to have a certified supervisor and foreman to oversee operations on NCDOT projects to ensure compliance with the Sedimentation Pollution Control Act as well as other environmental regulations.

Certification must be renewed every three years.

CERTIFICATION LEVELS

- Level I: Erosion & Sediment Control/Storm water Inspector /Installer
Currently Certified - 1,155
- Level II: Erosion & Sediment Control/ Storm water Site Management.
Currently Certified - 4,829
- Level III: Design of Erosion and Sediment Control Plans
Currently Certified - 611

***Review of
Erosion and Sedimentation Program
Delegation to the North Carolina
Department of Transportation, Division of Highways***

November 4, 2021



Performed By:

NCDEQ

North Carolina Department of Environmental Quality

Division of Energy, Mineral and Land Resources

Land Quality Section

Report By:

Julie Coco, PE, CPESC, State Sediment Specialist

Graham Parrish, EI, Assistant State Sediment Specialist

INTRODUCTION

The Division of Energy Minerals and Land Resources Land Quality Section (DEMLR-LQS) reviewed the program delegation to the North Carolina Department of Transportation (NCDOT) between July 14, 2021, and October 19, 2021. The review and the results reported here are in accordance with requirements of the Sedimentation Control Commission (SCC) delegation to the NCDOT and §113A-54(d)(2) and §113A-56(b).

§113A-54. POWERS AND DUTIES OF THE COMMISSION

(d) In implementing the erosion and sedimentation control program, the [Sedimentation Control] Commission shall:... (2) Assist and encourage other State agencies in developing erosion and sedimentation control programs to be administered in their jurisdictions. The Commission shall approve, approve as modified, or disapprove programs submitted pursuant to G.S. 113A-56 and from time to time shall review these programs for compliance with rules adopted by the Commission and for adequate enforcement.

§113A-56. JURISDICTION OF THE COMMISSION

(b) The [Sedimentation Control] Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any State Agency that has submitted an erosion and sedimentation control program to be administered by it, if the program has been approved by the Commission as being in conformity with the general State program.

GENERAL CONDITIONS OF THE PROGRAM

The NCDOT Division of Highways Sediment and Erosion Control Program was originally delegated in 1991. General conditions of the delegated program include but are not limited to the following statements. The NCDOT's Standard Specifications for Roads and Structures shall provide the basic erosion and sedimentation control requirements to be implemented by the NCDOT. The NCDOT will utilize designs and design criteria for application of its erosion and sediment control program that are consistent with minimum standards promulgated by the Sedimentation Control Commission. The NCDOT shall provide adequate rights of way or easements to accommodate installation and maintenance of appropriate sediment and erosion control measures. The NCDOT will take all reasonable measures to protect all public and private property from siltation damage caused by any Departmental activities. The NCDOT will prepare, or have prepared, erosion and sediment control plans consistent with Commission standards governing all land disturbing activity it undertakes which uncovers one or more contiguous acres of erodible surface. Erosion and sedimentation control plans prepared by and for the NCDOT shall address the following basic control objectives: Identification of Critical

Areas, Limited Time of Exposure, Limit Exposed Areas, Control Surface Water and Control Sedimentation, and Manage Stormwater Runoff.

PROJECT REVIEWS

Fifteen Contract Construction projects and one State Force (in-house operations) project were chosen across the state, at random, with varying stages of construction, sizes, budget, and significance of the projects. Projects reviewed were generally between 20 and 99 percent completed. State Force Projects consists of construction work the Department performs on secondary and primary roadway projects, including bridge management projects. The construction activities of State Force projects are completed using department forces and resources unless the project is contracted. State Force projects are also sometimes referred to as Operations projects.

NCDOT is responsible for two types of inspections on each project: weekly NPDES/SPCA self-monitoring inspections (self-inspections) and monthly Roadside Environmental Unit (REU) inspections. Self-inspections are conducted by a project inspector from the office of the Resident Engineer for active contract construction, or from the office of the county or District Engineer for active maintenance projects. The REU inspections are conducted by one of 7 REU Field Operation Engineers (FOEs). Each engineer covers 2 of the 14 DOT divisions across the state. Generally, the engineers each have one technician who inspects secondary road projects, and some contract construction projects. All projects are to be inspected monthly by the REU. Each project is evaluated on a scale of 1-10 for installation of measures, maintenance of measures, effectiveness of measures, plan implementation and overall project evaluation. A total site score of 6 or less results in the issuance of an “Immediate Corrective Action” report (ICA).

Land Quality Section personnel from the Regional Offices and Central Office accompanied NCDOT personnel on the 16 projects reviewed. Each project consisted of reviewing the erosion control plan for adequacy, examining the project files, and inspecting the project for compliance. Field data was collected on erosion and sediment control measure installation, maintenance, and effectiveness. Timely provision of ground cover, phasing of grading, field revisions and sedimentation damage were also evaluated. Each project was evaluated for overall compliance with the Sedimentation Pollution Control Act. A summary of the projects reviewed follows.

PROJECTS SELECTED

State Force/Operations Projects

Division	DEMLR-Region	County	WBS #	Route	Description
1	Raleigh	North Hampton	1B.206611	Burnt Bridges Road	Dual 48" Pipe Replacement and Upsize

Contract Construction

Division	DEMLR-Region	County	TIP #	Route	Contract Amount	Length (miles)
2	Washington	Carteret/Craven	R-1015	US-70 (Havelock Bypass) from North of Pine Grove to North of the Carteret County Line	\$167,243,715.65	10.353
3	Wilmington	New Hanover	U-4751	SR-1409 (Military Cutoff Road Extension) From SR-1409 to US-17	\$95,498,821.29	4.156
4	Washington	Wayne	U-2714	US-117 Alternate from US-70 Bypass to SR-1571 in Goldsboro	\$15,346,704.64	1.546
5	Raleigh	Wake	I-5700	I-40 and SR-3015 (Airport Blvd) Interchange and I-40 Westbound From SR-3015(Airport Blvd) to I-540	\$34,895,402.71	0.798
6	Fayetteville	Robeson		Bridge 239 Over Burnt Swamp on SR-1515 (Union Chapel Rd.)	\$514,743.20	0.095
7	Winston-Salem	Guilford	U-2581BA	US-70(Burlington Road) from W of SR-3045/SR-2819 to E of SR-2826	\$11,125,538.10	1.49
8	Raleigh	Chatham/Lee	B-4968	Bridge #10 Over Deep River on US-15/501 and NC-87	\$8,861,891.53	0.947
9	Mooreville	Rowan		Bridge #064 over Beaverdam Creek on SR-1952 Bridge #255 over Grant's Creek on SR-1503	\$814,268.77 \$547,804.92	0.134 0.095
10	Fayetteville	Anson		Bridge 234 over Cabbage Branch on Jacks Branch Rd.	\$411,909.30	0.1
11	Winston-Salem	Wilkes	BR-0124 and BR-1025	Bridge #166 Over West Prong Roaring River on SR-1745 Bridge #663 Over East Prong Roaring River on SR-1002	\$921,190.10 \$1,781,757.76	0.12 0.23
12	Mooreville	Iredell	I-3819B, U-6039	I-40/I-77 Interchange; I-40 from SR-2003 to SR-2158; I-77 from SR-2171 to SR-2321, & SR-2321 from Vine St. to SR-2422	\$260,290,000.00	4
13	Asheville	Buncombe/Henderson	I-4700	I-26 from NC-280(Exit 40) to I-40	\$263,010,000.00	7.49
14	Asheville	Clay	A-0011C	NC-69 from the Georgia State Line to US-64 (Hayesville Bypass)	\$46,327,228.88	3.801

PROJECT EVALUATIONS

- **State Force Project: Pipe Replacement on Burnt Bridges Road**

NCDOT Division: 1, North Hampton County

Type of Project: State Force/Operations

Date of Review: 10/19/2021

Evaluation: In Compliance

Sedimentation Damage: No

Comments/Summary:

This is a State Force project which consists of replacing dual 48" corrugated metal pipes on a secondary route in North Hampton County. This project was approximately 50% completed at the time of our review. During removal of the existing pipes, a waterline was discovered above the existing pipe forcing a redesign of the replacement pipes from dual 72" pipes to larger 81"x 59" arched pipes to fit below the water line. These revisions were reviewed and approved by the NCDOT Hydraulics Unit as well as the REU FOE Staff Engineer. During our review, impervious dikes were installed, and the stream was being pumped around the work area. DOT staff indicated that once pipes were installed and backfilled, the area would be stabilized with riprap or seed and matting. NCDOT Staff also stated that wattles are typically installed to reduce the chance of eroding above the pipe's inlet and outlet. This project was scheduled to be completed within 1-2 days from the day of our review. No sedimentation loss was noted. All appropriate permit documentation, NPDES records and a rain gauge were present onsite.



