

# AGENDA

## Commission for the Environment May 12, 2014 7:30 p.m.

Orange County West Campus Office Building  
131 West Margaret Lane, Hillsborough

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<u>Time</u>	<u>Item</u>	<u>Title</u>
7:30	I.	<b>Call to Order</b>
7:32	II.	<b>Additions or Changes to Agenda</b>
7:35	III.	<b>Approval of Minutes – April 14</b> (Attachment 1)
7:40	IV.	<b>Rural Curbside Recycling Program update</b> Sassaman and staff will report on the discussion of issues and funding options for Orange County's recycling programs by the BOCC at its May 8 meeting, and any guidance provided to staff in preparation for a May 13 work session. (Attachment 2)
7:50	V.	<b>State of the Environment 2014</b> Staff will review the status of the State of the Environment report and identify final tasks for CFE member involvement and assistance. (Attachment 3 – to be provided at meeting)
8:15	VI.	<b>Environmental Summit planning</b> The CFE will discuss preparations for the Environmental Summit to be held in Fall 2014 at the Maple View Farm Agricultural Education Center (Attachment 4 – to be provided at meeting)
8:30	VII.	<b>Committee Meetings</b> If time allows, CFE will break into its standing committees ( <i>Air and Energy, Land, Water</i> ) to discuss topics of interest and the State of the Environment report. (Attachment 5)
9:20	VIII.	<b>Updates and Information Items</b> Staff and/or CFE members will provide updates on the following items: <ul style="list-style-type: none"><li>➤ Orange County Community Giving Fund (Handout at meeting)</li><li>➤ The Nature of Orange photography contest (Attachment 6)</li><li>➤ OWASA forest management at Buckhorn Road tract (Attachment 7)</li><li>➤ Proposed NC rules for fracking nearly complete (Attachment 8)</li><li>➤ Potential changes would allow clustering in Rural Buffer (Attachment 9)</li><li>➤ Proposed changes to federal jurisdiction for wetlands (Attachment 10)</li><li>➤ Chatham Park (Pittsboro) public hearings (Attachment 11)</li><li>➤ Ryals bequeaths \$1 million to Triangle Land Conservancy (Attachment 12)</li></ul>
9:30	IX.	<b>Adjournment</b>  <i>Next meeting:</i> June 9 (Chapel Hill)

## CFE Meeting Ground Rules

1. Keep to agenda topic under discussion
2. Share relevant information
3. One person speaks at a time after recognition by the Chair
4. Everyone is invited to participate in discussions / no one person should dominate discussions
5. Strive to reach consensus first before voting

**Orange County  
Commission for the Environment**

**DRAFT Meeting Summary**

**April 14, 2014**

**Orange County Solid Waste Management Administration Building, Chapel Hill**

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PRESENT: Jan Sassaman (Chair), Loren Hintz, Donna Lee Jones, Steve Niezgod, Jeanette O'Connor, Rebecca Ray, Gary Saunders

ABSENT: May Becker, Peter Cada, David Neal, Lydia Wegman, David Welch

STAFF: Rich Shaw, David Stancil

GUESTS: Bill Kaiser, Marc Marcoplos

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- I. **Call to Order** – Sassaman called the meeting to order at 7:45 pm.
- II. **Additions or Changes to Agenda** – There were no changes or additions.
- III. **Approval of Minutes** – Sassaman asked for comments on the minutes for March 10. Saunders motioned to approve as written; Niezgod seconded. Approved unanimously.
- IV. **Orange County Recycling Program update** – Hintz reported on what he heard and observed at the March 18 public hearings on the County's proposed solid waste service tax district. He noted that the majority of speakers preferred the status quo rather than the proposed new tax district. Marcoplos remarked on what he observed at the April 1 public hearing in Hillsborough. Hintz said county residents might be willing to accept a one cent increase rather than one and one half cent increase for curbside recycling.  
  
Sassaman remarked that neither of the two options being considered was ideal, but the County needs to make a decision on how to pay for curbside recycling after July 1. He reminded CFE members they were welcome to attend the April 15 BOCC meeting and reference the CFE resolution in support of the proposed tax district.
- V. **Proposed Renewable Energy and Efficiency Work Group** – Shaw reported on the BOCC's response to the CFE's proposal of establishing a work group to discuss renewable energy and efficiency issues and to develop changes to County policies and perhaps also some recommendation for legislative changes.

David Neal presented the proposal during an April 8 commissioners' work session, and he and Shaw responded to questions from BOCC members. Shaw reported that most commissioners expressed enthusiasm for the project and thanked the CFE for bringing this idea forward. The BOCC asked for more specifics on the format and staffing of the meetings. Neal said the full CFE would participate rather than just members of the Air and Energy Resources Committee. Shaw said he had suggested that the CFE devote every second or third meeting toward this program rather than holding separate meetings outside of the monthly CFE meetings.

Shaw reported that the BOCC urged the CFE to identify a topic to serve as a "trial run" and report back to the BOCC on the outcome and experience. Commissioner Jacobs suggested the resulting recommendations from the CFE be brought forward as part of DEAPR's annual budget request.

Shaw reported that BOCC members also suggested the following:

- Look for other funding opportunities
- Explore using programs that were created using stimulus funds (in Chapel Hill?)
- Focus some attention on the energy conservation needs of low-income residents
- See if you can engage the Economic Development Commission and staff because these energy-savings initiatives may be helpful to local businesses

Stancil noted that it would be helpful for the CFE to develop more a more detailed approach to how it plans to carry out this effort and provide to the BOCC as an information item for their consideration.

Sassaman asked the Air & Energy Committee to identify a topic for the trial run of this work group and to report back to the full CFE for approval. He asked all members to re-read the proposal and consider how best to proceed with this work group.

- VI. **Environmental Summit** – The CFE discussed plans for the Environmental Summit to be held on May 31 at the Maple View Farm Agricultural Education Center.

Sassaman reported that he had spoken with Dr. Norm Christensen (keynote speaker) who is prepared to talk about historical changes in North Carolina’s environment and their lessons for a sustainable future. He noted that Dr. Christensen is welcome to ideas and would like to adapt his comments to the State of the Environment document. CFE members agreed to allow about 20 minutes for the presentation and another 15-20 minutes for questions and answers.

O’Connor and Ray reported on their recent meeting with Wegman to identify potential topics for the panel speakers: invasive species/native species, climate change, loss of prime forests, groundwater contamination/depletion, and local renewable energy options (which might also delve into fracking issue). Jones recommended adding to this list the effects of state reductions on the monitoring of surface and ground water, which could also include fracking and coal ash issues. Saunders noted that climate change also affects species diversity and water supply.

CFE members agreed on invasive species and water resources as general panel topics, which will be refined depending on who can be lined up to make presentations. These talks would complement an overarching subject of climate change presented by Dr. Christensen. The CFE also agreed to ask each panelist to end their remarks with specifics on what people can do locally, and to give Orange County examples.

O’Connor reported that Maple View is willing to provide farm tour, but we will need to ask people to sign up at the beginning of the program so they will have numbers.

The CFE discussed how best to publicize the summit, including a “save the date” flier, news release, calendars, and advertising at the upcoming Earth Evening event. Ray and O’Connor will also discuss potential refreshments and report back to staff on that.

- VII. **State of the Environment 2014** – Shaw reported on the status of the report, including a list of things that still needed to complete each section of the report. He thanked those who had provided comments on the various sections since the March meeting.

Ray reported on the work she had done to develop better symbols to convey the status and trend for each environmental indicator. She showed her proposed final symbols to

CFE members and all agreed with what she had come up with. Ray said she would provide the final symbols to the staff for them to incorporate into the document.

Sassaman asked CFE members to provide final comments and input to Shaw by April 21 so that the staff could make final edits by April 30 and print out paper copies of the penultimate draft for review by Sassaman and Bill Kaiser. Sassaman and Kaiser said they would complete their review and edits by May 9.

- VIII. **Committee Meetings** – The CFE broke into its standing committees (Air and Energy, Land, Water) to discuss final revisions to the State of the Environment report.
- IX. **Updates and Information Items** – Information on the following subjects was provided and selected items were summarized by staff: a) Nature of Orange photo contest, b) Intergovernmental Parks Work Group report, c) free-roaming cat task force meetings, d) environmental finance public forum, e) a solar array project in Efland, f) potential changes to Rural Buffer would allow clustering, and g) Haw River on endangered list.
- X. **Adjournment** – Sassaman adjourned the meeting at 9:30 pm.

Summary by Rich Shaw, DEAPR Staff

**ORANGE COUNTY  
BOARD OF COMMISSIONERS**

**ACTION AGENDA ITEM ABSTRACT**

**Meeting Date:** May 8, 2014

**Action Agenda  
Item No.** 7-f

**SUBJECT:** Issues and Funding Options for Orange County's Recycling Programs

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**DEPARTMENT:** Solid Waste/Recycling

**PUBLIC HEARING:** (Y/N)

No

**ATTACHMENT(S):**

- 1) April 9, 2013 Abstract – Operational and Funding Options for Orange County's Solid Waste and Recycling Programs
- 2) April 23, 2013 Abstract - Public Hearing to Consider Operational and Funding Options for Orange County's Solid Waste and Recycling Programs
- 3) October 8, 2013 – Work Session to Review the Process of Creating a Solid Waste Collection and Disposal System Service District
- 4) November 19, 2013 Abstract – Urban Curbside & Multi-family Recycling Discussion
- 5) December 10, 2013 Abstract – Rural Curbside Recycling Options
- 6) January 23, 2014 Abstract - Rural Recycling Service District Implementation Planning
- 7) February 4, 2014 Abstract – Scheduling Public Hearings – Proposed Unincorporated County Recycling Service District
- 8) April 15, 2014 Abstract – Solid Waste Service Tax District for Recycling
- 9) Frequently Asked Questions – Proposed Solid Waste Service Tax District

**INFORMATION CONTACT:**

John Roberts, 245-2318  
Michael Talbert, 245-2308

**PURPOSE:** To discuss issues and funding options for Orange County Recycling Programs.

**BACKGROUND:** The County's Reduce, Reuse & Recycle (3-R) Fees consists of one annual recycling fee that is billed in conjunction with the annual property tax. The fee is a Basic Availability Fee of (\$47/year) that is charged to all improved properties county-wide and funds various recycling operations such as the county Toxicity Reduction Improvement Program

(Household Hazardous Waste, batteries, waste oil, electronics, etc.), recycling drop-off sites, recycling at solid waste convenience centers, education and outreach, enforcement, planning, etc.

