1 15A NCAC 02B .0402 is proposed for readoption without substantive changes as follows:
 2
 3 15A NCAC 02B .0402 SCOPE

**Commented [TM1]:** 'Waters', 'outlet', and 'point source' are defined in G.S. 143-212 and 143-213.

Effluent limits established herein shall apply to all effluents discharged from pretreatment facilities and from outlets and point sources to the waters of the state.

History Note: Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1);
 Eff. February 1, 1976-1976;

9 <u>Readopted Eff. <date>.</u>

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15A NCAC 02B .0403 is proposed for readoption with substantive changes as follows:

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## 15A NCAC 02B .0403 DEFINITION OF TERMS

The terms used in this Section shall be as defined in G.S. 443-213 and 143-213; the federal Clean Water Act (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

- (1) The term "commission" means the Environmental Management Commission or its successor.
  - (2) The term "director" means the Director of the Division of Environmental Management, Water Resources or Division of Energy, Mineral and Land Resources, or both, Department of Natural Resources and Community Development. Environmental Quality, whichever is the permitting authority in a particular instance; or his designee.
- (3) "Division" means the Division of Water Resources or the Division of Energy, Mineral and Land
  Resources, or both, Department of Environmental Quality, whichever is the permitting authority in
  a particular instance.
- (4) The term "staff" "Staff" means the division of environmental management, Division, or its successor.
- (4) The term "BPCTCA" shall mean best practicable control technology currently available. Effluent limitations determined as BPCTCA are immediately applicable and shall be complied with not later than July 1, 1977.
- (5) The term "BPWTT" shall mean best practicable waste treatment technology. Effluent limitations established by this designation shall be complied with not later than July 1, 1983.
- 6) The term "BCT" shall mean best conventional pollutant control technology. Effluent limitations designated as BCT will control the discharge of pollutants determined to be conventional in nature and these limitations shall be complied with not later than July 1, 1984.
- (7) The term "BAT" shall mean best available technology economically achievable. Effluent limitations designated as BAT will control the discharge of pollutants determined to be nonconventional in nature and these limitations will come into effect on July 1, 1984, and shall be complied with not later than July 1, 1987.
- (8) The term "BAT/BMP'S" shall mean best available technology economically achievable/best management practices. Effluent limitations designated as BAT/BMP's will control the discharge of pollutants determined to be toxic in nature. Compliance with these designated effluent limitations must be maintained not later than three years after such limitations are developed, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.
- (5) "Technology-based effluent limitations (or limits)," or "TBELs," means those effluent limits that are based on a required level of treatment performance.
- (6) "Water quality-based effluent limitations (or limits)," or "WQBELs," means those effluent limits that are established to ensure that a discharge does not cause or contribute to a contravention of state surface water quality standards.

**Commented [A1]:** Change: Updated references to DENR and DWR; made minor punctuation corrections.

Effect: Technical corrections.

**Change:** Updated several existing definitions, added others. Deleted references to obsolete compliance dates.

Effect: None - technical change.

Commented [TM2]: Change: Expanded to include other applicable definitions, many established since original rule was established. Federal rules are incorporated by reference at 2B 0408

Effect: None - technical corrections

**Commented [A3]:** Change: Expanded the definition to reflect that directors of both divisions that have permitting authority under these rules. **Effect:** Technical correction.

**Commented [TM4]: Change:** Combined these five terms into new definition for TBELs.

Effect: Technical corrections and updates.

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36 37 (9) The term "new source performance standards" shall mean the effluent limitations required of an industrial discharger determined under the guidance of 15A NCAC 2B .0407 to be a new source.

- (7) "Publicly owned treatment works," or "POTW," means a treatment works owned by a State or a municipality and is as defined more fully in 40 CFR 403.3, which is hereby incorporated by reference including any subsequent amendments or editions. The current version of this regulation can be accessed free of charge at <a href="http://www.gpo.gov/fdsys/">http://www.gpo.gov/fdsys/</a>.
- (10)(8) The term "waste "Waste" stabilization pond" (also called "lagoons" or "oxidation ponds") shall meanmeans a large, relatively shallow basin designed for long term detention of wastewater which may or may not have received prior treatment. While in the basin, the wastewater is biologically treated to reduce biochemical oxygen demand and suspended solids. Stabilization ponds are further defined as:
  - (a) Photosynthetic Pond. A pond which is designed to rely on photosynthetic oxygenation (i.e., oxygen from algae) for any portion of the oxygen needed for waste treatment; This includes oxidation ponds and facultative lagoons. These ponds may have supplemental aeration by mechanical means. With regard to hydraulic flow, photosynthetic ponds are either of the:
    - flow—through type, in which the pond discharges relatively continuously throughout the year; or
    - (ii) controlled\_discharge type, in which the pond is designed to retain the wastewater without discharge from six months to one year, followed by controlled discharge over a short time interval (typically about one to three weeks);
  - (b) Aerated Pond. A pond which is not designed to rely on any photosynthetic oxygenation to provide oxygen needed for biological waste treatment; Air is supplied by mechanical means. Aerated ponds are either:
    - complete mix, in which sufficient energy is imparted to the wastewater to prevent deposition of solids in the pond; or
    - (ii) partial-mix, in which only sufficient energy is used to dissolve and mix oxygen in the wastewater. Solid materials settle in the partial-mix pond and are decomposed anaerobically. There will be algae in the partial-mix aerated pond, but usually far fewer than in a photosynthetic pond.

This definition does not include polishing or holding ponds which are preceded by other biochemical or physical/chemical secondary treatment processes and designed to increase their efficiency. The pond may be single-cell or multi-cell.

(11) The term "best waste stabilization pond technology" shall mean a monthly average effluent suspended solids concentration of 90 mg/l and a weekly maximum average effluent suspended solids concentration of 135 mg/l for those waste stabilization ponds that are achieving the level of effluent quality established for biochemical oxygen demand in .0406(a)(2) of this Section.

**Commented [TM5]: Change:** Moved to definition for 'Minimum treatment requirements'.

Effect: Technical change.

Commented [TM6]: Change: Moved to definition for 'Minimum treatment requirements'; and revised because the numeric limits are already defined in 2B .0406(3). Effect: Technical changes.

1	<del>(12)</del> (9)	The term "minimum" Minimum treatment requirements" means the minimum technology-based
2		effluent limitations that a specific discharge would be required to comply with the designations
3		secondary treatment as defined in 15A NCAC 2B .0406, BPWTT, BPCTCA, BCT, BAT and/or
4		BMP's as required of a specific wastewater discharge.meet in order to satisfy applicable treatment
5		standards, including the following:
6		(a) "Secondary treatment" is the minimum standard of treatment for POTWs.
7		(b) "Best waste stabilization pond technology" is the standard of treatment for waste
8		stabilization ponds treating municipal or similar wastewaters only.
9		(c) "Best practicable waste treatment technology," or "BPWTT," is an advanced standard of
0		treatment for POTWs.
1		(d) "Best practicable pollutant control technology," or "BPT," is the minimum standard of
2		treatment for existing industrial dischargers.
.3		(e) "Best conventional pollutant control technology," or "BCT," is a standard of treatment for
4		existing industrial dischargers and typically applies to conventional pollutants.
5		(f) "Best available technology economically achievable," or "BAT" is a standard of treatment
6		for industrial dischargers and typically applies to nonconventional and priority pollutants.
7		(g) "New source performance standards" is the standard of treatment for industrial dischargers
8		determined to be a new source pursuant to 15A NCAC 2B .0407.
9		_Minimum treatment requirements must be met even if the receiving waters affected can or are
20		expected to be able to accept higher pollutant-load levels and still meet applicable water quality
.1		standards.
.2	<del>(13)</del> (10)	The term "water "Water quality limited segment" means a segment where it is known that water
23		quality does not meet applicable water quality standards or is not expected to meet them even after
.4		the application of minimum treatment requirements.
25	<del>(14)</del> (11)	<u>The term "effluent" Effluent</u> limited segment means a segment where it is known that water quality
26		is meeting and will continue to meet applicable water quality standards or where there is adequate
27		demonstration that water quality will meet applicable water quality standards after the application
28		of minimum treatment requirements.
.9	<del>(15)</del> (12)	<u>The term "settleable" Settleable</u> solids "means the volumetric measurement of solids after a specified
60		settling time. The determination of settleable solids shall be made in the following manner: one
1		liter of the wastewater is placed in a standard Imhoff cone and allowed to settle for 45 minutes. After
2		45 minutes settling, the liquid layer is gently stirred and allowed to settle for 15 additional minutes.
3		The volume of solids is immediately read in milliliter per liter (ml/l).
34	<del>(16)</del> (13)	<u>The term "oxygen"Oxygen</u> consuming wastes" means those wastewater discharge components
5		recognized as being oxygen demanding in the aquatic environment. These are generally limited by
66		BOD(5) and NH(3)-N.

1	(14)	"Conventional pollutants" means biochemical oxygen demand (BOD(5)), Total Suspended Solids
2		(TSS), pH, fecal coliform, oil and grease, and any other pollutants the USEPA designates as
3		conventional in applicable regulations.
4	(15)	"Priority pollutant" means any chemical pollutant listed in 40 CFR Part 423, Appendix A, which is
5		hereby adopted by reference, including any subsequent amendments and editions.
6	(16)	"Nonconventional pollutant" means any pollutant not categorized as a conventional or priority
7		pollutant parameter.
8		
9	History Note:	Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1);
10		Eff. February 1, 1976;
11		Amended Eff. < <u>date&gt;;</u> August 12, 1979; November 1, 1978; December 1, 1976.
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15A NCAC 02B .0404 is proposed for readoption with subsequent changes as follows:

## 15A NCAC 02B .0404 WATER QUALITY BASED EFFLUENT LIMITATIONS IN WATER QUALITY LIMITED SEGMENTS

(a) Effluent limitations more stringent than minimum treatment requirements shall be developed by the staff and approved by the Director for all existing or proposed discharges to water quality limited segments of the surface waters of the state-state and for discharges that are found, through statistical analysis of effluent data or other appropriate means, to have a reasonable potential to cause or contribute to exceedance of applicable water quality standards. The basis of these water quality effluent limitations shall be maintenance of water quality standards.

(b) The staff shall also provide on a case-by-case basis for seasonal variation in the discharge of oxygen-consuming wastes. In order to be considered eligible for seasonal effluent limitations, a request must be submitted to the Director along with a rationale as to the need for such limitations. Permit reissuance or modification during the remaining time of an existing permit will be considered on the basis of demonstrated need. In no case shall this variation cause or be expected to cause a receiving water body to violate applicable water quality standards.

(c) For the purpose of determining seasonal effluent limitations, the year shall consist of a summer and a winter discharge period. The summer period will begin April 1 and extend through October 31. The winter period shall be that portion of the year from November 1 to March 31. The summer oxygen-consuming wasteload allocation shall be developed using the flow criteria specified in 15A NCAC 2B .0206. The winter oxygen-consuming wasteload allocation shall in no case be less stringent than two times the summer oxygen-consuming waste load limitations nor shall it be less restrictive than minimum treatment requirements.

(d) No domestic sewage regardless of the treatment proposed and no other wastes which could adversely affect the taking of shellfish for market purposes shall be discharged into water classified "SA", into unnamed waters tributary to "SA" waters classified "C" or "SC" in accordance with Rule 2B .0301(i)(1)(B) and (C), or into other waters in such close proximity as to adversely affect such "SA" waters. Wastes discharged into other waters tributary to waters classified "SA" shall be treated in such manner as to assure that no impairment of water quality in the "SA" segments shall occur. No permits shall be issued for discharges into waters classified "SA" unless Shellfish Sanitation, Division of Marine Fisheries, Department of Environmental Quality, provides written concurrence that the discharge would not adversely affect shellfish water quality or the propagation of shellfish.

(e) The discharge of wastewaters to the Atlantic Ocean shall follow the guidelines and requirements set forth in the United States Environmental Protection Agency regulation Ocean Discharge Criteria, 40 C.F.R. 125.120 through 125.124, which is hereby adopted by reference, including any subsequent amendments and editions.

33 History Note: Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1); 143-214.2(c)
 34 Eff. February 1, 1976;

35 Amended Eff. <a href="editor"><a href

**Commented [TM1]:** Change: Changed title to reflect current terminology.

Effect: Clarification and update.

Commented [TM2]: Note: This paragraph is consistent with 2H .0401 (proposed for repeal), which says, perhaps more clearly, that "all wastewater generated in the State of North Carolina shall be treated to such an extent as to [e]nsure the compliance with water quality standards promulgated by the Commission."

**Commented [A3]:** Change: Para. (d) is recodified from 02H .0404(a), and the reference to Shellfish Sanitation in that rule was updated.

**Effect:** Consolidation of water quality-based discharge requirements.

**Commented [A4]:** Change: Paragraph (e) recodified from 2H .0404(d). Broadened to include amendments to federal regulation.

**Effect**: Consolidation of water quality-based discharge requirements.

15A NCAC 02B .0406 is proposed for amendment as follows:

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## 15A NCAC 02B .0406 TECHNOLOGY BASED EFFLUENT LIMITED SEGMENTSLIMITATIONS

(a) Municipal (POTW) Wastewaters and Other Similar Discharges

(1) Applicability. This Regulation is applicable to all municipal wastewater treatment discharges and all discharges consisting primarily of domestic sewage. In addition to the limits contained herein, limits applicable to industrial categories contained in .0406(b) of this Section will be applicable to any municipality having industrialif influent waste discharges from industries in any single category which dischargesaccount for 10 or more percent of theits average daily wastewater flow to the municipal system or where the industrial discharges significantly impact the municipal system and the or its effluent discharge is significantly impacted discharge.

(2) Effluent Limitations Except for Waste Stabilization Ponds Included in (3) of This SubsectionSubject to Subparagraph (3) of this Rule. In mg/4mg/L expressed as monthly average and weekly maximum average:

SECONDARY "BPWTT" Effluent Characteristic Monthly Weekly Avg. Avg. Max. BOD(5) 30 mg/l 45 mg/l TSS 30 mg/l 45 mg/l Reserved Fecal Coliform (Effluent limitations for Reserved coliform bacteria and pH shall be imposed only if pН necessary to maintain Reserved compliance with applicable water quality standards.)

	SECC	<u>NDARY</u>	<u>"BP</u>	WTT"
Effluent Characteristic	Monthly Avg.	Weekly Avg. Max.	Avg.	Max.
<u>BOD(5)</u>	30 mg/l	45 mg/l	Rese	erved
TSS	30 mg/l	45 mg/l	Rese	erved
Fecal Coliform	(Effluent limita	ations for coliform	Rese	erved
<u>pH</u>	bacteria and pH s	hall be imposed only	Rese	erved

**Commented [TM1]: Change:** Changed title to reflect current terminology.

**Effect**: Technical change for clarification.

Commented [TM2]: Change: Paragraph (a) revised for clarity

Effect: Technical change.

Commented [TM3]: Change: General edits, reformatting

of tabl

Effect: Technical changes.

if necessary to maintain compliance	
with applicable water quality	
standards.)	

Effluent limitations for waste stabilization ponds provided that: (3)

- (A) Waste stabilization ponds are the sole process used for secondary treatment;
- (B) The maximum facility design capacity is two million gallons per day or less; and
- (C) Operation and maintenance data indicate that the requirements for TSS of Part (2) of this Subsection cannot be achieved. In mg/4mg/L expressed as monthly average and weekly maximum average:

- SECONDARY "BPWTT" Effluent Characteristic Monthly Weekly Avg. Avg. Max. BOD(5) 30 mg/l 45 mg/l TSS 90 mg/l 135 mg/l Fecal Coliform (Effluent limitations for coliform bacteria and pH shall be imposed only if necessary to maintain compliance with applicable water quality standards.)

	SECO	ONDARY	<u>"BP</u>	WTT"
Effluent Characteristic	Monthly Avg.	Weekly Avg. Max.	Avg.	Max.
<u>BOD(5)</u>	30 mg/L	45 mg/L	Res	erved
TSS	90 mg/L	135 mg/L	Res	erved
Fecal Coliform	(Effluent limita	ations for coliform	Res	erved
<u>pH</u>	if necessary to n	hall be imposed only naintain compliance ble water quality idards.)	Res	erved_

Commented [TM4]: Change: General edits, reformatting

of table . **Effect**: Technical changes.