Photo- Impervious Dike and Turbidity Curtain installed downstream (10/19/2021)



Photo- Existing pipe has been excavated (10/19/2021)

- TIP R-1015: US-70 (Havelock Bypass) from North of Pine Grove to North of the Carteret County Line

NCDOT Division: 2, Craven County

Type of Project: Contract

Date of Review: 10/4/2021

Evaluation: In compliance

Sedimentation Damage: No

Recent Project History:

Rainfall: 0.01" (9/30/21), 0.18" (9/24/21), 0.85" (9/23/21)

DOT Inspection Scores: 8 (9/9/21), 8 (8/3/21), 7-New Areas of Concern, 8-Areas of Concern from previous report (7/6/21)

Comments/Summary:

This is a 10.35-mile-long project with a total budget of \$167,243,715.65 that was let out of the Central Office. This project was approximately 30% complete and had received no ICAs at the time of our review. Self-inspection records and monthly REU inspection reports were reviewed. Self-inspection records appeared to be inconsistent with areas of concern noted on monthly REU reports and indicated infrequent inspections of the borrow pits. Monthly REU reports noted reoccurring areas of concern on subsequent inspections, but no mention of maintenance or repair was evident on self-inspection records during the time between REU inspections. During our review of the project, various sections were active and in different phases of construction. Multiple sections of the project were inspected and two borrow pits were observed. One borrow pit was active and dewatering by pumping into a stilling basin. The second pit had been completed and was establishing permanent vegetation. One section of the project inspected was being cleared during our review and contained Environmentally Sensitive Areas (ESA), which were clearly delineated in the field using orange safety fencing and orange jurisdictional flagging per provisions included in the project contract. The NCDOT defines ESAs to include high quality waters (HQW), outstanding resource waters (ORW), Critical Areas, riparian buffers, CAMA Areas of Environmental Concern, threatened and endangered species habitats and trout waters. ESAs require special procedures be used for clearing and grubbing, temporary stream crossings, and grading operations, and are to be delineated on the erosion and sediment control (ESC) plans with a 50-foot buffer around these waterbodies or areas. As clearing in this area had recently commenced, perimeter silt fence had been installed but no basins or culverts had been completed. Another section inspected had been brought to final grade, slope drains and basins had been installed and appeared to be functioning. Check dams and inlet protection throughout the site had been recently refreshed, and slopes appeared to have been seeded and mulched with straw and tack or hydro-seeded.

One area of Temporary Silt Ditch (TSD) needed to have the berm regraded so that it would function as intended and direct flow down the ditch. Overall, this project had some areas in need of maintenance but did not show signs of offsite sedimentation. Inactive or completed areas had adequate groundcover.



Photo- Grass establishing in ditch with Wattles and polyacrylamide (PAM). (10/4/21)



Photo- Active Clearing, ESAs delineated, and Silt fence installed. (10/4/21)



Photo- Skimmer Basin. (10/4/21)



Photo- Earthen Dam with Skimmer (10/4/21)



Photo- Active Borrow Pit pumping to Stilling Basin (10/4/21)



Photo- Completed Borrow Pit (10/4/21)

- TIP U-4751: SR-1409 (Military Cutoff Rd Extension) from SR-1409 (Military Cutoff Rd) to US-17 in Wilmington

NCDOT Division: 3, New Hanover County

Type of Project: Contract

Date of Review: 9/23/2021

Evaluation: In Compliance

Sedimentation Damage: No

Recent Project History:

Rainfall: 11" (9/21/21 - 9/23/21), 0.5" (9/7/21), 4" (8/23/21)

DOT Inspection Scores: 8 (8/23/21), No Score Given (7/22/21), 8 (6/21/21), 9 (5/24/21)

Comments/Summary:

This is a 4.16-mile-long project with a total budget of \$95,498,821.29 that was let out of the Central Office. This project was approximately 55% complete and had received no ICAs at the time of our review. Self-inspection records and monthly REU inspection reports were reviewed. No score was given during the July 22, 2021, inspection conducted by the FOE. DOT staff stated that due to a large rain storm the day before his inspection, the FOE noted all areas of concern but did not give a score as crews were beginning to work to address the areas in need. The approved plan appeared to be adequate. The plan for this project had been revised to add a second pipe at one of the larger culvert locations and enlarge the surrounding ditch cross-section, due to a requirement by the County. This revision went through a plan redesign process and was then reviewed by NCDOT staff. Some other ESC measures such as Skimmer basins, Silt Basin Type B and Temporary Rock Silt Check Type-A (TRSC-A) had been either deleted or the dimensions revised. These revisions did not go through a redesign process by the designer but were made as field changes after consulting the FOE. This project contained Environmentally Sensitive Areas (ESAs), as defined earlier, which were properly delineated on the plans. Some ESA sites in the field were not delineated using orange safety fence or orange jurisdictional flagging per the provisions of the contract. During our review, a portion of the site was inaccessible due to recent rain events. One TRSC-A in a vegetated area had experienced end-cutting. Sediment from under the Coir Fiber netting under the TRSC-A was moving toward a small, but flowing creek. One of three borrow sites used for this project was inspected on the day of our review. A couple of overwhelmed perimeter silt check dams were noted, likely a result of the recent rains. Stockpiles adjacent to the borrow pit had been left exposed. Overall, this site was in good condition with minor maintenance needs noted at both the borrow site and the main project. Inspection records indicated areas of non-compliance were being addressed in a timely manner.



Photo - End cutting around Temporary Rock Silt Check-Type A. (9/23/21)



Photo – Culvert and additional pipe installed, and ditch graded. (9/23/21)



Photo - Overwhelmed TRSC-A with minor sediment loss at Borrow Pit. (9/23/21)

- TIP U-2714: US-117A (North Williams St) from North of US-70 to SR-1571 (Tommy's Road)

NCDOT Division 4, Wayne County

Type of Project: Contract

Date of Review: 9/30/21

Evaluation: In Compliance

Sedimentation Damage: No

Recent Project History:

Rainfall: 0.11" (9/9/21), 0.75" (9/22/21), 0.22" (9/23/21)

DOT Inspection Scores: 8-Project and Borrow Pit (9/16/21), 8-Project and Borrow Pit (8/16/21), 8-Project/9-Borrow Pit (7/15/21)

Comments/Summary:

This is a 1.546-mile-long project with a budget of \$15,346,704.64 that was let out of the Central Office. This project was approximately 37% complete and had received no ICAs at the time of our review. Self-inspection records and monthly REU inspection reports were reviewed and appeared consistent and well maintained. The approved plan appeared to be adequate. The plan for the borrow pit and laydown area had been revised to add two skimmer basins and diversions due to a change in exposed areas. These revisions went through a plan redesign process and were then approved by NCDOT staff. This project contained ESAs which were delineated properly on the plans as well as in the field. During our review, we conducted an inspection of the site, borrow pit and laydown area. Curb and gutter were being poured as the active side of the project was approaching completion and work would soon transition to the remaining side of the project. The basins and diversions in the lay down area had been installed and appeared to be functioning. The clean water diversions and stilling basin for dewatering on the borrow site had been installed. One basin at the beginning of the project had been installed but was not receiving much flow and had become overgrown with vegetation. DOT staff stated that as construction transitions to the next phase this basin will receive more flow. DEMLR staff recommended that the basin be mowed enough to ensure that the skimmer would function properly and that baffles could be inspected and maintained. Measures throughout the project appeared to be installed properly and well-maintained. Areas appeared to be stabilized appropriately as they were being completed. Overall, the site was in good condition and areas of concern were being addressed in a timely manner.