It is anticipated that the Towns will levy an Urban Curbside Fee (\$59/year) and a Multi-family Fee (\$19/year) to improved residential properties within incorporated municipalities and funds weekly curbside recycling service.

Not related to recycling, the County also assesses a county-wide Solid Waste Convenience Center Fee that is billed in conjunction with the annual property tax. The Unincorporated Areas Fee is (\$40/year/Household), Incorporated Areas Fee is (\$20/year/Household), and Multi-family Fee is (\$4/year/multi-family unit). This basic Solid Waste Convenience Center Fee covers a portion of the operating costs of the County's five (5) Convenience Centers.

### **Timeline of Board Discussions regarding Orange County Recycling Programs:**

Attachment 1 is the Abstract from the **April 9, 2013** regular BOCC meeting outlining the legal, operational and funding options first considered for Solid Waste and Rural Curbside Recycling in Orange County.

At its **April 23, 2013** regular meeting, the Board held a public hearing to discuss operational and funding options for Orange County's Solid Waste and Recycling Programs (see Attachment 2). The Board instructed the Manager to maintain the current recycling programs, meet with the Towns of Chapel Hill, Carrboro and Hillsborough to discuss options and formulate an interim funding plan for Fiscal 2013/2014 by June 30, 2013. There were no additional 3-R Fee billings for urban or rural curbside, along multi-family recycling fees for Fiscal 2013/2014, which resulted in revenue loss of \$1.1 million.

At a BOCC work session on **October 8, 2013** the Board reviewed the process of creating a Solid Waste Tax Service District (see Attachment 3). At that time the Town of Chapel Hill was still exploring alternative options for solid waste disposal, as well as ways of increasing efficiency with solid waste collection. The Board was not willing to move forward with any recycling options until the Chapel Hill Town Council determined the Town's direction on Solid Waste options. The Board authorized the Manager to draft a letter of intent to the Towns, outlining that Orange County was very interested in continuing the long and successful partnership with the Towns with regard to recycling and waste reduction.

At the **November 19, 2013** regular meeting, the Board authorized the Manager to execute the attached Letter of Intent with the Towns of Chapel Hill, Carrboro and Hillsborough (see Attachment 4). The County Attorney, working with the Town Attorneys, prepared an interim agreement that allowed the County to proceed to expedite implementation of the roll carts and new collection service for the Urban Curbside Program that will be fully operational by July 1, 2014. The Letters of Intent with the Towns of Chapel Hill, Carrboro and Hillsborough have been executed and the roll carts have been ordered.

At the **December 10, 2013** regular meeting, the Board reviewed three options to fund Rural Curbside Recycling. All three options can be for either the approximately 13,700 households currently receiving rural curbside recycling services or expanded to the entire unincorporated area of Orange County (see Attachment 5).

1. Create a Solid Waste and Disposal Service District (Rural Curbside Recycling Only)
2. Establish a Rural Curbside Recycling Subscription Service (Operated by the County Solid Waste)
3. Fund Existing Rural Curbside Recycling Services from General Fund Revenues

The Board discussed the options and considered input from the public. After a lengthy discussion, the Board directed staff to come back with a plan on January 23, 2014 for public hearings with the intent to establish a Solid Waste Tax Service District for rural curbside recycling by July 1, 2014.

At the **January 23, 2014** regular Board meeting, the Board instructed staff to bring back to the Board a plan to schedule two public hearings, one in Hillsborough and one in Chapel Hill (see Attachment 6). At the **February 4, 2014** regular meeting, the Board set the dates for two public hearings, with the first public hearing to be held on March 18, 2014 starting at 6:00 PM at the Southern Human Services Center in Chapel Hill and the second to be held on April 1, 2014 starting at 6:00 PM at the Department of Social Services in Hillsborough (see Attachment 7).

After holding two public hearings on **March 18, 2014** and **April 1, 2014** to consider the establishment of a Solid Waste Tax Service District for rural curbside recycling, the Board discussed a possible Solid Waste Tax Service District at its **April 15, 2014** regular meeting (see Attachment 8). The Board determined that neither a Solid Waste Tax Service District nor a Rural Curbside Subscription Service were viable options.

The Board also expressed a desire to step back and review all options to fund the County's rural curbside recycling program. The Board noted that it was important to include the County's partners to find a comprehensive county-wide solution to recycling, which could be a component of a new Solid Waste Interlocal Agreement. A Work Group was discussed as a possible method to discuss this issue and formulate a county-wide recycling solution to be implemented by Fiscal 2015/2016.

**The Board requested the following information:**

**1. All available options to fund rural curbside recycling programs**

The Recycling Options that were available and discussed in 2013 have not changed. However; the Towns have agreed to levy both an Urban and Multifamily curbside recycling fee for Fiscal 2014/2015.

***Option 1***

Create a County-Wide Solid Waste Management Authority. North Carolina General Statute 153A-421 (see Attachment 1) outlines how two or more units of local government may create a regional solid waste management authority by adopting substantially identical resolutions to that effect in accordance with the provisions of this Article.

***Option 2***

Create a County-Wide Solid Waste Franchise Agreement that could cover all Municipal Solid Waste (MSW) Collections and Recycling in the unincorporated areas of Orange County.

**Option 3**

Create a Solid Waste Tax Service District for rural curbside recycling. The Towns have agreed to levy and authorize the County to collect a fee for recycling within their town limits for both an Urban and Multi-family curbside recycling for Fiscal 2014/2015.

**Option 4**

Establish a Rural Curbside Subscription Service for existing customers. Customers would have the options to continue the rural recycling service or option out of the service. A rural Orange County recycling service could be operated by Solid Waste and serve only the individuals who want the service. The Board first discussed the establishment of a Rural Curbside Subscription service at the December 10, 2013 regular meeting (see Attachment 5).

**Option 5**

Support rural curbside recycling with a contribution from the General Fund.

## 2. To discuss issues in front of the Board and decisions to be made by July 1, 2014.

### ***Issues to be discussed at May 13, 2014 Work Session***

- Discussion of Frequently Asked Questions from the Public Hearings (see Attachment 9)
- Does the County want to continue Rural Curbside Recycling, and if so, what is the customer base - the existing rural district (13,700 customers) and/or additional customers
- How does the County fund Rural Curbside Recycling for Fiscal 2014/2015
- Recycling and Solid Waste issues with the County's partners
- Other ways to provide recycling services and look at options
- New Solid Waste Interlocal Agreement
- A stable funding source for recycling that is fair and equitable
- Discuss different options for servicing high density rural residential clusters. including costs/benefit analysis

### ***Decisions by July 1, 2014:***

- Does the County want to continue Rural Curbside Recycling, and if so, what is the customer base, the existing rural district (13,700 customers) and/or additional customers
- How does the County fund Rural Curbside Recycling for Fiscal 2014/2015

**FINANCIAL IMPACT:** There is no financial impact to the County in discussing funding options for the County's Recycling Programs.

**RECOMMENDATION(S):** The Manager recommends that the Board receive the information and provide guidance to staff in preparation for the May 13, 2014 work session. (Note: Board members may find it beneficial to bring the materials for this agenda item to the May 13<sup>th</sup> work session as reference documents.)

**CFE Committee Priorities**

(as of February 2014)

**Air and Energy Resources Committee**

(May Becker, David Neal, Gary Saunders, and Jan Sassaman)

1. Recommend a variety of strategies to the BOCC that would encourage energy efficiency in new construction and existing buildings, and recommend requirements for preserving Renewable Energy sites on new land development.
2. Create a countywide composting initiative that would help reduce the disposal of organic material in landfill.
3. Examine solid waste issues and collaborate with the Solid Waste Advisory Board (SWAB) on charting a course for the future with a focus on conservation and energy reduction.
4. Research and recommend appropriate use of biofuels and look into UNC's planned use of wood to replace coal at its cogeneration plant.
5. Assist in evaluating the County's carbon footprint as follow-up to the 2005 GHG inventory.
6. Help implement the County's goal of Environmental Responsibility in County Government.
7. Monitor upcoming statewide air quality standards ( $O_3$  75 ppb in 8-hour period; Hg 85%-90% control;  $PM < 2.5 \mu m$ ), which could require additional controls on emissions from private and public sources.

**Water Resources Committee**

(Peter Cada, Donna Lee Jones, and Rebecca Ray)

1. Develop and implement a monitoring plan and associated Quality Assurance Protection Plan (QAPP) for more frequent monitoring at existing State sampling locations; identify and initiate monitoring at other locations to support State water quality objectives under the Clean Water Act. Collaborate with other entities that may support these efforts (e.g., Eno River Association).
2. Explore and pursue funding sources to increase funding for the County's groundwater observation well network program (Orange Well Net).
3. Initiate efforts to create a detailed Water Budget for Orange County.

**Land Resources Committee**

(Loren Hintz, Steve Niezgoda, Jeanette O'Connor, Lydia Wegman, and David Welch)

1. Revitalize effort to eliminate use of herbicides to manage vegetation in utility right of ways.
2. Help implement the development of a comprehensive conservation plan.
3. Educate the public about ways to promote biodiversity.

