NCDENR
North Carolina Department of Environment and Natural Resources
Division of Energy, Mineral, and Land Resources
Land Quality Section

Tracy E. Davis, PE, CPM
Director

Pat McCrory, Governor
John E. Skvarla, III, Secretary

March 12, 2013

Mr. Charlie Horne, Manager
Chatham County
P.O. Box 1809
Pittsboro, NC 27312

Dear Mr. Horne:

The Sedimentation Control Commission met on February 28, 2013, and approved the Memorandum of Agreement with Chatham County. A signed original is enclosed.

Thank you for submitting your MOA for approval. The County's willingness to participate as a delegated erosion and sedimentation control program is greatly appreciated.

Sincerely,

T. Gray Hauser, Jr., PE
State Sedimentation Specialist

Enclosure: Memorandum of Agreement (Signed)

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MEMORANDUM OF AGREEMENT

BETWEEN

THE NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION

AND

CHATHAM COUNTY

This MEMORANDUM OF AGREEMENT is entered into between the **North Carolina Sedimentation Control Commission** (hereinafter, "Commission") and Chatham County (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(1), provide a model erosion and sedimentation control ordinance (hereinafter, "model ordinance") for adoption by local governments who wish to operate a delegated local sedimentation and erosion 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 chose 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 staff for review prior to adoption. Local governments must adopt the ordinance prior to submission to the Commission for approval.
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.

Part II. Responsibilities and Expectations of the Commission.

A. Local Program Review

The Parties agree that the Commission shall do the following:

1. Review periodically approved local programs for compliance with the SPCA. The results of the reviews shall be presented at the next quarterly meeting of the Commission.
2. If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement.
3. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

B. Training and Education for Local Programs

The Parties agree that the Commission shall provide the following:

1. Educational programs in erosion and sedimentation control directed toward persons engaged in land-disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of the SPCA and erosion and sedimentation control rules, ordinances, regulations, and plans.
2. Manuals and publications to assist in the design, construction and inspection of erosion and sedimentation control measures.
3. Periodic reviews of local erosion and sedimentation control programs and through the reviews provide recommendations to improve program administration.
4. Technical assistance in review of draft erosion and sedimentation control plans for complex activities.

C. Concurrent Jurisdiction

The Parties agree that the Commission shall maintain concurrent jurisdiction with the local government for land-disturbing activities and may take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action.

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 Commisison may continue to adminster the SPCA over specific projects under enforcement action upon mutal 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 report to the Commission in the form adopted by the Commission.
2. Copy of all Financial Responsibility/Ownership forms to the Division of Water Quality (DWQ) when draft erosion and sedimentation control plans are received.
3. Copy of Notices of Violation to the appropriate regional office of DWQ.
4. Current contact information for their local program to the Division of 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, approve with performance reservations, 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, approved with performance reservations 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:

    a. reference to NPDES General Stormwater Permit NCG 010000,
    b. expiration date of the approval,
    c. the right of periodic inspection, and
    d. condition the approval upon the applicant's compliance with federal and State water quality laws, regulations and rules.

5. Enclose with all written permit notifications the following

    a. NPDES General Stormwater Permit NCG 010000, and
    b. Certificate of Approval for posting at the site of the land-disturbing activity.

D. Inspection

The Parties agree that the local government shall inspect all sites undergoing land-disturbing activity under the following standards:

a. Periodically and regularly inspect sites undergoing land-disturbing activity within its jurisdiction. Periodically and regularly means with sufficient frequency to effectively monitor compliance with the SPCA and rules adopted pursuant to the SPCA and the local erosion and sedimentation control ordinance.

2. Document all inspections in writing, including electronic documents.

3. Inspection reports shall include, at a minimum, all information in the model sedimentation inspection report developed by the Commission.

4. Maintain inspection records for active projects in accordance with State and local record retention policies.

E. Enforcement

The Parties agree that the local government shall enforce its local program ordinance under the following standards:

1. Issue Notices of Violation (hereinafter, "NOV") for any significant violation of the SPCA, rules adopted pursuant to the SPCA, or the local erosion and sedimentation control ordinance documented in an inspection report. An NOV shall be issued to the persons responsible for the violations, pursuant to N.C. Gen. Stat. § 113A-61.1.

2. The NOV shall specify the following:

    a. describe the violation with reasonable particularity

    b. request that all illegal activity cease

    c. the actions that need to be taken to comply with the SPCA and the local ordinance

d. a date by which the person must comply with the SPCA and the local ordinance

e. inform the violator that 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 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.

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IN WITNESS HEREOF, the Parties enter into this Memorandum of Agreement, this the _____ day of Feb. 28 2013 TMN.

SEDIMENTATION CONTROL COMMISSION

By: Robin K. Smith
Robin K. Smith
Chair
Dated: 2/28/2013

DIVISION OF ENERGY, MINERAL AND LAND RESOURCES

By: Francis M. Nash for
Tracy E. Davis, PE, CMP
Director
Dated: 2/28/13

Approved as to Form

Rufus T. Reynolds for
Rufus C. Allen
Assistant Attorney General and Counsel to the Commission
Dated: 2/28/2013

Chatham County

By: Walter Petty
Walter Petty
Chair
Dated: 12-17-2012

Attest:

By: Sandra B. Sublett
Sandra Sublett
County Clerk
Dated: 12-17-2012

Approved as to Form

Jep Rose
Jep Rose
County Attorney

Dated: 12/19/12

Appendix I.

NORTH CAROLINA GENERAL STATUTES
***Sedimentation Pollution Control Act* (Ch. 113A Art. 4)**
(selected statutes)

§ 113A-54. Powers and duties of the Commission.

(d) In implementing the erosion and sedimentation control program, the Commission shall:

(1) Assist and encourage local governments in developing erosion and sedimentation control programs and, as a part of this assistance, the Commission shall develop a model local erosion and sedimentation control ordinance. The Commission shall approve, approve as modified, or disapprove local programs submitted to it pursuant to G.S. 113A-60.

§ 113A-56. Jurisdiction of the Commission.

(a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:

(1) Conducted by the State.

(2) Conducted by the United States.

(3) Conducted by persons having the power of eminent domain other than a local government.

(4) Conducted by a local government.

(5) Funded in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any other 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.

(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 to this end local governments are authorized to 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. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. 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. 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.

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

(d) A local government may submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local 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 dollars ($100.00) 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.)