Photo- Skimmer Basins installed in laydown area (9/30/21)

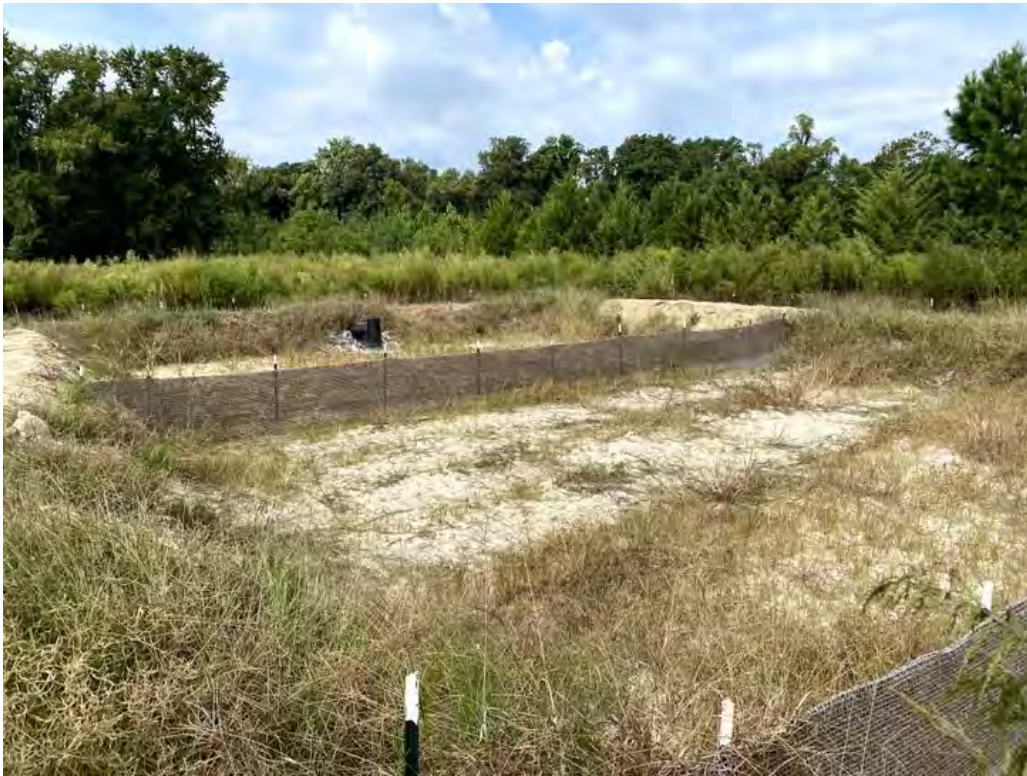


Photo- Stilling basin for Borrow Pit dewatering (9/30/21)



Photo- Culvert completed, surrounding areas stabilized (9/30/21)



Photo- Recently graded ditch with Wattles (9/30/21)

- TIP I-5700: I-40 and SR-3015 Interchange and I-40 Westbound from SR-3015 to I-540

NC DOT Division 5, Wake County

Type of Project: Contract

Date of Review: 7/14/21

Evaluation: In Compliance

Sedimentation Damage: No

Recent Project History:

DOT Inspection Scores: 8 (6/24/21), 8 (5/24/21), 8 (4/20/21)

Comments/Summary:

This is a 0.798-mile-long project with a budget of \$34,895,402.71 that was let out of the Central Office. This project was approximately 60% complete at the time of our review. Self-inspection records and Monthly REU inspection reports were reviewed. The recordkeeping for this project was consistent and well maintained. The approved plan appeared to be adequate. This project received an ICA on February 10, 2021, as the result of the monthly REU site inspection. REU staff found multiple areas where sediment loss had occurred, and there was potential for future loss and multiple maintenance needs throughout the site. REU staff conducted a follow-up inspection on February 17, 2021. During this inspection, staff found that the contractor was actively working to resolve areas noted in the ICA but found several erosion control concerns that had not yet been addressed. An ICA Extension was issued with a follow-up inspection scheduled for February 24, 2021. During this follow-up the site was found to be in-compliance and the ICA was lifted. Following the ICA, recommendations were made to add a sediment basin in one corner of the site. This revision was reviewed and approved by the REU. The basin had been installed and appeared to be functioning properly and well maintained. Slope drains and inlet protections throughout the site were being maintained. Slopes and disturbed areas were being seeded and mulched with straw and tack or matted per the approved plan. The bottom of one section of ditch was starting to erode and needed to be repaired and re-stabilized. Overall, this site was in compliance with just a few minor maintenance needs noted.



Photo- Ditch bottom beginning to erode. (7/14/2021)



Photo- Culvert installed and area stabilized. (7/14/2021)



Photo- Culvert installed (7/14/2021)



Photo – Well maintained Temporary Slope Drain. (7/14/2021)

- Bridge 239 Over Burnt Swamp

NC DOT Division 6, Robeson County

Type of Project: Contract

Date of Inspection: 8/31/2021

Evaluation: In Compliance

Sedimentation Damage: No

Recent Project History:

Rainfall: 0.5" (8/2/21), 0.3" (8/4/21), 1.3" (8/7/21)

DOT Inspection Scores: 9 (6/01/21), 9 (7/6/21), 9 (8/4/21)

Comments/Summary:

This is a 0.095-mile-long bridge replacement project with a budget of \$514,743.20 that was let out of the Division Office. This project was approximately 95% complete and had received no ICAs at the time of our inspection. Self-inspection records and monthly REU inspection reports were reviewed and appeared consistent and well maintained. The plan appeared to be adequate, and no revisions had been made to the original plan. Construction had been completed and this project had transitioned into the final vegetative establishment phase. All measures appeared to be properly installed and maintained. DOT staff indicated that measures would stay in place until final vegetation had established. Overall, this site was in good condition and was establishing a good stand of vegetation.



Photo -Bridge construction completed (8/31/21)



Photo – Final vegetation being established (8/31/21)



Photo- Silt fence and wattle breaks installed and maintained (8/31/21)

- TIP U-2581BA: US-70 from West of SR-3045 (Mt. Hope Church Rd.)/SR-2819 (McLeansville Rd.) to East of SR-2826 (Birch Creek Rd.)

NCDOT Division 7, Guilford County

Type of Project: Contract

Date of Review: 9/17/2021

Evaluation: In Compliance

Sedimentation Damage: No

Recent Project History:

Rainfall: 0.375" (9/16/21), 0.625" (9/1/21), 0.625" (8/20/21)

DOT Inspection Scores: 8 (8/24/21), 8 (7/14/21), 8 (6/17/21)

Comments/Summary:

This is a 1.49-mile-long project with a budget of \$11,125,538.10 that was let out of the Central Office. This project was approximately 85% complete and had received no ICAs at the time of our review. Self-inspection records and monthly REU inspection reports were reviewed and appeared consistent and well maintained. A tiered skimmer basin size had been revised and the number of tiers had been reduced due to field conditions. This revision went through a redesign process, reviewed by REU staff and added to the As-Built plan sets onsite. This project contained ESAs which were all properly delineated in the field; however, two areas within Riparian Buffers had not been properly delineated on the plans according to NCDOT Design Manual requirements. During our review, a culvert was being replaced. This replacement involved pumping the stream around in a lined diversion. The work area was being dewatered by pumping through a special stilling basin. Finished ditches had been matted and wattles or check dams had been installed per the plan. Overall, this site appeared to be stabilizing appropriately with minor maintenance needs noted. Previous REU inspection reports and Self-inspection records indicated some sediment loss, but all areas of concern were indicated to be corrected within a timely manner.