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- 1 (b) Industrial Waste Discharges. Effluent limits for industrial waste discharges are set forth in the Environmental
- 2 Protection Agency guidelines and standards listed in this Rule which promulgated by the Environmental Protection
- 3 Agency, including those in 40 CFR Chapter I, Subpart N Effluent Guidelines and Standards. Such guidelines and
- 4 standards are adoptedhereby incorporated by reference as amended through June 1, 1984:reference, including any
- 5 subsequent amendments and editions.
- 6
- 7 40 CFR 129 -- EPA Toxic Pollutant Effluent Standards
- 8 40 CFR 401 -- EPA General Provisions for Effluent Guidelines and Standards
- 9 40 CFR 405 -- EPA Effluent Guidelines and Standards for Dairy Products
- 10 40 CFR 406 -- EPA Effluent Guidelines and Standards for Grain Mills
- 11 40 CFR 407 -- EPA Effluent Guidelines and Standards for Canned and Preserved Fruits and Vegetables
- 12 40 CFR 408 -- EPA Effluent Guidelines and Standards for Canned and Preserved Seafood
- 13 40 CFR 409 -- EPA Effluent Guidelines and Standards for Sugar Processing
- 14 40 CFR 410 -- EPA Effluent Guidelines and Standards for Textiles
- 15 40 CFR 411 -- EPA Cement Manufacturing Effluent Guidelines and Standards
- 16 40 CFR 412 -- EPA Effluent Guidelines and Standards for Concentrated Animal Feeding Operations (CAFO)
- 17 40 CFR 413 -- EPA Effluent Guidelines and Standards for Electroplating
- 18 40 CFR 414 -- EPA Effluent Guidelines and Standards for Organic Chemicals
- 19 40 CFR 415 -- EPA Effluent Guidelines and Standards for Inorganic Chemicals
- 20 40 CFR 416 EPA Effluent Guidelines and Standards for Plastics and Synthetics
- 21 40 CFR 417 -- EPA Effluent Guidelines and Standards for Soaps and Detergents
- 22 40 CFR 418 -- EPA Effluent Guidelines and Standards for Fertilizer Manufacturing
- 23 40 CFR 419 -- EPA Effluent Guidelines and Standards for Petroleum Refining
- 24 40 CFR 420 -- EPA Effluent Guidelines and Standards for Iron and Steel Manufacturing
- 25 40 CFR 421 -- EPA Effluent Guidelines and Standards for Nonferrous Metals
- 26 40 CFR 422 -- EPA Phosphate Manufacturing Effluent Guidelines and Standards
- 27 40 CFR 423 -- EPA Effluent Guidelines and Standards for Steam Electric Power Generating
- 28 40 CFR 424 -- EPA Effluent Guidelines for Ferroalloy Manufacturing
- 29 40 CFR 425 -- EPA Effluent Guidelines and Standards for Leather Tanning and Finishing
- $\,30\,$   $\,$   $\,40$  CFR  $\,426$  -- EPA Effluent Guidelines and Standards for Glass Manufacturing
- 31 40 CFR 427 -- EPA Effluent Guidelines and Standards for Asbestos Manufacturing
- 32 40 CFR 428 -- EPA Effluent Guidelines for Rubber Processing
- 33 40 CFR 429 -- EPA Effluent Guidelines and Standards for Timber Products
- 34 40 CFR 430 -- EPA Effluent Guidelines and Standards for Pulp, Paper, and Paper Board
- 35 40 CFR 431 EPA Effluent Guidelines and Standards for Builders Paper and Board Mills
- 36 40 CFR 432 -- EPA Effluent Guidelines and Standards for Meat Products
- 37 40 CFR 433 -- EPA Effluent Guidelines and Standards for Metal Finishing

Commented [A5]: Change: References to federal Effluent Limitations Guidelines are updated and revised to include subsequent amendments.

**Effect:** Technical corrections plus automatic incorporation of future requirements.

Change: Updated list of federal Effluent Limitations

Guidelines.

Effect: Technical corrections.

- 1 40 CFR 434 -- EPA Effluent Guidelines and Standards for Coal Mining
- 2 40 CFR 435 -- EPA Effluent Guidelines and Standards for Offshore Oil and Gas Extraction
- 3 40 CFR 436 -- EPA Effluent Guidelines and Standards for Mineral Mining and Processing
- 4 40 CFR 437 -- EPA Effluent Guidelines and Standards for Centralized Waste Treatment
- 5 40 CFR 438 -- EPA Effluent Guidelines and Standards for Metals Products and Machinery
- 6 40 CFR 439 -- EPA Effluent Guidelines and Standards for Pharmaceutical Manufacturing
- 7 40 CFR 440 -- EPA Effluent Guidelines and Standards for Ore Mining and Dressing
- 8 40 CFR 441 EPA Effluent Limitations Guidelines and Standards for the Dental Category
- 9 40 CFR 442 -- EPA Effluent Guidelines and Standards for Transportation Equipment Cleaning
- 10 40 CFR 443 -- EPA Effluent Guidelines and Standards for Paving and Roofing Materials
- 11 40 CFR 444 -- EPA Effluent Guidelines and Standards for Waste Combustors
- 12 40 CFR 445 -- EPA Effluent Guidelines and Standards for Landfills
- 13 40 CFR 446 -- EPA Effluent Guidelines and Standards for Paint Formulating
- 14 40 CFR 447 -- EPA Effluent Guidelines and Standards for Ink Formulating
- 15 40 CFR 449 -- EPA Effluent Guidelines and Standards for Airport Deicing
- 16 40 CFR 450 -- EPA Effluent Guidelines and Standards for Construction and Development
- 17 40 CFR 451 -- EPA Effluent Guidelines and Standards for Concentrated Aquatic Animal Production (Aquaculture)
- 18 40 CFR 454 -- EPA Effluent Guidelines and Standards for Gum and Wood Chemicals Manufacturing
- 19 40 CFR 455 -- EPA Effluent Guidelines for Pesticide Chemicals Manufacturing
- 20 40 CFR 457 -- EPA Effluent Guidelines and Standards for Explosives Manufacturing
- 21 40 CFR 458 -- EPA Effluent Guidelines and Standards for Carbon Black Manufacturing
- 22 40 CFR 459 -- EPA Effluent Guidelines and Standards for Photographic Processing
- 23 40 CFR 460 -- EPA Effluent Guidelines and Standards for Hospitals
- 24 40 CFR 461 -- EPA Effluent Guidelines and Standards for Battery Manufacturing
- 25 40 CFR 463 -- EPA Effluent Guidelines and Standards for Plastic Molding and Forming
- 26 40 CFR 464 -- EPA Effluent Guidelines and Standards for Metal Molding and Casting (Foundries)
- 27 40 CFR 465 -- EPA Effluent Guidelines and Standards for Coil Coating
- 28 40 CFR 466 -- EPA Effluent Guidelines and Standards for Porcelain Enameling
- 29 40 CFR 467 -- EPA Effluent Guidelines and Standards for Aluminum Forming
- $30~-40~\mathrm{CFR}~468$  -- EPA Effluent Guidelines and Standards for Copper Forming
- 31 40 CFR 469 -- EPA Effluent Guidelines and Standards for Electrical and Electronic Components
- 32 40 CFR 471 -- EPA Effluent Guidelines and Standards for Nonferrous Metals Forming and Metal Powders
- 33 (c) Copies of theseThe current version of these Federal Regulations can be accessed free of charge at
- 34 <a href="http://www.gpo.gov/fdsys/">http://www.gpo.gov/fdsys/</a>. are on file at:
- 35 (1) Division of Environmental Management
- 36 Department of Natural Resources and Community Development
- 37 P.O. Box 27687, Raleigh, N.C. 27611

**Commented [A6]:** Change: Updated to note availability of materials online.

**Effect:** Technical corrections, improved availability of rules.

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Interchange Building, 59 Woodfin Place
 2
      Asheville, N.C. 28802
 3
 4
      (3) Fayetteville Regional Office
      Wachovia Building, Suite 714
 5
      Fayetteville, N.C. 28301
 6
 7
              Mooresville Regional Office
 8
      919 North Main Street
 9
      Mooresville, N.C. 28115
10
      (5) Raleigh Regional Office
      3800 Barrett Drive
11
12
      Raleigh, N.C. 27609
13
            Washington Regional Office
14
      1502 North Market Street
15
      Washington, N.C. 27889
16
      (7) Wilmington Regional Office
17
      7225 Wrightsville Avenue
      Wilmington, N.C. 28403.
18
19
      (8) Winston-Salem Regional Office
20
       8003 North Point Boulevard
       Winston-Salem, N.C. 27106
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       (d) In cases where effluent limits established by Paragraph (b) of this Rule are not adequate to control settleable
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      solids, the staff shall establish effluent limits for settleable solids. Such effluent limitations for settleable solids will
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      be applicable only when the projected average solids concentration exceeds 5.0 ml/l and the limitations established
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       shall lie within the range of 0.1 ml/l to 5.0 ml/l. The establishment of such limitations for any discharge shall be
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      approved by the Director of the Division of Environmental Management Water Resources or the Division.
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      (e) For industrial categories or parts of categories for which effluent limits and guidelines have not been published
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      and adopted, effluent limitations for existing industrial waste discharges, or new industrial waste discharges shall be
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      calculated by the staff using the projected limits of the Environmental Protection Agency, the Environmental
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      Protection Agency development document and other available information in order to achieve the purposes of Article
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      21. Such limits developed by the staff shall be subject to approval by the Director.
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      History Note:
                       Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1), (4);
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(2) Asheville Regional Office

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Amended Eff. <a href="editor-style-type-styl

Eff. February 1, 1976;

1 15A NCAC 02B .0407 is proposed for readoption without substantive changes as follows: 2 3 15A NCAC 02B .0407 GUIDANCE FOR DETERMINING A NEW SOURCE 4 (a) A source should be considered a new source by the Director provided on the date of publication of any applicable 5 new source performance standard there has not been any: 6 significant site preparation work, such as major clearing or excavation; or (1) 7 (2) placement, assembly, or installation of unique facilities or equipment at the premises where such 8 facilities or equipment will be used; or 9 (3) contractual obligation to purchase such unique facilities or equipment; Facilities and equipment 10 shall include only the major items listed below, provided that the value of such items represents a 11 substantial commitment to construct the facility: 12 (A) structures, or 13 (B) structural materials, or 14 (C) machinery, or 15 (D) process equipment, or 16 (E) construction equipment. 17 (4) contractual obligation with a firm to design, engineer and erect a completed facility (i.e., a turnkey 18 19 (b) A modification to an existing source will be considered a new source if the alteration is of such magnitude to, in 20 effect, create a new facility. In making such a determination, the Director shall find that the permit modification 21 procedures are not appropriate and shall consider, among other relevant factors, whether as a result of the alteration, 22 the source can reasonably achieve the standard of performance. Only those portions of a facility determined to be a 23 new source shall be required to achieve new source performance standards. 24 25 Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1), (4); History Note: 26 Eff. December 1, <del>1976.</del>1976; 27 *Readopted Eff. <date>*. 28

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      15A NCAC 02B .0408 INCORPORATION BY REFERENCE
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 4
      (a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference,
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      including subsequent amendments and editions, and shall apply throughout this Section except where procedural
 6
      details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately
 7
      adopted procedure governs. The current version of these regulations can be accessed free of charge at
 8
      http://www.gpo.gov/fdsys/.
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                       40 CFR Parts 122.2, 124.2, and 125.2: Definitions;
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                       §122.4: Prohibitions):
11
                       §122.5 (a) and (b): Effect of permit;
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                       §122.7 (b) and (c): Confidential information;
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                       §122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;
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                       §122.22: Signatories;
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                       §122.23: Concentrated animal feeding operations;
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                       §122.24: Concentrated aquatic animal production facilities;
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               (9)
                       §122.25: Aquaculture projects;
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               (10)
                     §122.26: Storm water discharges;
               (11) §122.27: Silviculture;
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               (12)
                     §122.28: General permits;
2.1
               (13)
                       §122.29 (a), (b), and (d): New sources and new dischargers;
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               (14)
                       §122.30: NPDES stormwater regulations for small MS4s: objectives;
23
                       §122.31: NPDES stormwater regulations: role of Tribes;
24
                       §122.32: NPDES stormwater regulations for small MS4s: applicability;
               (16)
25
                       §122.33: NPDES stormwater regulations for small MS4s: application for permit;
               (17)
26
                       §122.34: NPDES stormwater regulations for small MS4s: permit requirements;
               (18)
27
               (19)
                       §122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;
28
                       §122.36: NPDES stormwater regulations for small MS4s: compliance;
               (20)
29
               (21)
                       §122.37: NPDES stormwater regulations for small MS4s: evaluation;
               (22)
30
                       §122.41 (a)(1) and (b) through (n): Applicable permit conditions;
31
                       §122.42: Conditions applicable to specified categories of permits;
               (23)
32
                       §122.43: Establishing permit conditions;
               (24)
33
               (25)
                       §122.44: Establishing NPDES permit conditions;
34
                       §122.45: Calculating permit conditions;
               (26)
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15A NCAC 02B .0408 is proposed for adoption as follows:

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36 37 (27)

(29)

§122.46: Duration;

§122.47 (a): Schedules of compliance;

§122.48: Monitoring requirements;

Commented [TM1]: Change: Proposed new rule that incorporates multiple federal rules by reference. 40 CFR 123.25 requires approved states to implement most of these regulations, and NC has done so, but the state has yet to formally adopt them. (The same rule is proposed in Subchapter 02B, Sections 02B .0500 and 02H .0100.) Effect: In essence, a technical correction, as the state has implemented these rules all along.

1	(30)	§122.50: Disposal into wells;
2	(31)	§122.61: Permit transfer:
3	(32)	§122.62: Permit modification:
4	(33)	§122.64: Permit termination;
5	(34)	§124.3 (a): Application for a permit;
6	(35)	§124.5 (a), (c), (d), and (f): Modification of permits;
7	(36)	§124.6 (a), (c), (d), and (e): Draft permit;
8	(37)	§124.8: Fact sheets:
9	(38)	§124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;
10	(39)	§124.11: Public comments and requests for hearings;
11	(40)	§124.12 (a): Public hearings;
12	(41)	§124.17 (a) and (c): Response to comments;
13	(42)	§124.56: Fact sheets:
14	(43)	§124.57 (a): Public notice;
15	(44)	§124.59: Comments from government agencies;
16	(45)	§124.62: Decision on variances;
17	(46)	40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D
18		(Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling
19		Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures,
20		Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil
21		and Gas Facilities, CWA Section 316(b));
22	(47)	40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation),
23		and Subchapter N (Effluent Guidelines and Standards);
24	(48)	40 CFR Part 3: Electronic reporting;
25	(49)	40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and
26	(50)	40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).
27	(b) This rule is	not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the
28	Section incorpo	rate some of these same federal regulations for clarity or emphasis and may incorporate additional
29	regulations not	listed in Paragraph (a).
30		
31	History Note:	Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5);
32		Eff. <date>.</date>
33		

1	15A NCAC 021	3.0501 is proposed for readoption without substantive changes as follows:
2		
3	15A NCAC 02	B .0501 PURPOSE
4	The purpose of	this Section is to set forth the requirements of the Environmental Management Commission for
5	monitoring and	reporting the quantity and quality of wastewater discharges to, and their effects upon, the water
6	resources of the	state.
7		
8	History Note:	Authority G.S. 143-215.64; 143-215.68;
9		Eff. February 1, 1976;
10		Amended Eff. December 1, <del>1984.</del> <u>1984;</u>
11		Readopted Eff. <date>.</date>
12		

1	15A NCAC 02H	3 .0502 is proposed for readoption without substantive changes as follows:
2		
3	15A NCAC 021	B .0502 SCOPE
4	This Section sha	all apply to all persons subject to the provisions of G.S. 143-215.1.
5		
6	History Note:	Authority G.S. 143-215.64; 143-215.68;
7		Eff. February 1, <del>1976.</del> <u>1976:</u>
8		Readopted Eff. <date>.</date>
9		

15A NCAC 02B .0503 is proposed for amendment as follows:

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## 15A NCAC 02B .0503 DEFINITIONS

Unless the context otherwise requires, the terms used herein shall be as defined in G.S. 143-213 143-212 and 143-213; the federal Clean Water Act (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

- (1) "Biological monitoring" shall mean the sampling or testing of the biological integrity of surface waters and measurements of impacts including accumulations of pollutants in tissue, toxicity monitoring, and characterization of instream biological populations.
- (2) "Classified water pollution control facility" means a treatment works classified by the Water Pollution Control System Operator Certification Commission pursuant to Chapter 90A of the North Carolina General Statutes as class I, class II, class III, or class IV facility, or such other classifications as the Water Pollution Control System Operator Certification Commission may hereafter adopt.
- (3) "Commercial laboratory" means any laboratory which analyzes water samples for a fee.
- (4) "Composite sample" means:means a sample gathered over a 24 hour period by continuous sampling or combining grab samples in such a manner as to result in a total sample which is representative of the wastewater discharge during the sample period. This sample may be obtained by methods given below, however, the Director may designate the most appropriate method, number and size of aliquots necessary and the time interval between grab samples on a case-by-case basis. Samples may be collected manually or automatically.
  - (a) Continuous a single, continuous sample collected over a 24 hour period proportional to the rate of flow.
  - (b) Constant time/variable volume a series of grab samples collected at equal time intervals over a 24 hour period of discharge and combined proportional to the rate of flow measured at the time of individual sample collection, or
  - (c) Variable time/constant volume a series of grab samples of equal volume collected over a 24 hour period with the time intervals between samples determined by a preset number of gallons passing the sampling point. Flow measurement between sample intervals shall be determined by use of a flow recorder and totalizer, and the preset gallon interval between sample collection fixed at no greater than 1/24 of the expected total daily flow at the treatment system, or
  - (d) Constant time/constant volume a series of grab samples of equal volume collected over a 24 hour period at a constant time interval. This method may be used in situations where effluent flow rates vary less than 15 percent. The grab samples shall be taken at intervals of no greater than 20 minutes apart during any 24 hour period and must be of equal size and of no less than 100 milliliters. Use of this method requires prior approval by the Director.

