

Attachment 2

Summary of the draft

Chatham County Watershed Protection Ordinance

Amendments for

Jordan Lake Riparian Buffer rules

June 21, 2010

The following are key summary excerpts of text amendments to the Chatham County Watershed Protection Ordinance with the intent of meeting the NCDWQ Jordan Lake Buffer rules. In particular, key changes include:

1. Jordan Lake Watershed Areas Map – *The existing Chatham County Watershed Map must be amended to indicate the boundary of the Jordan Lake watershed area where these particular buffer rules apply. As written, the draft ordinance applies the Jordan Lake Buffer Rules only to within the Jordan Lake watershed boundary area in Chatham County. The Jordan Lake watershed area is indicated in yellow on the map, Attachment 3 . The revised Watershed Areas Map has not yet been fully developed.*
2. Buffer Zones – *Zone One is the first 30' from the top of stream bank and; Zone Two is the entire outer remaining portion of the riparian buffer with a width depending on the stream classification. Zones are a key new designation (in the JL Watershed only) due to the Table of Uses and the potential mitigation requirements.*
3. Table of Uses – *This table is required and was inserted into the existing Watershed Protection Ordinance with language so as not to weaken the existing County buffer rules nor render the amended JL Rules more restrictive than necessary. The existing county buffer regulations were blended and balanced with the JL Rules with the intent to effectively administer the added rules while minimizing the burdens placed on the applicant to the extent feasible under the law.*

4. Mitigation – *This requirement is only for cases where the threshold of buffer disturbance is reached inside buffers within the JL Watershed.*

Notes in boxes that follow the text amendments explain the sample amendments. The text amendments were developed by Fred Royal, PE, Director Environmental Resources Division and Tim Sullivan, Attorney, Poyner and Spruill. The adoption schedule is as follows:

- September, 2010: DWQ will provide recommendations to the Environmental Management Commission (EMC).
- November, 2010: Chatham County will adopt the amendments.

The full text of the draft Watershed Protection Ordinance (revised draft 3/10/10) is viewable at the agenda website. The public hearing/notification process is being reviewed by the County Attorney presently.

Sample Definitions:

Major Variance. A variance that results in any one or more of the following:

4) the allowance of a use that is prohibited by the Table of Uses in § 304(J)(3) that will impact any portion of Zone One or any portion of both Zones One and Two of a riparian buffer in the Jordan Lake watershed.

Minor Variance. A variance that does not qualify as a Major Variance. With respect to impacts to a riparian buffer in the Jordan Lake watershed, it is the allowance of a use that is prohibited by the Table of Uses in § 304(J)(3) that will impact only Zone Two of the riparian buffer.

Variance. A permission to develop or use property granted by the Watershed Review Board relaxing or waiving a ~~water supply watershed management~~ requirement ~~adopted by the Environmental Management Commission that is incorporated into~~of this ordinance.

The above definitions were edited for accuracy. The EMC has not adopted all of the local ordinance requirements and the local ordinance exceeds state standards. Major and Minor Variance procedures had to be consistent with state laws and the local ordinance.

6. *Perennial Water Body* - A pond or lake that is part of a natural drainageway and is fed by either an intermittent or perennial stream or directly discharges into either an intermittent or perennial stream.

The above definition is recommended because the definition of riparian buffer includes this term, "perennial water body" when describing buffer measurements required. The question of farm ponds vs. surface water has been prevalent in field determinations so this will provide clarity.

(F) Allowed Structures and Uses in Riparian Buffer-
Except Buffers Within the Jordan Lake Watershed.⁶

Owners of a lot who wish to undertake uses designated as "allowed" under subsection (F)(5), or as "allowed" or "allowable with mitigation" under subsection (J)(3), shall submit a request for a "no practicable alternatives" determination by the Watershed Review Board or delegated authority.

(J) Jordan Lake Watershed Riparian Buffer Requirements.

The requirements in § 304(A)-(E) and (I) shall also apply to riparian buffers in the Jordan Lake Watershed unless a more restrictive requirement is set forth in this subparagraph (J), in which case such more restrictive requirement shall apply.

1. *Zones of the Riparian Buffer* - Except in those instances when the total required buffer width for a particular surface water classification as established in § 304(D) is thirty (30) feet landward (such as for ephemeral streams and seeps and springs), the protected riparian buffer in the Jordan Lake watershed shall have two zones as follows:

⁶ See §304(J) of this Ordinance for requirements applicable to riparian buffers within the Jordan Lake Watershed. The Jordan Lake Watershed is depicted on the Chatham County Watershed Areas Map.

- a. Zone One shall be the first 30 feet landward measured from the particular surface water body as specified in § 304(D). In those instances when the total required buffer width in § 304(D) is thirty (30) feet, such buffer shall consist solely of Zone One.

