

MEMORANDUM OF AGREEMENT

BETWEEN

The North Carolina Sedimentation Control Commission

AND

The Town of Beech Mountain

This MEMORANDUM OF AGREEMENT is entered into between the **North Carolina Sedimentation Control Commission** (hereinafter, "Commission") and The Town of Beech Mountain (hereinafter, "**Local Government**," collectively, "Parties") for the purpose of clarifying their roles in the enforcement of the Sedimentation Pollution Control Act of 1973, N.C. Gen. Stat. Ch. 113A Art. 4 and any rules adopted pursuant to the Act (hereinafter collectively, "SPCA.")

Part I. Local Program Creation.

A. Model Ordinance

The Parties agree that the Commission shall do the following:

1. Per N.C. Gen. Stat. § 113A-54 (d) (1), provide a model erosion and sedimentation control ordinance (hereinafter, "model ordinance") for adoption by local governments who wish to operate a delegated local erosion and sedimentation control program (hereinafter, "local program.")
2. Update its model ordinance upon changes in the SPCA.

B. Proposed Ordinance Review

The Parties agree that:

1. Local governments who choose to create and operate a local program may do so by ordinance (hereinafter, "local program ordinance".) However, the local government must submit the proposed local program ordinance to the Commission for review prior to adoption.
2. North Carolina General Statute § 113A-60(b) requires the Commission to review, approve, approve as modified, or disapprove proposed local program ordinances based upon the minimum requirements of the SPCA.
3. The Commission shall review a local program ordinance submitted and, within 90 days of receipt thereof, shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved.
4. The local program's erosion and sedimentation control standards must equal or exceed those of the SPCA.
5. The Local Government has an existing local program and an ordinance approved by the Sedimentation Control Commission.

2. Relate to oil and gas exploration and development on the well pad site.

Part III. Responsibilities and Expectations of the Local Government.

A. Enforcement

The Parties agree that the local government shall administer its own local program ordinances, through the following:

1. Enforce the provisions of the SPCA.
2. Administer the SPCA for all land-disturbing activity within its jurisdiction, including existing sites at the time the local government received program delegation. The Commission may continue to administer the SPCA over specific projects under enforcement action upon mutual agreement with the local government. The local program is not responsible for activities over which the Commission has exclusive jurisdiction.
3. Employ a sufficient number of qualified personnel. Qualified personnel shall be competent to review sedimentation and erosion control plans and conduct inspections of land-disturbing activities.
4. Provide adequate resources for plan review and compliance inspections.

B. Reporting

The Parties agree that the local government shall provide the following reports/information:

1. Monthly activity reports to the Commission.
2. Notification to the appropriate regional office of DEMLR of issuance of Notices of Violation at the time the violator is notified.
3. Current contact information for their local program to the Division of Energy, Mineral, and Land Resources.

C. Sediment and Erosion Control Plans for Land-Disturbing Activity Review

The Parties agree that the local government shall review erosion and sedimentation control plans for land-disturbing activity (hereinafter, "plans") submitted to its local program under the following standards:

1. Review plans within 30 days of receipt of a new plan and within 15 days of a revised plan.
2. Approve, approve with modifications, or disapprove draft plans in conformance with the basic control objectives contained in 15A NCAC 04B .0106.
3. Notify in writing the person submitting the plan that it has been approved, approved with modifications, or disapproved within 30 days of receipt of a new plan and within 15 days of a revised plan.
4. Include in written notifications of plan approval the following:

is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and the local ordinance

3. Undertake appropriate enforcement actions, including injunctive relief, or assessment of civil penalties for an initial penalty or a daily penalty for continuing violations.
4. 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.

F. Termination of Local Program

1. Should a Local Government decide to end their local program, or portions thereof, and return jurisdiction to the Commission, the Local Government shall provide 120 days written notice of their intent to the Commission and to the Department of Environmental Quality (hereinafter "Department") to end the local program and transfer existing projects to the Commission, by and through the Department.
2. To terminate all or part of their local program, a Local Government must comply with the following:
 - a. The notice of intent must include a list of all open projects that are anticipated to be transferred.
 - b. Any legal action or existing litigation undertaken by the Local Government under the local program must stay with the Local Government and cannot be transferred to the Department. This does not prevent the Department from taking new actions against violators for new or continuing violations of the SPCA.
 - c. Local Government shall make a good faith effort to resolve any Notices of Violation prior to transferring projects to the Department provided doing such would not adversely affect any enforcement actions or possible litigation.
 - d. At least 90 days prior to the transfer of all or part of their local program, the Local Government shall provide the Department copies of all its local program project files including all applications, inspection reports, and if applicable, enforcement documentation. Staff from the Local Government shall make themselves available to the Department staff to conduct any necessary joint site visits or coordinate joint inspections.
 - e. At least 60 days prior to the transfer, the Local Government shall notify the responsible parties of all open projects that the local program is ending and shall provide contact information for the Department.
 - f. At least 30 days prior to the transfer of all or part of the local program, Local Government must notify DEMLR upon the termination or expiration of any inter-local agreements.
 - g. At least 30 days prior to the transfer of all or part of their local program, the Local Government shall no longer accept applications for new or revised land-disturbing activities within the

IN WITNESS HEREOF, the Parties enter into this Memorandum of Agreement, this the _____ day of Month _____ 20_.

