

July 15, 2010

Ian McMillan, Acting Supervisor
North Carolina Department
of Environment and Natural Resources
Division of Water Quality
Wetlands and Stormwater Branch
1617 Mail Service Center
Raleigh, NC 27699-1617

Re: Town of Apex Jordan Buffer Ordinance Review

Dear Mr. McMillan:

In response to your June 15, 2010 letter providing comments on Chatham County's ordinance provisions pertaining to the Jordan Lake Watershed riparian buffer requirements, I am enclosing a revised version of the County's Watershed Protection Ordinance which shows the proposed changes to the version initially submitted to you. Also enclosed is a completed Local Government Ordinance Submission Checklist addressing the items you highlighted.

Your comments are restated below followed by the County's response.

1. **Chatham County's Jordan Ordinance (hereafter "Ordinance") should contain a purpose statement of nutrient removal as a primary function of the riparian buffers.**

Language has been added to Sec. 101 on page 1.

2. **Ordinance Section 304(A), you must also include "A map approved by the Geographic Information Coordinating Council and by the NC Environmental Management Commission".**

That language has been added to Sec. 304(A) on page 33.

3. **Ordinance should contain language describing its relation to other local ordinances. It should include a statement that the requirements of this ordinance shall supersede all locally implemented buffer requirements in the Water Supply Watershed areas within the Jordan watershed. See Section 6 of DWQ's Model Local Riparian Buffer Protection Ordinance (hereafter "Model Ordinance") for suggested language. If this requirement is already contained in another section of your ordinance, please submit that section with your reply.**

Chatham County's approach to meeting its obligation to adopt riparian buffer requirements for the Jordan Lake watershed portion of the County that are at least as stringent as 15A NCAC 2B .0267 and .0268 is to amend its existing comprehensive Watershed Protection Ordinance as necessary to meet DENR's new requirements. Footnote 6 on page 37, and Section 304(J), beginning on page 44, make clear that the applicable buffer requirements for the Jordan Lake Watershed are contained in Section 304(J). See also the last sentence in Section 103(A) which has the effect of ensuring that the provisions of this Ordinance would control over any conflicting, less restrictive provision in another ordinance.

4. **Please add an "Applicability" section that states "This Ordinance applies to all landowners and other persons conducting activities in the area described in Section 102, with the exception of activities conducted under the authority of the State, the United States, multiple jurisdictions, or local units of government, and forest harvesting and agricultural activities. The NC Division of Water Quality shall administer the requirements of Rule 15A NCAC 02B .0267 and .0-268 (Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers and Mitigation of Existing Riparian Buffers, respectively) for these activities."**

Language has been added to the beginning of Sec. 304(J) on page 45.

5. **Please clarify Section 300 of the Ordinance to state it applies to all landowners.**

The change noted above in response to comment # 4 includes language indicating that the Jordan Watershed buffer requirements apply to all landowners.

6. **In Section 304 (I)(1), "Owners of a lot" needs to be changed to "Persons".**

Requested change has been made. See page 42.

7. **Section 304 (I)(1) is missing Section 9(A)(2-5) from the Model Ordinance.**

Similar language has been proposed as subsections (I)(2) – (5) in Section 304 of the County's Ordinance. See pages 43 – 45.

8. **In Section 507(B)(2)(a), the hardship that the applicant did not purchase the property after the effective date of this Ordinance, and then request a variance must be added to the Ordinance.**

That provision is located in Section 507(B)(2)(a)(4) on page 88 of Chatham County's current Ordinance.

9. **In Section 304(A)&(B), you must add the language that the latest version of the *Surface Water Identification Training Certification* course, its successor, or other equivalent training approved by the Division shall make onsite determinations.**

Those changes have been made. See pages 32 – 33.

10. **Please revise Section 304(C) to be at least as stringent as the Exemptions in the Model Ordinance Section 7.B & C. Section 304(C) of your Ordinance is also missing a section for “Exemptions Based on On-site Determinations”.**

The heading of Section 304(C) has been amended to make clear that it only applies to areas outside of the Jordan Lake Watershed, and that clarification was also added to footnote 6. Language exempting surface waters that appear on maps from the riparian buffer requirements based on an onsite evaluation has been added to Section 304(B). An “Exemption when uses are existing and ongoing” provision has been added as Section 304(J)(6) which is applicable to the Jordan Lake Watershed.

11. **In the Table of Uses in Section (J)(3), please clarify what the superscript 201 is referring to or have it removed from the Ordinance.**

Any superscript such as that noted is not intended to be a part of the Ordinance and has been removed.

12. **In the Table of Uses in Section (J)(3), the use “Temporary sediment and erosion control devices” is not clearly labeled in the table and there are no “Xs” marking if the two temporary in-stream sediment and erosion control device uses are exempt, allowable or allowable with mitigation.**

The heading “In-stream temporary erosion and sediment control measures:” has been added and an “X” has been added to the appropriate column beside each of the two activities listed below the heading.

