

Local Program Report to the SCC Town of Cary, May 23, 2023

On March 28, 2023, personnel from NCDEQ, DEMLR conducted a formal review of the Town of Cary Erosion and Sedimentation Control Program. The Town of Cary program was last reviewed on August 6, 2019. The Town requires an erosion and sediment control plan for commercial projects disturbing greater than 12,000 sq ft and residential projects not in a common plan of development disturbing greater than one acre. Jurisdiction of the program covers the Town of Cary's corporate limits and extraterritorial jurisdiction (ETJ). The program consists of 5 staff which contribute approximately 4 full time equivalents (FTE). Within the past 6 months, the Town hired two inspectors to fill vacancies; new staff were still being trained at the time of the review. From March 2022 through February 2023, the Town conducted 232 plan reviews or re-reviews, issued 40 approvals and 175 disapprovals. Notifications of plan approval were being sent but did not contain language conditioning the approval upon compliance with water quality laws and notice of the local program's right to inspect. Some of the missing language was included within the grading permits. The Town was sending review comments back to the applicant when plans were found to be inadequate; however, these comments did not contain an official plan decision and were not being sent with the ability to track receipt. Letters of Disapproval must include the necessary language and be sent with the ability to track receipt by the applicant as the applicant can appeal this decision if they file a request within 15 days of receiving the written notice of disapproval. During this period the Town also conducted 1734 inspections and issued 22 NOVs. Staff stated that the Town can issue a stop work order, place a hold on building inspections, and hold the final plat approval or the issuance of a certificate of occupancy until any outstanding erosion and sedimentation control issues have been resolved. The Town has used this ability to issue a stop work order and/or place a hold on building inspections or permits 32 times during this period. At the time of our review the Town had 73 open projects. During our review of the program, we looked at three project files and conducted site inspections on those projects.

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

1. North Harrison Hotels:

This project consists of 6.44 acres disturbed for commercial development and is located within the Upper Neuse sub-basin of the Neuse 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 missing from the project file. Staff indicated that current land ownership is verified with the stormwater application, which occurs at the end of the process before the certificate of occupancy is issued, but that they were not verifying the deed information or retaining a copy in the file during the erosion and sediment control plan review. The FRO form did not contain landowner information and was submitted after the E&SC plan had been approved in the review system but prior to issuing the grading permit. Additionally, a letter of consent between the landowner and the applicant was not included in the project file. The town received the application on February 24, 2020, and went through 5 review cycles before

the plan was approved on February 19, 2021, and the grading permit was issued on April 13, 2022. A review cycle starts when the package is deemed complete and ends when a plan has been approved or disapproved. Not all review cycles for this project were completed within the statutory timeframe. The approved plan included multiple phases and a detailed construction sequence; however, construction details and maintenance notes were not included for all proposed measures. The Town had conducted 23 inspections since the project began construction in April 2022. No NOVs or CPAs had been issued to this project. During the review, grading was underway at the site and a retaining wall was being installed. The construction entrance had been refreshed and extended in response to the March 15, 2023, inspection by the Town noting that dirt being tracked into the street. No tracking was observed during the review. Diversion ditches throughout the site had been driven over and needed to be reinstalled or revised to ensure flow diverts to the basin. Some stockpiles had silt fencing installed along the toe of the slope while others did not. The sediment basin did not appear to be functioning; the basin outlet pipe had been installed near the top of riser and above skimmer attachment elevation such that the skimmer was not dewatering the basin. The baffles were underwater due to excavation to the permanent stormwater design and the skimmer not functioning. Minor sediment loss and staining were noted beyond the limits of disturbance at a silt fence outlet into a wooded area. Overall, this site was out of compliance.