**Commented [TM1]:** Change: Updated organizational names and addresses (8, 9, 22). Updated sources of materials (22). Corrected punctuation (4). **Effect:** Technical corrections.

**Commented [TM2]:** Change: Expanded to include other applicable definitions, many established since original rule was established. Federal rules are incorporated by reference at 2B .0511.

Effect: Technical corrections

legal holidays unless otherwise specified by the Director.  (6) "Design flow" means the average daily volume of wastewater which a water pollution control facility was designed, approved and constructed to treat.  (7) "Design treatment capability" means a water pollution control facility's capacity to achieve a specified degree of reduction in waste constituents at a specified design flow, to meet specified limits or removal efficiencies.  (8) "Director" means the Director of the Division of Environmental Management_Water Resources or Division of Energy, Mineral and Land Resources, or both, Department of Environment, Health, and Natural Resources_Environmental Quality, whichever is the permitting authority in a particular instance; or his designee.  (9) "Division" means the Division of Environmental Management_Water Resources or the Division of Energy, Mineral and Land Resources, or both, Department of Environment, Health, and Natural Resources_Environmental Quality, whichever is the permitting authority in a particular instance.  (10) "Domestic wastewater" means water-carried human wastes together with all other water-carried wastes normally present in wastewater from non-industrial processes.  (11) "Downstream" means locations in the receiving waters below (downstream of) a point of waste discharge after a reasonable opportunity for dilution and mixture as specified in the Commission's "Rules, Regulations, Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina."  (12) "Effluent" means wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.  (13) "Flow" means the total volume of wastewater discharged from an outlet during any given period.  (14) "Grab sample" means an individual sample collected instantaneously. Samples of this type must be	1	(5)	"Daily" means every day on which a wastewater discharge occurs except Saturdays, Sundays and
facility was designed, approved and constructed to treat.  (7) "Design treatment capability" means a water pollution control facility's capacity to achieve a specified degree of reduction in waste constituents at a specified design flow, to meet specified limits or removal efficiencies.  (8) "Director" means the Director of the Division of Environmental Management, Water Resources or Division of Energy, Mineral and Land Resources, or both, Department of Environment, Health, and Natural Resources, Environmental Quality, whichever is the permitting authority in a particular instance; or his designee.  (9) "Division" means the Division of Environmental Management, Water Resources or the Division of Energy, Mineral and Land Resources, or both, Department of Environment, Health, and Natural Resources-Environmental Quality, whichever is the permitting authority in a particular instance.  (10) "Domestic wastewater" means water-carried human wastes together with all other water-carried wastes normally present in wastewater from non-industrial processes.  (11) "Downstream" means locations in the receiving waters below (downstream of) a point of waste discharge after a reasonable opportunity for dilution and mixture as specified in the Commission's "Rules, Regulations, Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina."  (12) "Effluent" means wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.  (13) "Flow" means the total volume of wastewater discharged from an outlet during any given period.	2		legal holidays unless otherwise specified by the Director.
5 (7) "Design treatment capability" means a water pollution control facility's capacity to achieve a specified degree of reduction in waste constituents at a specified design flow, to meet specified limits or removal efficiencies.  8 (8) "Director" means the Director of the Division of Environmental Management, Water Resources or Division of Energy, Mineral and Land Resources, or both, Department of Environment, Health, and Natural Resources, Environmental Quality, whichever is the permitting authority in a particular instance; or his designee.  12 (9) "Division" means the Division of Environmental Management, Water Resources or the Division of Energy, Mineral and Land Resources, or both, Department of Environment, Health, and Natural Resources. Environmental Quality, whichever is the permitting authority in a particular instance.  15 (10) "Domestic wastewater" means water-carried human wastes together with all other water-carried wastes normally present in wastewater from non-industrial processes.  17 (11) "Downstream" means locations in the receiving waters below (downstream of) a point of waste discharge after a reasonable opportunity for dilution and mixture as specified in the Commission's "Rules, Regulations, Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina."  20 (12) "Effluent" means wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.  21 (12) "Effluent" means the total volume of wastewater discharged from an outlet during any given period.	3	(6)	"Design flow" means the average daily volume of wastewater which a water pollution control
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discharge after a reasonable opportunity for dilution and mixture as specified in the Commission's  "Rules, Regulations, Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina."  (12) "Effluent" means wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.  (13) "Flow" means the total volume of wastewater discharged from an outlet during any given period.	16		wastes normally present in wastewater from non-industrial processes.
"Rules, Regulations, Classifications and Water Quality Standards Applicable to the Surface Waters of North Carolina."  (12) "Effluent" means wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.  (13) "Flow" means the total volume of wastewater discharged from an outlet during any given period.	17	(11)	"Downstream" means locations in the receiving waters below (downstream of) a point of waste
of North Carolina."  (12) "Effluent" means wastewater discharged following all treatment processes from a water pollution control facility or other point source whether treated or untreated.  (13) "Flow" means the total volume of wastewater discharged from an outlet during any given period.	18		discharge after a reasonable opportunity for dilution and mixture as specified in the Commission's
21 (12) "Effluent" means wastewater discharged following all treatment processes from a water pollution 22 control facility or other point source whether treated or untreated. 23 (13) "Flow" means the total volume of wastewater discharged from an outlet during any given period.	19		"Rules, Regulations, Classifications and Water Quality Standards Applicable to the Surface Waters
control facility or other point source whether treated or untreated.  23 (13) "Flow" means the total volume of wastewater discharged from an outlet during any given period.	20		of North Carolina."
23 (13) "Flow" means the total volume of wastewater discharged from an outlet during any given period.	21	(12)	"Effluent" means wastewater discharged following all treatment processes from a water pollution
	22		control facility or other point source whether treated or untreated.
24 (14) "Grab sample" means an individual sample collected instantaneously. Samples of this type must be	23	(13)	"Flow" means the total volume of wastewater discharged from an outlet during any given period.
	24	(14)	"Grab sample" means an individual sample collected instantaneously. Samples of this type must be
representative of the discharge or the receiving waters.	25		representative of the discharge or the receiving waters.
26 (15) "Industrial establishment" means any industrial, business, commercial or governmental enterprise	26	(15)	"Industrial establishment" means any industrial, business, commercial or governmental enterprise
which produces water carried wastes.	27		which produces water carried wastes.
28 (16) "Influent" means the wastewater entering a water pollution control facility.	28	(16)	"Influent" means the wastewater entering a water pollution control facility.
29 (17) "Monitoring" means a program of sample collection, analysis, and observation sufficient to quantify	29	(17)	"Monitoring" means a program of sample collection, analysis, and observation sufficient to quantify
various aspects of waste streams, treatment plant operations and environmental impacts.	30		various aspects of waste streams, treatment plant operations and environmental impacts.
31 (18) "Point source" means any discernible, confined, and discrete conveyance, including, but not	31	(18)	"Point source" means any discernible, confined, and discrete conveyance, including, but not
specifically limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,	32		specifically limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container,
rolling stock, or concentrated animal feeding operation from which waste is or may be discharged	33		rolling stock, or concentrated animal feeding operation from which waste is or may be discharged
to the waters of the state.	34		to the waters of the state.
35 (19) "Quarterly" means occurring four times during a 12-month period at a frequency of once per each	35	(19)	"Quarterly" means occurring four times during a 12-month period at a frequency of once per each
interval of three consecutive months.	36		interval of three consecutive months.
37 (20) "Quarterly Average" means the average of all samples taken over a quarterly period.	37	(20)	"Quarterly Average" means the average of all samples taken over a quarterly period.

Commented [TM3]: Change: Added reference to DEMLR, since the stormwater permitting program is no longer a part of DWR.

Effect: Technical correction. The intent of 2nd sentence is to avoid having to name both divisions in every case.

(21) "Sample" means a representative portion of the wastewater from water pollution control facilities or of receiving waters.

- "Standard Industrial Classification" (SIC) code means those <u>four-digit</u> numerical designations set forth in "The Standard Industrial Classification Manual," (Superintendent of Documents, U.S. Government Printing Office) classifying industries according to the type of activity (relating to major products manufactured or principle services furnished) in which they are engaged. For the purposes of this Section, each industry or unit of government shall be classified by SIC numbers applicable to each activity carried on by such establishment or unit which results in a discharge of wastewater. In addition, any industrial establishment or unit of government which collects or discharges domestic sewage is hereby assigned SIC number 4952. The Standard Industrial Classification Manual, as used in this Section, is hereby incorporated by reference, including any subsequent amendments and editions. A copy is available for inspection at the central office of the Division of Environmental ManagementWater Resources, 512 North Salisbury Street, Raleigh, North Carolina. CopiesThe classifications found in the manual may also be obtained accessed at the GPO Bookstore, Room 100, 275 Peachtree Street NE, or Post Office Box 56445, Atlanta GA 30343 at a cost of twenty four dollars (\$24.00).https://www.osha.gov/pls/imis/sic\_manual.html.
- (23) "Storet number" means a number which designates a test or measurement according to the analytical procedure used or a method of measurement and units of measurement. Storet is an acronym for the water quality data storage and retrieval computer system of the Environmental Protection Agency.
- (24) "Toxic substances" means any substance, or combinations of substances, including disease-causing agents, which, after discharge, and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression of reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.
- (25) "Toxicity monitoring" means controlled toxicity testing procedures employed to measure lethality or other harmful effects as measured by either aquatic populations or indicator species used as test organisms from exposure to a specific chemical or mixture of chemicals (as in an effluent) or ambient stream conditions.
- (26) "Unit of government" means any incorporated city, town or village, county, sanitary district, metropolitan sewerage district, water or sewer authority, special purpose district, other municipality, or any agency, board, commission, department or political subdivision or public corporation of the state, now or hereafter created or established, empowered to provide wastewater collection systems or wastewater treatment works.
- (27) "Upstream" means locations in the receiving waters near but above (upstream of) a point of wastewater discharge and unaffected by the discharge.

1	(28)	"Water pollution control facilities" or "facility" means "treatment works" as defined in G.S. 143-
2		213.
3	(29)	"North American Industry Classification System" (NAICS) code means those six-digit numeric
4		designations used to classify business establishments according to the processes employed to
5		produce goods or services. For the purposes of this Section, each industry or unit of government
6		shall be classified by NAICS codes applicable to each activity carried on by such establishment or
7		unit which results in a discharge of wastewater. In addition, any industrial establishment or unit of
8		government which collects or discharges domestic sewage is hereby assigned NAICS number
9		221320. The North American Industry Classification System Manual, as used in this Section, is
10		hereby incorporated by reference, including any subsequent amendments and editions. The
11		classifications found in the manual may also be accessed at
12		https://www.census.gov/eos/www/naics/.
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14	History Note:	Authority G.S. 143-213; 143-215.68;
15		Eff. February 1, 1976;
16		Amended Eff. <a href="editor"></a> April 1, 1993; December 1, 1984.
17		

Commented [TM4]: Change: EPA rules now refer to this system in addition to, or in lieu of SIC codes.

Effect: Technical correction/ update.

15A NCAC 02B .0504 is proposed for readoption without substantive amendment as follows:

#### 15A NCAC 02B .0504 CLASSIFICATION OF WASTE SOURCES

(a) All persons subject to the requirements of these Rules shall determine the standard industrial classification (SIC) number or North American Industry Classification System number or both, as specified by the Director, for each type of activity (required to be reported under Rule .0506 of this Section) in which they are engaged by reference to the Standard Industrial Classification Manualappropriate classification manuals.

(b) Environmental Management Commission hereby assigns SIC number 4952 and NAICS number 221320 to every industrial establishment or unit of government which collects or discharges domestic wastewater, whether from onpremises bathrooms, restrooms, kitchens, dining rooms, water pollution control facilities, or from any other source.

(c) The owner or person in responsible charge of every water pollution control facility, facility which receives a wastewater influent from more than one source, source shall determine and report to the Department of Environment, Health, and Natural Resources Environmental Quality the name and standard industrial classification number(s) for each applicable activity(ies) of every industrial establishment contributing wastes containing toxic substances, in toxic quantities, and also every industrial establishment contributing an average daily wastewater influent of one percent or more of the design flow of the facility or in excess of 100,000 gallons per day, whichever is less, and shall report such other information as is required by Rule .0505 of this Section; provided; however, that it is not required that the name and SIC or NAICS number of any source contributing domestic sewage influent only be reported hereunder.

(d) The average daily influent volume contributed by any one source may be computed by dividing the total volume of wastewater discharged by the source during the reporting year by the total number of days that the source operated during the reporting year.

23 History Note: Authority G.S. 143-215.64; 143-215.68;

Eff. February 1, 1976;

Amended Eff. <date>; April 1, 1993; December 1, 1984; November 1, 1978.

**Commented [TM1]:** Change: Updated agency name. **Effect:** None – technical correction.

Effect: None technical correction.

**Commented [TM2]:** Change: Added reference to the new system, for completeness.

**Effect:** Ensure consistency with federal requirements.

15A NCAC 02B .0505 is proposed for amendment as follows:

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## 15A NCAC 02B .0505 MONITORING REQUIREMENTS

(a) General. Every person subject to this Section shall be required to establish, operate and maintain a monitoring program consistent with their National Pollutant Discharge Elimination System (NPDES) Permit or as required by the Director.

(b) Wastewater and Stream Flow Measurement.

(1)

- A device or method, approved by the Director for determining the rate of flow of all discharges of wastewater whether treated or untreated shall be provided at those point sources of which monthly reports of monitoring tests and measurements are required unless specifically excepted by the Director as not significant. All water pollution control facilities shall install, operate, and maintain continuous flow measuring with recording devices or totalizing devices, if approved by the Director, or shall employ other flow measuring or flow control methods approved by the Director and shall submit monthly reports of such data as required in Rule .0506 of this Section. The permittee shall install appropriate flow measurement devices consistent with approved engineering and scientific practices to ensure the accuracy and reliability of measurements of the volume of monitored discharges. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10 percent from true discharge volumes. Flow measurement devices shall be accurately calibrated at a minimum of once per year and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. The flow measurement device and location shall be approved by the Director prior to installation. Records of flow measurement device calibration shall be kept on file by the permittee for a period of at least three years. At a minimum, data to be included in this documentation shall be:
  - (A) Date of flow measurement device calibration
  - (B) Name of person performing calibration.
  - A reading of the U.S. Geological Survey stream flow staff gauge or reference point shall be made at the time of stream sampling in those instances so determined the Director.

(c) Sampling.

(2)

(1) Frequency and Location. Except as otherwise provided herein, all industrial establishments and units of government shall take influent, effluent and stream samples at such locations and with such frequency as shall be necessary to conduct the tests and analyses required by Rule .0508 of this Section.

(2) Establishment of Sampling Points:

A) Sampling points as required in Rule .0508 of this Section shall be established for collecting influent and effluent samples for each facility. **Commented [TM1]:** Change: Updated organizational names and addresses, and updated sources of materials (d)(4).

Effect: Technical corrections.

1		(B)	Sampli	ng points shall be established in the receiving waters at one or more upstream
2			locatio	ns and at one or more downstream locations. These locations shall be specified by
3			the Dir	ector.
4	(3)	Collecti	ion of Sa	mples:
5		(A)	Sample	es collected in receiving waters shall be grab samples.
6		(B)	Sample	es of the influent and effluent of the water pollution control facility or other point
7			source	shall be composite samples, except as provided in Rule .0505 (c)(3)(C) of this
8			Section	n, or for facilities with design flows of 30,000 gallons per day or less unless required
9			by the	Director. The Director may specify the methods of sample collection as to type of
10			sample	and type of composite sampling required.
11		(C)	The fo	llowing influent and effluent tests shall be made on grab samples and shall not be
12			made c	n composite samples:
13			(i)	dissolved oxygen,
14			(ii)	temperature,
15			(iii)	settleable matter,
16			(iv)	turbidity,
17			(v)	pH,
18			(vi)	residual chlorine,
19			(vii)	coliform bacteria (fecal or total),
20			(viii)	cyanide,
21			(ix)	oil and grease,
22			(x)	sulfides,
23			(xi)	phenols,
24			(xii)	volatile organics.
25	(4)	Stream	samplin	g may be discontinued at such times as flow conditions in the receiving waters or
26		extreme	weathe	r conditions will result in a substantial risk of injury or death to persons collecting
27		samples	s. In su	ch cases, on each day that sampling is discontinued, written justification for the
28		disconti	inuance s	shall be specified in the monitoring report for the month in which the event occurred
29		This pro	ovision s	hall be strictly construed and may not be utilized to avoid the requirements of this
30		Section	when p	erformance of these requirements is attainable. When there is a discontinuance
31		pursuar	t to this	provision, stream sampling shall be resumed at the first opportunity after the risk
32		period l	nas cease	d.
33	(d) Biological a	and Toxic	ity Mon	toring. Biological and Toxicity monitoring may be required when, in the opinion
34	of the Director,	such mon	itoring is	s necessary to establish whether the designated best use of the waters as determined
35	by the Environm	nental Ma	nagemei	nt Commission, Commission is being or may be impaired or when toxic substances
36	are known or su	spected to	be pres	ent in the facility's discharge.
37	(e) Tests and A	nalyses.		

