

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

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

The following is a summary of projects reviewed:

1. Atando:

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

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

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

2. Grier Meadows:

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

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

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

3. Verizon Mecklenburg North: (File Review Only)

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

4. Fuller: (File Review Only)

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

Positive Findings:

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

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

Issues noted and Required Actions:

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

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

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

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

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

- Once a complete application is received, plans are to be reviewed and the person submitting the plan notified that it has been approved, approved with modifications, or disapproved within 30 days of receipt of a new plan and within 15 days of receipt of a revised plan. G.S. 113A-61(b) and MOA Part III (C). Staff should ensure that an official review decision is being sent to the applicant within the appropriate statutory timeframe. When plans are being disapproved, these notices should be sent with the ability to track receipt by the applicant as they have the right to appeal the decision if a request for a hearing is made within 15 days of receiving the notice of disapproval. The City has recently begun including the official disapproval language via emails sent through the City's electronic permitting system. These notices must be sent with the ability to track receipt. When a revised plan is resubmitted after being disapproved, the plan should be reviewed, and the official review decision sent to the applicant within the 15-day timeframe.
- If the financially responsible party is a company/firm, an individual with signatory authority should sign the FRO form on behalf of the company/firm; however, the company/firm should be listed as the financially responsible party. The City should use the Secretary of State's website to verify the Financially Responsible Party information when applicable.
- Plans should include all information necessary to ensure that they can be approved in accordance with 15A NCAC 04B.0107(a) &(c) and 15A NCAC 04B.0118(d)(1) pursuant to the basic plan objectives under 15A NCAC 04B.0106. Staff should ensure that plans include specific maintenance notes for all proposed measures prior to approving plans. These can be incorporated into the construction details or notes throughout the plan.

Recommendations for improvement:

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

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

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

Conclusion:

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

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