## Contest Rules:

2013 3rd Place Youth Winner,  
Katerina Gilfillen



- 1) Photographs should feature Orange County wildlife, natural resources, landscapes, or people enjoying the parks and other outdoor environments.
- 2) All photos must be taken in a natural setting (no staged photos).
- 3) Limited to photos taken in Orange County.
- 4) Orange County employees are eligible with the exception of DEAPR staff. Contest judges are ineligible.
- 5) Entries per person: Maximum of five (5) total photos.
- 6) Complete and submit a Contest Entry Form for each photo entered, found under "Breaking News" at:  
<http://orangecountync.gov/deapr/>
- 7) Photo(s) must be mounted and suitable for display. The photos (excluding mounting) must be at least 8"x10".
- 8) Each photo must be accompanied by an electronic version of the photograph, either emailed, CD or DVD. Limit file formats to .gif and .jpg files (identifiable by their extensions,) with a width of 500 pixels.
- 9) DEADLINE TO ENTER: May 16, 2014.  
Submit to: Orange County DEAPR,  
306-A Revere Rd., PO Box 8181,  
Hillsborough, NC 27278

### The Department of Environment, Agriculture, Parks & Recreation

(DEAPR) works to conserve and manage the natural and cultural resources of Orange County. Included within this "green infrastructure" are natural areas and nature preserves, open spaces, parks and recreation facilities, water resources, and agricultural and cultural resource lands. Consistent with the strong environmental ethic of the community, DEAPR also strives to bring environmental education, recreation, athletics and other programs to residents of the County - with a goal of promoting cultural, physical and natural stewardship and well being.



### Department of Environment, Agriculture, Parks & Recreation

306-A Revere Rd.  
P.O. Box 8181  
Hillsborough, NC 27278

Phone: 919-245-2510  
Fax: 919-644-3351  
<http://www.orangecountync.gov/deapr/>  
E-mail: [lthecht@orangecountync.us](mailto:lthecht@orangecountync.us)

ORANGE COUNTY  
DEPARTMENT OF  
ENVIRONMENT, AGRICULTURE,  
PARKS & RECREATION

## "The Nature of Orange" Photography Contest

**Entry Deadline: May 16, 2014**

2013 Adult Winner, Darren Strickland



919-245-2510  
<http://www.orangecountync.gov/deapr/>

## "The Nature of Orange" Photography Contest

The Department of Environment, Agriculture, Parks and Recreation (DEAPR) is proud to present its 3rd annual photography contest. The goal is to inspire exploration, celebration and appreciation of Orange County's diverse landscapes and outdoor experiences. Through photography we want you to document the beauty of our wildlife, waterways, natural resources, and people connecting with their environment.

**Deadline: All entries must be received by May 16, 2014**

2013 1st Place Youth,  
Kirby Lau



### Age Divisions:

- Youth (age 18 and younger)
- Adult

### Photographs should feature:

Orange County wildlife, natural resources, landscapes, or people enjoying the parks and outdoor environments.

### How to Submit Your Photo:

See the Contest Rules on the reverse page.

**Prizes:** \$100 First, \$75 Second, and \$50 Third place cash prizes will be awarded for photos in both divisions; divisions will be judged separately. In addition, participants will receive a certificate and winning photographs will be displayed in prominent, public locations.

**For more information** about parks and other natural settings in Orange County visit: <http://orangecountync.gov/deapr/>

### 2013 3rd Place Adult, Statler Gilfillen



### Owner/Use Rights:

Contestants retain the copyright to their photographs, and all rights thereto, except as follows. Orange County and DEAPR shall have the right to use the likeness, name, and/or images photographed by contestants in any and all publications, including web site entries without compensation in perpetuity.

Photos will be credited to the contestant named in the entry form. Descriptions or titles, if any, used with the photos are in DEAPR's sole discretion (see Photo Release and Agreement on the required Entry Form under "Breaking News" at: <http://www.co.orange.nc.us/deapr/> )

### Judging Criteria:

*Relevancy to Featured Topics* - Is the photo an obvious illustration of the focus of the contest?

*Composition / Arrangement* - Are the objects in the photo arranged in a meaningful, pleasing manner or are they "haphazard"? Did the photographer use the best angle or otherwise interesting perspective?

*Focus / Sharpness* - Is the object of the photo in focus? If not in sharp focus, does it appear to be an intentional effect to enhance the image in some "artistic" way?

*Lighting* - Did the photographer use proper lighting of the subject matter? Do any extremes of darkness or brightness lend to or detract from the image content?

*Creativity* - Does the photographer show some creative thought or original idea in the making of this image?

## Sponsors

- Orange County Department of Environment, Agriculture, Parks and Recreation
- Orange County Commission for the Environment
- Orange County Cooperative Extension / 4-H
- Orange County Parks and Recreation Council

### 2013 2nd Place Youth, Kirby Lau



### ORANGE COUNTY DEPARTMENT OF ENVIRONMENT, AGRICULTURE, PARKS & RECREATION

306-A Revere Rd.  
P.O. Box 8181

Phone: 919-245-2510  
Fax: 919-644-3351

<http://orangecountync.gov/deapr/>  
E-mail: [lthecht@orangecountync.us](mailto:lthecht@orangecountync.us)



# ORANGE WATER AND SEWER AUTHORITY

*A public, non-profit agency providing water, sewer and reclaimed water services  
to the Carrboro-Chapel Hill community.*

May 8, 2014

Dear Neighbor:

**RE: UPCOMING WORK ON OWASA'S 491-ACRE CANE CREEK RESERVOIR  
MITIGATION PROPERTY NEAR BUCKHORN ROAD**

I am writing to follow up on my letters of September 20 and December 3, 2013 in which we informed you that OWASA had selected a contractor to implement the forest management plan provided by the North Carolina Wildlife Resources Commission (WRC) for our 491-acre Cane Creek Reservoir Mitigation Tract. This work is being performed to comply with the requirements of the 404 permit issued by the US Army Corps of Engineers to construct Cane Creek Reservoir.

In the December letter, we indicated that work would likely begin later that month. Due to the wet weather we experienced this winter, we delayed the timbering to help protect the stream on the site. At this time, we anticipate beginning work in May. All work will be completed in accordance with *North Carolina Best Practices Guidelines Related to Water Quality* and recommendations described in *North Carolina Forestry Best Management Practices (BMP) Manual to Protect Water Quality* as amended in September 2006.

I have attached a map summarizing the forest management plan, which has not changed since the September and December updates. The area north of the stream has already been harvested, and no further activities will occur on that portion of the site as noted on the attached map. The area scheduled for management is approximately 407 acres out of the total 491 acre tract. As shown on the attached map, the following management activities will occur:

- No Harvesting –about 151 acres (37% of area; shown in green on attached map) – no cutting will occur in the riparian buffer areas, visual buffers at the property boundaries near occupied homes, and near historic home sites found on the property.
- Thinning –about 201 acres (49% of area; shown in yellow on attached map) – these areas will be thinned to promote overall forest health and vigor and improve wildlife habitat. Many of the thinnings will protect the healthier trees and higher value species.
- Final Harvest –about 43 acres (11% of area; shown in orange on attached map) - these areas include pine stands and areas which were severely damaged from Hurricane Fran. All trees will be harvested from these management areas (largest area is 8 acres, but average size is 3.6 acres). These areas will be reforested in shortleaf or loblolly pine following harvest.
- Hardwood Openings –about 12 acres (3% of area; shown in white on attached map) – these are small group harvests within the hardwood thinning areas which average one acre in size. Mature oak and hickory trees may be left to help regenerate the center of the openings.

We anticipate two main impacts to neighbors:

1. Noise – neighbors may be able to hear equipment during hours of operation.
2. Vehicular traffic – all trucks will enter and exit the site via Martin Road; we anticipate six to eight truckloads of timber per day during normal harvest operations.

We will continue to keep you informed about our forestry management activities. If you did not receive e-mail notification (with this same letter attached) please send me an e-mail (see below) and I will add your name to our distribution list. Conversely, if you prefer not to be contacted about our activities at this site please notify me and I will remove your name from our list.

Please contact me at 919-537-4214 or at [rrouse@owasa.org](mailto:rrouse@owasa.org) if you have any questions or would like more information regarding our forestry management activities at the Cane Creek Reservoir Mitigation Tract.

Thank you very much.

Sincerely,



Ruth C. Rouse, AICP  
OWASA Planning and Development Manager

# Forest Management Plan for the Cane Creek Mitigation Tract (491 Ac)

9/13/2013

BUCKHORN RD

MARTIN RD

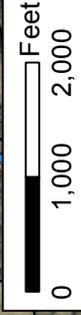
Forest Mgmt  
Previously  
Implemented

Gate at end of road

MT WILLING RD

HOLLY HILL RD

OAK GROVE CHURCH RD



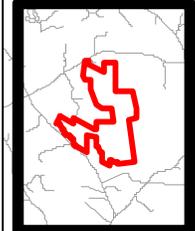
## Legend

- Property Boundary
  - Access Road
  - Streams and Creeks
  - Previous Forest Mgmt
- Treatment**
- No Harvesting
  - Thinning
  - Final Harvest
  - Hardwood Group Opening

This map contains sensitive information, not to be copied or distributed without the express written permission of OWASA. This data is being provided as a visual representation and at no time should the data be considered exact. The data is not guaranteed to be accurate and is not intended as a substitute for a field survey. OWASA assumes no legal liability or responsibility for this data.



Cane Creek Mitigation Tract General Location



Cane Creek Reservoir



# Fracking rules nearly complete

## Safety proposals to get final look before public hearings, review

By JOHN MURAWSKI  
jmurawski@newsobserver.com

**RALEIGH** The N.C. Mining and Energy Commission is set to hold its last regular meeting Wednesday before the state's proposed safety standards for fracking are taken to public hearings in community auditoriums this summer.

Wednesday's meeting will culminate a year-and-a-half of intense, technical review that fracking critics considered too rushed and advocates praised as meticulously thorough. By the end of the meeting, the commission will have produced about 120 safety rules, setting the stage for packed public comment sessions in August that are likely to be heated.

"It's quite possible they could influence, in a minor way or a major way, some of the tweaks that we ap-

ply to the rules," said Commission Chairman James Womack. "They could catch something we've missed. They could cause us to rework some aspect of our rule writing."

Shale gas exploration remains under a de facto moratorium in North Carolina, but as the legal process winds down, horizontal drilling and hydraulic fracturing could be less than a year away. Womack said the first fracking permits could be issued as early as next spring, once

the state legislature approves some form of the safety rules the commission has labored over.