(1)	If a water pollution control facility receives waste influent from two or more sources, every test
	required by Rule .0508 of this Section for the standard industrial classification number applicable
	to the sources shall be performed one time, and it shall not be necessary to repeat such tests for each
	source; however, the tests shall be performed at the intervals specified by Rule .0508 of this Section
	for the applicable industrial classification requiring the most frequent test interval.

- (2) If analyses of samples of any effluent or any receiving water (collected by the state or a public agency) indicate a violation of effluent <a href="https://limitations.plimitations">https://limitations</a> or water quality standards or indicate exceedances of stream action levels or that a violation of water quality standards or exceedances of stream action levels may result under any projected eonditions conditions, including minimum stream flow and temperature extremes, the Director may require the person responsible for the violation or potential violation to monitor the pollutants or parameters at such points and with such frequency as he determines appropriate. If the source of the pollutant is unknown, the Director may require monitoring for specific pollutants from any suspected discharger.
- (3) If the wastewaters discharged by any water pollution control facility violate any effluent limitations or water quality standards or exceeds any stream action levels or contribute to the violation of water quality standards or exceedance of stream action levels established by the Environmental Management Commission Commission, the facility shall perform and report such additional tests and measurements at such frequencies and for such periods of time as the Director may require.
- (4) Approved Methods of Analysis.

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36 37 Methods. The methods used in collection, preservation and analysis of samples shall conform to the guidelines of the Environmental Protection Agency codified as 40 CFR Part 136, which is hereby incorporated by reference including any subsequent amendments and editions. Copies may be obtained from the New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954 at a cost of three hundred forty dollars (\$340.00) per edition. The single volume containing 40 CFR Part 136 may be obtained at a cost of thirty dollars (\$30.00). The current version of these regulations can be accessed free of charge at http://www.gpo.gov/fdsys/. Other analytical procedures shall conform to those found in either the most recent approved edition of "Standard Methods for the Examination of Water and Wastewater", (published jointly by the American Public Health Association, the American Water Works Association, and the Water Environment Federation), or "Methods for Chemical Analysis of Waters and Wastes", 1983, or subsequent editions or other methods as approved by the Director. Standard Methods for the Examination of Water and Wastewater is hereby incorporated by reference including any subsequent approved amendments and approved editions. Copies may be obtained from the American Water Works Association, 6666 West Quincy Avenue, Denver CO 82535 at a cost of one hundred sixty dollars (\$160.00) per edition. The current version of these methods may be viewed at http://www.standardmethods.org. Methods for Chemical Analysis of Waters and

**Commented [TM2]:** Change: Removed references to NC's action level policy, disapproved by EPA in latest triennial review.

Effect: Conforms with NC water quality standards rules.

1		Wastes is hereby incorporated by reference including any subsequent amendments and
2		editions. These methods (document EPA-600-4-79-020) can be accessed free of charge at
3		http://nepis.epa.govCopies may be obtained from the NTIS, 5285 Port Royal Road,
4		Springfield, VA 22161 at a cost of fifty dollars (\$50.00) per edition. All material
5		incorporated by reference in this Rule is available for inspection at the Central office of the
6		Division of Environmental Management Water Resources, 512 North Salisbury Street,
7		Raleigh, North Carolina 27626 053527604.
8		(b) Method Sensitivity. All test procedures must produce detection and reporting levels that
9		are below the permit discharge requirements and all data generated must be reported to the
10		approved detection level or lower reporting level of the procedure. Monitoring required for
11		permit application or to determine compliance with effluent limitations or applicable water
12		quality standards shall be performed using sufficiently sensitive methods in accordance
13		with 40 CFR 122.21(e)(3) or 122.44(i), which are hereby incorporated by reference,
14		including any subsequent amendments and editions. If no approved methods are
15		determined capable of achieving detection and reporting levels below permit discharge
16		requirements, then the approved method with the lowest detection and reporting level must
17		be used. Biological testing shall be performed in accordance with 15A NCAC 2B .0103(b).
18	(5)	Approval of Laboratories. Analytical determinations made pursuant to the monitoring and reporting
19		requirements of this Section shall be made in adequately equipped laboratories staffed by person(s)
20		competent to perform tests. Only monitoring programs which provide for the making of analytical
21		determinations by qualified employees of the owner or by a laboratory certified by the Division
22		under 15A NCAC 2H .0800 or 15A NCAC 2H .1100 will be considered adequate.
23	(f) Process Co	ontrol Monitoring Testing: The Director may require, on a case-by-case basis, process control
24	monitoring testing	ng suitable for the size and classification of the facility.
25		
26	History Note:	Authority G.S. 143-215.64; 143-215.66; 143-215.68;
27		Eff. February 1, 1976;
28		Amended Eff. <date>; April 1, 1993; December 1, 1984; November 1, 1978.</date>
29		

Commented [TM3]: Change: Edited and updated to reflect applicable federal regulations, and edited for clarification.

Effect: Technical correction and clarification.

15A NCAC 02B .0506 is proposed for readoption with substantive amendments as follows:

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#### 15A NCAC 02B .0506 REPORTING REQUIREMENTS

General

- (1) Every person subject to this Section shall file certified monitoring reports setting forth the results of tests and measurements conducted pursuant to NPDES permit monitoring requirements.
  - (A) Monthly monitoring reports shall be filed no later than 30 calendar days after the end of the reporting period for which the report is made.
  - (B) Reports filed pursuant to the requirements of Subparagraph (a)(1) of this Rule shall be submitted in a manner consistent with the requirements of 40 CFR Part 3, which is hereby incorporated by reference including subsequent amendments and additions. Where submittal of printed documents is allowed, of such submittals shall be made on forms furnished or in a format provided or approved by the Director and shall be submitted in duplicate to:

ATTN: CENTRAL FILES

DIVISION OF ENVIRONMENTAL MANAGEMENT WATER RESOURCES

POST OFFICE BOX 29535

MAIL SERVICE CENTER 1617

RALEIGH, NORTH CAROLINA 27626-0535.27699-1617

- (C) A copy of all reports submitted to the Director pursuant to this Section shall be retained by the owner of each water pollution controlpermitted facility for a period of at least three years from the date of submission and be readily available to the Division for inspection.
- (D) In order to document information contained in reports submitted to the Director pursuant to this Section, the owner of each pollution control facility is required to retain or have readily available for inspection by the <u>Division, Division</u> the following items for a period of at least three years from report submission:
  - the original laboratory reports from any certified laboratory utilized for sample analysis. Such reports must be signed by the laboratory supervisor, and must indicate the date and time of sample collection and analysis, and the analysts' name;
  - (ii) bench notes and data logs for sample analyses performed by the pollution control facility staff or operator in responsible charge, whether or not the facility has a certified lab; and
  - (iii) copies of all process control testing.
- (E) In situations where no discharge has occurred from the facility during the report period, the permittee is required to submit a monthly monitoring report giving all required

Commented [TM1]: Change: Updated organizational

names and addresses.

Effect: Technical corrections.

Change: Revised to allow for electronic submittal of

reports

**Effect:** Reflects promulgation of 40 CFR 3, Electronic Reporting, which is incorporated by reference in 2B .0511,

etc.

1			information and indicating "NO FLOW" unless the Director agrees to waive the reporting
2			requirement during extended conditions of no discharge.
3	(2)	Every p	person subject to this Section shall report by telephone to either the central office or
4		appropr	iate regional office of the Division as soon as possible but no later than 24 hours after
5		occurre	nce or on the next working day (however, if the occurrence is one which may endanger the
6		<del>public h</del>	realth, or fish or wildlife, and contact with the central office or the appropriate regional office
7		cannot l	be made, such person shall report as soon as possible to the State Highway Patrol Warning
8		Point in	a state 1-800-662-7956 or out of state 919-733-3861) following the occurrence or first
9		knowled	dge of the occurrence of any of the following:
10		(A)	Any failure of a collection system, pumping station or treatment facility resulting in a by-
11			pass without treatment of all or any portion of the wastewater:wastewater;
12		(B)	Any occurrence at the water pollution control facility which results in the discharge of
13			significant amounts of wastes which are abnormal in quantity or characteristic, such as the
14			dumping of the contents of a sludge digester, the known passage of a hazardous substance
15			through the facility, or any other unusual circumstances.circumstances; or
16		(C)	Any process unit failure, due to known or unknown reasons, that renders the facility
17			incapable of adequate wastewater treatment, such as mechanical or electrical failures of
18			pumps, aerators, compressors, etc.;
19		except t	hat if the occurrence is one which may endanger the public health or fish or wildlife, and if
20		contact	with the central office or the appropriate regional office cannot be made, such person shall
21		report a	s soon as possible to the NC Emergency Operations Center 24/7 at 1-800-858-0368 (toll-
22		free) or	919-733-3300
23	(3)	Persons	reporting such occurrences by telephone shall also provide a written report to the Division
24		in letter	or electronic form setting out the information required in Subparagraph (a)(4) of this Rule
25		and pert	tinent information pertaining to the occurrence. This report must be received by the Division
26		within f	ive days following first knowledge of the occurrence.
27	(4)	All repo	orts required to be filed by this Section shall contain the following information in addition to
28		such oth	ner information as is required for the particular report:
29		(A)	name of facility,
30		(B)	water pollution control facility location,
31		(C)	the class assigned to the water pollution control facility,
32		(D)	the water pollution control facility permit number assigned by the Department of
33			$\underline{Environment, Health, and\ Natural\ Resources}\underline{Environmental\ Quality}\ to\ the\ permit\ or\ other$
34			approval document issued by the Environmental Management Commission under which
35			the discharge is made,
36		(E)	contact name andname, telephone number number, email address, and mailing address,
37		(F)	estimated nature and extent of environmental damage caused by the incident.

Commented [TM2]: Change: Updated contact information and reordered the SubParagraph for clarity. Effect: Technical corrections.

1	(5)	Any pe	rson des	iring confidentiality for any influent information submitted shall specify the influent
2		inform	ation for	which confidentiality is sought and shall justify such request to the Department of
3		Enviro	nment, I	Health, and Natural Resources, Environmental Quality, and and, if such request is
4		approv	ed by the	e Director Director, shall by an appropriate stamp, stamp indicate the location of such
5		inform	ation on	each report filed thereafter.
6	(b) Monthly M	onitoring	Reports	:
7	(1)	Every j	person o	perating a monitoring system required by this Section shall file a monitoring report
8		once ea	ach mon	th which includes the data for the samples collected during the month. This report
9		shall be	e filed no	later than 30 calendar days after the end of the reporting period for which the report
10		is made	e.	
11	(2)	Month	ly monite	oring reports shall be reviewed, compliance status determined, certified by signature,
12		and sul	omitted b	by the following:
13		(A)	For a	corporation: by a responsible corporate officer. For the purpose of the Section, a
14			respon	sible corporate officer means:
15			(i)	a president, secretary, treasurer or vice president of the corporation in charge of a
16				principal business function, or any other person who performs similar policy or
17				decision-making functions for the corporation, or
18			(ii)	the manager of one or more manufacturing production or operating facilities
19				employing more than 250 persons or having gross annual sales or expenditures
20				exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980
21				dollars), if authority to sign documents had been assigned or delegated to the
22				manager in accordance with corporate procedures.
23		(B)	For a p	partnership or sole proprietorship: by a general partner or the proprietor, respectively;
24			or	
25		(C)	For a	municipality, State, Federal, County, or other public agency: by either a principal
26			execut	tive officer or ranking elected official;
27		(D)	Duly a	authorized representative of the person described in Paragraphs (b)(2)(A), (B) and
28			(C). A	A person is a duly authorized representative only if:
29			(i)	The authorization is made in writing by a person described in Paragraphs
30				(b)(2)(A), (B) and (C);
31			(ii)	The authorization specified either an individual or a position having responsibility
32				for the overall operation of the regulated facility or activity, such as the position
33				of plant manager, operator of a well or well field, superintendent, a position of
34				equivalent responsibility, or an individual or position having overall responsibility
35				for environmental matters for the company. (A duly authorized representative
36				may thus be either a named individual or any individual occupying a named
37				position.); and

1			(iii)	The written authorization is submitted to the Permit Issuing Authority.
2				Permittees A permittee authorizing another individual to sign as representative in
3				no way relinquishes any responsibility for the permit or his responsibility to
4				remain familiar with the permit conditions, conditions and limits, including any
5				modifications, and for the compliance data reports for the permit.
6	<del>(E)</del> (3)	Permitt	ee <u>Certifi</u>	cation by Signature.
7		(A)	The pe	rmittee signing the report certifies to the following statement: "I certify, under
8			penalty	of law, that this document and all attachments were prepared under my direction
9			or supe	ervision in accordance with a system designed to assure that qualified personnel
10			properl	y gather and evaluate the information submitted. Based on my inquiry of the person
11			or perso	ons who managed the system, or those persons directly responsible for gathering the
12			informa	ation, the information submitted is, to the best of my knowledge and belief, true,
13			accurat	e, and complete. I am aware that there are significant penalties for submitting false
14			informa	ation, including the possibility of fines and imprisonment for knowing violations."
15		(B)	_The m	onthly report shall also be certified by the operator in responsible charge of a
16			classifi	ed treatment facility or by the manager of an industrial establishment which has a
17			point s	ource of waste discharge and which does not have a classified water pollution
18			control	facility.
19	<del>(3)</del> (4)	In addi	tion to th	ne information required on all reports [see Subparagraph (a)(4) of this Rule] the
20		followi	ng inforn	nation shall be submitted in monthly monitoring reports:
21		(A)	nameN	ame of person or group collecting sample or making observation;
22		(B)	name N	Name of person or group that analyzed sample;
23		(C)	name N	Name of operator in responsible charge of the facility and the grade certificate held
24		(D)	samplii	ng-Sampling point for each sample;
25		(E)	date Da	ate and time (on 2400 hour clock basis) at which each grab sample was collected;
26		(F)	For cor	mposite samples:
27			(i)	date on which collection of composite samples is commenced,
28			(ii)	time of starting and ending of composite sample period on 2400 hour clock basis
29		(G)	wastew	raterWastewater flow in million gallons per day (MGD);(MGD), or in units
30			specifie	ed in the permit;
31		(H)	Results	of analyses (reported to the designated number of figures with a properly placed
32			decima	l point as indicated on each report sheet) together with the proper storet number (to
33			be furn	ished by the Division) for the analytical procedure used and the reporting units shall
34			be thos	e specified by the NPDES permit or current enforcement document, unless modified
35			by the l	Director;
36		(I)	Only n	umeric values will be accepted in reporting results of fecal coliform testing. The
37			reportii	ng of "too numerous to count" (TNTC) as a value will constitute a violation;

1		(J) The results of all tests on the characteristics of the effluent, including but not limited to
2		NPDES Permit Monitoring Requirements, shall be reported on monthly report forms;
3		(K) The monthly average of analysis for each parameter and the maximum and minimum
4		values for the month shall be reported;
5		(L) Certification by the Operator in Responsible Charge (ORC) as to the accuracy and
6		completeness of the report and that he/she has performed and documented the required
7		visitation and process control.
8	(c) Additional I	Reporting/Monitoring Requirements:
9	(1)	When a facility is operated on an independent contract basis, the operator in responsible charge shall
10		notify the owner of the facility in writing of any existing or anticipated conditions at the facility
11		which may interfere with its proper operation and which need corrective action by the owner. The
12		notice shall include recommendations for corrective action.
13	(2)	Two copiesprinted copies, or an electronic copy, of the signed notice to the owner shall be sent to
14		the Division as an attachment tono later than the next monthly monitoring report.
15	(3)	A log demonstrating visitation at the proper frequency for the assigned classification, including
16		dates and times of visits, and documentation of proper process control monitoring shall be
17		maintained and shall be submitted to the Division upon request. Copies of all information must be
18		readily available for inspection for a period of three years.
19	(d) All inform	nation submitted will be classified as public information unless determined otherwise by the
20	Director.Director	or in accordance with 15A NCAC 02H .0115.
21		
22	History Note:	Authority G.S. 143-215.1(b); 143-215.64; 143-215.65; 143-215.68;
23		Eff. February 1, 1976;

 $Amended\ Eff.\ \underline{<date>;}\ August\ 2,\ 1993;\ April\ 1,\ 1993;\ December\ 1,\ 1984;\ November\ 1,\ 1978.$ 

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Commented [TM3]: Change: Added cross-reference to the rule pertaining to confidential information Effect: Technical change – clarification.

15A NCAC 02B .0508 is proposed for readoption with substantive changes as follows:

### 15A NCAC 02B .0508 TESTS AND MEASUREMENTS APPLICABLE TO SICS

(a) Determination of Type and Frequency of Tests and Measurements:

(1) Introduction. The tables set forth in this Rule are designed to indicate, for any particular water pollution control facility or point source, the minimum standard tests and measurements which are to be performed, the minimum frequency with which the tests and measurements are to be conducted, and the location and minimum number of sampling points that are required.

(2) Determination of Facility Class and SIC Numbers. Before these tables may be applied, the standard industrial classification(s) of the activities discharging to the water pollution control facility must be determined from The Standard Industrial Classification Manual. The classification of the facility as determined by the Water Pollution Control System Operators Certification Commission, must also be known.