Photo- Tiered Skimmer Basin (9/17/21)



Photo- Lined Stream Diversion and Impervious Dike around Culvert installation (9/17/21)



Photo- Special Sediment Control Fence adjacent to Wetlands (9/17/21)



Photo- Storm Drain Outlet (9/17/21)

- TIP B-4968: Bridge #10 Over the Deep River on US-15/501 and NC-87

NCDOT Division 8, Chatham/Lee County

Type of Project: Contract

Date of Review: 10/5/2021

Evaluation: In Compliance

Sedimentation Damage: No

Recent Project History:

Rainfall: 1.85" (9/23/21), 1.52" (9/22/21), 0.1" (9/9/21)

DOT Inspection Scores: 7 (9/28/21), 8 (8/27/21), 9 (7/22/21)

Comments/Summary:

This is a 0.947-mile-long bridge replacement project with a budget of \$8,861,891.53 that was let out of the Central Office. This project was approximately 80% complete and had received no ICAs at the time of our review. Some self-inspection records were missing the priority ranking for corrective actions as well as the date that corrective actions had been taken. These inconsistencies had been noted on multiple Monthly REU reports. At the time of our review, the new bridge construction had been completed and traffic had been shifted to the new bridge. The existing bridge had yet to be removed. The finished ditch line and slopes were stabilized well with grass starting to vegetate. TRSC-As with polyacrylamide (PAM) were installed and appeared well maintained. Areas of reoccurring concern and sediment loss had been noted on REU Monthly inspection reports. One of these areas was a section of Special Sediment Control Fence (SSCF) below the existing bridge. This area appeared to have been recently maintained with signs of previous loss still evident. Overall, this site was in decent condition, with maintenance needs throughout.



Photo- Vegetation establishing and TRSC-A with PAM installed (10/5/21)



Photo- Evidence of Previous Sediment loss at SSCF (10/5/21)



Photo- Ditch line measures installed (10/5/21)

- Bridge #64 over Beaverdam Creek on SR-1952 and
Bridge #255 over Grant's Creek on SR-1503

NCDOT Division: 9, Rowan County

Type of Projects: Contract

Date of Review: 9/16/2021

Evaluation: Both Bridges in Compliance

Sedimentation Damage: No

Recent Project History:

Rainfall:

Bridge #64: 0.41" (9/9/21), 0.01" (9/7/21), 0.72" (9/2/21)

Bridge #255: 0.01" (9/10/21), 0.23" (9/9/21), 0.06" (9/7/21)

DOT Inspection Scores:

Bridge #64: 8 (9/8/21), 8-Overall Project/7-End Bent 2 Side (8/23/21), 8 (8/3/21)

Bridge #255: 8 (9/8/21), 8 (8/23/21), 8 (8/3/21)

Comments/Summary:

Bridge #64 over Beaverdam Creek:

This is a 0.134-mile-long bridge replacement project with a total budget of \$814,268.77 that was let out of the Division Office. This project was approximately 20% complete and had received no ICAs at the time of our review. Self-inspection records and monthly REU inspection reports were reviewed and appeared consistent and well maintained. The approved plan was adequate. The approved plan called for impervious dikes to line the banks of the stream during construction, but these dikes were not being used. The FOE was consulted and approved the deletion of these measures but required that additional silt fence be installed at the top of the stream bank. These revisions were noted on the plans kept on-site. During our review, the existing bridge had been removed and the new end bents were being installed. The stream banks had been stabilized with Coir Fiber matting. Inactive or completed areas had been seeded and mulched with straw. Silt fence and checks appeared to be maintained throughout the site. Overall, this site appeared to be implementing the approved plan correctly and well maintained.



Photo- **Bridge #64 over Beaverdam Creek- Additional Silt Fence (9/16/2021)**



Photo- **Bridge #64 over Beaverdam Creek- Finished End Bent stabilized (9/16/2021)**

Bridge #255 over Grant's Creek:

This is a 0.095-mile-long bridge replacement project with a total budget of \$547,804.92 that was let out of the Division office. This project was approximately 60% complete and had received no ICAs at the time of our review. Self-inspection records and monthly REU inspection reports were reviewed and appeared consistent and well maintained. The approved plan was adequate. Throughout the site, Coir Fiber Wattles with PAM had been used in place of TRSC-B. These substitutions had been approved by the FOE. This project was transitioning to the final grade phase and had installed measures the day prior after grading had been completed. One TRSC-A with Matting and PAM had been installed but did not extend all the way across the ditch and may start to wash around during future rain events. Overall, this site was in good condition and appeared to be transitioning properly between phases.



Photo- **Bridge #255 over Grant's Creek** – Area around Bridge being stabilized (9/16/2021)



Photo- **Bridge #255 over Grant's Creek** – Coir Fiber Wattles with PAM (9/16/2021)



Photo-**Bridge #255 over Grant's Creek**- Check Dam susceptible to wash around (9/16/2021)

- Bridge #234 over Cabbage Branch on SR-1637

NCDOT Division: 10, Anson County

Type of Project: Contract

Date of Review: 9/28/2021

Evaluation: In Compliance

Sedimentation Damage: No

Recent Project History:

Rainfall: 0.25" (8/31/21), 0.75" (8/26/21), 1.5" (8/17/21)

DOT Inspection Scores: 8 (9/1/21), 8 (8/16/21), 8 (7/20/21)

Comments/Summary:

This is a 0.1-mile-long bridge replacement project with a total budget of \$411,909.30 that was let out of the Division office. This project was approximately 98% complete and had received no ICAs at the time of our review. This project consisted of replacing and upsizing a concrete box culvert and had been completed with the final construction inspection conducted on 9/3/21. Self-inspection records and monthly REU inspection reports were reviewed and appeared consistent and well maintained. During our review of the contract documentation, we were unable to find the Stream Impact Permit plan set which shows all approved work under the 404/401 permits. This plan set is typically included in the contract following the permit documents. DOT staff was unsure why these plans were not included in the contract but indicated that this set was given to the contractor during the Pre-construction meeting, if not before. The approved plan appeared adequate. DOT staff indicated that no major revisions or deviations had been made from the approved plan and therefore, a set of ESC As-Built plans was not kept and updated throughout the project. During construction, an increased flow through the ditches was noted and DOT staff recommended that Coir Fiber Wattles be replaced with TRSC-A to handle the high flows during rain events. Riprap armoring on both the inlet and outlet side of the culvert appeared stable and well maintained. Overall, permanent vegetation was establishing well, and measures appeared to be maintained.



Photo- Riprap armoring and silt fence maintained (9/28/2021)



Photo- Wattles and vegetation establishing (9/28/2021)

- TIP BR-0124: Bridge #166 over West Prong Roaring River on SR-1745 and TIP BR-0125: Bridge #663 over East Prong Roaring River on SR-1002

NC DOT Division: 11, Wilkes County

Type of Projects: Contract

Date of Review: 8/25/2021

Evaluation: Both Bridges in Compliance

Sedimentation Damage: No

Recent Project History:

Rainfall:

BR-0124: 3.5" (8/18/21), 0.5" (8/17/21), 1.5" (8/16/21)

BR-0125: 0.75" (8/15/21), 0.75" (8/14/21), 1.0 inches (8/12/21)

DOT Inspection Scores:

BR-0124: 9 (8/3/21), 9 (7/1/21), 9 (6/16/21)

BR-0125: 8 (8/3/21), 9 (7/1/21), 9 (6/16/21)

Comments/Summary:

TIP BR-0124:

This is a 0.12-mile-long bridge replacement project with a total budget of \$921,190.10. This project was approximately 90% complete and had received no ICAs at the time of our review. Self-inspection records and monthly REU inspection reports were reviewed and appeared consistent and well maintained. The approved plan appeared adequate. Minor revisions to the right of way and the riprap channel of a pipe outfall had been shortened. These revisions had not been marked up on the plans kept on-site. All revisions had been approved by the NC DEQ Division of Water Resources (DWR) prior to being implemented in the field. This project had transitioned into the final vegetative establishment phase. All disturbed areas had been seeded and final cover was being established. Overall, the site was in good condition.