13. **Diffuse flow needs to match Section 7(E) of the Model Ordinance.**

The County believes that its proposed language in Section 304(J)(2) on pages 46 -47 is consistent with, and at least as stringent as, the diffuse flow requirements of the Model Ordinance. Section 304(J)(2)(a) requires conversion to diffuse flow at non-erosive velocities before it enters “the riparian buffer” rather than referencing “Zone 2” because the County’s diffuse flow requirement also applies to the 30 foot buffers that are required for ephemeral streams and seeps and springs (both within and outside of the Jordan Lake Watershed), and such buffers do not contain a “Zone 2”. The revised Ordinance submitted to you in response to these comments also deleted the reference to “stormwater management ponds” in Section 304(J)(2)(c) because the County is not including

stormwater management ponds as a permissible use in the Table of Uses in Section 304(J)(3).

14. **Please revisit your definitions in Section 109 or the Ordinance. Several definitions were missing from the Model Ordinance.**

The County has added definitions for access trails, airport facilities, forest management plan, forest plantation, greenway/hiking trails, shoreline stabilization, temporary road and tree.

15. **Section 304(A), please clarify what is meant by “where applicable” for buffers required.**

The County has inserted the language “As provided in this Ordinance” in lieu of “Where applicable”. See page 32.

16. **Please revise Section 304(H)(1) and (2) of the Ordinance to be at least as stringent as the Model Ordinance. As it is written now, Section (H) is less stringent than the Jordan Buffer Rule for vegetation management in the protected buffers.**

The County’s intent is that Section 304(H) does not apply to riparian buffers in the Jordan Lake Watershed. Those buffers are regulated by 304(J). Footnote 6 has been amended to further clarify that point, and any reference to Section 304(H) in the table of uses in Section 304(J)(3) has been deleted.

17. **Please revise Section 304(H)(3) to reference Cherri Smith’s *Exotic Plant Guidelines. Dept of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30*, as a reference for exotics that can be removed from the buffer and not the NC Botanical Gardens.**

Please see response to comment # 16. Reference to Cherri Smith’s *Exotic Plant Guidelines. Dept of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30* is contained in the Section 304(J)(3) Table of Uses applicable to the Jordan Lake Watershed.

18. **Ordinance should specify that it will become effective upon approval by the EMC and adoption by the County. See Section 12 of the Model Ordinance for suggested language.**

Rather than adopting a new ordinance, the County is amending its existing Watershed Protection Ordinance to ensure that its regulation of buffers in the Jordan Lake Watershed meets or exceeds the requirements in 15A NCAC 2B. .0267 and .0268. A

provision establishing the effective date of the various amendments to the ordinance would be contained as part of the County's published amendments for the Ordinance. Also, Article 700, Amendments, of the County's Watershed Protection Ordinance will contain the effective date for the amendments.

19. **Ordinance should contain language describing the process for incorporating future revisions to the Model Ordinance. See Section 13 of the Model Ordinance for suggested language.**

In the event the EMC determines in the future that additional changes are required to the County's Watershed Protection Ordinance in order to meet the standards established in 15A NCAC 2B .0267 and .0268, the County would then respond as necessary to ensure its ordinance contains all required provisions. The provision in 15A NCAC .0267(15)(d) regarding a two month timeframe for a local government to respond to required changes upon the Commission's review of the local ordinance applies to a local government regardless of whether the local government adopts similar language in its own ordinance. The County would prefer not to add such language to its Ordinance because it regulates all watersheds in the County, not just the Jordan Lake watershed.

20. **Section 304(F) and 304(J) of the Ordinance seem to contradict each other. Please clarify which riparian buffers Section 304(F) applies.**

Section 304(F) does not apply to riparian buffers in the Jordan Lake Watershed. See footnote 6 on page 37.

21. **Several uses listed in Section 304(F) needs to be revised to match the Model Ordinance:**

- a. **304(F)(3);**
- b. **Footnote 7 for 304(F)(3) does not exist;**
- c. **304(F)(4) perpendicular road crossings that impact greater than 150 linear feet or one-third riparian buffer require mitigation;**
- d. **304(F)(5) perpendicular utility crossings that impact greater than 150 linear feet require mitigation;**
- e. **304(F)(6) non-perpendicular utility impacts would require mitigation in Zone 1; and**
- f. **304(F)(9) should be prohibited. No wastewater treatment or disposal components are allowed in the protected Jordan buffer.**

As noted above, the requirements in Section 304(F) do not apply to buffers within the Jordan Lake Watershed. Therefore, those provisions do not have to be consistent with the requirements of 15A NCAC 2B .0267. Regarding, comment # 21(b), the text of footnote 7 is on page 38 of the Ordinance.

Ian McMillan
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Please do not hesitate to contact me if you have any questions or comments regarding any of the County's responses. Thank you for your assistance with this matter.

Sincerely,

Fred Royal, PE, CFM
Director, Environmental Resources Division

Cc: Tim Sullivan, Poyner and Spruil
Jason Sullivan, Director, Planning Division
Cynthia Van Der Wiele, Director, Sustainable Communities Development Department