

**REQUEST FOR APPROVAL OF LOCAL PROGRAMS  
IMPLEMENTING THE JORDAN NEW DEVELOPMENT STORMWATER RULE  
AND DELEGATION OF FURTHER APPROVAL AUTHORITY TO THE DIRECTOR**

**REPORT TO THE NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION  
May 10, 2012**

**Note: Local stormwater program documents summarized here can be viewed or  
downloaded from the DWQ web page at  
<http://portal.ncdenr.org/web/jordanlake/draft-new-development-programs>**

**Summary & Recommendation**

The Jordan Lake New Development Stormwater Rule, 15A NCAC 02B .0265, requires thirty-three local governments to prepare, adopt, and implement programs to address the issue of post-construction nutrient control on new development within their respective jurisdictions. In March 2011, the EMC approved a model local program developed by staff and stakeholders. Communities submitted proposed local programs for DWQ staff review in September 2011, and have made revisions based on staff comments. Staff requests that the Commission approve thirty-two of the thirty-three local programs as meeting the minimum requirements established in section (3) of the rule. Staff requests that the Commission disapprove Pittsboro's program, which was incomplete and does not meet the requirements of the rule. Pittsboro has hired an engineer that is currently developing their program. The rule requires local governments whose programs are disapproved to resubmit revised programs to the Division within two months, and gives Division staff an additional two months to review them and provide recommendations to the Commission.

**Rule Requirements**

The rule requires all local governments in the Jordan watershed – eight counties and twenty-five municipalities – to implement local stormwater programs for new development activities. They are to establish permitting programs that require all residential new development activities disturbing one acre or more and all commercial new development projects disturbing one-half acre or more to meet the following requirements:

- Post-construction runoff meets nitrogen & phosphorus unit-area loading rate targets:

Subwatershed	Total Nitrogen (lbs/ac/yr)	Total Phosphorus (lbs/ac/yr)
Haw	3.8	1.43
Upper New Hope	2.2	0.82
Lower New Hope	4.4	0.78

- Proposals that exceed these rate targets without engineered stormwater controls shall have engineered stormwater controls that achieve at a minimum 85% removal of total suspended solids.

- Proposals that exceed the rate targets after meeting the above minimum onsite treatment criteria may offset their remaining load exceedances through the use of offsite measures, to the extent that their on-site loading rates do not exceed the following thresholds:
  - 6 lbs/ac/yr for residential projects
  - 10 lbs/ac/yr for commercial projects
- At minimum, post-development peak flows leaving the site may not exceed pre-development conditions for the 1-year, 24-hour storm event.
- Stormwater systems shall be designed to control and treat at a minimum the runoff generated from all surfaces in the project area by one inch of rainfall.
- Proposed new development shall demonstrate compliance with the riparian buffer protection requirements of 15A NCAC 02B .0267 and .0268 (Jordan Buffer Rules).

**Jordan Watershed Local Governments**

The following local governments are subject to the Jordan Lake New Development Stormwater Rule:

<b>Municipalities</b>		<b>Counties</b>
Alamance	Kernersville	Alamance
Apex	Mebane	Caswell
Burlington	Morrisville	Chatham
Carrboro	Oak Ridge	Durham
Cary	Ossipee	Guilford
Chapel Hill	Pittsboro	Orange
Durham	Pleasant Garden	Rockingham
Elon	Reidsville	Wake
Gibsonville	Sedalia	
Graham	Stokesdale	
Green Level	Summerfield	
Greensboro	Whitsett	
Haw River		

For these local governments only that part of their planning jurisdiction that is located within the Jordan Lake watershed is subject to the rule. For subject counties, applicable areas are those under the direct jurisdiction of the county, which excludes incorporated municipalities. Municipalities and counties are also authorized by statute to establish joint programs or to delegate their programs as permitted by statutes regulating such interlocal agreements.

**Characteristics of Local Programs**

To assist the local governments in developing their programs, the EMC approved a model local stormwater program in March 2011. The model program: defined program submittal requirements; provided guidance to local governments and developers on interpreting and applying rule requirements; included a model ordinance developed by the UNC School of Government; and included an updated stormwater nutrient loading accounting tool developed by NC State based on current research that will allow determination of compliance with the rule’s

loading rate targets. In developing the model programs, staff worked in consultation with affected local governments and other concerned stakeholders.

Eleven of the thirty-three local governments enlisted the help of consultants to develop their local programs and have indicated they will likely continue to use consultants to a certain degree with the implementation of the requirements. An additional five municipalities enlisted the help of Guilford County to develop and implement their programs.

Sixteen of the local governments utilized the model ordinance, some making minor revisions to the model. The remaining local governments revised their existing land development related ordinances to embody the requirements of the rule, some of them utilizing portions of the model ordinance.

Thirty-two of the thirty-three Jordan local governments submitted draft programs for DWQ staff review in September 2011 and have made subsequent revisions based on staff comments. Pittsboro did not submit a program in September, and has since submitted an incomplete program. They have recently hired an engineer that is currently completing their program for submission. Pittsboro will have two months to submit their program after Commission disapproval, and Division staff will have an additional two months to review and provide recommendations to the Commission.

The local government program documents are numerous and quite large and are not attached to this report. Instead, full documentation for each local government can be accessed on the EMC website (<http://portal.ncdenr.org/web/emc/124>) or the DWQ Jordan Lake website (<http://portal.ncdenr.org/web/jordanlake/draft-new-development-programs>).