Photo- **BR-0124**: Riprap and matted stabilization below bridge (8/25/2021)



Photo- **BR-0124**: Areas being stabilized (8/25/2021) **TIP BR-0125**:

TIP BR-0125:

This is a 0.23-mile-long bridge replacement and realignment project with a total budget of \$1,781,757.76. This project was approximately 75% complete and had received no ICAs at the time of our review. Self-inspection records and monthly REU inspection reports were reviewed and appeared consistent and well maintained. The approved plan appeared adequate. During our inspection the new bridge was nearing completion while the existing bridge was still being used by live traffic. Minor revisions to a stream relocation had been made in the field but had not been marked up on the plans kept on-site. All revisions had been approved by DWR prior to being implemented in the field. This project contained ESAs which were properly shown on the plans; however, no signs of proper delineation could be seen in the field. The basin in the southeast corner of the new bridge had been installed and appeared to be maintained and functioning properly. The stream relocation had been completed and was being stabilized. One short section of ditch had been temporarily stabilized using coir fiber matting material but had been laid improperly with overlaps facing upstream. All disturbed areas which were not being actively worked had been seeded and matted. Overall, the site was in good condition and appeared to be well maintained.



Photo- **BR-0125:** Basin in the SE corner of the bridge (8/25/2021)



Photo- **BR-0125**: Permanent Ditch (left) and Stream Relocation (Right) (8/25/2021)



Photo- **BR-0125**: Coir Fiber laid as matting and Wattles installed (8/25/2021)

- TIP I-3819B/U-6039: I-40/I-77 Interchange: I-40 from SR 2003 to SR 2158; I-77 from SR 2171 to SR 2321; and SR 2321 from Vine Street to SR 2422

NCDOT Division: 12, Iredell

Type of Project: Contract

Date of Review: 9/29/2021

Evaluation: In Compliance

Sedimentation Damage: No

Recent Project History:

Rainfall: 0.21" (9/16/21), 1.07" (9/1/21), 0.81" (8/31/21)

DOT Inspection Scores: 8 (9/15/21), 8 (8/2/21), 8 (7/13/21)

Comments/Summary:

This is a 4.0-mile-long project with a total budget of \$260,290,000 that was let out of the Central Office. This project was approximately 50% complete at the time of our review and had received no ICAs at the time of our review. Self-inspection records and monthly REU inspection reports were reviewed and found to be adequate. Previous off-site sedimentation was noted in the monthly REU reports as well as Self-inspection records. When these losses were discovered, the Resident Engineer halted all production work until urgent corrective actions had been completed throughout the project. Reports indicated that in all instances corrective actions were completed within 3-days and production was allowed to resume. This plan had undergone revisions in response to comments from the FOE and as a result of the need for an intermediate phasing plan. These revisions consisted of resizing one skimmer basin and adding two others. These changes underwent a redesign process, were reviewed by the DOT and had been added to the plans onsite appropriately. This project did not contain any ESAs; however, jurisdictional features and wetland areas were present. Orange safety fencing appeared to have been recently installed in these areas. Fencing had been draped over the upstream side of the silt fence in these areas. Active grading was occurring during our review. One skimmer basin outlet was buried. A culvert extension and channel change had been completed and stabilized appropriately. Matting and slope drains had been installed throughout the site; however, some slope drains did not include stakes in which to secure them. Overall, this project was in good condition with general maintenance needs noted throughout the site.



Photo- Channel change and slopes stabilized (9/29/21)



Photo- Safety Fence draped on the upstream side of silt fence (9/29/21)



Photo- Culvert extension and Channel Stabilization (9/29/21)



Photo- Basin needing maintenance and skimmer outlet did not daylight (9/29/21)

- TIP I-4700: I-26 from NC-280 (Exit 80) to I-40

NCDOT Division: 13, Buncombe/Henderson County

Type of Project: Contract

Date of Review: 10/14/2021

Evaluation: In Compliance

Sedimentation Damage: No

Recent Project History:

Rainfall: 2.1" (10/8/21-10/9/21), 1.3" (10/4/21-10/6/21), 0.6" (9/23/21)

DOT Inspection Scores: 8-Permitted Areas/7-Remainder of Project (9/9/21), 8 (8/11/21),
8 (7/15/21)

Comments/Summary:

This is a 7.49-mile-long project with a total budget of \$263,070,00 that was let out of the Central Office. This project was approximately 35% complete at the time of our review. Self-inspection records and monthly REU reports were reviewed and found to be adequate. The approved plan appeared to be adequate. This project contains ESAs which were properly delineated on both the plans as well as in the field. This project received an ICA on November 13, 2020, during the monthly REU inspection. REU Staff found that one stream through the site was running turbid and that a basin upstream of this area had been filled in without first dewatering the basin. Several maintenance and measure installation needs were noted on the ICA as well. DWR was notified about the losses into the stream and advised corrective actions needed. All corrective actions were found to have been made during the follow-up inspection conducted by REU staff on November 18, 2020, at which time the ICA was lifted. Some skimmer basins had to be resized or shifted from the proposed plan due to field conditions. Several additional Silt Basin Type-Bs had been added throughout the project. All revisions, deviations or additions from the approved plan were approved by the FOE but did not undergo a redesign process. One section of silt fence below a basin had undermined and been filled in with stone. Signs of previous sediment loss were evident here. A section of SSCF had been overwhelmed and sediment could be seen beyond the fence line. This sediment deposit was still within the project boundaries and no signs of encroachment to the French Broad River were evident. DOT staff indicated that this was a reoccurring area of concern, but no losses had reached beyond the project limits. Basins throughout the project had been installed and appeared to be functioning properly. Finished slopes and stockpiles seen throughout the project had been stabilized appropriately. Maintenance needs throughout the site and some sediment loss beyond perimeter measures was noted but did not appear to have left the project limits. Overall, this project appeared to have measures installed and maintained per the approved plan, and completed areas were being stabilized.



Photo- Sediment deposited beyond SSCF (10/14/21)



Photo- Cleared ESA (10/14/21)



Photo- SSCF needing maintenance (10/14/21)



Photo-Recently Installed Basin (10/14/21)



Photo- Impervious dike and pump around for culvert extension (10/14/21)



Photo- Slopes Stabilized (10/12/21)

- TIP A-0011C: NC-69 from the Georgia Line to US-64

NCDOT Division: 14, Clay County

Type of Project: Contract

Date of Review: 10/13/2021

Evaluation: In Compliance

Sedimentation Damage: No

Recent Project History:

Rainfall: 4.25” (10/4/21-10/7/21), 0.65” (9/21/21), 0.30” (9/19/21)

DOT Inspection Scores: 8-Project/10-Waste Site (9/13/21), 8 (8/12/21), 8 (7/12/21)

Comments/Summary:

This is a 3.80-mile-long project with a total budget of \$46,327,228.88 that was let out of the Central Office. This project was approximately 50% complete and had received no ICAs at the time of our review. Self-inspection records and monthly REU reports were reviewed and found to be adequate. The approved plan appeared to be adequate. One skimmer basin had not been installed due to safety concerns with its placement. The FOE was consulted and approved this deletion, requiring that a Temporary Rock Silt Check Type B (TRSC-B) be installed instead. All revisions had been properly indicated on the plans on-site. This project contained an on-site stream mitigation plan which had been completed. Rills had begun to form beneath the kudzu above the inlet of one skimmer basin which also had a wood pole laying across one of the baffles. A section of the first baffle in a Temporary Silt Check Dam Type B (TRSD-B) had been knocked down and needed to be repaired or replaced. Another TRSD-B had been partially removed during recent grading. DOT staff stated that this measure would be reconfigured at a reduced size to still function until the area had been completely stabilized. During our review, we inspected two of the three waste sites for this project. One waste site was active with a skimmer basin and clean water diversions installed. Minor sediment tracking onto the road was noted and it was suggested that additional stone be added to the construction entrance which had previously been paved. The other waste site had been completed, stabilized and released back to the owner. This project appeared to be following the approved ESC plan and completed areas were stabilizing. Some minor maintenance needs were noted throughout but overall, this site was in good condition.