(b) Modification of Test(s) or Measurement(s) Requirements:

- (1) If it is demonstrated to the satisfaction of the Director that any of the tests and measurements, sampling points, or frequency of sampling requirements, as required in this Rule for a particular SIC group, are not applicable to the discharge of a particular water pollution control facility, or if it can be demonstrated that the objectives of this Section can be achieved by other acceptable means, then such requirements may be waived or modified to the extent that the Director determines to be appropriate.
- (2) In addition to the tests and measurements as listed in this Rule applicable to each of the SIC groups, persons subject to this Section may be required to perform such additional tests and measurements at such sampling points and with such frequency as are determined by the Director to be necessary to adequately monitor constituents of the waste discharge and their effect upon the receiving waters. This monitoring may include; include but not be limited to weekends and holidays as deemed necessary by the Director to ensure representative sampling and proper operation and maintenance of any facility.

#### (c) Unclassified Activities:

- (1) Any person owning or operating a water pollution control facility who determines that a major SIC group(s) is not listed in this Rule for an activity subject to this Section shall so notify the Division.
- (2) The Director shall prescribe the number and location of sampling points and the frequency with which tests and measurements must be made for such pollutant or pollutant effects as it shall deem necessary to properly monitor the quantity or quality of waste discharges resulting from any activity subject to this Section which is not included in the major SIC groups set forth in this Rule and to properly monitor effects of the discharges upon the waters of this state.
- (d) Index of Major Standard Industrial Groups:

Commented [TM1]: Change: Minor punctuation, capitalization changes.

Effect: Technical corrections.

1	SIC Number	Major Products or Services
2	1400-1499	Mining
3	2000-2199	Food, Beverage and Tobacco Processing
4	2200-2299	Textile Processing
5	2400-2599	Lumber and Wood Products Except Wet Decking
6	2600-2699	Paper and Allied Products
7	2800-2899	Chemical and Allied Products
8	2900-2999	Petroleum Refining and Related Industries
9	3100-3199	Leather and Leather Products
10	3400-3699	Fabricated Metal Products Except Ordnance, Machinery and Transportation Equipment
11		Machinery Electrical Machinery, Equipment and Supplies
12	4900-4939	Electric, and Gas Services
13	4941	Water Supply
14	4952	Wastewater and all facilities discharging primarily domestic wastewater
15	7000-8999	Services
16	Abbreviations for sampling	ng locations and frequencies to be used with SIC monitoring requirements:
17		
18	"I" means influent "E" me	eans effluent "U" means upstream "D" means downstream
19	"2/month" means sample:	s are collected twice per month with a required 10 day interval between the collection of
20	the samples	
21	"3/week" means samples	are collected three times per week on three separate days
22		
22		

23 24

25

26 27

# $\frac{\mbox{MINING}}{\mbox{MINIMUM REQUIREMENTS FOR SIC }1400\mbox{-}1499}$

REQUIRED TEST LOCATION FREQUENCY CLASS CLASS CLASS CLASS II Ш IV I 1. Turbidity Е Monthly Monthly Monthly Monthly 2. Settleable Matter E Monthly Monthly Monthly Monthly TSS Е 3. Monthly Monthly Monthly Monthly 4. pН Е Monthly Monthly Monthly Monthly \*\* \*\* \*\* \*\* 5. Toxics and Toxicity

28 29

3			MINIMUM REQU	JIREMENTS FO	OR SIC 2000-219	99	
4			_	FLUENT LIMIT			
5							
		REQUIRED TEST	LOCATION		FREQU	JENCY	
				CLASS	CLASS	CLASS	CLASS
				I	II	III	IV
	1.	pН	E	Weekly	Weekly	3/week	Daily
	2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
	3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
	4.	TSS	E	2/month	Weekly	3/week	Daily
	5.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	Weekly
	6.	Total Nitrogen	E	*	*	*	*
	7.	Total Phosphorus	E	*	*	*	*
	8.	Toxics and Toxicity		**	**	**	**
5							
7			WATER	R QUALITY LIN	MITED		
8							
	1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
	2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
	3.	pН	E	Weekly	Weekly	3/week	Daily
	4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
	5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
	6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
	7.	TSS	E	2/month	Weekly	3/week	Daily
	8.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
	9.	Total Nitrogen	E	*	*	*	*
	10.	Total Phosphorus	E	*	*	*	*
	11.	Toxics and Toxicity		**	**	**	**
	12.	Conductivity	E	Weekly	Weekly	3/week	Daily
	13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+
)							
)							
l							
2			TEX	TILE PROCESS	ING		

3 of 15

1			EFFLUE	ENT LIMITED			
2							
		REQUIRED TEST	LOCATION		FREQUEN		
				CLASS	CLASS	CLASS	CLASS
				I	II	III	IV
	1.	pН	E	Weekly	Weekly	3/week	Daily
	2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
	3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
	4.	COD	E	2/month	Weekly	3/week	Daily
	5.	TSS	E	2/month	Weekly	3/week	Daily
	6.	Total Nitrogen	E	*	*	*	*
	7.	Total Phosphorus	E	*	*	*	*
	8.	Toxics and Toxicity		**	**	**	**
3							
4			WATER QU	JALITY LIMITED			
5							
		REQUIRED TEST	LOCATION		FREQUEN	ICY	
				CLASS	CLASS	CLASS	CLASS
				I	II	III	IV
	1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
	2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
	3.	pH	E	Weekly	Weekly	3/week	Daily
	4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
	5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
	6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
	7.	COD	E	2/month	Weekly	Weekly	Weekly
	8.	TSS	E	2/month	Weekly	3/week	Daily
	9.	Total Nitrogen	E	*	*	*	*
	10.	Total Phosphorus	E	*	*	*	*
	11.	Toxics and Toxicity		**	**	**	**
	12.	Conductivity	E	Weekly	Weekly	3/week	Daily
	13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+
6		Ž	,	Ž	•		
7	_						
8							
9		LUMBER	AND WOOD PRODU	JCTS (EXCLUDIN	IG WET DECKING	G)	
10			MINIMUM REQUIRE			<del>_</del>	
			`				

1		EFFLUENT LIMITED								
2		REQUIRED TEST	LOCATION		FREQU	JENCY				
				CLASS	CLASS	CLASS	CLASS			
				I	II	III	IV			
	1.	pН	E	Weekly	Weekly	3/week	Daily			
	2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily			
	3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily			
	4.	COD	E	Monthly	2/month	Weekly	3/week			
	5.	Total Phenols	E	2/month	Weekly	3/week	Daily			
	6.	TSS	E	2/month	Weekly	3/week	Daily			
	7.	Total Nitrogen	E	*	*	*	*			
	8.	Total Phosphorus	E	*	*	*	*			
	9.	Toxics and Toxicity		**	**	**	**			
3										
4			WATE	ER QUALITY L	IMITED					
5										
	1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily			
	2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+			
	3.	pН	E	Weekly	Weekly	3/week	Daily			
	4.	Temperature, 0C	E	Weekly	Weekly	3/week	Daily			
	5.	Temperature, 0C	U,D	Weekly	Weekly	3/week+	3/week+			
	6.	BOD, 5-day, 200C	E	2/month	Weekly	3/week	Daily			
	7.	COD	E	2/month	Weekly	3/week	Daily			
	8.	Total Phenols	E	2/month	Weekly	3/week	Daily			
	9.	TSS	E	2/month	Weekly	3/week	Daily			
	10.	Total Nitrogen	E	*	*	*	*			
	11.	Total Phosphorus	E	*	*	*	*			
	12.	Toxics and Toxicity		**	**	**	**			
	13.	Conductivity	E	Weekly	Weekly	3/week	Daily			
	14.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+			
6										
7										
8										
9				AND ALLIED P						
10			MINIMUM REQ			99				
11			EF	FFLUENT LIMI	TED					

	REQUIRED TEST	LOCATION		FREO	UENCY	
			CLASS	CLASS	CLASS	CLAS
			I	II	III	IV
1.	рН	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	Е	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	Е	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**
		WATER	R QUALITY LIN	MITED		
1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week
3.	pН	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Total Nitrogen	E	*	*	*	*
9.	Total Phosphorus	E	*	*	*	*
10.	Toxics and Toxicity		**	**	**	**
11.	Conductivity	E	Weekly	Weekly	3/week	Daily
12.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week
		CHEMICAL	AND ALLIED	PRODUCTS		
		MINIMUM REQU			99	
		EFF	LUENT LIMIT	ED		
	REQUIRED TEST	LOCATION		FREQ	UENCY	
			CLASS	CLASS	CLASS	CLAS
			I	II	III	IV
1.	pН	E	Weekly	Weekly	3/week	Daily

	2.	Temperature, °C	Е	Weekly	Weekly	3/week	Daily
	3.	BOD, 5-day, 20°C	Е	2/month	Weekly	3/week	Daily
	4.	TSS	E	2/month	Weekly	3/week	•
					•		Daily
	5.	Total Nitrogen	E	*	*	*	*
	6.	Total Phosphorus	E	*	*	*	*
	7.	Toxics and Toxicity		**	**	**	**
1							
2			WATI	ER QUALITY LIN	MITED		
3							
	1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
	2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
	3.	pH	E	Weekly	Weekly	3/week	Daily
	4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
	5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
	6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
	7.	TSS	E	2/month	Weekly	3/week	Daily
	8.	Total Nitrogen	E	*	*	*	*
	9.	Total Phosphorus	E	*	*	*	*
	10.	Toxics and Toxicity		**	**	**	**
	11.	Conductivity	E	Weekly	Weekly	3/week	Daily
	12.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+
4							
5							

# PETROLEUM REFINING AND RELATED INDUSTRIES MINIMUM REQUIREMENTS FOR SIC 2900-2999

6

9 10 EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY					
				CLASS	CLASS	CLASS		
			I	II	III	IV		
1.	pН	E	Weekly	Weekly	3/week	Daily		
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily		
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily		
4.	TSS	E	2/month	Weekly	3/week	Daily		
5.	Total Phenols	E	2/month	Weekly	3/week	Daily		
6.	Oil and Grease	E	2/month	Weekly	3/week	Daily		

	7.	Total Nitrogen	E	*	*	*	*
	8.	Total Phosphorus	E	*	*	*	*
	9.	Toxics and Toxicity		**	**	**	**
1							
2			WATI	ER QUALITY LI	MITED		
3							
	1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
	2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
	3.	pН	E	Weekly	Weekly	3/week	Daily
	4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
	5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
	6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
	7.	TSS	E	2/month	Weekly	3/week	Daily
	8.	Total Phenols	E	2/month	Weekly	3/week	Daily
	9.	Oil and Grease	E	2/month	Weekly	3/week	Daily
	10.	Total Nitrogen	E	*	*	*	*
	11.	Total Phosphorus	E	*	*	*	*
	12.	Toxics and Toxicity		**	**	**	**
	13.	Conductivity	E	Weekly	Weekly	3/week	Daily
	14.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+
4							
5							
6							

## <u>LEATHER AND LEATHER PRODUCTS</u> MINIMUM REQUIREMENTS FOR SIC 3100-3199

7

8 9

10

### EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY					
			CLASS	CLASS	CLASS	CLASS		
			I	II	III	IV		
1.	pH	E	Weekly	Weekly	3/week	Daily		
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily		
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily		
4.	TSS	E	2/month	Weekly	3/week	Daily		
5.	COD	E	2/month	Weekly	Weekly	Daily		
6.	Ammonia Nitrogen	E	Monthly	Weekly	Weekly	Weekly		
7.	Oil and Grease	Е	2/month	Weekly	3/week	Daily		

8.	Turbidity	E	Weekly	3/week	Daily	Daily
9.	Total Nitrogen	E	*	*	*	*
10.	Total Phosphorus	E	*	*	*	*
11.	Toxics and Toxicity		**	**	**	**
		WATI	ER QUALITY LI	MITED		
1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	COD	E	2/month	Weekly	3/week	Daily
9.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
10.	Oil and Grease	E	2/month	Weekly	3/week	Daily
11.	Turbidity	E	Weekly	Weekly	3/week	Daily
12.	Total Nitrogen	E	*	*	*	*
13.	Total Phosphorus	E	*	*	*	*
14.	Toxics and Toxicity		**	**	**	**
15.	Conductivity	E	Weekly	Weekly	3/week	Daily
	Conductivity	U,D	Weekly	Weekly	3/week+	

	REQUIRED TEST	LOCATION	FREQUENCY				
			CLASS	CLASS	CLASS	CLASS	
			I	II	III	IV	
1.	pH	E	Weekly	Weekly	3/week	Daily	
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily	
3.	Oil and Grease	E	2/month	Weekly	3/week	Daily	

4.	Total Nitrogen	E	*	*	*	*
5.	Total Phosphorus	Е	*	*	*	*
6.	Toxics and Toxicity	_	**	**	**	**
7.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
		***		(MEET)		
		WATER	QUALITY LIN	MITED		
1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	pH	E	Weekly	Weekly	3/week	Daily
3.	•	E	Weekly	Weekly	3/week	Daily
3. 4.	Temperature, °C Oil and Grease	E	2/month	•	3/week	•
4. 5.	Total Nitrogen	E	2/IIIOIIIII *	Weekly *	3/Week *	Daily *
5. 6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity	L	**	**	**	**
7.	Toxics and Toxicity					
		ELECTRIC	AL AND GAS	SERVICES		
		ELECTRIC MINIMUM REQU			39	
		MINIMUM REQU		OR SIC 4900-493	39	
		MINIMUM REQU	IREMENTS FO	OR SIC 4900-493	39	
	REQUIRED TEST	MINIMUM REQU	IREMENTS FO	OR SIC 4900-493 ED	39 JENCY	
	REQUIRED TEST	MINIMUM REQU EFF	IREMENTS FO	OR SIC 4900-493 ED		CLAS:
	REQUIRED TEST	MINIMUM REQU EFF	IREMENTS FO	DR SIC 4900-493 ED FREQU	JENCY	CLAS: IV
1.	REQUIRED TEST	MINIMUM REQU EFF	IREMENTS FO LUENT LIMIT CLASS	OR SIC 4900-493 ED FREQU CLASS	JENCY CLASS	IV
1. 2.		MINIMUM REQUESTED FOR THE PROPERTY OF THE PROP	IREMENTS FO LUENT LIMIT CLASS I	OR SIC 4900-493 ED FREQU CLASS II	JENCY CLASS III	IV Weekl
	рН	MINIMUM REQUESTED FOR THE PROPERTY OF THE PROP	IREMENTS FO LUENT LIMIT CLASS I Weekly	OR SIC 4900-493 ED FREQU CLASS II Weekly	JENCY CLASS III Weekly	IV Weekl
2.	pH Temperature, °C	MINIMUM REQUESTS  LOCATION  E E	IREMENTS FO LUENT LIMIT CLASS I Weekly Weekly	PR SIC 4900-493 ED FREQU CLASS II Weekly Weekly	JENCY CLASS III Weekly Weekly	IV Weekl Weekl
2. 3.	pH Temperature, °C Total Nitrogen	MINIMUM REQUESTS  LOCATION  E E E E	CLASS I Weekly Weekly *	PR SIC 4900-493 ED  FREQUE CLASS II  Weekly Weekly *	JENCY CLASS III Weekly Weekly *	IV Weekl Weekl
<ul><li>2.</li><li>3.</li><li>4.</li></ul>	pH Temperature, °C Total Nitrogen Total Phosphorus	MINIMUM REQUESTS  LOCATION  E E E E	CLASS I Weekly Weekly *	PR SIC 4900-493 ED  FREQUE CLASS II  Weekly Weekly * *	JENCY CLASS III Weekly Weekly *	IV Weekl
<ul><li>2.</li><li>3.</li><li>4.</li></ul>	pH Temperature, °C Total Nitrogen Total Phosphorus	MINIMUM REQUESTS  LOCATION  E E E E	CLASS I Weekly Weekly *	FREQUENCY CLASS II Weekly Weekly * *	JENCY CLASS III Weekly Weekly *	IV Weekl
<ul><li>2.</li><li>3.</li><li>4.</li></ul>	pH Temperature, °C Total Nitrogen Total Phosphorus	MINIMUM REQUESTS  LOCATION  E E E E	CLASS I Weekly Weekly * * *	FREQUENCY CLASS II Weekly Weekly * *	JENCY CLASS III Weekly Weekly *	IV Weekly Weekly *
<ul><li>2.</li><li>3.</li><li>4.</li></ul>	pH Temperature, °C Total Nitrogen Total Phosphorus	MINIMUM REQUESTS  LOCATION  E E E E	CLASS I Weekly Weekly * * *	FREQUENCY CLASS II Weekly Weekly * *	JENCY CLASS III Weekly Weekly *	IV Weekl Weekl * * *
2. 3. 4. 5.	pH Temperature, °C Total Nitrogen Total Phosphorus Toxics and Toxicity	MINIMUM REQUESTS  LOCATION  E E E E E WATER	CLASS I Weekly Weekly * * * * * * * * * * * * * * * * * * *	FREQUENCY SIC 4900-493 ED  FREQUENCY SIC 4900-493 FREQUENCY SIC 4900	JENCY CLASS III Weekly Weekly * *	IV Weekl  * * * * * Weekl
2. 3. 4. 5.	pH Temperature, °C Total Nitrogen Total Phosphorus Toxics and Toxicity  Dissolved Oxygen	MINIMUM REQUESTS  LOCATION  E E E E E E E	CLASS I Weekly Weekly * * * * * * * * * * * * * * * * * * *	FREQUENCY CLASS II Weekly Weekly * * ** MITED Weekly	UENCY CLASS III Weekly Weekly * * **	IV Weekl  *  *  *  Weekl  Weekl
2. 3. 4. 5.	pH Temperature, °C Total Nitrogen Total Phosphorus Toxics and Toxicity  Dissolved Oxygen pH	MINIMUM REQUERTS  LOCATION  E E E E E E E	CLASS I Weekly Weekly * * * * * * * * * * * * * * * * * * *	FREQUENCY STATES OF SIC 4900-493  FREQUENCY STATES OF ST	JENCY CLASS III Weekly Weekly * * **  Weekly Weekly	Weekly  * *