### **Rule Implementation Timeline**

Contingent upon EMC approval of the subject local programs, local governments are required to fully adopt and begin implementing the permitting requirements of their programs by August 2012. Annual reports are required beginning in August 2013.

(August 11, 2009	Effective date of the stormwater rule)
(March 10, 2011	EMC approves model local program)
(September 10, 2011	Deadline for submittal of draft local programs to DWQ)
May 10, 2012	EMC hears request to approve local programs.
July or September, 2012	Disapproved program returns to EMC
August, 2012	Local governments adopt and implement programs.
August, 2013	Local governments begin submitting annual reports to DWQ.

### **Staff Recommendations**

Staff respectfully requests that the Commission approve thirty-two of Jordan Lake local government new development stormwater programs as meeting the minimum requirements established in Section (3) of the rule, and disapprove Pittsboro's program. Staff also requests that the Commission delegate authority to the Director to approve any subsequent program amendments that the approved communities may propose in the future. The Director would forward unique future program revisions of concern to the Water Quality Committee for review.

## **APPENDIX A**

### **SUMMARY OF LOCAL PROGRAM SUBMITTAL REQUIREMENTS**

*The model program DWQ provided to local governments in March 2011 identified the following set of elements local governments were to include in their local program submittal:*

### **I. Local Program Information for EMC Approval (Required)**

Local programs were required to provide the following minimum information in their local program submittal for Commission approval:

- **Proposed adoption timeline and effective date** – Timeline requirements for the submittal, review, and adoption and implementation of local programs.
- **Other Stormwater Programs** – The rule requires adherence to certain other state stormwater regulations. Programs identify existing stormwater regulations within the jurisdiction, including water supply watershed, whether designated under Phase II NPDES and status of Phase II implementation.
- **Statement of Riparian Buffer Ordinance Compliance** - One aspect of development application review required by the rule is ensuring protection of riparian buffers and state whether, and if so, where they include that process description in their ordinance.
- **State and Federal Entities Implementation** – State whether the program will enforce the requirements of this rule on state and federal entities that do not have a Phase II NPDES stormwater permit.
- **Area of Applicability** – Include description of planning jurisdiction, responsibility for program in ETJ, any inter-jurisdictional agreement, and if applicable, extent of implementation of rule requirements outside the Jordan Watershed.
- **Minimum Qualifications of Stormwater Administrator** - State the minimum qualifications of the personnel who will be responsible for implementing the program, including stormwater plan review and BMP inspection.
- **Maintenance/Inspection Program** - Describe intent regarding a program for ensuring maintenance of BMPs called for in the rule.
- **Forms in Administrative Manual** – Provide a listing of forms to be used in the permitting and compliance process.
- **Ordinance** – Provide all sections of ordinance that will be necessary to implement the rule. This should include all subject areas covered by the model ordinance.
- **Nutrient Loading Accounting Tool** – Provide a statement that the local government plans to use the Jordan / Falls nutrient load accounting tool or describe the method that will be used for accounting for nutrient loading and BMP implementation to meet rule requirements. In the latter case, please provide: documentation on that tool; an electronic version of the tool; a discussion of how it differs from the Jordan / Falls tool; and how it will be at least as protective as the Jordan/Falls tool.

### **II. Appendix of Supporting Information (Required)**

Local governments were requested to include an appendix in their program submittal that contains detailed supporting information that may be updated periodically. Future revisions to this information will not require Commission or Division Director approval. The supporting information appendix for each program includes the following information:

- **Program Contacts and Professional Qualifications** – Names and contact information for the Stormwater Administrator and other personnel responsible for reviewing stormwater designs and performing and reviewing inspections.
- **Stormwater Map** – The most current map of jurisdictional boundaries at a scale or resolution useful for implementation purposes, and be one that the local government will be prepared to update periodically as needed and report on in annual reports.
- **Forms** – Provide a copy of all forms that you will use to carry out permitting and compliance

## II. Supplemental Information (Optional)

Local governments are asked to provide the following supplemental information to aid the Division's review of your programs:

- **Program Approval** – Describe your local approval process and the status of your program's approval prior to submittal to the Division. Include a description of approval steps following Commission approval leading to implementation.
- **Ordinance Changes** – Provide a listing of ordinance sections created or revised to address the rule's requirements. If a local government finds a subject covered by the model ordinance unnecessary, provide a statement identifying the model ordinance section(s) and any supporting discussion to support your position.
- **Land use planning** – State whether you have conducted a review of local ordinances to identify potential modifications that would 1) reflect improved growth management practices 2) allow developers adequate flexibility to utilize planning measures to reduce impervious surfaces and 3) reduce untreated nutrient loading rates from developments as discussed in Chapter 2-E - Land Use Planning. If such a review has been conducted, please provide a summary of your findings and any actions taken.
- **Appeals Process** – (optional) Summarize the appeals processes that are described in your ordinance.
- **Exceeding Minimum Requirements** – (optional) Identify significant aspects of your proposed local program that go beyond the minimum requirements established in the rule, potentially including any of the following:
  - New Development Definition
  - Disturbance thresholds
  - Loading rate targets
  - Off-site thresholds
  - If your jurisdiction is partly outside the Jordan watershed, whether you propose to apply the rule jurisdiction-wide
  - Redevelopment - require treatment on redevelopment that does not increase built-upon area?
- **Permitting Process** – (optional) Provide an outline and fact sheet describing the steps of the local permitting process for developers and engineers subject to the program requirements.