The prospect of energy exploration frustrates Therese Vick, a community activist with the Blue Ridge Environmental Defense League, who has attended almost every commission meeting in person and listened to several by Web audio since they got underway in 2012. She said the energy industry cast a long shadow at the commission's

SEE **FRACKING**, PAGE 5B

proceedings, at which commissioners chipped away at regulations that could be criticized as onerous and seen as an impediment to drilling.

### Higher standards sought

But Commissioner Vikram Rao, a former chief technology officer for the Halliburton energy services conglomerate, said the commission is striking the right balance. He noted that all but one of the panel's votes was unanimous, indicating unity on complex issues.

"It does mean there was a consensus," said Rao, executive director of the Research Triangle Consortium. "When I was appointed, I never dreamed we'd get that kind of result."

Opponents of fracking see the potential for chemical spills and other harmful byproducts of industrialization. Supporters envision economic development, job creation and a relatively clean energy source in the form of natural gas.

The 15-member volunteer commission expects to conclude its technical duties Wednesday by writing the last 20 safety rules relating to such issues as waste management, surety bonds, tank construction and permit applications.

As in previous monthly discussions, this session will offer an opportunity for public comment, which so far have featured consistent concerns from environmental organizations that the commission is being too lax with the energy industry.

On Tuesday, Clean Water for North Carolina, Haw RiverKeeper and five other groups sent a letter to the commission, urging improvements to safety standards scheduled for Wednesday's discussion. The organizations said the surety bond and financial protections are inadequate as proposed, exposing the state to financial risk in the event of a serious accident.

"These shortcomings constitute a potential significant subsidy to an industry that is unlikely to contribute to the general economic well-being for even a limited region of NC, and could introduce significant new costs for local governments, individuals and our shared environment," the groups said in their letter.

### Contentious issues

The commission will meet again in May and in June to review and fine-tune all the safety rules as a complete set, but it is not expected to produce new rules.

Much of the commission's grunt work has been done by staffers at the N.C. Department of Environment and Natural Resources, who collated laws and regulations from other states and came up with the most workable options for North Carolina.

Most of the issues debated since 2012 have not attracted a great deal of attention. Womack said the most pivotal safety issue the commission discussed is well construction, including specifications for multiple layers of cement and steel required for well-shaft integrity. "Those are the rules almost no one talk about, no one challenged," he said.

Contentious topics have included letting companies use a trade secret exemption to prevent public disclosure of fracking chemicals pumped into the ground, as well as forcing property owners to allow fracking under their land if enough neighbors agree to drilling.

In addition, commission study groups are writing a half-dozen study reports on key issues for the legislature to take up, including an overview of a single permit to comply with all the safety rules, and limits on the ability of local governments to restrict or ban fracking in their communities.

Both of those issues are designed to remove obstacles to energy exploration in North Carolina, which is at a disadvantage to states that have vaster gas reserves and an existing infrastructure of pipelines and compressor stations to make drilling feasible.

Murawski: 919-829-8932

## Fracking timeline in North Carolina

*The N.C. Mining and Energy Commission has completed most of its technical work and is now preparing for the next phase of creating a safety program for fracking. Here's an overview of the state's fracking timeline.*

**Wednesday:** Discussion and revision of remaining eight rule bundles, including waste management and surety bonds.

**May 15-16:** Review of complete proposed rule set.

**June 5-6:** Review and approval of complete rule set.

**Aug. 19:** Public hearing in the Triangle.

**Aug. 22:** Public hearing in Sanford.

**Aug. 25:** Public hearing in Rockingham County.

**Sept. 5:** Review of public comments and resulting rule changes.

**Oct. 3:** Approval of complete rule set, with changes prompted by public comments. Fracking rule package to be forwarded to the state legislature for final approval.

**ORANGE COUNTY  
PLANNING BOARD  
ACTION AGENDA ITEM ABSTRACT**  
Meeting Date: May 7, 2014

Action Agenda  
Item No. 8

**SUBJECT:** Joint Planning Land Use Plan and Agreement Amendments – Revisions to Existing Language Ensuring Agricultural Activities are Allowed Throughout the Rural Buffer as well as Density and Minimum Lot Size Clarification(s)

**DEPARTMENT:** Planning and Inspections

**PUBLIC HEARING:** (Y/N)

No

**ATTACHMENTS:**

1. Joint Public Hearing Materials
2. Excerpt of Draft Minutes from April 2, 2014 Planning Board Meeting

**INFORMATION CONTACT:**

Michael D. Harvey, Planner III, (919) 245-2597  
Craig Benedict, Director, (919) 245-2592

**PURPOSE:** To make a recommendation to the BOCC on proposed amendments to the Joint Planning Land Use Plan (Plan) and Joint Planning Agreement (JPA) modifying language to ensure agricultural activities are allowed throughout the Rural Buffer and clarify required densities and minimum lot sizes within, and outside of, the University Lake Watershed Area.

**BACKGROUND:** In the mid-1980s Orange County and the Towns of Chapel Hill and Carrboro adopted a Joint Planning Land Use Plan that provided land use planning for the area of the county commonly referred to as the Rural Buffer. In 1987 the participating entities adopted the JPA establishing parameters for the review and approval of development projects within the area.

The full Plan and JPA is available at: <http://orangecountync.gov/planning/Documents.asp>.

A Joint Planning Area Public Hearing was held on March 27, 2014 to review proposed modifications to the Plan and JPA to address issues associated with the use of property for agricultural purposes as well as to clarify allowable density and lot sizes throughout the area covered by the Plan. Attachment 1 is the agenda materials for the joint public hearing and includes the proposed text amendments.

This item was previewed at the April 2, 2014 Planning Board meeting to familiarize Planning Board members with the Plan and JPA. As detailed at the April 2, 2014 Planning Board meeting, staff is proposing to amend the Plan and JPA as follows:

- i. Combine the existing Rural Residential and Agricultural Areas land use categories into 1 category and add language indicating agricultural activities are permitted throughout the area covered by the Plan.
- ii. Add language establishing a density of 1 dwelling unit for every 2 acres for property located within the Rural Residential land use category.

- iii. Allow for cluster subdivisions within the Rural Residential category so long as proposed density requirements (i.e. 1 unit for every 2 acres) are adhered to.
- iv. Change language within the Plan denoting the required minimum lot size for parcels in the University Lake Watershed Area is **2 acres** consistent with the adopted JPA and existing County regulations.

Draft minutes from this meeting are contained in Attachment 2.

**FINANCIAL IMPACT:** Consideration and approval will not create the need for additional funding for the provision of County services. Costs for the required legal advertisement were paid from FY2013-14 Departmental funds budgeted for this purpose. Existing Planning staff included in the Departmental staffing budget has accomplished the work required to process this amendment.

**RECOMMENDATION:** The Planning Director recommends the Board:

1. Deliberate as necessary on the proposed amendments to the Plan and JPA,
2. Make a recommendation to the BOCC on the proposed amendments in time for the **June 3, 2014** BOCC meeting.

**PAGE 60-a – JPA LAND USE PLAN**

The Rural Buffer is defined as being a low-density area consisting of single-family homes situated on large lots having a minimum size of two (2) acres. The Rural Buffer is further defined as land which, although adjacent to an Urban or Transition Area, is rural in character and which will remain rural, ~~contain low density residential uses~~, and not require urban services (public utilities and other Town services). ~~The Rural Buffer is expected to contain low density residential uses as well as agricultural uses~~ ~~The Rural Buffer~~ and consists of the following Joint Planning Area Land Use Plan categories: Rural Residential ~~and Agricultural~~; ~~Agricultural~~; <sup>2</sup> Public-Private Open Space; Resource Conservation; New Hope Creek Corridor Open Space; Extractive Use; and the overlay category designated University Lake Watershed Area.

**Rural Residential and Agricultural Areas** are low-density areas consisting of single-family homes situated on large lots ~~two acres in size or greater with a minimum lot size of two acres, except when part of a cluster subdivision and then adhering to a density limit of 1 unit for every 2 acres of property. Cluster subdivisions, reducing parcels to at least 1 acre in area, are allowed so long as density limits for the entire subdivision are maintained.~~ <sup>3</sup> In that respect, Rural Residential Areas are identical to the definition of the Rural Buffer. ~~The area includes property supporting farming operations, including forestry activities, established in accordance with the provisions of the North Carolina General Statutes.~~

~~**Agricultural Areas** include land areas currently in use for farming and forestry operations and which qualify for, or are listed for, use value taxation purposes.~~ <sup>4</sup>

**Public-Private Open Space Areas** include major land areas owned or controlled by public and private interests in the Rural Buffer. Such holdings as Duke Forest, Camp New Hope, U.S. Government lands associated with Jordan Lake, the 100-foot buffer along I-40, and Orange Water and Sewer Authority lands adjacent to University Lake and the quarry site on N.C. Highway 54 provide open space through research, educational, forest management, and recreational functions.

**Resource Conservation Areas** in the Rural Buffer are identical to those in the Transition Areas; i.e., floodplains, wetlands along drainage tributaries, and steep slope areas (15% or greater). The areas form the basis for a parks and open space system (see Strategy Map) which provided the framework within which other land uses are situated.

**New Hope Creek Corridor Open Space Areas** include some of the Resource Protection Areas and a portion of the Public/Private Open Space Areas which were designated as significant and worthy of protection according to the New Hope Corridor Open Space Master Plan completed in April of 1991. (See Master Plan Map following Strategy Maps). The areas are part of a system of open space in Durham and Orange Counties along New Hope Creek and its tributaries between Eno River State Park and U.S. Army Corps of Engineers land north and south of Jordan Lake. This category is made up of critical environmental areas such as stream beds, floodplains, steep slopes, and larger tracts of historic, educational, or recreational value.

**Extractive Use Areas** encompass mining and quarry operations. Only one such site exists in the Rural Buffer, the American Stone Company quarry on N.C. Highway 54 west of Carrboro.

