

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

On April 5, 2023, personnel from NCDEQ, DEMLR conducted a formal review of the Town of Lake Lure Erosion and Sedimentation Control Program. The Town of Lake Lure program was last reviewed on 7/11/2019. The Town requires a major erosion control plan for all projects disturbing one acre or more and a minor erosion control plan for all projects disturbing greater than 2,000 square feet or 100 square feet if the land disturbing activity is within 35 feet of a lake or natural watercourse. Minor plans require all the necessary components of an erosion control plan but do not require some of the stormwater related items required in a Major plan. Jurisdiction of the program covers the Town's corporate limits. The program consists of three staff which contribute approximately 0.5 full time equivalents (FTE). During the 2022 calendar year, the Town conducted 63 plan reviews or re-reviews, issued 50 approvals and 8 disapprovals. During this period, the Town conducted 103 inspections and issued 2 NOVs and 1 CPA. The Town also issued 2 stop work orders during this period. Staff stated that they will hold zoning permit closeouts and will work with the County Building Department to hold final building permits until any outstanding erosion control issues have been resolved. Staff stated that inspections were not being documented through official inspection reports until the beginning of 2023. Inspections were previously noted using an internal log, but no report was filled out. At the time of our review the Town had 45 open projects. The Town currently has no projects with land disturbances of one acre or greater. During our review, the project files for three projects were reviewed, and a site inspection was conducted on each project.

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

1. 0 Memorial Hwy:

This project consists of 0.62 acres disturbed for residential development and is located within the Upper Broad subbasin of the Broad River basin. The project file contained the approved plan, letter of approval, a copy of the property deed, the FRO form and the most recent inspection report. The complete application was initially received by the Town on 7/7/2022 and was approved on 9/8/2022. The FRO form within the project file had not been notarized. The approved plan did not include a construction entrance or the seeding specifications for temporary and permanent groundcover. No NOVs or CPAs had been issued to this project prior to our review. On the day of our review active grading was still underway. The completed septic field had been seeded and vegetation was beginning to establish. One short section of silt fence needed to have accumulated sediment removed to ensure that failure of the fence did not occur during future rain events. This site was at the end of a gravel drive; however, no construction entrance had been installed. Silt fence had been installed around the toe of the stockpile onsite. Overall, this site was out of compliance. No signs of offsite sediment were noted.

2. 355 Tryon Bay:

This project consists of 1,634 square feet disturbed for a retaining wall and staircase replacement and is located within the Upper Broad subbasin of the Broad River basin. This project was located within thirty-five feet of Lake Lure and therefore required a minor erosion control

plan. The project file contained the approved plan, letter of approval, the FRO form and the most recent inspection report. A copy of the property deed and written landowner consent for the Financially Responsible Party to submit the application and conduct the land disturbing activity was not retained in the project file. The project file also contained the Trout Buffer Waiver issued by DEMLR. The approved plan for this project did not appear to be adequate. The approved limits of disturbance did not encompass all proposed activity and did not show access to the site. The existing topography was not shown, and the construction sequence did not adequately describe the various aspects of construction. Construction on this project had not yet begun.

3. 145 Eagles Court:

This project consists of 0.12 acres disturbed for residential development and is located within the Upper Broad subbasin of the Broad River basin. The project file contained the approved plan, the letter of approval, the FRO form and the most recent inspection report. The plan in the file delineated the areas to be cleared but did not include any proposed erosion control measures. On the day of our review, the retaining wall had been completed and wood mulch had been spread on the disturbed area. These areas would need to be permanently stabilized with adequate ground cover prior to closing out the project. Overall, this site was in compliance. No signs of offsite sediment were noted.

Positive Findings:

During the review DEMLR staff noted positive aspects about the Town of Lake Lure Erosion and Sedimentation Control Program including:

- The Town requires a preconstruction meeting for all approved projects.
- The Town provides reference to the NCG01 permitting process within their letters of approval.
- The Town has a more restrictive criterion than the State as to when an ESC plan is required. A major plan is required for all projects of one acre or greater and a minor plan is required for projects disturbing more than 2,000 sq. ft. or 100 sq. ft. if the activity is within 35 feet of a watercourse. Both minor and major plans follow the same review and approval process.
- The Town can use Stop Work Orders and final planning approval holds as additional tools to bring sites in compliance. Staff also work with the County Building Department to place a hold on the final building permit until outstanding erosion control issues have been addressed.

Issues Noted and Required Actions:

During the review DEMLR staff found that the Town of Lake Lure Erosion and Sedimentation Control Program had deficiencies including:

- Once a complete application was received, the Town reviewed the plans and then issued an official review decision. However, this official review decision was not always sent within the statutory timeframes.
- Documentation of property ownership was not retained in all project files.

- Written landowner consent was not obtained when the financially responsible party (FRP) and landowner differed.
- Approved plans did not all adequately represent the existing and proposed site conditions. Proposed measures nor plan notes did not appear to be adequate to control erosion and sedimentation on all approved plans.
- The Town's reported activity indicates a low inspection frequency. Staff also stated that inspections were previously not being documented through an official inspection report but were being noted in an internal log.
- Certain sections of the local ordinance are devoid or no longer adhere to the most recent state statutes and administrative code.

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

- 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 the plans are reviewed, and notice of the review decision is being sent within the statutory timeframes.
- 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.
- 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 to conduct the land-disturbing activity. G.S. 113A-54.1(a). When the landowner and FRP differ, written consent from the landowner shall be obtained and retained in the project file.
- 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 all the necessary details and specifications. Staff should also ensure that all areas potentially being disturbed are within the limits of disturbance. Plans should include access to the site and provide adequate measures or practices to control erosion and sedimentation.
- The Town shall employ a sufficient number of qualified personnel and provide adequate resources for plan review and compliance inspections. MOA Part III.A.3 & 4. The Town will need to increase their inspection frequency to ensure active projects are in compliance with the SPCA. Staff indicated that they have recently begun documenting inspections and providing an official inspection report. The Town should continue to document inspections and issue reports to the FRP.
- The Local ordinance should be updated to reflect the most recent state statutes and administrative code pertaining to that which constitute your delegation authority for erosion and sedimentation control. The Commission has approved a Model Ordinance

which can be found on the [NC DEQ Erosion and Sedimentation Control Local Programs Website](#).

Conclusion:

During the review, DEMLR staff noted that the Town of Lake Lure locally delegated erosion and sedimentation control program had a few deficiencies. The Town will need to adjust the plan review process to ensure that all required aspects of a complete package are obtained and that reviews are completed within the statutory timeframe. Approved plans reviewed did not appear to be adequate and the Town should adjust their review checklist to ensure that all necessary aspects of a plan are included prior to approval. The Town has a more restrictive criterion as to when an erosion and sediment control plan is required. The Town currently does not have any projects which disturb greater than one acre and would therefore require an erosion and sediment control plan if under the State's jurisdiction. Town staff reported an infrequent presence onsite and should increase the inspection frequency to ensure projects are sufficiently monitored for compliance with the SPCA. No signs of offsite sedimentation were noted on any site; however, staff would benefit from additional training regarding both plan reviews and site inspections. The Town has demonstrated their willingness and ability to utilize enforcement tools including NOVs, CPAs, SWOs and coordination with the County Building Department to hold final permits and closeouts to bring sites back into compliance. DEMLR staff recommend to "Continue Delegation with Review" for a period of 6-months of the Town of Lake Lure 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 Lake Lure Erosion and Sedimentation Control Program conducted on April 5, 2023, and will be presented to the Sedimentation Control Commission during its 2023 Q2 meeting on May 23, 2023.