2. Autumnwood 2:

This project consists of 8.04 acres disturbed for residential development and is located within the Haw sub-basin of the Neuse 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 missing from the project file. The FRO form did not contain landowner information and was received after the plan had been approved but prior to a grading permit being issued. Additionally, a letter of consent between the landowner and the FRP was not included in the project file. The Town received the plan application for this project on April 20, 2016, and it went through 5 review cycles before being approved on November 2, 2017, and the grading permit was issued on November 30, 2017. Not all review cycles for this project were completed within the statutory timeframe. The approved plan was missing final grade contours, stockpile locations and maintenance notes for some details, but otherwise appeared adequate. The Town had conducted 75 inspections since the project began construction in November 2017. The Town issued an NOV on February 10, 2023, for offsite sediment and failure to install and maintain erosion and sediment control measures. Those issues were resolved; however, the Town sent a second NOV on March 2, 2023, for offsite sediment at a different location on the site. All compliance issues noted in the NOVs had been resolved at the time of the review. The NOVs issued did not state the required corrective actions to resolve the noted violations. During the review, the site was in the final stages of construction with only a few homes still being built. The silt fencing on multiple lots was undermined and needed to be trenched properly. Minor sediment loss outside the silt fence at one location and signs of previous sediment loss at another location where the silt fence had been repaired were noted. Any remaining sediment loss needed to be cleaned up. Construction entrances to some of the lots needed to be refreshed to prevent tracking. Overall, this site had been stabilized throughout, except for the few homes still under construction which had minor sediment losses and therefore was out of compliance.

3. Young Farm Property:

This project consists of 68.73 acres disturbed for residential development and is located within the Haw sub-basin of the Neuse 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 missing from the project file. The FRO form was missing the registered agent's and landowner information. The Town received the plan application for this project on September 23, 2020, and went through 7 review cycles before being fully approved on February 28, 2022. Not all review cycles for this project were completed within the statutory timeframe. The Town issued an early grading permit for the project on October 6, 2021. An early grading permit may be issued prior to the full construction plan set being approved if the erosion control plan has been found to be approvable but other aspects of the construction plan are not adequate. Under an early grading permit, only installation of erosion control measures and grading is approved, no infrastructure installation is allowed. Once the full construction plan is approved, the early grading permit is transitioned into the full grading permit. The approved plan appeared to be adequate. The Town had conducted 28 inspections since construction began in October 2021. No NOV or CPAs had been issued to this project. Due to time constraints, only a partial inspection was conducted on this site during our review. Active grading was underway at the site and two stream/wetland crossings had been completed. The silt fence and silt fence outlet had been undermined at both the stream and wetland crossing resulting in sediment loss into the stream and wetland area. Drop inlet protection measures had been installed and maintained in some areas but others needed to be replaced or repaired. A sewer line crossing had been installed and grass had been established. Soil stockpiles needed to be stabilized and silt fence installed around the toe of the piles. Slope drains needed to be staked down and extended to the toe of the slope. Outlet and inlet protection measures were also needed on slope drains. Town staff conducted a full inspection on March 29, 2023, after the review and issued an NOV for the sediment loss and other violations.

Positive Findings:

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

- The Town has a more restrictive criterion than the State as to when an Erosion and Sediment Control Plan is required. Plans are required for all projects disturbing greater than one acre and all commercial projects disturbing greater than 12,000 square feet.
- The Town requires a preconstruction meeting for all projects.
- Prior to issuing a grading permit, the Town requires that materials for erosion and sediment control be onsite, for example the skimmer, risers, piping, etc. This ensures that measures can be installed without delay once construction begins.
- The Town utilizes an electronic system to document inspection reports. Inspection staff can indicate the areas with compliance issues on an electronic copy of the E&SC plan and tag photos within the inspection report through this system.
- The Town requires a certificate of compliance indicating that initial E&SC measures have been installed and approved before mass grading can begin.

- The Town utilizes the ability to issue stop work orders and/or place holds on building inspections or permits for E&SC violations as additional tools to bring sites into compliance.