<sup>2</sup> County governments do not have the authority to restrict the location of agricultural activities while municipalities can regulate farms located within their corporate limits. Agricultural activities, as defined within State law, are allowed in all areas subject to the Plan. Staff is clarifying existing language accordingly and eliminating references to 'Agricultural Areas' as being a separate Plan land use category and combining it with the Rural Residential Land Use Category.

<sup>3</sup> Cluster subdivisions are allowed throughout the County, including the University Lake Watershed Area, with the exception of the Rural Residential area of the Rural Buffer. We are modifying existing language to allow cluster subdivisions in the Rural Buffer, outside of the University Lake Watershed Area, so long as a density limit of 1 dwelling unit per 2 acres is maintained. This proposed amendment does not impact existing density limits in the University Lake Watershed Area, which only allows 1 dwelling unit for every 5 acres of land area. Staff has incorporated comments received by the County Attorney's office as well as Chapel Hill and Carrboro Planning staff.

<sup>4</sup> This information has been captured within the renamed 'Rural Residential and Agricultural Areas' land use category.

**Retail Trade Areas** in the Rural Buffer include low intensity neighborhood centers which serve the immediate area and generate low traffic volumes. Only one such area is designated in the Rural Buffer – Blackwood station on N.C. Highway 86.

**PAGE 60-b – JPA LAND USE PLAN**

**\*University Lake Watershed Area**

\*Amended  
4/2/90

The University Lake Watershed Area includes all lands which drain into the University Lake reservoir. Density within this area is limited to 1 dwelling unit for every 5 acres with a required minimum lot size of 2 acres. Based on a preferred watershed protection strategy of land use controls as recommended by Camp, Dresser and McKee in the University Lake Watershed Study, only low-intensity residential uses are permitted. A minimum lot size of five (5) acres and a maximum density of one (1) unit per five (5) acres is required for any development. <sup>5</sup>Cluster subdivisions with lot sizes of not less than one (1) acre are also allowed so long as density limits are adhered to. There is an allowance for as well as the creation of a limited number of 5 lots (5) of two-acre lots at a density of 1 unit per 2 acres for property legally in existence as of October 2, 1989. <sup>6</sup>Additional lots shall be allowed consistent with the 1 unit per 5 acre density as detailed herein.

<sup>5</sup> The minimum lot size in the Rural Buffer is 2 acres. Density (i.e. how many residences are allowed on a given property) has always been limited to 1 dwelling unit for every 5 acres of property. With this amendment staff is moving density language to the front portion of the description so that it is understood what the limit is. We are also indicating the required minimum lot size for the area is 2 acres to ensure consistency with the Joint Planning Agreement.

<sup>6</sup> Staff is adding the specific date a lot has to have existed on to qualify for the 2 acre density allowance. This date is consistent with the existing requirements of Orange County's Unified Development Ordinance (UDO) specifically Section 4.2.4.



## County Action Needed

### New “Waters of the United States” Definition Released

*Counties are strongly encouraged to submit written comments on potential impacts of the proposed regulation to the Federal Register*

On April 21, the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) jointly released a new proposed rule – [Definition of Waters of the U.S. Under the Clean Water Act](#) – that would amend the definition of “waters of the U.S.” and expand the range of waters that fall under federal jurisdiction. The proposed rule, published in the Federal Register, is open for public comment for 90 days, until July 21, 2014.

The proposed rule uses U.S. Environmental Protection Agency’s (EPA) draft report on [Connectivity of Stream and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence](#), which is currently undergoing review by EPA’s Science Advisory Board, as a scientific basis for the new definition. The report focuses on over 1,000 scientific reports that demonstrate the interconnectedness of tributaries, wetlands, and other waters to downstream waters and the impact these connections have on the biological, chemical and physical relationship to downstream waters.

#### Why “Waters of the U.S.” Regulation Matters to Counties

The proposed “waters of the U.S.” regulation from EPA and the Corps could have a significant impact on counties across the country, in the following ways:

- **Seeks to define waters under federal jurisdiction:** The proposed rule would modify existing regulations, which have been in place for over 25 years, regarding which waters fall under federal jurisdiction through the Clean Water Act (CWA). The proposed modification aims to clarify issues raised in recent Supreme Court decisions that have created uncertainty over the scope of CWA jurisdiction and focuses on the interconnectivity of waters when determining which waters fall under federal jurisdiction. **Because the proposed rule could expand the scope of CWA jurisdiction, counties could feel a major impact as more waters become federally protected and subject to new rules or standards.**
- **Potentially increases the number of county-owned ditches under federal jurisdiction:** The proposed rule would define some ditches as “waters of the U.S.” if they meet certain conditions. This means that more county-owned ditches would likely fall under federal oversight. In recent years, Section 404 permits have been required for ditch maintenance activities such as cleaning out vegetation and debris. **Once a ditch is under federal jurisdiction, the Section 404 permit process can be extremely cumbersome, time-consuming and expensive, leaving counties vulnerable to citizen suits if the federal permit process is not streamlined.**

- **Applies to all Clean Water Act programs, not just Section 404 program:** The proposed rule would apply not just to Section 404 permits, but also to other Clean Water Act programs. Among these programs—which would become subject to increasingly complex and costly federal regulatory requirements under the proposed rule—are the following:
  - **Section 402 National Pollution Discharge Elimination System (NPDES) program**, which includes municipal separate storm sewer systems (MS4s) and pesticide applications permits (EPA Program)
  - **Section 303 Water Quality Standards (WQS) program**, which is overseen by states and based on EPA’s “waters of the U.S.” designations
  - Other programs including **stormwater, green infrastructure, pesticide permits and total maximum daily load (TMDL) standards**

## Background Information

The Clean Water Act (CWA) was enacted in 1972 to restore and maintain the chemical, physical and biological integrity of our nation’s waters and is used to oversee federal water quality programs for areas that have a “water of the U.S.” The term navigable “waters of the U.S.” was derived from the Rivers and Harbors Act of 1899 to identify waters that were involved in interstate commerce and were designated as federally protected waters. Since then, a number of court cases have further defined navigable “waters of the U.S.” to include waters that are not traditionally navigable.

More recently, in 2001 and 2006, Supreme Court cases have raised questions about which waters fall under federal jurisdiction, creating uncertainty both within the regulating agencies and the regulated community over the definition of “waters of the U.S.” In 2001, in *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers* (531 U.S.159, 2001), the Corps had used the “Migratory Bird Rule”—wherever a migratory bird could land—to claim federal jurisdiction over an isolated wetland. The Court ruled that the Corps exceeded their authority and infringed on states’ water and land rights.

In 2006, in *Rapanos v. United States*, (547 U.S. 715, 2006), the Corps were challenged over their intent to regulate isolated wetlands under the CWA Section 404 permit program. In a 4-1-4 split decision, the Court ruled that the Corps exceeded their authority to regulate these isolated wetlands. The plurality opinion states that only waters with a relatively permanent flow should be federally regulated. The opposing opinion stated that waters should be jurisdictional if the water has a “significant nexus” with a navigable water, either alone or with other similarly situated sites. Since neither opinion was a majority opinion, it is unclear which opinion should be used in the field to assert jurisdiction, leading to further confusion over what waters are federally regulated under CWA.

The newly proposed rule attempts to resolve this confusion by broadening the geographic scope of CWA jurisdiction. The proposal states that “waters of the U.S” under federal jurisdiction include navigable waters, interstate waters, territorial waters, tributaries (ditches), wetlands, and “other waters.” It also redefines or includes new definitions for key terms—adjacency, riparian area, and flood plain—that could be used by EPA and the Corps to claim additional waters as jurisdictional.

States and local governments play an important role in CWA implementation. As the range of waters that are considered “waters of the U.S.” increase, states are required to expand their current water quality designations to protect those waters. This increases reporting and attainment standards at the state level. Counties, in the role of regulator, have their own watershed/stormwater management plans that would have to be modified based on the federal and state changes. Changes at the state level would impact comprehensive land use plans, floodplain regulations, building and/or special codes, watershed and stormwater plans.

## Examples of Potential Impact on Counties

### County-Owned Public Infrastructure Ditches

**The proposed rule would broaden the number of county maintained ditches—roadside, flood channels and potentially others—that would require CWA Section 404 federal permits.** Counties use public infrastructure ditches to funnel water away from low-lying roads, properties and businesses to prevent accidents and flooding incidences.

- The proposed rule states that man-made conveyances, including ditches, are considered jurisdictional tributaries if they have a bed, bank and ordinary high water mark (OHWM) and flow directly or indirectly into a “water of the U.S.,” regardless of perennial, intermittent or ephemeral flow.
- The proposed rule excludes certain types of upland ditches with less than perennial flow or those ditches that do not contribute flow to a “water of the U.S.” However, under the proposed rule, key terms like ‘uplands’ and ‘contribute flow’ are undefined. It is unclear how currently exempt ditches will be distinguished from jurisdictional ditches, especially if they are near a “water of the U.S.”

**Ultimately, a county is liable for maintaining the integrity of their ditches, even if federal permits are not approved by the federal agencies in a timely manner.** For example, in 2002, in *Arreola v Monterey* (99 Cal. App. 4<sup>th</sup> 722), the Fourth District Court of Appeals held the County of Monterey (Calif.) liable for not maintaining a levee that failed due to overgrowth of vegetation, even though the County argued that the Corps permit process did not allow for timely approvals.

The National Association of Counties’ policy calls on the federal government to clarify that local streets, gutters, and human-made ditches are excluded from the definition of “waters of the U.S.”

### Stormwater and Green Infrastructure

Since stormwater activities are not explicitly exempt under the proposed rule, concerns have been raised that Municipal Separate Storm Sewer System (MS4) ditches could now be classified as a “water of the U.S.” Some counties and cities own MS4 infrastructure including ditches, channels, pipes and gutters that flow into a “water of the U.S.” and are therefore regulated under the CWA Section 402 stormwater permit program.

