



September 14, 2007

Mr. Rich Gannon
NC DENR Division of Water Quality, Planning Section
1617 Mail Service Center
Raleigh, NC 27699-1617

Dear Mr. Gannon:

The purpose of this letter is to convey the Ecosystem Enhancement Program's (EEP) comments on the proposed rules related to the management of water quality in Jordan Lake. As you know, EEP administers a Riparian Buffer In Lieu Fee program and a Nutrient Offset In Lieu Fee program in parts of North Carolina. We appreciate the opportunity to serve in this role and believe that it gives us a unique perspective in commenting on the proposed rules.

Our comments are grouped into three major themes – Buffer Fees, Management Area Definition, and Nutrient Offset Fees – which are addressed below. Our fundamental interest is ensuring that the final rule is one that can be effectively implemented as required.

Buffer Fees

The proposed rule offers a revision to the current buffer fee of 96 cents per square foot. EEP's restoration cost data show that the fee you have proposed in 15A NCAC 2B.0272 (70 cents per square foot) is insufficient to cover what it actually costs EEP to produce buffer restoration. Based on our assessment, which includes the cost of perpetual stewardship plus an inflation adjustment for 2008 when the new rules are expected to be effective, it is EEP's recommendation that the fee be set at 89 cents per square foot (which is equivalent to \$38,821.35 per acre). This fee is based on existing EEP buffer projects that provide riparian buffers up to 200 feet from the stream bank. If smaller riparian buffer widths are recommended for future projects, the fee would need to be increased to compensate for lost economies of scale and increased administrative costs.

Management Area Definition

One important aspect of the proposed Jordan Lake rules is the definition of subwatersheds for the application of nutrient management strategies. While EEP understands the logic behind this approach, we have concerns about being able to achieve reduction requirements in the Upper New Hope and Lower New Hope arms of the watershed. These areas are geographically small

and contain limited opportunities for buffer projects, thus requiring more construction-intensive and more costly BMP's to achieve the required nutrient reduction. Also, EEP is entirely dependent upon landowner willingness to participate, potentially further reducing opportunities.

Accordingly, EEP requests that the requirements of the rule recognize opportunity limitations in some parts of the watershed and allow for reductions to be achieved in other parts. EEP cannot accept requests that involve requirements that cannot knowingly be met. A built-in contingency for meeting requirements outside of preferred watersheds when necessary will provide a higher level of compliance confidence that would allow EEP to move ahead. EEP is comfortable with a rule that would require demonstration of a lack of mitigation opportunities before allowing work outside of preferred subwatersheds. This process could apply to all entities (not just EEP) that may provide nutrient reduction services.

Nutrient Offset Fees

In expectation of limited opportunities in some areas for nutrient reduction projects, we have a related concern regarding the cost of such projects that we are able to do. EEP cannot accept payments that would be insufficient to cover the costs of necessary nutrient reduction projects. As you are aware, 15A NCAC 2b . 0240 currently references Session Law of the North Carolina General Assembly. Earlier this year, the General Assembly enacted legislation that established a new fee structure for nutrient reduction in the Tar-Pamlico and Neuse river basins. These fees were based on the findings of an analysis conducted by Research Triangle Institute (RTI). EEP recommends that RTI's report form the basis to establish fees specific to nutrient reduction requirements in the Jordan Lake watershed.

Again, in light of limited opportunities that might exist in some subwatersheds, EEP recommends that Scenario C (All Stormwater Retrofit Analysis) be used to establish fees in the Upper New Hope and Lower New Hope subwatersheds, and possibly other small subwatershed management areas. Since the Haw River subwatershed is a larger area with some buffer restoration opportunities, we recommend that the fee be based on Scenario B (Integrated Restoration) – a mix of buffer restoration and BMP implementation.

Another issue relates to the way the 15A NCAC 2B .0240 refers to Session Law. Current Session Law (SL2007-0438) which resulted from the ratification of H859 on August 1, 2007, references the formula contained in the regulation before the March 2006 fee revision reinstating the old \$11 per pound fee. The referenced formula essentially required that "pounds per year" be multiplied by 30 years to determine the total nutrient reduction required. By doing so, it explicitly stated that mitigation is calculated in total pounds and based on impacts over a 30-year period. EEP wants to make sure that this intent is included in the total fee requirement so that there is no possible misinterpretation that the requirements will extend for more than 30 years. If EEP provides a BMP to meet reduction requirements, it should be clearly stated that the reduction is not expected to last in perpetuity, as such a condition would require perpetual fee charges to the applicant or an alternative source of perpetual funding.

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In conclusion, EEP has already been active in parts of the Upper New Hope and Haw River subwatersheds that would be affected by the proposed rules. In 2004, EEP completed a Local Watershed Plan in the Morgan and Little Creek watersheds. The plan may be viewed on EEP's website at (http://www.nceep.net/services/lwps/Morgan_Creek/Morgan.pdf). This watershed planning effort identified several project opportunities, including BMP retrofits.

Thank you for the opportunity to provide input into this complex rule-making process. We are happy to answer any questions about the issues we have raised.

Sincerely,



William D. Gilmore, P.E., Director
Ecosystem Enhancement Program

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