Issues Noted and Required Actions:

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

- Documentation of property ownership was not retained in project files. Staff stated that they were verifying property ownership during the stormwater application, which occurs before the certificate of occupancy is issued, but that they were not verifying the deed information or retaining a copy in the file during the erosion and sediment control plan review.
- Written landowner consent was not obtained when the financially responsible party (FRP) and landowner differed.
- The FRO form did not include landowner information and in one instance was missing the business's registered agent information.
- Once a complete application is received, plans are reviewed, and either approved or review comments are sent back to the applicant. Official notification of the plan review decision is not always being sent within the required statutory timeframes. The approval and disapproval notifications are missing necessary language, and notifications of disapproval are not being sent with the ability to track receipt.
- Maintenance notes for all proposed measures were not included in all approved plans.

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

- Documentation of land ownership must be obtained prior to approval of a plan. 15A NCAC 04B.0118(c). A copy of the property deed should be retained in each project file. After the review, the Town began requiring a copy of the deed to be submitted prior to issuing a grading permit.
- Except for certain utility construction, if the applicant is not the owner of the land to be disturbed, the erosion and sediment control plan must include the landowner's written consent for the applicant to submit a plan and to conduct the land-disturbing activity. G.S. 113A-54.1(a). The Town should obtain a letter of consent when the landowner and FRP differ and retain this in the project file.
- Erosion and sedimentation control plans must be disapproved unless the application includes an authorized statement of financial responsibility and documentation of property ownership. 15A NCAC 04B .0118. The Town's FRO form should be updated to include landowner information and Town staff should ensure that the form is filled out completely. After the review, The Town updated the FRO form to include landowner information.
- Once a complete application is received, plans are to be reviewed and the person submitting the plan notified that it has been approved, approved with modifications, or disapproved within 30 days of receipt of a new plan and within 15 days of receipt of a

revised plan. G.S. 113A-61(b) and MOA Part III.C.1 & 3. Staff should ensure that plans are being reviewed and notice of the official review decision is being sent within the statutory timeframes. The applicant has the right to appeal a disapproval or modification if written demand for a hearing is made within 15 days after receipt of written notice of the disapproval or modification. G.S. 113A-61(c). Notice of Disapproval and modifications should be sent with the ability to track when the applicant has received the notice to ensure any request for appeal has been made in accordance with the statutory timeframe.

- The Town should ensure that specific maintenance notes for each proposed measure are included somewhere within the plans.

Recommendations for Improvement:

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

- Certain sections within the Town’s ordinances have been updated pursuant to the 2021 Model Ordinance; however, some updates from previous Model Ordinances had not been made such as sections which refer to the right to request remissions when issued a civil penalty. It is recommended to review the local ordinances to ensure that the most recent state statutes and administrative codes are reflected and update all template letters to reflect any changes.

Conclusion:

During our review we found that the Town of Cary locally delegated erosion and sedimentation control program had a few deficiencies. The Town will need to adjust their plan review procedure to ensure that plans are reviewed, and the applicant notified of the decision properly and within the statutory timeframe. Staff should ensure that construction details and maintenance notes are included for all proposed measures prior to approving plans. Documentation of property ownership and landowner consent should be retained within each project file. The FRO form should be updated to include landowner information and staff should verify that it is filled out completely. It’s recommended that the Town update their local ordinance to reflect the most recent Model Ordinance. The Town has a stricter criterion than the State as to when an erosion and sediment control plan is required. Staff stated that preconstruction meetings are required for all projects and that materials such as skimmers, riser barrels, etc. are onsite prior to construction starting. This ensures that the installation of measures once construction begins is not delayed due to potential supply chain shortages. During the review, the Town demonstrated a thorough understanding of the enforcement processes and tools which are delegated to them. However, the Town hired two inspectors in the past 6 months to fill vacancies, and new staff, while showing a wide breadth of knowledge, would benefit from additional training. Current staffing levels appear to be adequate. DEMLR staff recommends to “Continue Delegation with Review” for a period of 6-months of the Town of Cary locally delegated program with a follow up report to be presented during the 2023 Q4 meeting.

This report has been prepared based on the formal review of the Town of Cary Erosion and Sedimentation Control Program conducted on March 28, 2023, and will be presented to the Sedimentation Control Commission during its 2023 Q2 meeting on May 23, 2023.