**This is a significant potential threat for counties that own MS4 infrastructure because they would be subject to additional water quality standards (including total maximum daily loads) if their stormwater ditches are considered a “water of the U.S.”** Not only would the discharge leaving the system be regulated, but all flows entering the MS4 would be regulated as well. Even if the agencies do not initially plan to regulate an MS4 as a

“water of the U.S.,” they may be forced to do so through CWA citizen suits, unless MS4s are explicitly exempted from the requirements.

In addition, green infrastructure is not explicitly exempt under the proposed rule. A number of local governments are using green infrastructure as a stormwater management tool to lessen flooding and protect water quality by using vegetation, soils and natural processes. The proposed rule could inadvertently impact a number of these county maintained sites by requiring Section 404 permits for non-MS4 and MS4 green infrastructure construction projects. Additionally, it is unclear under the proposed rule whether a Section 404 permit will be required for maintenance activities on green infrastructure areas once the area is established. In stakeholder meetings, EPA has suggested local governments need to include in their comments whether an exemption is needed, and if so, under what circumstances, along with the reasoning behind the request.

### **Potential Impact on Other CWA Programs**

It is unclear how the proposed definitional changes may impact the pesticide general permit program, which is used to control weeds and vegetation around ditches, water transfer, reuse and reclamation efforts and drinking and other water delivery systems. According to a joint document released by EPA and the Corps, [Economic Analysis of Proposed Revised Definition of Waters of the United States](#) (March 2014), the agencies have performed cost-benefit analysis across CWA programs, but acknowledge that “readers should be cautious in examining these results in light of the many data and methodological limitations, as well as the inherent assumptions in each component of the analysis.”

### **Submitting Written Comments**

NACo is in the process of preparing suggested draft comments for counties. In the short term, because of the complexity of the proposed rule and the unexplored impacts on CWA programs, counties should ask for an extension of the 90 day comment period to 180 days.

Written comments to EPA and Corps are due no later than July 21, 2014. *If you submit comments, please share a copy with NACo’s Julie Ufner at [jufner@naco.org](mailto:jufner@naco.org) or 202.942.4269.*

Submit your comments, identified by **Docket ID No. EPA-HQ-OW-2011-0880** by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments
- E-mail: [ow-docket@epa.gov](mailto:ow-docket@epa.gov). Include EPA-HQ-OW-2011-0880 in the subject line of the message
- Mail: Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention: Docket ID No. EPA-HQ-OW-2011-0880.

**For further information, contact: Julie Ufner at 202.942.4269 or [jufner@naco.org](mailto:jufner@naco.org)**

# Definition of “Waters of the United States” Under the Clean Water Act

## Summary of Draft Regulation As Proposed by EPA and Corps



(Working draft subject to change, updated April 23)

Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p><b>“Waters of the U.S.”<sup>1</sup> Definition</b></p>	<p>40 CFR 230.3(s) The term “Waters of the United States” means:</p> <p>(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, all waters which are subject to the ebb and flow of the tide;</p> <p>(2) All interstate waters<sup>2</sup>, including interstate “wetlands”;</p>	<p>Define “Waters of the United States” for all sections (including sections 301, 311, 401, 402, 404) of the CWA to mean:</p> <p>(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;</p> <p>(2) All interstate waters, including interstate wetlands;</p>	<p><b>No change from current rules</b></p> <p>These waters are referred to as traditionally navigable waters of the U.S. For the purposes of CWA jurisdiction, waters are considered traditional navigable waters if:</p> <ul style="list-style-type: none"> <li>• They are subject to section 9 or 10 of the 1899 Rivers and Harbors Appropriations Act</li> <li>• A federal court has determined the water body is navigable-in-fact under law</li> <li>• Waters currently used (or historically used) for commercial navigation, including commercial waterborne recreation (boat rentals, guided fishing trips, etc.)</li> </ul> <p><b>No change from current rules</b></p> <p>Under the proposed rule, waters (lakes, streams, tributaries, etc.) would be considered “interstate waters” if they flow across state boundaries, even if they</p>

<sup>1</sup> There is only one Clean Water Act definition of “waters of the U.S.” This definition is used for all CWA programs (including sections 301, 311, 401, 402, and 404)

<sup>2</sup> All interstate waters are “waters of the U.S.”, even if they are non-navigable (under the current “waters of the U.S.” definition)

# Definition of “Waters of the United States” Under the Clean Water Act

## Summary of Draft Regulation As Proposed by EPA and Corps



(Working draft subject to change, updated April 23)

Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p><b>“Waters of the U.S.” Definition (continued)</b></p>	<p>(3) All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:</p> <p>(i) Which are or could be used by interstate or foreign travelers for recreation or other purposes;</p> <p>(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or</p>	<p>(7) And on a case-specific basis, other waters, including wetlands, provided that those waters alone, or in combination with other similarly situated waters, including wetlands<sup>3</sup>, located in the same region, have a significant nexus to a traditional navigable water, interstate water or the territorial sea</p> <p>(i) through (iii) eliminated</p>	<p>are not considered “navigable” and do not connect to a “water of the U.S.”</p> <p>Under the proposed rule, “other waters” would not automatically be considered jurisdictional, instead, they would be assessed on a case-by-case basis, either alone or with other waters in the region to assess the biological, physical, chemical impacts to the closest jurisdictional waters</p> <p>Under the proposed rule, “other waters,” such as isolated wetlands, must meet the significant nexus test to be considered jurisdictional. <b><i>This is a major change over current practice.</i></b></p> <p>The agencies consider (i) through (iii) duplicative language</p>

<sup>3</sup> The term wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typical of wet soil conditions The term generally includes swamps, marshes, bogs and other similar areas

# Definition of “Waters of the United States” Under the Clean Water Act

## Summary of Draft Regulation As Proposed by EPA and Corps



(Working draft subject to change, updated April 23)

Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p><b>“Waters of the U.S.” Definition</b> (continued)</p>	<p>(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;</p> <p>(4) All impoundments of waters otherwise defined as waters of the U.S. under this definition;</p> <p>(5) Tributaries of waters identified in paragraphs (a) through (d) of this definition;</p> <p>(6) The territorial seas; and</p>	<p>(4) All impoundments of a traditional navigable water, interstate water, the territorial seas or a tributary;</p> <p>(5) All tributaries of a traditional navigable water, interstate water, the territorial seas or impoundment;</p> <p>(3) The territorial seas;</p>	<p><b>No change from current rules – County owned dams and reservoirs are under federal jurisdiction</b></p> <p><b>Proposed rule more broadly defines the definition of tributary to include manmade and natural ditches</b></p> <p><b>Proposed rule would potentially increase the number of county-owned ditches under federal jurisdiction</b></p> <p>All manmade and natural ditches that meet the definition of a tributary would be considered a “water of the U.S.” regardless of perennial, intermittent or ephemeral flow – <i>Refer to “Tributary” definition for further explanation</i></p> <p><b>No change from current rules</b></p> <p>Territorial seas are defined as <i>“the belt of the seas measured from the line of the ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and</i></p>

# Definition of “Waters of the United States” Under the Clean Water Act

## Summary of Draft Regulation As Proposed by EPA and Corps

(Working draft subject to change, updated April 23)



Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p><b>“Waters of the U.S.” Definition</b> (continued)</p>	<p>(7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.</p> <p>(8): Waters of the United States do not include prior converted cropland or waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling points as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the U.S.</p>	<p>(6) All waters, including wetlands, adjacent to a traditional navigable water, interstate water, the territorial seas, impoundment or tributary;</p> <p>Waters excluded from the definition of “waters of the U.S.” include:</p>	<p><i>extending seaward a distance of three miles”</i></p> <p><b>Proposed rule would broaden what types of waters next to a “waters of the U.S.” are considered jurisdictional</b></p> <p>Under the proposed regulation, wetlands, lakes, ponds, etc. that are adjacent to “waters of the U.S.” would be jurisdictional if they can meet the significant nexus test – meaning the adjacent waters must show a significant connect to a “water of the U.S.”</p> <p><b>The proposed rule change would be relevant for non-jurisdictional county-owned ditches near a “water of the U.S.” that have a significant connection (hydrologic water connection is not necessary) to a “water of the U.S.”</b></p> <p><b>The proposed rule excludes certain types of waters from being classified as a “water of the U.S.”</b></p> <p>The proposed rule codifies 1986 and 1988 guidance preamble language – meaning the proposed rule makes official a number of exemptions that have been in place since the 1980’s</p>

# Definition of “Waters of the United States” Under the Clean Water Act

## Summary of Draft Regulation As Proposed by EPA and Corps



(Working draft subject to change, updated April 23)

Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p><b>“Waters of the U.S.” Definition</b> (continued)</p>		<ul style="list-style-type: none"> <li>Waste treatment systems, including treatment points or lagoons, <b>designed to meet CWA requirements</b></li> <li>Prior converted cropland</li> <li>Ditches that are excavated wholly in uplands, drain only in uplands, and have less than perennial flow</li> <li>Ditches that do not contribute to flow, either directly or indirectly to a “water of the U.S.”</li> </ul>	<p><b>Over the years, some exemptions, such as for waste treatment systems, have been challenged in the courts. The exemptions may be interpreted very narrowly</b></p> <p>Under the proposed rule, only those waste treatment systems, designed to meet CWA requirements, would be exempt. For waste treatment systems that were built to address non-CWA compliance issues, it is uncertain whether the system would also be exempt</p> <p><b>The proposed rule exempts a certain type of uplands ditch – there is little consensus on how this language would (or would not) impact roadside ditches. EPA and Corps need to answer whether ditches will be considered in parts or in whole</b></p> <p>Under the new rule, other ditches, not strictly in uplands, would be regulated or potentially those ditches adjacent to a “water of the U.S.”</p> <p><b>The proposed rule would exempt ditches that show they do not contribute to the flow of a “water of the U.S.”</b></p>

# Definition of “Waters of the United States” Under the Clean Water Act

## Summary of Draft Regulation As Proposed by EPA and Corps



(Working draft subject to change, updated April 23)

Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p><b>“Waters of the U.S.” Definition</b> (continued)</p>		<p>Additionally, the following features are exempted (from the “waters of the U.S.” definition):</p> <ol style="list-style-type: none"> <li>1. Would exclude artificial areas that revert to uplands if application of irrigation water ceases;</li> <li>2. Artificial lakes and ponds used solely for stock watering, irrigation, settling basins, rice growing;</li> <li>3. Artificial reflecting pools or swimming pools created by excavating and/or diking in dry land</li> <li>4. Small ornamental waters created by excavating and/or diking dry land for primarily aesthetic reasons;</li> <li>5. Water-filled depressions created incidental to construction activity;</li> <li>6. Groundwater, including groundwater drained through subsurface drainage systems; and</li> <li>7. Gullies and rills and non-wetland swales<sup>4</sup></li> </ol>	<p><b>Question: Are there county maintained ditches that do not contribute to flow of a “water of the U.S.”?</b></p> <p><b>However, ditches can be a point source and regulated under the CWA Section 402 permit program</b></p> <p><b>Under the proposed rule, ditches that do contribute to the flow of a “water of the U.S.” regardless of perennial, intermittent or ephemeral flows, would be jurisdictional</b></p>

<sup>4</sup> While non-jurisdictional geographic features such as non-wetland swales, ephemeral upland ditches may not be jurisdictional under the CWA section 404 permit program, the “point source” water discharges from these features may be regulated through other CWA programs, such as section 402

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## Summary of Draft Regulation As Proposed by EPA and Corps

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Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p><b>“Waters of the U.S.” Definition (continued)</b></p>			<p><b>Under the proposed rule, stormwater and green infrastructure are not explicitly exempt. Clarification is needed to ensure this type of infrastructure is not classified as a “water of the U.S.” through regional staff determinations or CWA citizen lawsuits</b></p> <p>If more waters are designated “waters of the U.S.,” those waters would then have to meet water quality standards (WQS), which are set by the state based on federally designated “waters of the U.S.” State standards for these waters must include a highest beneficial use based on scientific analysis—fishable, swimmable, water supply—these standards are often challenged in the courts. Under CWA statute, states must treat all “waters of the U.S.” equally, regardless of size or flow, when determining WQS</p> <p>In parts of California, stormwater channels are considered “waters of the U.S.” However, the designation is not currently enforced</p>

# Definition of “Waters of the United States” Under the Clean Water Act

## Summary of Draft Regulation As Proposed by EPA and Corps



(Working draft subject to change, updated April 23)

Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p><b>Ditches</b> (aka “Tributaries”)</p>	<p>Tributaries are considered a “waters of the U.S.” under existing regulation.<sup>5</sup></p> <p>Agencies have stated they <i>generally</i> would not assert jurisdiction over ditches (including roadside ditches) excavated wholly in and draining only in uplands and do not carry a relatively permanent flow of water.</p>	<p>Tributaries include, natural and manmade waters, including wetlands, rivers, streams, lakes, ponds, impoundments, canals and ditches if they:</p> <ul style="list-style-type: none"> <li>• Have a bed, bank, and ordinary high water mark (OHWM)<sup>6</sup></li> <li>• Contribute to flow, either directly or indirectly, to a “water of the U.S.”<sup>7</sup></li> </ul> <p>Would excludes ditches that are excavated wholly in uplands, drain only in uplands, and have less than perennial flow<sup>8</sup></p>	<p>Proposed rule includes <i>for the first time</i> a regulatory definition of a tributary, which specifically defines <b>ditches</b> as jurisdictional tributaries unless exempted</p> <p>The proposed rule states that manmade and natural ditches are considered jurisdiction if they have a bed, bank and evidence of, and contribute to, flow, directly or indirectly, to a “water of the U.S.”</p> <p><b>Proposed rule would potentially increase the number of county-owned ditches under federal jurisdiction</b></p> <p>All manmade and natural ditches that meet the definition of a tributary would be considered a “water of the U.S.” regardless of perennial, intermittent or ephemeral flow</p> <p>Under the proposed rule, ditches are “exempt” if they are strictly uplands ditches with a less than a relatively permanent flow. There is uncertainty</p>

<sup>5</sup> The term “tributary” is not defined under current regulations

<sup>6</sup> Bed, bank and OHWM are features generally associated with flow. OHWM usually defines the lateral limits of the ditch by showing evidence of flow. The bed is the part of the ditch, below the OHWM, and the banks may be above the OHWM

<sup>7</sup> The flow in the tributary may be ephemeral, intermittent or perennial, and the tributary must drain, or be a part of a network of tributaries that drain, into a “water of the U.S.”

<sup>8</sup> Perennial flow means that water is present in a tributary year round when rainfall is normal or above normal

# Definition of “Waters of the United States” Under the Clean Water Act

## Summary of Draft Regulation As Proposed by EPA and Corps



(Working draft subject to change, updated April 23)

Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p><b>Ditches</b> (aka “Tributaries”) (continued)</p>		<p>Would exclude ditches that do not contribute flow, either directly or through another water, to a traditional navigable water, interstate water, the territorial seas or an impoundment of a jurisdictional water</p> <p><b>Jurisdictional ditches include, but are not limited to,</b> natural streams that have been altered (i.e. channelized, straightened, relocated); ditches that have been excavated in “waters of the U.S.” including jurisdictional wetlands; ditches that have perennial flow; and ditches that connect two or more “waters of the U.S.”</p> <p>Tributaries that have been channelized in concrete or otherwise human altered, may also be jurisdictional if they meet the definitional conditions</p> <p>All tributaries in a watershed will be considered in combination to assess whether they have a significant nexus to a “water of the U.S.”</p>	<p>whether this designation would protect all roadside ditches in uplands since many ditches run through both uplands and wetlands through the length of the ditch</p> <p>Under the proposed rule, ditches that do not contribute to flow of a “waters of the U.S.” would be exempt. Since the majority of public infrastructure ditches are ultimately connected to a “water of the U.S.” it is uncertain how this would be documented</p> <p>EPA officials indicate the intent of the rule to regulate ditches that remain “wet” most of the year and have a mostly permanent flow –pooled or standing water is not jurisdictional.</p> <p>Question: if all perennial, intermittent and ephemeral ditches are jurisdictional, how can they be differentiated from exempt ditches?</p>

# Definition of “Waters of the United States” Under the Clean Water Act

## Summary of Draft Regulation As Proposed by EPA and Corps



(Working draft subject to change, updated April 23)

Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p style="text-align: center;"><b>Ditches</b> (aka “Tributaries”) (continued)</p>		<p>A water, that is considered a jurisdictional tributary, does not lose its status if there are manmade breaks – bridges, culverts, pipes, or dams – or natural breaks – wetlands, debris piles, boulder fields, streams underground –as long as there is a bed, bank, and OHWM identified upstream of the break. This is relevant for arid and semi-arid areas where banks of the tributary may disappear at times.</p>	<p>The proposed rule notes that manmade and natural breaks in ditches – pipes, bridges, culverts, wetlands, streams underground, dams, etc. – are not jurisdictional. However, the ditch considered a “water of the U.S.” above the break is also a jurisdictional water after the break</p> <p>The term uplands is not defined under the current or the proposed regulation.</p> <p>Question: how can the term uplands be defined to lessen impact on county operations?</p> <p>The proposed rule states that tributary connection may be traced by using direct observation or U.S. Geological Survey maps, aerial photography or other reliable remote sensing information, and other appropriated information in order to claim federal jurisdiction over the ditch</p> <p>Question: how can the agencies delineate how seasonal ditches will be regulated under the proposal?</p>

# Definition of “Waters of the United States” Under the Clean Water Act

## Summary of Draft Regulation As Proposed by EPA and Corps



(Working draft subject to change, updated April 23)

Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p><b>“Other Waters”</b></p>	<p>All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds that would impact interstate or foreign commerce</p>	<p>“Other waters” are jurisdictional if, “either alone or in combination with similarly situated “other waters” in the region<sup>9</sup>, they have a “significant nexus” to a traditional navigable water, interstate water, or the territorial seas.”</p> <p>“Other waters” would be evaluated either individually, or as a group of waters, where they are determined to be similarly situations in the region</p> <p>Waters would be considered “similarly situated” when they perform similar functions and are located sufficiently close together or when they are sufficiently close to a jurisdictional water</p>	<p><b>Under the proposed rule, “other waters” are not automatically considered jurisdictional, instead, they must be assessed on a case-by-case basis, either alone or with other waters in the region to assess the biological, physical, chemical impacts to the closest jurisdictional waters</b></p> <p>Under the proposed rule, “other waters” will be under federal jurisdiction if they have a significant connection to “waters of the U.S.”</p> <p>Question: In the proposed rule, how can agencies clearly distinguish between landscape features that are not waters or wetlands and those that are jurisdictional</p> <p>Question: The agencies request, in the proposed rule, comments on alternative methods to determine “other waters.” For example, should determinations be made on ecological or hydrologic landscape regions? If so, why and how? How would the various definitions impact counties?</p>

<sup>9</sup> “In the region,” means the watershed that drains to the nearest traditional navigable water, interstate water, or the territorial seas through a single point of entry

# Definition of “Waters of the United States” Under the Clean Water Act

## Summary of Draft Regulation As Proposed by EPA and Corps



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Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p><b>“Adjacent Waters”</b></p>	<p>Under existing regulation for “adjacent wetlands,” only wetlands adjacent to a “water of the U.S.” are considered jurisdictional</p> <p>Adjacent means bordering, ordering, contiguous or neighboring</p>	<p>Adjacent waters are defined as wetlands, ponds, lakes and similar water bodies that provide similar functions which have a significant nexus to “waters of the U.S.”</p> <p>Waters, including wetlands, separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, etc. are “adjacent waters” are jurisdictional</p>	<p><b>The proposed rule replaces the term “adjacent wetlands” with “adjacent waters”</b> – this definition would include adjacent wetlands and ponds</p> <p><b>Under the proposed rule, adjacent waters to a “water of the U.S.” are those waters (and tributaries) that are highly dependent on each other, which must be shown through the significant nexus test</b></p> <p>The proposed rule uses other key terms in definition—riparian area and flood plains—to claim jurisdiction over adjacent waters</p>
<p><b>“Significant Nexus”</b></p>	<p>n/a</p>	<p>The term “significant nexus” means that a water, including wetlands, either alone or in combination with other similarly situated waters in the region (i.e. the watershed that drains to the nearest “water of the U.S.”) and significant affect the chemical, physical or biological integrity of the water to which they drain</p> <p>For an effect to be significant, it must be more than speculative or insubstantial</p> <p>Other waters, including wetlands, are similarly situated when they perform similar functions and are located sufficiently close together or sufficiently close to a “water of the U.S.” so they can be evaluated as a single landscape unit regarding their chemical, physical, or biological impact on a “water of the U.S.”<sup>10</sup></p>	<p><b>Newly defined term</b> – The proposed rule definition is based on Supreme Court Justice Kennedy’s “similarly situated waters” test. A significant nexus test can be based on a specific water or on a combination of nearby waters</p> <p>The proposed rule states waters would be considered jurisdictional, the waters either alone or in conjunction, with another water must perform similar functions such as sediment trapping, storing and cleansing of water, movement of organisms, or hydrologic connections.</p>

<sup>10</sup> Note: The term “single landscape unit is not defined in the proposed regulation.

