

MEMORANDUM OF UNDERSTANDING (MOU)
Between the Town of Carrboro and Orange County
For the Administration of an E&SC Program Within Town Boundaries

This Memorandum of Understanding (MOU) is made and entered into by and between the following parties:

1. Town of Carrboro, a unit of municipal government
Carrboro Town Hall, 301 W Main Street, Carrboro, NC 27510
2. Orange County, a unit of county government
Whitted Human Services Building, 300 W Tryon St, Hillsborough, NC 27278

Execution of this instrument is made and entered into the ____ day of _____, ____, by and between the Town of Carrboro (hereinafter referred to as the "Town") and Orange County (hereinafter referred to as the "County") per N.C.G.S. 160A-461.

PURPOSE: The Town and County desire to continue their coordinated Erosion and Sediment Control (E&SC) regulations and procedures in all of the Town's jurisdiction pursuant to the terms of this instrument and applicable ordinances.

BACKGROUND:

WHEREAS, the State of North Carolina enacted the Sedimentation Pollution Control Act (SPCA) of 1973 for the creation, administration, and enforcement of a program and for the adoption of minimal mandatory standards which permit development to continue with the least detrimental effects from pollution.

WHEREAS, the Orange County Erosion Control Officer and staff have enforced the Ordinance in Carrboro pursuant to a resolution adopted by the Town of Carrboro Board of Alderman in 1976 and amendment of the Town's Land Use Ordinance in 1983; and

WHEREAS, the County has a locally delegated E&SC Program with requirements to reduce pollutants in stormwater runoff from construction activities in its jurisdiction in accordance with N.C.G.S. 113A-60; and

WHEREAS, SPCA regulatory mechanisms are presently set forth in the Orange County Unified Development Ordinance (Ordinance), in Sections 1.11, 2.18, 2.19, 2.26, 6.15 and 9.8; and

WHEREAS, this enforcement was first set forth in an agreement, "Memorandum of Agreement between the NC Sedimentation Control Commission and Orange County" executed from the date of March 11, 2015; and

WHEREAS, the Town is required to meet minimum control measures directed through a comprehensive Stormwater Management Plan (SWMP) and MS4 Permit (NCS000450),

including requirements for construction site runoff controls through its own operations or by shared responsibility with a delegated E&SC program.

TERMS:

The Town and County hereby agree as follows:

Town of Carrboro agrees to:

1. Relinquish its right to collect associated E&SC fees to Orange County, so long as this MOU is in effect. However, the Town retains its authority to review and approve such fees, should they differ from those applicable in Orange County areas outside of the Town of Carrboro.
2. Support E&SC best practices and desired environmental outcomes through the Town's development review process and construction/development site inspections, including coordinating the application of enforcement measures available to both the Town and Orange County.
3. Acknowledge that while Orange County Erosion Control provides supplemental support, the Town of Carrboro retains ultimate responsibility for NPDES compliance and may face enforcement if it or OCEC fails to meet required Best Management Practice (BMP) obligations.

Orange County agrees to:

1. Publish its fee schedule, including E&SC items, making it publicly available to Carrboro residents.
2. Administer and enforce the Ordinance sections relating to E&SC within the Town's jurisdiction. Administration shall include: processing applications; collecting fees; reviewing plans; conducting field inspections; maintaining files and records; and enforcement actions.
3. Inform and coordinate with the Town on E&SC administration and enforcement actions such as, but not limited to: stop work orders, permit revocation, imposition of requirements in addition to those in approved E&SC plans, and appeals of staff determinations.
4. Notify the Town of Carrboro in writing within three (3) business days if the County's delegated program is placed on probation by the North Carolina Department of Environmental Quality (NCDEQ). The written notification shall include a description of the basis for the probation and its causes. Upon request of the Town, Orange County shall provide documentation relevant to NCDEQ's determination. Within 3 business days of receiving notice from NCDEQ that the probationary status has been lifted, Orange County shall provide written notice to the Town.

Both Parties agree to:

1. Coordinate compliance efforts on E&SC for development projects from concept to final stabilization. Both parties will share data for the respective development projects.

2. Upon mutual concurrence between the Carrboro Board and the Orange County Board of County Commissioners, the Town Manager and the County Manager, or their designees, may be delegated to establish administrative procedures to supplement or amend this instrument.
3. Based on recommendations and guidance from State permitting authorities, this MOU shall be reviewed and reauthorized by both governing bodies no less than every five (5) years and occurring at least once amid an MS4 permitting period.

SEVERABILITY: If any term or provision of this agreement is found to be illegal or in conflict with any existing or newly enacted law, the remaining portions shall be considered severable and shall not be affected by such a determination and the rights and obligations of the parties shall be construed and enforced as if the instrument did not contain the noncompliant part. Upon such determination, if either party feels a replacement provision is needed, the parties shall negotiate in good faith to draft a replacement clause that is enforceable and that as closely corresponds to the spirit and purpose of this document as a whole.

TERMINATION:

This Agreement shall continue until terminated. The Town or County may terminate the MOU upon 120 days advance written notice to the County Manager or Town Manager, as appropriate.

ADOPTION:

IN WITNESS WHEREOF, the Town and County have caused this instrument to be executed by the Town Manager and County Manager, and they have hereunto set their hands and seals on the day and year first written above.

Approved as to form and authorization:

Town of Carrboro Manager

Date: _____

Orange County Manager

Date: _____