- b. Zone Two shall begin at the outer edge of Zone One and extend landward the distance required for the combined width of Zone 1 and Zone 2 to equal the riparian buffer width specified in § 304(D) for the particular surface water feature. For example, Zone 2 for intermittent streams shall be twenty (20) feet, and Zone 2 for a perennial stream shall be seventy (70) feet. Both Zone 1 and Zone 2 shall consist of a vegetated area that is undisturbed except for uses provided for in the Table of Uses set forth below in § 304(J)3. of this Ordinance.

Sample Table of Uses

Use	Exempt *	Allowable *	Allowable with Mitigation*
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> ● Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer ● Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious 	X	X	

surface is added to the riparian buffer			
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“Exempt” means the activity can occur without further approvals.

“Allowable” means that the activity can occur by passing the “no practical alternatives” test.

“Allowable with Mitigation” means that the activity has to pass the “allowable” test and must provide mitigation required by this ordinance.

Vegetation management and re-vegetation must be consistent with Section 304(H), Buffer Vegetation Requirements and the following. The more restrictive regulation applies:

Section 305. Mitigation

(A) This item shall apply to persons who wish to impact a riparian buffer in the Jordan watershed when on of the following applies:

1. A person has received an Authorization Statement pursuant to § 304(I) of this Ordinance for a proposed use that is designated as “allowable with mitigation;” or
2. A person has received a variance pursuant to § 304(J)(5) and § 507(B) of this Ordinance and is required to perform mitigation as a condition of a variance approval.

(B) Issuance of the Mitigation Approval

The Watershed Review Board or delegated authority shall issue a mitigation approval upon determining that a proposal meets the requirements set out in this Ordinance. The approval shall identify at a minimum the option chosen for meeting the mitigation requirement, the required area of mitigation, and either the mitigation location or the offset payment amount as applicable.

(C) Options for Meeting the Mitigation Requirement

The mitigation requirement may be met through one of the following options:

1. Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 2B .0269 (Jordan Water Supply Nutrient Strategy: Riparian Buffer Mitigation Fees to the NC Ecosystem Enhancement Program) contingent upon acceptance of payments by the NC Ecosystem Enhancement Program, or to a private mitigation bank that complies with banking requirements of the US Army Corps of Engineers, currently set out at <http://www.saw.usace.army.mil/WETLANDS/Mitigation/mitbanks.html> or from the US Army Corps of Engineers, P.O. Box 1890, Wilmington, NC, 28402-1890, and the applicable trading criteria in Rule 15A NCAC 2B .0273;
2. Donation of real property or of an interest in real property pursuant to § 305(F) of this Ordinance; or
3. Restoration or enhancement of a non-forested riparian buffer pursuant to the requirements of § 305(G) of this Ordinance.

(D) The Area of Mitigation

Chatham County shall determine the required area of mitigation, which shall apply to all mitigation options identified in § 305(C) of this Ordinance and as further specified in the requirements for each option set out in this Section. The required area of mitigation shall be determined based on impacts to Zone One and impacts to the first landward twenty (20) feet of Zone Two, according to the following:

(E) The Location of Mitigation

For any option chosen, the mitigation effort shall be located within the same subwatershed of the Jordan watershed, as defined in 15A NCAC 2B.0262, and the same distance from the Jordan Reservoir as the proposed impact, or closer to the Reservoir than the impact, and as close to the location of the impact as feasible.

(F) Donation of Property

Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:

(G) Riparian Buffer Restoration or Enhancement

Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:

1. The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:
 - a. The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to § 305(D) of this Ordinance; or
 - b. The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to § 305(D) of this Ordinance;
2. The location of the riparian buffer restoration or enhancement shall comply with the requirements in § 305(E) of this Ordinance;
3. The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;
4. Enhancement and restoration shall both have the objective of establishing a forested riparian buffer according to the requirements of this § 305(G). Enhancement shall be distinguished from restoration based on existing buffer conditions. Where existing trees are sparse, that is greater than or equal to 100 trees per acre but less than 200 trees per acre, a buffer may be enhanced. Where existing woody vegetation is

absent, that is less than 100 trees per acre, a buffer may be restored;

5. The applicant shall first receive an Authorization Statement for the proposed use according to the requirements of § 304(I)(1) of this Ordinance. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by Chatham County. The restoration or enhancement plan shall contain the following:
 - a. A map of the proposed restoration or enhancement site;
 - b. A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity;
 - c. A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer;
 - d. A fertilization plan; and
 - e. A schedule for implementation;
6. Within one year after Chatham County has approved the restoration or enhancement plan, the applicant shall present proof to the County that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of both the State's and Chatham County's riparian buffer protection program;
7. The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions; and
8. The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the

trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.