	REQUIRED TEST	LOCATION	FREQUENCY					
			CLASS	CLASS	CLASS	CLASS		
			I	II	III	IV		
1.	Temperature, °C	E	Cont.	Cont.	Cont.	Cont.		
2.	Temperature, °C	U, D	3/week+	3/week+	3/week+	3/week-		
3.	Flow		Continuous	Continuous	Continuous	Continuo		
			during	during	during	during		
			discharge	discharge	discharge	discharg		
		WAT	ER SUPPLY PL	ANTS				
		MINIMUM RI	EQUIREMENTS	S FOR SIC 4941				
		EF	FLUENT LIMIT	ΓED				
	REQUIRED TEST	LOCATION		FREQ	UENCY			
			CLASS	CLASS	CLASS	CLASS		
			I	II	III	IV		
1.	Settleable Solids	E	Weekly	Weekly	Weekly	Weekly		
2.	TSS	E	2/month	2/month	2/month	2/montl		
3.	Turbidity	E	Weekly	Weekly	Weekly	Weekly		
4.	pH	Е	Weekly	Weekly	Weekly	Weekly		
5.	Chloride	Е	Weekly	Weekly	Weekly	Weekly		
			D EACH ITIES	DISCHARGING	PRIMARILY D	OMESTIC		
	DOMESTIC WASTEW	ATER AND OTHE	R FACILITIES	DID CITI II COLI (C				
	DOMESTIC WASTEW			FOR SIC 4952				
	DOMESTIC WASTEW	MINIMUM RI		S FOR SIC 4952				
	DOMESTIC WASTEW	MINIMUM RI	EQUIREMENTS	S FOR SIC 4952 FED	UENCY			

			I	II	III	IV
1.	pH	E	2/month	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	I,E	2/month	Weekly	3/week	Daily
4.	TSS	I,E	2/month	Weekly	3/week	Daily
5.	Ammonia Nitrogen	Е	Monthly	2/month	Weekly	3/week
6.	Fecal Coliform	Е	2/month	Weekly	3/week	Daily
7.	Total Nitrogen	E	*	*	*	*
8.	Total Phosphorus	E	*	*	*	*
9.	Toxics and Toxicity		**	**	**	**
		WATER	QUALITY LIN	MITED		
1.	Dissolved Oxygen	Е	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	рН	E	2/month	Weekly	3/week	Daily
4.	Temperature, °C	E	Daily	Daily	Daily	Daily
5.	Temperature, °5	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	<del>E,I</del> I,E	2/month	Weekly	3/week	Daily
7.	TSS	<del>E,II,E</del>	2/month	Weekly	3/week	Daily
3.	Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
9.	Residual Chlorine	E	2/week	2/week	3/week	Daily
10.	Fecal Coliform	Е	2/month	Weekly	3/week	Daily
11.	Fecal Coliform	U,D	2/month	Weekly	3/week+	3/week+
12.	Conductivity	E	Weekly	Weekly	3/week	Daily
13.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+
14.	Total Nitrogen	E	*	*	*	*
15.	Total Phosphorus	E	*	*	*	*
	Toxics and Toxicity		**	**	**	**

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			CLASS	CLASS	CLASS	CLASS
			I	II	III	IV
1.	pН	E	Weekly	Weekly	3/week	Daily
2.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
3.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
4.	TSS	E	2/month	Weekly	3/week	Daily
5.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
6.	Detergents (MBAS)	E	2/month	Weekly	3/week	Daily
7.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
8.	Total Nitrogen	E	*	*	*	*
9.	Total Phosphorus	E	Monthly	2/month	Weekly	3/week
10.	Toxics and Toxicity		**	**	**	**
		WATI	ER QUALITY LIN	MITED		
1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3.	pH	E	Weekly	Weekly	3/week	Daily
4.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
5.	Temperature, °C	U,D	Weekly	Weekly	3/week+	3/week+
6.	BOD, 5-day, 20°C	E	2/month	Weekly	3/week	Daily
7.	TSS	E	2/month	Weekly	3/week	Daily
8.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	3/week
9.	Detergents (MBAS)	E	2/month	Weekly	3/week	Daily
10.	Fecal Coliform	E	2/month	Weekly	3/week	Daily
11.	Total Nitrogen	E	*	*	*	*
12.	Total Phosphorus	E	*	*	*	*
13.	Toxics and Toxicity		**	**	**	**
14.	Conductivity	E	Weekly	Weekly	3/week	Daily
15.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+
	1.0				. 1 1 1	
-	stream and Downstream mag g June, July, August, and Se	-	• •			nes per week
during	s June, July, Magast, and St	premoer, and or	ice per week durin	ig the rest of the	year.	
* Tot	al Nitrogen and Phosphoru	s Monitoring				
	(1) Monitoring Re	quirements				

13 of 15

1		(A)	All fa	cilities equal to or greater than	50,000 g <sub>J</sub>	pd, shall	monitor for	r total N	N and P.	
2		(B)	Facili	ties less than 50,000 gpd shall	ll monito	r for to	tal N and P	when	dischargir	ng into
3			nutrie	nt sensitive waters as designate	ed by the l	Division	1.			
4	(2)	Monito	ring fre	quency for total N and P is base	ed on rive	r subbas	sins in two s	eparate	areas of th	ie state
5		as follo	ws:							
6		(A)	Weste	ern area includes the French	Broad,	Broad,	Savannah,	New,	Watauga,	Little
7			Tenne	essee, and Hiwassee:						
8				Facility Design Capacity:						
9			-	Frequency						
10			(i)	50,000 gpd or higher					Se	mi-
11				annually						
12			(ii)	1,000,000 gpd or higher						
13				——Quarterly.						
14		(B)	Piedm	ont and Eastern area includes	the Catav	wba, Lu	mber, Yadk	in, Cap	e Fear, Cl	nowan,
15			Neuse	, Pasquotank, Roanoke, Tar-Pa	amlico, an	nd White	e Oak:			
16				Facility Design Capacity						
17				Frequency						
18			(i)	50,000 gpd or higher						
19				Quarterly						
20			(ii)	1,000,000 gpd or higher						
21				Monthly.						
22	(3)	Definiti	ion for	Γotal Nitrogen and Total Phosp	horus:					
23		(A)	Total	Nitrogen shall be the sum of	total <del>kjel</del> e	<del>lahl</del> Kje	ldahl nitrog	en, nitr	ate nitroge	n, and
24			nitrite	nitrogen expressed as "N" in r	nilligrams	s per lite	er <del>(mg/l).</del> (m	g/L).		
25		(B)	Total	Phosphorus shall include all	orthoph	osphates	and cond	ensed	phosphates	, both
26			dissol	ved and particulate, organic ar	nd inorgar	nic, exp	ressed as "P	" in mi	illigrams p	er litei
27			(mg/l)	<u>-(mg/L).</u>						
28										
29	** Specific test	type, con	ditions	, and limitations will be defined	d by perm	it. Toxi	city limits v	vill be a	applied to a	all
30	major discharges	and all	discharg	ges of complex wastewater. To	xicity lim	itations	and monito	ring rec	quirements	may
31	be applied to per	mits for	other di	scharges when, in the opinion	of the Dir	ector, su	ich discharg	e may i	impair the	best
32	use of the receiv	ing water	by the	discharge of toxic substances i	n toxic ar	nounts.				
33	Specific frequen	cy will b	e define	d by individual permit condition	ons. For r	nost fac	ilities with	continu	ous and	
34	regularly occurri	ng disch	arges, fi	requency will be defined as a m	ninimum (	of quarte	erly.			
35										
36	History Note:	Authori	ty G.S.	143-215.65; 143-215.66; 143-	215.68;					
37		Eff. Fel	bruary I	1, 1976;						

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15A NCAC 02B .0511 is proposed for adoption as follows:
 2
      15A NCAC 02B .0511 INCORPORATION BY REFERENCE
 3
 4
      (a) The following sections of Title 40 of the Code of Federal Regulations (CFR) are incorporated by reference,
 5
      including subsequent amendments and editions, and shall apply throughout this Section except where procedural
 6
      details of the federal rules differ from procedures adopted elsewhere in this section, in which case the separately
 7
      adopted procedure governs. The current version of these regulations can be accessed free of charge at
 8
      http://www.gpo.gov/fdsys/.
 9
                       40 CFR Parts 122.2, 124.2, and 125.2: Definitions;
10
                       §122.4: Prohibitions):
11
                       §122.5 (a) and (b): Effect of permit;
12
                       §122.7 (b) and (c): Confidential information;
13
                       §122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;
14
                       §122.22: Signatories;
15
                       §122.23: Concentrated animal feeding operations;
16
                       §122.24: Concentrated aquatic animal production facilities;
17
               (9)
                       §122.25: Aquaculture projects;
18
               (10)
                     §122.26: Storm water discharges;
               (11) §122.27: Silviculture;
19
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               (12)
                     §122.28: General permits;
2.1
               (13)
                       §122.29 (a), (b), and (d): New sources and new dischargers;
22
               (14)
                       §122.30: NPDES stormwater regulations for small MS4s: objectives;
23
                       §122.31: NPDES stormwater regulations: role of Tribes;
24
                       §122.32: NPDES stormwater regulations for small MS4s: applicability;
               (16)
25
                       §122.33: NPDES stormwater regulations for small MS4s: application for permit;
               (17)
26
                       §122.34: NPDES stormwater regulations for small MS4s: permit requirements;
               (18)
27
               (19)
                       §122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;
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                       §122.36: NPDES stormwater regulations for small MS4s: compliance;
               (20)
29
               (21)
                       §122.37: NPDES stormwater regulations for small MS4s: evaluation;
               (22)
30
                       §122.41 (a)(1) and (b) through (n): Applicable permit conditions;
31
                       §122.42: Conditions applicable to specified categories of permits;
               (23)
32
                       §122.43: Establishing permit conditions;
               (24)
33
               (25)
                       §122.44: Establishing NPDES permit conditions;
34
                       §122.45: Calculating permit conditions;
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36 37 (27)

(29)

§122.46: Duration;

§122.47 (a): Schedules of compliance;

§122.48: Monitoring requirements;

Commented [TM1]: Change: Proposed new rule that incorporates multiple federal rules by reference. 40 CFR 123.25 requires approved states to implement most of these regulations, and NC has done so, but the state has yet to formally adopt them. (The same rule is proposed in Subchapter 02B, Sections 02B .0400 and 02H .0100.) Effect: In essence, a technical correction, as the state has implemented these rules all along.

1	(30)	§122.50: Disposal into wells;
2	(31)	§122.61: Permit transfer:
3	(32)	§122.62: Permit modification:
4	(33)	§122.64: Permit termination;
5	(34)	§124.3 (a): Application for a permit;
6	(35)	§124.5 (a), (c), (d), and (f): Modification of permits;
7	(36)	§124.6 (a), (c), (d), and (e): Draft permit;
8	(37)	§124.8: Fact sheets:
9	(38)	§124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e): Public notice;
10	(39)	§124.11: Public comments and requests for hearings;
11	(40)	§124.12 (a): Public hearings;
12	(41)	§124.17 (a) and (c): Response to comments;
13	(42)	§124.56: Fact sheets:
14	(43)	§124.57 (a): Public notice:
15	(44)	§124.59: Comments from government agencies;
16	(45)	§124.62: Decision on variances;
17	(46)	40 CFR Part 125, Subparts A (Technology-Based Treatment Requirements), B (Aquaculture), D
18		(Fundamentally Different Factors), H (Alternative Limitations, CWA Section 316(a)), I (Cooling
19		Water Intake Structures, New Facilities, CWA Section 316(b)), J (Cooling Water Intake Structures,
20		Existing Facilities, CWA Section 316(b)), and N (Cooling Water Intake Structures, Offshore Oil
21		and Gas Facilities, CWA Section 316(b));
22	(47)	40 CFR Parts 129 (Toxic Pollutant Effluent Standards) and 133 (Secondary Treatment Regulation),
23		and Subchapter N (Effluent Guidelines and Standards);
24	(48)	40 CFR Part 3: Electronic reporting;
25	(49)	40 CFR Part 136: Guidelines for establishing test procedures for the analysis of pollutants; and
26	(50)	40 CFR 401.15: List of toxic pollutants pursuant to CWA Section 307(a)(1).
27	(b) This rule is	not an exclusive list of federal regulations adopted by reference in this Section. Other rules of the
28	Section incorpo	rate some of these same federal regulations for clarity or emphasis and may incorporate additional
29	regulations not	listed in Paragraph (a).
30		
31	History Note:	Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5);
32		Eff. <date>.</date>
33		

Draft for Rule Readoption (2/9/2016)

15A NCAC 02B .0601 is proposed for amendment as follows:

### 15A NCAC 02B .0601 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): PURPOSE

The Goose Creek watershed in the Yadkin Pee-Dee River Basin provides habitat for an aquatic animal species that is listed as federally endangered by the U.S. Fish and Wildlife Service under the provisions of the Endangered Species Act, 16 U.S.C. 1531-1544. Maintenance and recovery of the water quality conditions required to sustain and recover the federally-listed endangered species thereby protects the biological integrity of the waters. The Goose Creek watershed, which includes Goose Creek (Index # 13-17-18), Stevens Creek (Index # 13-17-18-1), Paddle Branch (Index # 13-17-18-2), Duck Creek (Index # 13-17-18-3) and all tributaries, shall be protected by the site-specific management strategy described in Rules .0601 through .0609 .0608 of this Section.

The purpose of the actions required by this site-specific management strategy is for the maintenance and recovery of the water quality conditions required to sustain and recover the federally endangered Carolina heelsplitter (Lasmigona decorata) species. Management of the streamside zones to stabilize streambanks and prevent sedimentation are critical measures to restore water quality to sustain and enable recovery of the federally endangered Carolina heelsplitter. Site-specific management strategies shall be implemented to:

- control stormwater for projects disturbing one acre or more of land as described in Rule <u>.0602,.0602 of</u> this Section;
- (2) control wastewater discharges as described in Rule .0603, .0603 of this Section;
- (3) control toxicity to streams supporting the Carolina heelsplitter as described in Rule .0604, \_.0604 of this Section; and
- (4) maintain riparian buffers as described in Rules .0605 through .0609. .0608 of this Section.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;

25 Eff. January 1, 2009.26

Commented [A1]: Reference correction. .0609 was repealed. No, effect.

**Commented [A2]:** Added "of this section" to rule reference for clarity. No effect

Draft for Rule Readoption (12/6/2017)

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15A NCAC 02B .0602 is proposed for amendment as follows:

# 15A NCAC 02B .0602 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): STORMWATER CONTROL REQUIREMENTS

(a) Any new development activity that disturbs one acre or more of land within the Goose Creek watershed and will result in addition of impervious surface shall control and treat the difference in the stormwater runoff from the predevelopment and post-development conditions for the one-year, 24-hour storm, with structural stormwater controls, control measures (SCMs), with the exception of NC Department of Transportation and NC Turnpike Authority activities that shall be regulated in accordance with provisions of that agency's National Pollutant Discharge Elimination System NPDES (NPDES) Stormwater Permit. Development and redevelopment shall implement stormwater management measures that promote infiltration of flows and groundwater recharge for the purpose of maintaining stream base flow or the delegated local government shall maintain a written explanation when it is not practical to use infiltration methods.

- (b) Structural stormwater controls SCMs shall meet the following requirements:
  - (1) Remove an 85 percent average annual amount of Total Suspended Solids;
  - (2) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours, for detention ponds;
  - (3) Discharge the storage volume at a rate equal or less than the pre-development discharge rate for the one-year, 24 hour storm; and
  - (4) Meet Design of Stormwater Management Measures set forth in 15A NCAC 02H .1008. meet the relevant Minimum Design Criteria (MDC) set forth in 15A NCAC 02H .1050 through .1062.

(c) Local governments may submit a written request to the Commission for authority to implement and enforce the state's stormwater protection requirements of G.S. 143-214.7 and S.L. 2006-246 within their jurisdiction. The written request shall be accompanied by information that shows:

- (1) The local government has land use jurisdiction for the riparian buffer demonstrated by delineating the local land use jurisdictional boundary on USGS 1:24,000 topographical map(s) or other finer scale map(s):
- (2) The local government has the administrative organization, staff, legal authority, financial and other resources necessary to implement and enforce the state's stormwater requirements based on its size and projected amount of development;
- (3) The local government has adopted ordinances, resolutions, or regulations necessary to establish and maintain the state's stormwater requirements; and
- (4) The local government has provided a plan to address violations with civil or criminal remedies and actions as well as remedies that shall restore buffer functions on violation sites and provide a deterrent against the occurrence of future violations.