# Definition of “Waters of the United States” Under the Clean Water Act

## Summary of Draft Regulation As Proposed by EPA and Corps



(Working draft subject to change, updated April 23)

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<p><b>“Riparian Area”</b></p>	<p>n/a</p>	<p>The term riparian area means an area bordering a water where the surface or subsurface hydrology directly influence the ecological processes and plant and animal community structure in that area.</p> <p>Riparian areas are transition areas between aquatic and terrestrial ecosystems that influence the exchange of energy and materials between those ecosystems<sup>11</sup></p> <p>No uplands located in “riparian areas” can ever be “waters of the United States.”</p>	<p><b>Newly defined term</b></p> <p><b>The proposed rule broadly defines “riparian area” to include aquatic, plant or animal life that depend on above or below ground waters to exist</b></p> <p>Under the proposed rule, a riparian area would not be jurisdiction in itself, however, it could be used as a mechanism to claim federal jurisdiction</p> <p>Under the proposed rule, there is no limiting scope to the size of a riparian area or a definition of the types of animal, plant and aquatic life that may trigger this definition</p> <p>The proposed rule states that no uplands in a riparian area can ever be “waters of the U.S.”</p>

<sup>11</sup> Note: Under the new term “riparian area,” terms used in the definition – area, ecological processes, plant and animal community structure, exchange of energy and materials are not defined.

# Definition of “Waters of the United States” Under the Clean Water Act

## Summary of Draft Regulation As Proposed by EPA and Corps



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Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p><b>“Flood Plain”</b></p>	<p>n/a</p>	<p>Flood plain, under this definition, means an area bordering inland or coastal waters that was formed by sediment preposition from such water under present climatic conditions and is inundated during periods of moderate to high water flows</p> <p><b>Absolutely no uplands located in riparian areas and flood plains can ever be “waters of the U.S.”</b></p> <p>There may be circumstances where a water located outside a flood plain or riparian area is considered adjacent if there is a confined surface or shallow subsurface hydrology connection</p> <p>Determination of jurisdiction using the terms “riparian area,” “flood plain,” and “hydrologic connection” will be based on best profession judgment and experience applied to the definitions proposed in this rule</p>	<p><b>Newly defined term</b></p> <p>The proposed rule uses the term “flood plain” to identify waters and wetlands that would be near (adjacent) to a “waters of the U.S.” in order to establish federal jurisdiction</p> <p>The proposed rule definition relies heavily on “moderate to high water flows” rather than the Federal Emergency Management Agency’s (FEMA) flood plain definitional terms such as 100 year or 500 year floodplains</p> <p><b>The proposed rule states waters near to a “water of the U.S.” could be jurisdiction <i>without a significant nexus</i> if they are in a flood plain or riparian area</b></p>

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Key Terms	Current EPA/Corps Regulations	Proposed Regulatory Language	Analysis of Potential County Impact
<p><b>“Neighboring”</b></p>	<p>n/a</p>	<p>Neighboring is defined as:</p> <ul style="list-style-type: none"> <li>• Including waters located within the riparian area or floodplain of a “water of the U.S.” or waters with a confined surface or shallow subsurface hydrological connection <sup>12</sup> to a jurisdictional water;</li> <li>• Water must be geographically proximate to the adjacent water;</li> <li>• Waters outside the floodplain or riparian zone are jurisdictional if they are reasonably proximate</li> </ul>	<p>Under the proposed rule, neighboring is defined for the first time</p>

<sup>12</sup> While shallow subsurface flows are not considered a “water of the U.S.” under the proposal, they may provide the connection establishing jurisdiction

# Final public hearing set for Chatham Park

By ANDREW KENNEY  
akenney@newsobserver.com

**PITTSBORO** The Chatham Park project and its city-size ambitions are scheduled for a final round of public thrashing and praise.

Preston Development Co. and the town of Pittsboro are nearly ready to put the developer's plan up for public comment on May 12, perhaps followed by a decision by the Board of Commissioners.

"Maybe after the public hearing, we can get a vote," said Tim Smith, lead developer of the proposal. "It's going on a year."

The Chatham Park master plan has been battled between town staff, its five elected commissioners and mayor, the development company and Lawrence Group, a planning firm Pittsboro hired to audit the project and look out for the town's interests.

Monday's meeting was crowded, as they have been during Chatham Park's consideration, but the crowd was subdued, and criticism of the project was couched with acknowledgments of its potential.

"You know, I'm feeling better about this," Mayor Bill Terry said

of the plan. "I think we may be saying the same thing in different words here."

The board talked about a few last requests it made of the developer.

First, Preston Development agreed it would illustrate its plans with examples of how neighborhoods, commercial centers and other ingredients of the development might look.

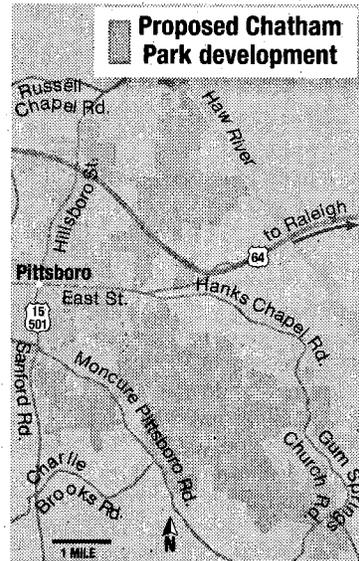
"If what we're approving is New York City on the Haw, we ought to at least understand that," Terry said. "Let's see that."

Standing outside the meeting, Smith said he can't predict 40 years of development style, but he would oblige.

## Timing of open space

Following questions earlier this year about its land, Preston Development told the town that Chatham Park will include a minimum of about 2,000 acres of open space and parkland – about 28 percent of the total. Open space can include undeveloped woods.

Philip Culpepper, a representative of Preston, has said the company wants to set aside land as it builds each section of the commu-



The News & Observer

nity, rather than choosing and dedicating the land now.

"If houses get built, parks and open space get dedicated," Culpepper wrote in an email before the meeting. "If offices get built, open space gets dedicated. If nothing gets built, then the land just sits there undeveloped."

Pittsboro Matters, a group that has

pressed for changes in Chatham Park, wants to see the open space delineated and set aside early. Critics of the project also want to see more land kept in conservation, saying Chatham Park's hills and streams and its position above Jordan Lake and the Haw River could cause ecological problems.

With that in mind, town commissioners voted earlier to ask that land near the Haw River northeast of Pittsboro be "very lightly" developed. But Preston on Monday rejected the call for lowered density there, saying that "clustered," higher-density construction will be more efficient and may better protect the river and Jordan Lake just downstream.

The developers did agree to accept a previously written environmental report about the area, called the Southwest Shore Conservation Assessment, as a "reference to guide future development," according to town documents.

With those points in mind, Preston will push its plan toward a last few meetings.

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## Triangle Land Conservancy gets \$1 million bequest from open-space activist

By Martha Quillin  
The News and Observer

Hildegard Ryals, who worked so hard on local land conservation projects in her lifetime, made sure the Triangle Land Conservancy could carry on her vision after her death with a \$1 million gift.

Chad Jemison, executive director of the Durham-based TLC, said Ryals' was the largest cash bequest the agency has received since it was formed in 1983. The money, recently distributed from Ryals' estate, will be invested, Jemison said, "to support conservation work in the Triangle for years to come."

Ryals died in 2012 at the age of 81.

She was a native of Philadelphia who moved to Durham in 1972 with her husband, then a professor of English at Duke University. She became friends with Margaret Nygard, a longtime proponent of the Eno River, and worked with her and others to protect the river's watershed.

Ryals later founded the New Hope Creek Corridor Advisory Committee in the 1980s to work on preserving land along the creek that ran through four jurisdictions: Orange County, Chapel Hill, Durham County and the City of the Durham.

She was really looking ahead," said Robert Healy, professor emeritus of environmental policy at Duke's Nicholas School of the Environment, and co-chair of the New Hope Creek Advisory Committee. Ryals knew that growth was coming to the New Hope corridor and that the creek, which feeds into Jordan Lake, a future drinking-water source, would need to be protected before development got there. Not only was she passionate about the work of protecting open space, but she drew others into to it as well, Healy said.

Hildegard had a way of telling each person she encountered that unless they acted to protect the environment, things would simply fall apart," he said. "She convinced you that if you didn't do it – you, personally – that it would not happen, and it was important."

You had no counterargument. You just had to do it."

One of Ryals' signature accomplishments was the Durham County Inventory of Natural and Cultural Resources, and she was instrumental in establishing Leigh Farm Park and Little River Regional Park and Natural Area, both in Durham. Jemison said Ryals understood the importance of open space where people and nature have a chance to regenerate. The TLC has worked with landowners, developers, governments, the public and other nonprofits to preserve more than 15,000 acres of land in six counties.

As a community grows, "Open space is really an important piece of the infrastructure, a really basic element that a growing metropolitan area needs to address," Jemison said.