

MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: Lance Norris, Public Works Director
J. B. Culpepper, Planning Director
Sue Burke, P.E., Stormwater Management Engineer

SUBJECT: Scheduling a Public Hearing on February 15, 2010 for a Pending Text Amendment to the Land Use Management Ordinance – Jordan Rule for Existing Riparian Buffer Protection

DATE: January 11, 2010

PURPOSE

The purpose of this report is to request that the Town Council adopt the attached resolution scheduling a public hearing on February 15, 2010 to receive comments for a proposed text amendment to the Land Use Management Ordinance incorporating the minimum requirements of the Jordan Nutrient Strategy Rule (15A NCAC 02B.0267, as amended by SL 2009-484) for existing riparian buffer protection.

BACKGROUND

The Jordan Lake Nutrient Management Strategy is a set of rules developed to reduce the nutrient over-enrichment in Jordan Lake. These rules target sources of nutrients such as agriculture, stormwater from new and existing development, fertilizer applicators, and wastewater treatment plants, as well as provide increased protection of riparian buffers along intermittent and perennial streams.

All of Chapel Hill and its planning jurisdiction areas are tributary to the Upper New Hope Arm of the Jordan Lake. The Town is required to develop, modify, and implement the necessary ordinances and strategies for the new and existing development stormwater regulations, the riparian buffer protection regulations, and the fertilizer management regulations. A discussion of the rules and their impacts on the Town of Chapel Hill was provided to the Council at its November 23, 2009 meeting.

This report addresses the existing riparian buffer protection regulations, the resulting text amendments needed to the Land Use Management Ordinance to demonstrate compliance, and a schedule for compliance.

DISCUSSION

We are proposing the minimum text amendments to the LUMO, based on the model ordinance (please see Attachment 1) approved by the State, necessary to demonstrate compliance with the Jordan Rule for Existing Riparian Buffer Protection. Local governments must submit their local riparian buffer programs to the North Carolina

Division of Water Quality (DWQ) by March 10, 2010 for review, with subsequent approval by the North Carolina Environmental Management Commission (EMC). The local program must consist of draft ordinances, policies, and procedures for protecting the riparian buffer, determining variances, record keeping, and enforcement.

The riparian buffer protection program must provide minimum 50-foot wide buffers along intermittent and perennial streams, lakes, ponds, and reservoirs. The water features subject to the buffer requirements must appear on the most recent soil survey maps prepared by the U.S. Natural Resources Conservation Service; the 1:24,000 scale quadrangle topographic maps prepared by the U.S. Geologic Survey (USGS), or a map approved by the North Carolina Information Coordinating Council and the EMC.

The Rules require that within the 50-foot buffer, there are two zones (please see Attachment 2). Zone One extends from the top of bank and extends landward 30 feet and must remain in an undisturbed, vegetated condition. Permitted activities in this zone are limited. Zone Two is the remaining 20 feet landward of Zone One. Zone Two is a stable, vegetated area that is to remain undisturbed unless the activity is expressly permitted under the rule. Grading and revegetating in Zone Two is permitted provided that Zone One is not adversely impacted. The State rule includes a table of uses that are designated as exempt, allowable, or allowable with mitigation. The Town may grant minor variances, i.e., activities that will impact only Zone Two, but major variances (activities that would impact any portion of Zone One) must be submitted to the EMC for approval.

The Town has riparian buffer requirements through the Resource Conservation District (RCD) provisions in its Land Use Management Ordinance (LUMO). Compliance with the RCD requirements would meet some of the Jordan Lake rule criteria. However, revisions to the LUMO (e.g., revisions to permitted uses, grandfathering, variance approval by the State) are needed to demonstrate full compliance with the new Jordan Rules. Generally, where the two sets of regulations overlap, both must be complied with.

NEXT STEPS

The Council will receive comment at the public hearing on February 15, 2010 and will continue the public hearing until September 20, 2010. No later than March 10, 2010, Town staff must submit the draft ordinance; policies and procedures for protecting the riparian buffer and determining variances; and plans for record keeping and enforcement to the DWQ for its review. DWQ staff must provide recommendations for approval of or required changes to the local riparian buffer protection programs to the EMC by September 10, 2010. Upon approval by the EMC, the Town will have two months to adopt the ordinance and begin implementation of its riparian buffer protection program. The implementation schedule is provided as Attachment 3.

RECOMMENDATIONS

We recommend that the Council adopt the attached resolution scheduling a public hearing for February 15, 2010 to receive public comment for the proposed text

amendment to the Land Use Management Ordinance incorporating the minimum requirements of the Jordan Nutrient Strategy Rule (15A NCAC 02B.0267, as amended by SL 2009-484) for existing riparian buffer protection.

ATTACHMENTS

1. North Carolina Division of Water Quality Model Riparian Buffer Ordinance (p. 5).
2. Chapel Hill RCD and Jordan Riparian Buffer (p. 44).
3. Chapel Hill Implementation Timeline (p. 45).