Photo- Complete Stream Mitigation (10/13/21)



Photo- Basin removed and Permanent Ditch recently completed (10/13/21)



Photo- Wood pole laying across Baffle (10/13/21)



Photo- Section of first baffle knocked down in TRSD-B (10/13/21)



Photo- TRSD-B partially removed for slope grading (10/13/21)



Photo- Completed Slopes stabilized (10/13/21)



Photo- Waste Area Skimmer Basin and Entrance (10/13/21)

Positive Findings

- **DOT Internal Inspection Process**

The NCDOT is responsible for two types of inspections on each project: NPDES/SPCA Self-Monitoring Inspections (Self-inspections) and monthly REU inspections. Self-inspections for all active projects are conducted at least weekly and within 24 hours of a rain event of 1.0 inch or greater, by a project inspector from the office of the resident engineer or their designee on Contract Construction or from the county or district engineer for maintenance on State Force/Operations projects. Weekly project inspections and monthly REU inspections were reviewed for each project. Monthly REU inspections appeared consistent across all the divisions and were well maintained on all projects reviewed. Some inconsistencies on the self-inspections, such as the date corrective actions were completed, were noted on two projects. In most cases this inconsistency had been previously noted on the REU monthly inspections, and in one case this was a reoccurring comment throughout the life of the project.

- **Communication and Project Progression**

Pre-construction meetings are held with the contractor on every project. In addition, monthly meetings are held between Department staff and the contractor's workforce to discuss erosion control and other items that may need attention throughout the life of the project. When questioned, it appeared there was good communication between the division erosion control inspector, Resident Engineer, and the Division Field Operations Engineers (FOEs).

- **Educational Efforts**

NCDOT has contracted with N.C. State University to train and certify contractors and staff in the design, management and installation of sedimentation and erosion control practices. There are three levels of certification: Level One certifications for installers, Level Two certifications for inspectors and Level Three certifications for designers. Certification is required to work on a DOT project. NCDOT is also funding extensive research on innovative sedimentation and turbidity control measures.

- **Innovative Approach**

Some innovative approaches for sediment control were noticed during the review, such as the use of flocculants on nearly every one of its projects statewide. Almost every project involved in this review had either used or planned to use measures with polyacrylamide (PAM) during the construction process. PAM was often applied to check dams or wattles along diversion ditches leading to sediment basins, traps, or discharge points. The plans were drawn such that the last device before discharging into jurisdictional waters were to be PAM-free. The use of flocculants helps to keep sediment on site and our waters clean.

Issues Noted and Recommendations

- Document Updates

Several changes have occurred in recent years to the Sedimentation Pollution Control Act of 1973, the State Construction Stormwater General Permit, and Chapter 04 of Title 15A of the North Carolina Administrative Code dealing with erosion and sedimentation. Some of these changes affect transportation projects. The NCDOT has adapted to some of these changes. For instance, reclamation procedures for in-house operations and contract projects include the latest administrative code requirements for disturbances within High Quality Waters. Self-inspection forms provided for contractors have been updated. However, the Stabilization Requirements special provision and Soil Stabilization Timeframes Table provided in project contracts and in the ESC plans, respectively are slightly outdated and should be updated to reflect the most recent requirements found in Table 3 of Part II, Section E of the 2019 NCG01 General NPDES Permit. Some sections of the *NCDOT Erosion and Sediment Control Design and Construction Manual* and certain guidance documents need to be updated to reflect the latest changes in the NC Administrative Code which became effective on June 1, 2020. Land Quality staff informed the NCDOT of these inconsistencies with the latest regulations upon discovery, and most have since been corrected. A thorough review of all related specifications, provisions, drawings, and manuals should be made to ensure standards and guidance reflect current regulatory language.

- DEMLR Notification

Some NCDOT Divisions and Districts are communicating properly with the DEMLR Land Quality Section (LQS), although the majority are not notifying DEMLR staff per the delegation requirements. The Division Engineer is to include the Regional Land Quality Engineer on the list of invited attendees for preconstruction conferences for projects involving significant land disturbing activity. The NCDOT Resident Engineer is to notify the Regional Land Quality Engineer when construction begins. As part of this notification, the Resident Engineer is to include the name of the technician who will be on the project and responsible for inspecting sediment and erosion activities and who will be maintaining the continuously updated erosion control plans. This is in accordance with the Department's program delegation. Additionally, one set of the Erosion and Sediment Control plans is to be sent to the Regional Land Quality Engineer. NCDOT staff are also to notify DEMLR LQS of any significant sediment loss as well as notify the DWR for losses into a stream or wetland. It was discovered that the NCDOT is currently notifying DWR but not always notifying DEMLR LQS in these cases. The State Roadside Environmental Field Operations Engineer was reminded of this delegation requirement, and has since instructed his staff of the notification requirements.

- Plan Revision Reviews

The NCDOT should reconsider when it is appropriate to make in-field revisions/plan mark ups and when a plan needs to be revised and go back through a design and review process. Throughout our review we noted multiple instances where significant deviations from the plan, such as basin relocation, resizing or deleting measures from the plan were made as simple field revisions as opposed to a plan revision with a redesign and subsequent plan review. While minor alterations, such as silt fence additions or alignment adjustments can be handled with red line drawings, any significant deviation or alteration to a plan should result in a plan revision and review to ensure that proposed measures will be adequate for site conditions.

- Construction Staking for Project Limits and Environmentally Sensitive Areas

The NCDOT's jurisdiction for delegation consists of land which is inside their right-of-way and easements. The Department has provisions in place for staking or otherwise delineating their right-of-way and permanent easements needed for work such as clearing and grubbing, drainage or bridge installations, and related stream or wetland impacts. Rights-of-way and easements were clearly shown on the plans. These items should be clearly marked in the field as well as on the plans, and any stakes should be re-installed if inadvertently damaged or removed.

The delineation of areas draining to certain classes of jurisdictional water bodies is a proactive measure by the Department to require special working conditions around sensitive waterbodies. Delineation of these sensitive areas on the plans is required of consultants and in-house design engineers. Delineation of these sensitive areas in the field is required of contractors through the plans and contract documents. Some inconsistencies were discovered during plan reviews and site visits. The NCDOT is encouraged to thoroughly review plans and inspect the project site to ensure that these requirements are being met before beginning operations or letting projects out for bidding and upon initial project inspection.

- Matting Specification

Matting for erosion control is included on the Soil Stabilization Summary Sheet within erosion and sediment control plan set. This table includes the location for placement along with the estimated quantity needed. A construction detail for matting installation is referenced on the plans under the list of standard drawings shown on the title page. The type of matting is not indicated on the Soil Stabilization Summary Sheet table, in a construction detail or anywhere within the plan set. Two approved types of matting for erosion control (excelsior and straw) are specified in the 2018 Standard Specifications for Roads and Structures. It is recommended that the type of matting to be used be shown either on the plans at the locations to be installed or within the Soil Stabilization Summary Sheet. For matting materials other than excelsior and straw, such as Coir Fiber Matting or Permanent Soil Reinforcement Matting (PSRM), a special provision is included in the contract with material specifications. These matting types are indicated within the Soil Stabilization Summary Sheet table or at the location of installation within the plans themselves.

