



North Carolina
Department of Environment and
Natural Resources

Michael F. Easley, Governor
William G. Ross Jr., Secretary



North Carolina
Division of Forest Resources

Wib L. Owen, Director

Griffith's Forestry Center
2411 Old US 70 West
Clayton, NC 27520-8631

September 12, 2007

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

Through: Dave Andres, DFR Forest Management Section Chief

Re: NC Division of Forest Resources comments on draft Jordan Reservoir Water Supply
Nutrient Strategy Plan

Dear Mr. Gannon:

Staff from the NC Division of Forest Resources (DFR) have reviewed the proposed Jordan Reservoir Water Supply Nutrient Strategy. We appreciate the opportunity to provide feedback on the plan, and understand your Division is receiving a large number of public comments about the proposal. For that reason we will keep our input brief and to the point.

Rules Comment #1:

As currently written the Strategy appears to merely establish baseline standards. It then directs local governments to create programs that

“...meet or exceed the minimum requirements of this Rule.....
Parties subject to this rule may choose to implement more stringent
rules....“

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The DFR understands the staffing challenges of DWQ and why it is turning to local governments for assistance in carrying out the Jordan Reservoir Strategy. We are very concerned, however, that this manner of delegation will result in Forestry operations being over-regulated in some counties and under-regulated in others. Our concern primarily deals with the components dealing with timber harvesting found within the

“Protection of Existing Riparian Buffers” rule. Many in the Forestry Community (loggers, consultants, timber buyers, even some landowners) routinely operate across county boundaries. **It is critical to set up a system that encourages regulations that are appropriate, fair and uniform across a region.**

We suggest some re-wording of the Jordan Strategy to indicate that the Forestry-related Rules described in the draft document are those that must be followed by the local governments-**nothing more and nothing less**. This would hopefully “take the guess-work” out of the regulatory equation and help create a predictable and fair environment for the Forestry Community to operate under.

There is also the concern that DWQ will task the Counties with developing their own programs and regulations, and **the public and affected parties will never have a chance to provide input on these County programs/rules that are attempting to satisfy the State-mandated regulations**. This potential lack of input with the county-level programs could lead to the implementation of Rules that are not in line with what DWQ intended and are possibly even unfair. There might not be such a concern over this if DWQ followed the recommendations above and the Forestry Community had a sense that the Forestry-related regulations were going to be fair and uniform across the region.

Rules Comment #2:

Please consider the following passage within the “Exemptions Based on on-site Determinations” section of the “Protection of Existing Riparian Buffers” rule:

“When a landowner or affected party believes that the maps have inaccurately depicted surface waters, he or she shall consult the appropriate local government. Upon request, the local government shall make on-site determinations. Local governments **may** also accept the results of site determinations made by other parties who have successfully completed a Division training course and are sanctioned by the Division to make such determinations. Any disputes over on-site determinations shall be referred to the local Board of Adjustment or other local appeals process in writing”.

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We would like to see the word “may” changed to “must”. This may seem trivial, but DFR would like to make sure that on-site determinations made by our Division’s Stream ID-certified personnel remain valid (and the preferred method) for Forestry operations. There have already been instances of local governments with delegated authorities believing that only THEY could make such on-site determinations. By changing the word “may” to “must” it hopefully will make it clear to all counties that onsite determinations by certified DFR personnel (as well as other certified individuals) must still be accepted.

The last sentence of the passage above addresses disputes over on-site determinations. DFR believes that such “appeals” for Forestry cases should go to DWQ personnel to review and decide rather than county staff.

Rules Comment #3:

On page 53 of 81, section (b) discusses activities that are not allowed in Zone 1 (the first ten feet of the buffer). One of them (ii) states:

“Soil disturbing site preparation activities are not allowed”.

There may be times during planned riparian plantings where it could be beneficial to site prepare and plant an area right alongside a stream. This is particularly true if the trees being planted were needed for shade over the channel. DWQ may want to examine the wording of this passage and modify it to say

“soil-disturbing site preparation in Zone 1 is prohibited unless approved by the Division of Forest Resources”.

In addition to the comments above that pertain to the draft rules language, the following feedback relates to Chapter 6 (“Protection of Existing Riparian Buffers”) of the “Fiscal Analysis of Costs to Affected Parties” document that accompanies the draft rules.

Fiscal Analysis Comment #1

Page 82 contains the following section:

“Forest Harvesting: The rule restricts timber harvesting in the first 30 feet of buffer, or Zone 1, to half of existing trees, with a minimum return frequency of 15 years....”

This statement has oversimplified and over-generalized the restrictions in Zone 1, and in doing so, have made it appear as though the regulations are even stricter than what is set forward in the rules language. I would encourage you to refer to page 53 of 81 of the rules draft for the specific language. It specifies:

“The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut”

“In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than 5 inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every 5 years. In either case, the trees remaining after the harvest shall be as evenly spaced as possible.”

We request that you edit the sentence in the “Fiscal Analysis” document to more accurately reflect those standards that are set forth in the rules.

Fiscal Analysis Comment #2

Page 88 of the “Fiscal Analysis...” document states:

“Forest harvesting requirements do not involve new permitting. Selective harvesting in the buffer requires that loggers have a **certified** forest management plan or specified alternative, but this is not expected to involve new regulatory costs.”

The word “certified” should be removed (DFR does not “certify” forest management plans) from this statement and it should be edited to more accurately reflect page 53 of 81 of the draft rules which states:

“In Zone one, forest vegetation shall be protected and maintained. Select harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either of the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request...”

Some of these comments may seem minor, but I believe it is critical that all of DWQ’s official documents related to the Jordan Lake plan contain language and legal terms that reinforce what the other documents state.

Summary

As you work with other parties that question whether or not “Forestry” is “doing their part” under this proposed plan, I would ask you to remind them that the Forestry Community will be significantly impacted by these Rules. Some of the conservative estimates of these impacts include:

- An estimated 50% increase in unit costs for logging in Zone 1.
- A total capital increase in harvest costs between years 2 through 5 of approximately \$750,729
- Annual opportunity costs of approximately \$1,003,853 to Forest Landowners due to unharvested timber in the Jordan Lake Watershed

We at the DFR are extremely proud of our Water Quality Program. I also believe the vast majority of the Forestry Community is committed to protecting water quality through the application of Silvicultural Best Management Practices (North Carolina’s recently-revised “Forestry BMPs Manual to Protect Water Quality” can be downloaded at http://www.dfr.state.nc.us/water_quality/wq_bmpmanual.htm) and maintaining compliance with the Forest Practices Guidelines. We look forward to working with the DWQ on making this proposed Rule as fair and effective as possible. Please feel free to

contact me at (office) 919-553-6178 Ext. 230 or (cell) 919-218-2149 if you have questions regarding our comments. I would be very happy to work with you and your Staff to edit these Rules in an effort to make the Forestry-related portion of the text as accurate and fair as possible.

Sincerely,



Sean Brogan

DFR Staff Forester-Water Quality & Wetlands
NC RF #1362, SAF CF #2755

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