Commented [A1]: Term "structural" is not necessary to describe SCMs. No effect.

Commented [A2]: NC Turnpike Authority is now part of NCDOT. No effect.

Commented [A3]: Remove outdated rule reference and insert updated reference to recently adopted Minimum Design Criteria stormwater rules. No effect.

#### Draft for Rule Readoption (12/6/2017)

- (d) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local
   government based on standards as set out in Paragraph (c) of this Rule whether it has been approved, approved with
   modifications, or denied.
  - (e) The Commission, upon determination that a delegated local authority is failing to implement or enforce the requirements in keeping with a delegation, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the state's stormwater requirements.
  - (f) Limits of delegated local authority are as follows: The Commission shall have jurisdiction to the exclusion of local governments to implement the state's stormwater protection requirements for the following types of activities:
    - (1) Activities undertaken by the State;
      - (2) Activities undertaken by the United States;
- 13 (3) Activities undertaken by multiple jurisdictions; and
  - (4) Activities undertaken by local units of government.
    - (g) Recordkeeping requirements are as follows: Delegated local authorities shall maintain on-site records for a minimum of five years. Delegated local authorities must furnish a copy of these records to the Director within 30 days of receipt of a written request for the records. The Division of Water Quality Resources shall inspect local stormwater programs to ensure that the programs are being implemented and enforced in keeping with an approved delegation.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A; 143-214.7, S.L. 2006-246; Eff. February 1, 2009.

1	15A NCAC 02B	.0603 proposed for amendment as follows:
2		
3	15A NCAC 02B	.0603 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE
4		CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): WASTEWATER
5		CONTROL REQUIREMENTS
6	No new National	Pollution Pollutant Discharge Elimination System "NPDES" wastewater discharges or expansions to
7	existing discharg	es shall be permitted.
8		
9	History Note:	Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;
10		Eff. January 1, 2009.
11		

Draft for Rule Readoption (2/9/2016)

1 2	15A NCAC 02B	.0604 is proposed for amendment as follows:				
3	15A NCAC 02B	3.0604 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE				
4		CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): CONTROL				
5		TOXICITY INCLUDING AMMONIA				
6	No activity that	results in direct or indirect discharge is allowed if it causes toxicity to the Carolina heelsplitter				
7	(Lasmigona decorata) endangered mussel. For any direct or indirect discharge that may cause ammonia toxicity to the					
8	Carolina heelsplitter freshwater mussel, action shall be taken to reduce ammonia (NH3-N) inputs to achieve 0.5					
9	milligrams per li	ter or less of total ammonia based on chronic toxicity defined in <del>15A NCAC 02B .0202. Rule .0202 of</del>				
10	this Subchapter.	This level of total ammonia is based on ambient water temperature equal to or greater than 25 degrees				
11	Celsius.					
12						
13	History Note:	Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;				
14		Eff. February 1, 2009.				
15						

Commented [A1]: Formatting change for rule reference. No effect.

15A NCAC 02B .0605 is proposed for amendment as follows:

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16 17 15A NCAC 02B .0605 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): RIPARIAN BUFFER WIDTHS

In this the Goose Creek watershed, undisturbed riparian buffers are required within 200 feet of waterbodies within the 100-Year Floodplain and within 100 feet of waterbodies that are not within the 100-Year Floodplain. The 100-Year Floodplain is the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management. The riparian buffer shall consist of a vegetated area that is undisturbed except for uses provided in Rule .0607 of this Section. Within the buffer areas that are regulated by this Rule, redevelopment is allowed for residential structures and redevelopment of non residential structures is allowed provided that less than an additional half acre is disturbed during the redevelopment activity for non residential structures. Redevelopment is defined in 15A NCAC 02H .1002(14). Exceptions to undisturbed forested riparian buffer requirements are set forth in Rule .0607 of this Section. Activities shall require stormwater control as required by Rule .0602 of this Section.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;

18 Eff. January 1, 2009.

Commented [HK1]: No effect - clarification

Commented [HK2]: No effect – moved to below

**Commented [HK3]:** No effect – clarification/reorganization

Commented [HK4]: No effect – Moved to Rule .0607

**Commented [HK5]:** No effect – clarification/reorganization

Commented [HK6]: No effect – Moved to Rule .0607

1	15A NCAC 02B .0606 is	s proposed for amendment as follows:	
2			
3	15A NCAC 02B .0606	SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE	
4		CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): VARIANCE FOR	
5		ACTIVITIES WITHIN RIPARIAN BUFFERSAUTHORIZATION	
6		CERTIFICATES	 Commented [HK1]: no effect - update terminology;
7	(a) PURPOSE. Persons	The following requirements shall apply to persons who wish to undertake uses designated as	moved authorization certificate language from .0607 into this
8	allowable upon authoriz	ation, allowable with mitigation upon authorization, or allowable with exceptionprohibited	Rule  Commented [HK2]: no effect – added header
9	within the protected ripa	rian buffer area may pursue a variance.as specified in Rule .0607 of this Section. Persons	Commented [HK3]: no effect - grammar
10	who wish to undertake t	orest harvesting beyond the requirements set forth in 15A NCAC 02B .0608 may pursue a	Commented [HK3]: no effect - grammar
11	variance.		 Commented [HK4]: no effect – update terminology
12	(b) AUTHORIZATION	CERTIFICATES. Persons who wish to undertake uses designated in Rule .0607 of this	
13	Section as allowable upo	on authorization or allowable with mitigation upon authorization shall submit an application	
14	requesting an Authorizat	ion Certificate from the Authority.	
15	(1) The ap	plication shall specify:	
16	(A)	The name, address and phone number of the applicant;	
17	(B)	If the property owner is different than the applicant, specify the name, address and phone	
18		number of the property owner and provide authorization from the owner for the application;	 Commented [HK5]: no effect - moved from Rule .0607
19	(C)	If the applicant is a corporation, the state in which it is domesticated, the name of its	
20		principal officers, the name and address of the North Carolina process agency, and the	
21		name, address and phone number of the individual who shall be primarily responsible for	
22		the conduct of the activity for which certification is sought;	 Commented [HK6]: no effect - clarification – similar to
23	(D)	The nature of the activity to be conducted by the applicant;	requirement for 401 WQC
24	<u>(E)</u>	The location of the activity, including the jurisdiction;	
25	<u>(F)</u>	A map of sufficient detail to accurately delineate the boundaries of the land to be utilized	
26		in carrying out the activity, the location and dimensions of any disturbance in riparian	
27		buffers associated with the activity, and the extent of riparian buffers on the land;	
28	(G)	An explanation of why this plan for the activity cannot be practically accomplished,	
29		reduced, relocated or reconfigured to avoid or better minimize disturbance to the riparian	
30		buffer, preserve aquatic life and habitat and protect water quality;	
31	<u>(H)</u>	Plans for any best management practices proposed to be used to control the impacts	
32		associated with the activity; and	 Commented [HK7]: no effect - moved from Rule .0607
33	(I)	For uses designated as allowable with mitigation upon authorization or allowable with	
34		exception, a mitigation proposal in accordance with Rule .0704 of this Section.	 Commented [HK8]: no effect – clarification
35	(2) The ap	plicant shall certify that the project meets all the following criteria for finding no practical	
36	alterna	tives:	

1		(A) The basic project purpose cannot be practically accomplished in a manner that would better	
2		minimize disturbance, preserve aquatic life and habitat, and protect water quality;	
3		(B) The use cannot practically be reduced in size or density, reconfigured or redesigned to	
4		better minimize disturbance, preserve aquatic life and habitat, and protect water quality;	
5		(C) Best management practices shall be used if necessary to minimize disturbance, preserve	
6		aquatic life and habitat, and protect water quality; and	Commented [HK9]: no effect – moved from Rule .0607
7		(D) Why alternatives cannot be practically accomplished to avoid or minimize the disturbance.	Commented [HK10]: no effect – clarification
8	(3)	The Authority must consider the impacts that may affect conditions required to sustain and recover	
9		the federally endangered Carolina heelsplitter (Lasmigona decorata).	
10	(4)	Within 60 calendar days of receipt of a complete application package that addresses Subparagraph	
11		(b)(1) and (b)(2) of this Rule, the Authority shall issue an Authorization Certificate if the Authority	
12		makes a finding of "no practical alternatives" and the applicant also satisfies other applicable	
13		requirements as described in Subparagraph (b)(1) through (b)(3) of this Rule. Failure to act within	
14		60 calendar days of receipt of a complete application shall be construed as a finding of "no practical	
15		alternatives" and an Authorization Certificate shall be issued by the Authority to the applicant unless	Commented [HK11]: no effect – moved from Rule .0607
16		one of the following occurs:	<u> </u>
17		(A) The applicant agrees, in writing, to a longer period;	
18		(B) The applicant fails to furnish information necessary for the Authority's decision;	
19		(C) The applicant refuses Authority staff access to its records or premises for the purpose of	
20		gathering information necessary for the Authority's decision; or	
21		(D) Information necessary for the Authority's decision is unavailable.	Commented [HK12]: no effect – clarification – similar to
22	(5)	The Authority may attach conditions to the Authorization Certificate that support the purpose, spirit	401 WQC rules
23		and intent of the riparian buffer protection program.	
24	(6)	Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to	
25		G.S. 150B. Request for appeals of Authorization Certificates issued by the delegated local authority	
26		shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.	Commented [HK13]: no effect – moved from Rule .0607
27	(c) AUTHORIZ	ZATION CERTIFICATES WITH EXCEPTIONS. Persons who wish to undertake uses designated in	
28	Rule .0607 of	this Section as allowable with exception shall submit an application requesting an Authorization	
29	Certificate with	Exception. The variance Authorization Certificate with Exception reviewrequest procedure shall be	Commented [HK14]: less stringent: for uses not listed in
30	as follows:		the table, instead of requesting a major variance, applicants
31	(1)	For any variance request, the Division of Water Quality shall make a finding of fact as to whether	will request an authorization certificate with exception.
32		the following requirements have been met: An Authorization Certificate with Exception shall require	
33		that all of the following conditions are met:	Commented [HK15]: no effect – Clarify that these
34		(a)(A) There are practical difficulties or unnecessary hardships that prevent compliance with the	conditions must be met to receive an authorization certificate
35		strict letter of the riparian buffer protection requirements. Practical difficulties or	with exception.
36		unnecessary hardships shall be evaluated in accordance with the following:	Commented [HK16]: less stringent simplified
		2 of 5	

1		( <u>i)(B)</u>	If the applicant complies with the provisions of the buffer requirements, he/shehe or she	
2			can secure no reasonable return from, nor make reasonable use of, his/herhis or her	
3			property. Merely proving that the variance Authorization Certificate with Exception would	
4			permit_allow_a greater profit from the property is not adequate justification for a	
5			variance: for an Authorization Certificate with Exception. Moreover, the Division of Water	
6			Quality Authority shall consider whether the variance Authorization Certificate with	
7			Exception is the minimum possible deviation from the terms of the buffer requirements	Commented [HK17]: no effect – Clarification
8			that will make reasonable use of the property possible.	
9		(ii)	The hardship results from application of the buffer requirements to the property rather than	
10			from other factors such as deed restrictions or other hardship.	Commented [HK18]: less stringent - Removed hardship
11		(iii)(C)	The hardship is due to the physical nature of the applicant's property and is unique to the	
12			applicant's property, such as its size, shape, or topography, such that compliance with	
13			provision of this Rule would not allow reasonable use of the property-topography.	Commented [HK19]: less stringent - Simplified
14		(iv)(D)	The applicant did not cause the hardship by knowingly or unknowingly violating the buffer	
15			<del>requirements.</del> hardship.	Commented [HK20]: less stringent: Removed language
16		<del>(v)</del>	The applicant did not purchase the property after the effective date of this Rule, and then	related to violations
17			request a variance.	Commented [HK21]: less stringent: Removed hardship
18		(b)(E)	The variance requested Authorization Certificate with Exception is in harmony with the	
19			general spirit, purpose and intent of the State's riparian buffer protection requirements and	
20			preserves its spirit; and	
21		<del>(c)</del>	In granting the variance, the public safety and welfare have been assured, water quality has	
22			been protected, and substantial justice has been done.requirements, will protect water	
23			quality, will secure public safety and welfare, and will preserve substantial justice.	Commented [HK22]: less stringent: simplified
24	(2)	MINO	R EXCEPTIONS. An Authorization Certificate with Minor Exception request pertains to	
25		allowab	ele with exception activities that are proposed to impact equal to or less than one-third of an	
26		acre of	riparian buffer.	
27		(A)	Authorization Certificate with Minor Exception requests shall be reviewed based on the	
28			criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.	
29		(B)	Within 60 calendar days of receipt of a complete application package that addresses	
30			Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall issue an	
31			Authorization Certificate with Minor Exception if the Authority makes a finding that the	
32			criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant	
33			satisfies other applicable requirements as described in Paragraph (b) and Subparagraph	
34			(c)(1) of this Rule. If the Authority determines that all of the requirements in	
35			Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a	
36			final decision denying the Authorization Certificate with Minor Exception.	Commented [HK23]: less stringent: Added new provision
				for a minor exception

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MAJOR EXCEPTIONS. A variance An Authorization Certificate with Major Exception request pertains to any activity that is proposed to impact any portionallowable with exception activities that are proposed to impact greater than one-third of an acre of the riparian buffer. If the Division of Water Quality has determined that a major variance request meets the requirements in Item (1) of this Rule, then it

- (A) Authorization Certificate with Major Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
- (B) shall prepare a preliminary finding wWithin 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall prepare a preliminary finding as to whether the criteria in Subparagraphs (b)(2) and (c)(1) of this Rule have been met.—and submit it to the Environmental Management Commission.
- (C) Notice of each pending complete application for an Authorization Certificate with Major

  Exception, including the primary findings prepared by the Authority, shall be posted on
  the Division's website and sent to all individuals on the Mailing List, as described in 15A

  NCAC 02H .0503 (g), at least 30 calendar days prior to proposed final action by the
  Authority on the application.
  - days after receipt by the Director. Requests for appeals of determinations that the requirements of Item (1) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division of Water Quality or the appropriate Board of Adjustments under G.S. 160A-388 or G.S. 153A-345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees Within 60 calendar days following the notice as described in SubPart (c)(3)(C) of this Rule, upon the Authority's determination that all of the requirements in Item (1)Subparagraphs (b)(2) and (c)(1) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings.met, the Authority shall issue an Authorization Certificate with Major Exception. If the Authority determines that all of the requirements in Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a final decision denying the Authorization Certificate with Major Exception. The following actions shall be taken depending on the Commission's decision on the major variance request:
    - (a) Upon the Commission's approval, the Division of Water Quality shall issue a final decision granting the variance.
    - (b) Upon the Commission's approval with conditions or stipulations, the Division of Water Quality shall issue a final decision, which includes these conditions or stipulations.

Commented [HK24]: No effect - grammar

**Commented [HK25]:** less stringent Added threshold for major exception to only include impacts to greater than 1/3 acre of buffer.

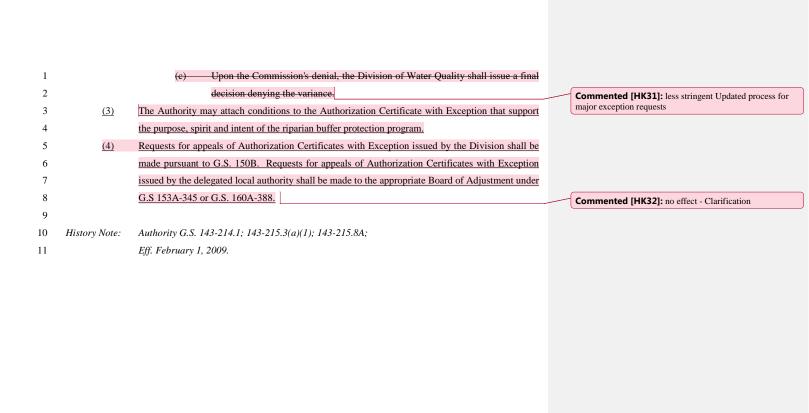
Commented [HK26]: No effect - reorganization

**Commented [HK27]:** less stringent Establishes a timeframe to process major exceptions

**Commented [HK28]:** less stringent Updated process for major exception requests

Commented [HK29]: less stringent Because these are not variances, they will not come before the EMC for a decision. A public notice will be provided of all major exception requests.