- Concrete Washout

The NCDOT requires any project involving concrete (including those with sidewalks or curb and gutter) to have a designated concrete washout. No construction detail for a concrete washout is provided within the plans, rather, a link to an example construction detail can be found within a contract special provision. It is recommended that a construction detail for concrete washouts be included in the ESC plan set, similar to how construction details for other special provisions such as skimmer basins, earthen dams with skimmer, coir fiber wattle breaks, etc. are included in the ESC plans.

Conclusion

In general, the projects reviewed were in compliance with some maintenance needs noted. Plans, NPDES/SPCA Self-monitoring records and monthly REU Inspection records were available onsite for all projects reviewed. DOT staff indicated the Field Operations Engineer or Staff Engineer were consulted on all deviations, substitutions, and revisions. However, some of these revisions were significant deviations and should have gone through a redesign and review process. The REU staff has done well to inspect all projects periodically and routinely on a monthly basis. Record keeping and monitoring of erosion and sedimentation control measures was adequate.

III. **Information Items**

- A. NCDOT Report – Ms. Julie Coco
- B. Commission Technical Committee – Mr. Mark Taylor
- C. Ad-Hoc Committee Update – Mr. Hartwell Carson
- D. The Education Advisory Committee – Dr. Susan White
- E. Land Quality Section Active Sediment Cases and Enforcement – Ms. Julie Coco
- F. Education Program Status Report – Ms. Rebecca Coppa
- G. Sediment Program Status Report – Ms. Julie Coco
- H. Land Quality Section Report – Mr. Toby Vinson
- I. Recent Legislative Changes and Potential Impacts to DEMLR and the Local Programs – Mr. Brian Wrenn
- J. Local Programs and Full-Time Equivalent Positions – DEMLR Staff
- K. 2022 Commission Meetings Schedule and Discussion of Hybrid Meeting Model – Dr. Susan White

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: 10/13/2021	Evaluator: Josh Young
Project #: 34542.3.6	TIP #: R-3421A&B Contract #: C204368
Division #: 8	County: Richmond
Project Type: Contract	Engineer: Asheboro Resident
Project Length: 6.10	Disturbed Acres: 0
River Basin: Yadkin	HQW Zone: NO Trout Zone: NO
Location Description: I-73/74 From US-74 ByPass West of Rockingham at SR-1109(Zion Church Rd) to North of SR 1304(Harrington 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
1.8	R-3421A	--	--	--	--	--
4.3	R-3421B	--	--	--	--	--
	Permitted Area(s)	--	--	--	--	--
	Permit Site 4	6	6	6	6	6

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

Remarks and Recommendations:

The reason for the site review today was to look at several permitted areas on both the A and B sections of the project. I met Ryan Conchilla (DWR), Art King, Michael McKenzie, Darren Cranford, Lonnie Owens, John Partin, and several other contractor employees onsite. We discovered a silt loss with (approx. 2 to 3 cubic yards of material) in a Jurisdictional Stream at STA 178+50 LT (Site 4). The project has received an excessive amount of rainfall over the last several weeks, however two basins (ID B-121 and ID B-122) were removed from this ESA/Permitted location without contacting roadside environmental for prior approval. Both basins should have remained in place during the construction and stabilization of the fill slope. I was informed that both basins were removed due to conflicting with the proposed fill line. It appears that there may be enough R/W to adjust basins to outer limits of project to build the fill slope and while also meeting the surface dewatering requirements per the NCGO1 permit. I am issuing an ICA based on removal of two basins without prior REU approval, inadequate runoff management to BMP devices, and soil stabilization timeframes not being followed per the NCGO1 permit. I recommend that the contractor follow guidance giving by DWR and the DEO for any retrieval of material in the Jurisdictional Stream and wetland areas. Moving forward: I recommend that both basins be reinstalled to the outer limits of project near R/W if possible.

If needed, please reach out to Roadside Environmental for guidance on where basins need to be installed. If basin sizing becomes an issue, please let REU know so we can discuss possible basin changes with designers. I also recommend that all perimeter EC measures along with TSD and rock checks with PAM be installed per approved EC plan moving forward to help prevent another silt loss in this area. I highly recommend moving forward that all areas especially in ESA areas are well protected by having all the required EC measures in place per the approved EC plans. Keep in mind that ESA areas are required to be worked until completion and stabilized per the NCG01 permit.

I plan on making a site visit next week to ensure that this area is cleaned up and that all required EC measures are in place per the approved EC plan. The ICA will remain in place until all the above items have been addressed and all the lost material has been retrieved per guidance given by DWR and the DEO offices.

If you have any questions or concerns please feel free to email or call.

Thankyou

Active Sediment Case Report as of October 14, 2021

Atty	Case#	Violator (Name of Case)	County	Date of Assessment	Penalty Assessment Amt	Final Amt Paid	Comments
CM	20-017	Tardiff Property	McDowell	N/A	N/A	N/A	Injunction issued 10/2 Consent Judgement issued 12/30/20
CM	20-019	G&H Hauling, LLC	Brunswick	30-Oct-20	\$25,000.00		Under payment plan
CM	20-022	Blue Ridge Mountain Sky, LLC	Polk	16-Dec-20	\$25,000.00		Awaiting response from violator - case stayed until 9/15/21
CM	20-023	Blue Ridge Mountain Sky, LLC	Polk	N/A	N/A		Injunction filed 11/5/20 Consent Judgement signed 2/25/21
CM	21-003	Southwest Cabarrus Elementary School	Cabarrus	22-Sep-21	\$69,130.00		Awaiting response from violator

N.C. SEDIMENTATION CONTROL COMMISSION ENFORCEMENT REPORT

by the OFFICE OF THE ATTORNEY GENERAL

10/21/2021

Status of Cases	2/8/2021	4/19/2021	8/2/2021	10/21/2021
1. LQS Drafting CPA	1	0	0	1
2. CPAs Out to Violator (30-day)	0	2	0	1
3. CPAs Out to Violator (60-day)	1	0	0	0
4. CPAs Prepared by LQS Under Review	1	1	2	1
5. CP Remission Requests Under Review	2	0	0	0
6. CP Remission Decisions	0	2	2	0
7. Cases Pending in OAH	2	1	1	1
8. Cases Awaiting Final Agency Decision	0	0	0	0
9. Cases Pending in General Courts of Justice				
a. Judicial Review	0	0	0	0
b. Injunctions	1	2	1	1
c. Pre-Judgement Collections	0	0		
d. Post-Judgement Collections	0	0		
e. Federal Cases	1	1	1	1
10. Cases in Bankruptcy Proceedings	0	0	0	0
11. *Cases where CPA Being Paid by Installment	0	0	0	0
12. Cases to be Closed	3	0		
TOTALS:	12	9	7	6
Action Since Prior Quarterly Report:				
New Cases Received by AGO	2	2		
Cases Closed by AGO	0	0		

Education Program Status Report

Presentations/Exhibits

Participated in SciREN Virtual Teachers Event on September 23, 2021. Shared what resources DEMLR has available for teachers.

Presented on the Virtual DEQ Career Panel for the NC Governor's Page Program on September 30, 2021; 11 Pages attended the virtual panel.

In September DWR's water educator, Lauren Daniel, and I began co-hosting bi-weekly Virtual Water Education Coffee Talks for formal and non-formal educators. The purpose of these coffee talks are to answer questions, showcase our education resources, facilitate networking, and discover/facilitate collaboration opportunities.