SEDIMENTATION CONTROL COMMISSION

By: _____
Susan N. White

Commission Chair

Dated: _____

By:  _____
LG Name 1

Title: Mayor/Council Chair/Commissioner


Dated: 1/15/26

Approved as to Form

Sarah Zambon

Counsel to the Commission

Dated: _____

By:  _____
LG Name 2

Title: Mayor/Council Chair/Commissioner

Dated: 1/15/26

Approved as to Form

By: _____
LG Legal Rep Name

Title: LG Legal Rep Title

Dated: _____

Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments that administer a delegated erosion and sedimentation control program over all other land-disturbing activities. In addition to the authority granted to the Commission in G.S. 113A-60(c), the Commission has the following authority with respect to a delegated erosion and sedimentation control program:

(1) To review erosion and sedimentation control plan approvals made by a delegated erosion and sedimentation control program and to require a revised plan if the Commission determines that a plan does not comply with the requirements of this Article or the rules adopted pursuant to this Article.

(2) To review the compliance activities of a delegated erosion and sedimentation control program and to take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action.

(1973, c. 392, s. 7; c. 1417, s. 4; 1987, c. 827, s. 130; 1987 (Reg. Sess., 1988), c. 1000, s. 4; 2002-165, s. 2.5; 2006-250, s.2.)

§ 113A-60. Local erosion and sedimentation control programs.

(a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction and may adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related activities. The fee shall be, on the option of the applicant, either (i)

calculated on the basis of the number of acres disturbed or (ii) no more than one hundred dollars (\$100.00) per lot developed in the case of a single-family lot that is less than one acre, including such a lot that is part of a larger common plan of development. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. Except as otherwise provided in this Article, an ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article.

(a1) Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of this Article and rules adopted pursuant to this Article.

(b1) When a development project contains an approved erosion control plan for the entire development, a separate erosion control plan shall not be required by the local government for development of individual residential lots within that development that disturb less than one acre if the developer and the builder are the same financially responsible person. For review of an erosion control plan for a single-family lot in a

government. The Commission shall be responsible for the administration and enforcement of all other components of the erosion and sedimentation control program and the requirements of this Article. The local government may adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control program. An ordinance adopted by a local government that establishes a limited program shall conform to the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. The local government shall establish and collect a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be an amount equal to eighty percent (80%) of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus any amount that the local government requires to cover the cost of inspection and program administration activities by the local government. The total fee shall not exceed one hundred fifty dollars (\$150.00) per acre. A local government that administers a limited erosion and sedimentation control program shall pay to the Commission the portion of the fee that equals eighty percent (80%) of the fee established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and enforcement of other components of the erosion and sedimentation control program. Fees paid to the Commission by a local government shall be deposited in the Sedimentation Account established by G.S. 113A-54.2(b). A local government that administers a limited erosion and sedimentation control program and that receives an erosion control plan and fee under this subsection shall immediately transmit the plan to the

Commission for review. A local government may create or designate agencies or subdivisions of the local government to administer the limited program. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration of the limited program. The resolutions establishing any joint limited program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission. Subsections (b) and (c) of this section apply to the approval and oversight of limited programs.

- (e) Notwithstanding G.S. 113A-61.1, a local government with a limited erosion and sedimentation control program shall not issue a notice of violation if inspection indicates that the person engaged in land-disturbing activity has failed to comply with this Article, rules adopted pursuant to this Article, or an approved erosion and sedimentation control plan. The local government shall notify the Commission if any person has initiated land-disturbing activity for which an erosion and sedimentation control plan is required in the absence of an approved plan. If a local government with a limited program determines that a person engaged in a land-disturbing activity has failed to comply with an approved erosion and sedimentation control plan, the local government shall refer the matter to the Commission for inspection and enforcement pursuant to G.S. 113A-61.1.

(1973, c. 392, s. 11; 1993 (Reg. Sess., 1994), c. 776, s. 7; 2002-165, s. 2.8; 2006-250, s. 3; 2021-121, s. 5(c); 2021-180, s. 12.10A(b); 2023-108, s. 10.)