Co-hosted a virtual Project WET workshop for educators with Lauren Daniel on 10/25/21 & 10/26/21.

Workshops

The hybrid in-person and virtual 2021 NC Erosion & Sediment Control Workshop (formally called the E&SC Design Workshop) has been scheduled for December 2 at the McKimmon Center in Raleigh, and is being planned in coordination with SE-IECA and NCSU Department of Crop and Soil Sciences.

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

Contract Administration

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

Updates

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

If you would like to contribute an article or suggest a topic for the December edition 1 of the Sediments Newsletter email the Sediment Education Specialist.

LAND QUALITY REGIONAL PROGRAM MONTHLY ACTIVITY REPORT

State Total FY 2021-2022 through:

September

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	22	100	12	36	14	69	32	87	10	43	48	136	39	106	577
2. New Sedimentation Plan Reviews	17	69	17	46	30	105	15	41	0	0	0	4	35	103	368
3. Sedimentation Plan EXPRESS Reviews	4	14	8	16	4	18	15	38	0	0	0	0	11	24	110
4. New Sedimentation Plan Disapprovals	0	2	4	11	0	3	9	19	0	0	0	0	10	40	75
5. Revised Sedimentation Plan Received	6	32	11	36	4	12	9	35	0	0	9	30	32	93	238
6. Revised Sedimentation Plan Reviews	9	32	15	37	5	11	8	33	0	0	0	0	27	84	197
7. Revised Sedimentation Plan Disapprovals	0	0	1	8	0	0	0	4	0	0	0	0	4	19	31
8. Unreviewed E&SC Plans - End of Month	0	35	5	14	7	36	9	17	0	0	0	0	41	0	102
9. E&SC Plan Reviews > 30 Days	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10. Revised Plan Reviews > 15 Days	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11. Mine Permits Reviewed	4	9	2	3	4	12	0	0	2	5	0	0	2	3	32
12. Dam Safety Plans (Construction/Repair)	0	0	0	0	2	5	1	7	0	1	0	2	2	10	25
13. Dam Safety Plans (Impoundment)	0	0	0	0	0	0	1	1	0	0	0	0	1	1	2
14. Dam Safety Plans (EAP)	0	0	0	0	1	1	0	0	0	0	0	0	0	0	1
15. State Stormwater Plans Received	0	136	0	0	40	111	0	0	0	0	2	3	0	0	250
16. State Stormwater Plans Reviewed	0	262	0	0	24	82	0	0	0	0	0	1	1	1	346
17. Stormwater EXPRESS Reviews	0	50	0	0	3	16	0	0	0	0	0	0	0	0	66
18. State Stormwater Revised Plans Received	0	101	N/A	N/A	4	8	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	109
19. State Stormwater Revised Plans Reviewed	0	156	N/A	N/A	3	6	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	162
MONITORING															
1. Sedimentation Inspections (Total)	164	525	0	37	123	356	195	661	103	283	93	393	347	1117	3372
A. Landfills	0	0	0	0	0	0	0	0	0	0	0	5	0	0	5
B. DOT Contract	1	1	0	0	0	0	1	6	2	2	0	0	5	5	14
C. DOT Force Account	0	0	0	0	0	0	1	1	0	0	0	0	0	0	1
D. Complaints	4	11	0	3	0	6	21	62	5	20	3	25	23	80	207
2. Mining Inspections (Total)	5	29	0	0	11	29	3	7	3	9	3	12	0	3	89
A. Mining Inspections (Annual)	3	7	0	0	5	17	0	0	0	2	0	0	0	3	29
B. Complaints	0	1	0	0	0	0	0	6	0	0	0	1	0	0	8
3. Dam Safety Inspections (Total)	0	0	0	3	0	0	18	28	2	9	0	7	0	6	53
A. Existing Dams Added to IBEAM	0	0	0	0	0	0	0	1	0	0	0	0	0	0	1
B. Complaints	0	0	0	0	0	0	2	5	0	0	2	2	0	0	7
C. Emergency Inspections	0	0	0	0	0	0	1	1	0	1	0	2	0	0	4
4. Stormwater Inspections (Total)	213	670	0	2	156	484	135	546	97	289	95	400	399	1044	3435
A. State Stormwater Inspections	9	63	0	0	28	104	0	0	0	0	0	1	1	3	171
B. Industrial Stormwater Inspections	25	40	0	1	4	11	10	22	2	4	4	6	40	70	154
C. Construction Stormwater Inspections	179	543	0	0	112	342	117	434	61	238	91	389	344	933	2879
D. Assisted Inspections	0	23	0	0	1	3	2	16	23	64	0	4	4	16	126
E. No Exposure Certification Inspections	0	0	0	0	1	7	1	1	0	1	0	0	7	17	26
F. Stormwater Complaints	3	9	0	0	1	5	5	21	0	2	1	2	6	27	66
G. Representative Outfall Status Requests	0	0	0	0	0	0	0	1	0	0	0	0	1	2	3
ENFORCEMENT															
1. Sedimentation															
A. Notices of Violation (Total)	4	15	0	8	0	0	7	10	3	19	1	5	4	14	71
B. NOVs to Repeat Violators	0	1	0	2	0	0	0	1	0	3	0	0	1	1	8
C. Cases Referred for Enforcement	0	1	0	2	0	0	0	0	0	0	0	1	0	0	4
2. Mining	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
A. Notices of Violation w/o Permit	0	1	0	0	0	0	0	0	0	0	0	1	0	0	2

LAND QUALITY REGIONAL PROGRAM MONTHLY ACTIVITY REPORT

State Total FY 2021-2022 through:

September

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	
B. Notices of Violation of Permit	0	0	0	0	0	1	0	0	0	0	0	0	0	0	1
C. Letters of Deficiency	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
D. Cases Referred for Enforcement	0	0	0	0	0	0	0	0	0	0	1	1	0	0	1
3. Dam Safety	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
A. Letters of Deficiency	0	0	0	2	0	0	0	0	0	0	0	4	0	0	6
B. Enforcement Requests	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4. Stormwater	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
A. Notices of Violation (Total)	0	7	0	0	0	0	1	1	0	0	0	0	1	1	9
B. Notices of Deficiency (Total)	0	2	0	0	0	0	0	1	0	1	0	1	0	0	5
C. NOV's to Repeat Violators	0	0	0	0	0	0	0	2	0	0	0	0	0	0	2
D. Cases Referred for Enforcement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
LOCAL PROGRAMS															
1. Local Ordinance Reviews	0	0	0	1	0	0	0	1	0	1	0	0	0	0	3
2. Local Programs Aided (hours)	0	0	0	2	0	0	1	1	8	24	0	0	6	15	42
DREDGE & FILL APPLICATIONS	0	11	0	0	5	20	0	0	0	0	0	0	7	23	54
CUSTOMER SERVICE															
Technical Assistance (Aided Hours)	46	486	20	60	199	556	51	205	0	27	21	99	89	290	1722.6
Pre-Application Meetings	15	237	0	2	20	63	3	17	0	0	0	13	10	35	367

Land Quality Section Report – November 4, 2021

Vacancies Related to E&SC

Org Unit Desc	Location	Position Description
ENR SO ASEN EML DO LQ CO Raleigh RO	Raleigh Regional Office	Environmental Specialist I

Other Vacancies in DEMLR

Org Unit Desc	Location	Position Description
ENR SO ASEN EML DO LQ CO Mining	Raleigh - Archdale	Engineer I
ENR SO ASEN EML DO LQ CO Dam Safety	Raleigh - Archdale	Engineer II
ENR SO ASEN DO GS CO Landslide	Asheville Regional Office	Geologist/Hydrogeologist TL
ENR SO ASEN DO GS CO Landslide	Asheville Regional Office	Geologist/Hydrogeologist TL
ENR SO ASEN DO GS CO Landslide	Asheville Regional Office	Geologist/Hydrogeologist TL