**Commented [HK30]:** less stringent Establishes a timeframe to process major exceptions



15A NCAC 02B .0607 is proposed for amendment as follows: 1 2 SITE SPECIFIC WATER OUALITY MANAGEMENT PLAN FOR THE GOOSE 3 15A NCAC 02B .0607 CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): BUFFER TYPES 4 AND MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS 5 (a) DEFINITIONS. For the purpose of this Rule and Rules .0605, .0606 and .0608 of this Section, these terms shall 6 7 be defined as found in Rule .0610 of this Section and as follows: 8 (1) "Authority' means either the Division or a local government that has been delegated pursuant this 9 Rule to implement the riparian buffer program. 10 'Riparian buffer' means the area as defined in Paragraph (c) of this Rule. (b) APPLICABILITY. This Rule applies to all landowners and other persons including local governments, state and 11 federal entities conducting activities within the riparian buffers as described in Paragraph (c) of this Rule in the Goose 12 13 Commented [HK1]: no effect - clarification 14 (a)(c) RIPARIAN BUFFER. BUFFERS PROTECTED. The protected riparian buffer shall consist of an area that is 15 undisturbed except for uses provided for in the table in this Rule. A waterbody shall be considered to be present if the feature is shown as described in the applicability paragraph of 15A NCAC 02B .0233 (3) and 02B .0233(3)(a)(i) (iii). 16 The location of the riparian buffer shall be as follows: The following minimum criteria shall be used for identifying 17 18 regulated buffers: Commented [HK2]: no effect - reorganization (1) 19 A surface water shall be subject if the feature is approximately shown on any of the following 20 references: (A) The most recent version of the published manuscript of the soil survey map that shows 2.1 stream layers prepared by the Natural Resources Conservation Service of the United States 22 23 Department of Agriculture; The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps (B) 24 25 prepared by the United States Geologic Survey (USGS); or Commented [HK3]: no effect - moved from paragraph (a), which referenced neuse rule Other maps approved by the Geographic Information Coordinating Council and by the 26 27 Environmental Management Commission as more accurate than those identified in Subparagraph (c)(4)(A) and (c)(4)(B) of this Rule. Other maps may be submitted to the 28 29 Division for review and recommendation to the Environmental Management Commission. 30 Prior to recommendation to the Environmental Management Commission, the Division 31 shall issue a 30-calendar day public notice through the Division's Mailing List in 32 accordance with 15A NCAC 02H .0503. Division staff shall present recommendations 33 including comments received during the public notice period to the Environmental Management Commission for a final decision. Maps approved under this Subparagraph 34 35 shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Paragraph (e) of this Rule. 36  $\begin{array}{l} \textbf{Commented [HK4]: Less stringent-added flexibility for a $3^{rd}$ } \\ map to be used-language from SL 2009-484 for Jordan buffer rules \\ \end{array}$ 

1 of 34

1	<u>(2)</u>	This Rule shall apply to activities conducted within riparian buffers as set forth in Rule .0605 of this	
2		Section.	
3	(3)	Wetlands adjacent to surface waters or within the buffer width as set forth in Rule .0605 of this	
4		Section shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC	
5		<u>02H .0506.</u>	
6	(4)	Stormwater runoff from activities conducted outside the riparian buffer shall comply with Paragraph	
7		(h) of this Rule.	Commented [HK5]: no effect – reorganization and clarification
8	<del>(1)</del> (5)	For streams, the riparian buffer shall begin at the most landward limit of the top of bank or the rooted	
9		herbaceous vegetation and extend landward on all sides of the surface water, stream, measured	
10		horizontally on a line perpendicular to the surface water.stream (where a stream begins or ends,	
11		including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the	
12		required distance shall be measured as a radius around the beginning or the end).	Commented [HK6]: no effect – codifying policy
13	<del>(2)</del> (6)	For ponds, lakes and reservoirs located within a natural drainage way, the riparian buffer shall begin	
14		at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend	
15		landward, measured horizontally on a line perpendicular to the surface water.	
16	<u>(7)</u>	A riparian buffer may be exempt from this Rule as described in Paragraphs (e), (f) and (g) of this	
17		Rule.	
18	(8)	No new clearing, grading or development shall take place nor shall any new building permits be	
19		issued in violation of this Rule.	Commented [HK7]: no effect - clarification
20	(d) ON-SITE D	ETERMINATION. When a landowner or other affected party believes that the maps listed in Sub-	
21	paragraph (c)(1)	of this Rule have inaccurately depicted surface waters or the specific origination point of a stream,	
22	or the specific or	igination point of a stream is in question or unclear, he or she shall request the Authority to make an	
23	on-site determin	ation. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-	
24	214.25A. Regis	stered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina	
25	Forest Service o	f the Department of Agriculture and Consumer Services can make on-site determinations for forest	
26	harvesting opera	tions and practices. On-site determinations shall expire five years from the date of the determination.	
27	Any disputes over	er on-site determinations shall be referred to the Director in writing within 60 calendar days of written	
28	notification from	the Authority. The Director's determination is subject to review as provided in Articles 3 and 4 of	
29	G.S. 150B.		
30	(e) EXEMPTIO	N BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Sub-	
31	paragraph (c)(1)	of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one	
32	of the following	categories:	
33	(1)	Ditches and manmade conveyances other than modified natural streams unless constructed for	
34		navigation or boat access.	
35	(2)	Manmade ponds and lakes that are not fed by an intermittent or perennial stream nor have a direct	
36		discharge point to an intermittent or perennial stream.	
37	(3)	Ephemeral (stormwater) streams.	

1	(4)	The absence on	the grour	nd of a corresponding perennial waterbody, intermittent waterbody, lake,				
2		pond or estuary.						
3	( <del>b)</del> ( <u>f)</u> EXEMPT	TION WHEN EXIS	STING U	ISES ARE PRESENT AND ONGOING. The buffer requirements in this				
4	Rule do not apply to portions of the riparian buffer where a use is existing and ongoing.							
5	(1)	A use that shall b	e conside	ered existing if:				
6		(A)	It was p	resent within the riparian buffer as of the effective date of this Rule January				
7			1, 2009	and has continued to exist since that time.				
8		(B)	It was a	deemed allowable activity as listed in Paragraph (i) of this Rule.				
9		(C)	It was	conducted and maintained pursuant to an Authorization Certificate or				
10			Varianc	e issued by the Authority.				
11		(D)	The pro	ject or proposed development are determined by the Authority to meet at				
12			least on	e of the following criteria:				
13			(i)	Project requires a 401 Certification/404 Permit and these were issued				
14				prior to January 1, 2009 and are still valid;				
15			(ii)	Project requires a state permit, such as a landfill, NPDES wastewater				
16				discharge, land application residuals and road construction activities, and				
17				has begun construction or is under contract to begin construction and has				
18				received all required state permits prior to January 1, 2009;				
19			(iii)	Project is being reviewed through the Clean Water Act Section				
20				404/National Environmental Policy Act Merger 01 Process or Safe				
21				Accountable Flexible Efficient Transportation Equity Act; a Legacy for				
22				Users (published by the US Army Corps of Engineers and Federal				
23				Highway Administration, 2003) or its immediate successor and that have				
24				reached agreement with Department on avoidance and minimization by				
25				January 1, 2009; or				
26			(iv)	Project is not required to be reviewed by the Clean Water Act Section				
27				404/National Environmental Policy Act Merger 01 Process or Safe				
28				Accountable Flexible Efficient Transportation Equity Act; a Legacy for				
29				Users (published by the US Army Corps of Engineers and Federal				
30				Highway Administration, 2003) or its immediate successor if a Finding				
31				of No Significant Impact has been issued for the project and the project				
32				has the written approval of the Division prior to January 1, 2009.				
33	(2)	Existing and on	going us	es shall include include, but not be limited to, agriculture, buildings,				
34		industrial facilit	ies, com	mercial areas, transportation facilities, maintained lawns, (i.e. can be				
35		mowed without	a chains	aw or bush-hog), maintained (i.e vegetation management has occurred				
36		within the last to	en years)	_utility lines-line corridors and on-site sanitary sewage systems.sewage				

Commented [HK8]: no effect – moved from paragraph (a), which referenced neuse rule

1		systems, any of which involve either specific periodic management of vegetation or displacement
2		of vegetation by structures or regular activity.
3	(3)	Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is
4		except from the buffer requirements of this Rule.
5	(4)	_Change of ownership through purchase or inheritance is not a change of use.
6	(5)	_Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains
7		similarly vegetated, no impervious surfacebuilt upon area is added within the buffer area where it
8		did not exist as of the effective date of this Ruleprior to January 1, 2009, and existing diffuse flow
9		is maintained the site is in compliance with Paragraph (h) of this Rule.
10	(2)	A use that can be documented to the Division of Water Quality that meets at least one of the
11		following criteria:
12		(A) Project requires a 401 Certification/404 Permit, issued prior to the effective date of this
13		Rule and are still valid;
14		(B) Project requires a state permit, such as a landfill, NPDES wastewater discharge, land
15		application residuals and road construction activities, and has begun construction or is
16		under contract to begin construction and has received all required state permits prior to the
17		effective date of this Rule;
18		(C) Project is being reviewed through the Clean Water Act Section 404/National
19		Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient
20		Transportation Equity Act; a Legacy for Users (published by the US Army Corps of
21		Engineers and Federal Highway Administration, 2003) or its immediate successor and that
22		have reached agreement with Department of Environment and Natural Resources on
23		avoidance and minimization by the effective date of this Rule; or
24		(D) Project is not required to be reviewed by the Clean Water Act Section 404/National
25		Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient
26		Transportation Equity Act; a Legacy for Users (published by the US Army Corps of
27		Engineers and Federal Highway Administration, 2003) or its immediate successor if a
28		Finding of No Significant Impact has been issued for the project and the project has the
29		written approval of the Division of Water Quality prior to the effective date of this Rule.
30	<del>(5)</del> (6)	At This Rule shall apply at the time an existing and ongoing use is changed to another use, use, the
31		buffer requirement of this Rule shall apply. Change of use includes the following: Change of use
32		shall involved the initigation of any activity not defined as existing and ongoing in Sub-paragraphs
33		(f)(1) through $(f)(5)$ of this Rule.
34		(A) To add impervious surface within the riparian buffer;
35		(B) An agricultural operation within the riparian buffer is converted to a non-agricultural; or
36		(C) a lawn within the riparian buffer ceases to be maintained.

Commented [HK9]: no effect – reorganized and clarifications; updated terminology, dates and citations

1	(g) EXEMPTION	ON FOR	PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule	
2	shall not apply t	o a fresh	water pond if all of the following conditions are met:	
3	(1)	The pro	operty on which the pond is located is used for agriculture as that term is defined in G.S. 106-	
4		581.1.		
5	(2)	Except	for this Rule, the use of the property is in compliance with all other water quality and water	
6		quantit	y statutes and rules applicable to the property before January 1, 2009.	
7	(3)	The po	and is not a component of an animal waste management system as defined in G.S. 143-	
8		215.10	B (3).	 Commented [HK10]: no effect - added per SL 2013-413
9	(c) DIFFUSE	FLOW I	REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by	
10	dispersing conce	entrated f	low and reestablishing vegetation, as follows:	
11	(1)	Concer	ntrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow	
12		before	the runoff enters the riparian buffer; and	
13	(2)	Periodi	c corrective action to restore diffuse flow shall be taken if necessary to impede the formation	
14		of eros	ion gullies.	
15	(h) STORMWA	ATER R	UNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage	
16	ditches, roadside	e ditches.	and stormwater conveyances. The following stormwater conveyances through the riparian	
17	buffer are either	r deemed	allowable or allowable upon authorization, as defined in Subparagraph (i)(1) of this Rule,	
18	provided that th	ey do not	erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater	
19	conveyances thr	ough the	riparian buffer that are not listed below shall be allowable with exception as defined in Part	
20	(i)(1)(E) of this	Rule		 Commented [HK11]: Less stringent – removed diffuse flow requirement; instead provide options for stormwater discharges
21	(1)	The fol	llowing are deemed allowable as defined in Part (i)(1)(A) of this rule:	Commented [HK12]: no effect - organization
22		(A)	New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002,	(
23			when the Primary SCM is designed to treat the drainage area to the conveyance and that	
24			comply with a stormwater management plan reviewed and approved under a state	
25			stormwater program or a state-approved local government stormwater program;	 Commented [HK13]: Less stringent – new use – allows for DWR to accept local government review of a SMP without having
26		(B)	New stormwater flow to existing drainage conveyances provided that the addition of new	to review for meeting diffuse flow
27			flow does not result in the need to alter the conveyance.	 Commented [HK14]: no change – moved from table
28	(2)	The fol	llowing are allowable upon authorization as defined in Part (i)(1)(B) of this Rule:	 Commented [HK15]: no effect - organization
29		(A)	New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002	
30			when the Primary SCM is provided to treat the drainage area to the conveyance but are not	
31			approved under a state stormwater program or a state-approved local government	
32			stormwater program;	 Commented [HK16]: no change moved from table
33		(B)	New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet	
34			per second during the peak flow from the 0.75 inch per hour storm;	 Commented [HK17]: Less stringent – new use
35		(C)	New stormwater runoff that has been treated through a level spreader-filter strip that	
36			complies with 15A NCAC 02H .1059;	 Commented [HK18]: no change – from diffuse flow

1		(D)	Realignment of existing drainage conveyances applicable to publicly funded and	
2			maintained linear transportation facilities when retaining or improving the design	
3			dimensions provided that no additional travel lanes are added and the minimum required	
4			roadway typical section is used based on traffic and safety considerations;	
5		(E)	Realignment of existing drainage conveyances retaining or improving the design	
6			dimensions provided that the size of the drainage area and the percent built-upon area	
7			within the drainage area remain the same	 Commented [HK19]: Less stringent – new uses
8		(F)	New or altered drainage conveyances applicable to publicly funded and maintained linear	
9			transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best	
10			Management Practices Toolbox, are employed:	 Commented [HK20]: Less stringent – New Use
11		(G)	New drainage conveyances applicable to publicly funded and maintained linear	
12			transportation facilities that do not provide a stormwater management facility due to	
13			topography constraints provided other measures are employed to protect downstream water	
14			quality to the maximum extent practical;	
15		(H)	New drainage conveyances where the drainage area to the conveyance has no new built-	
16			upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass	
17			of existing drainage only.	 Commented [HK21]: Less stringent – New uses
18	(d)(i) REQUIRE	EMENT	S FOR CATEGORIES OF USES AND MITIGATION. USES. Uses within the riparian	
19	buffer, or outside	the buf	er with hydrological impacts on the riparian buffer, shall be designated as exempt, deemed	
20	allowable, poten	tially al	lowable, allowable upon authorization, allowable with mitigation upon authorization,	
21	allowable with ex	contion	and the dead and the delication in the dead of the delication in the Delication in the College in the	
	•	серион	or prohibited and prohibited location in the chart of uses in this Rule shall have the following	
22	requirements:	серион	or pronibited, and prombited location in the chart of uses in this Rule shall have the following	
22 23	•	*	al new uses shall have the following requirements:	 Commented [HK22]: no effect – clarification
	•	Potentia		 Commented [HK22]: no effect – clarification  Commented [HK23]: no effect - updated terminology
23	•	Potentia	al new uses shall have the following requirements:	 
23 24	•	Potentia	al new uses shall have the following requirements:  EXEMPT.DEEMED ALLOWABLE. Uses designated as exempt deemed allowable in	 
23 24 25	•	Potentia	Lexis and the following requirements:  EXEMPT. DEEMED ALLOWABLE. Uses designated as exempt deemed allowable in Subparagraphs (h)(1) and (i)(3) of this Rule may occurare allowed within the riparian	 
23 24 25 26	•	Potentia	EXEMPT.DEEMED ALLOWABLE. Uses designated as exempt deemed allowable in Subparagraphs (h)(1) and (i)(3) of this Rule may occurare allowed within the riparian buffer. Exempt Deemed allowable uses shall be designed, constructed and maintained to	 
23 24 25 26 27	•	Potentia	EXEMPT.DEEMED ALLOWABLE. Uses designated as exempt deemed allowable in Subparagraphs (h)(1) and (i)(3) of this Rule may occurare allowed within the riparian buffer. Exempt Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality	 
23 24 25 26 27 28	•	Potentia	EXEMPT.DEEMED ALLOWABLE. Uses designated as exempt_deemed allowable in Subparagraphs (h)(1) and (i)(3) of this Rule may occurare allowed within the riparian buffer. Exempt_Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable practicable, including construction, monitoring and maintenance	 
23 24 25 26 27 28 29	•	Potentia	EXEMPT.DEEMED ALLOWABLE. Uses designated as exempt deemed allowable in Subparagraphs (h)(1) and (i)(3) of this Rule may occurare allowed within the riparian buffer. Exempt Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable practicable, including construction, monitoring and maintenance activities. In addition, exempt deemed allowable uses shall meet requirements listed in the	Commented [HK23]: no effect - updated terminology
23 24 25 26 27 28 29 30	•	Potentia:	EXEMPT.DEEMED ALLOWABLE. Uses designated as exempt deemed allowable in Subparagraphs (h)(1) and (i)(3) of this Rule may occurare allowed within the riparian buffer. Exempt Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable practicable, including construction, monitoring and maintenance activities. In addition, exempt deemed allowable uses shall meet requirements listed in the tableSubparagraph (h)(3) of this Rule for the specific use.	 Commented [HK23]: no effect - updated terminology  Commented [HK24]: no effect - clarification
23 24 25 26 27 28 29 30 31	•	Potentia:	EXEMPT.DEEMED ALLOWABLE. Uses designated as exempt_deemed allowable in Subparagraphs (h)(1) and (i)(3) of this Rule may occurare allowed within the riparian buffer. Exempt_Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable practicable, including construction, monitoring and maintenance activities. In addition, exempt_deemed allowable uses shall meet requirements listed in the tableSubparagraph (h)(3) of this Rule for the specific use.  POTENTIALLY ALLOWABLE ALLOWABLE UPON AUTHORIZATION. Uses	Commented [HK23]: no effect - updated terminology  Commented [HK24]: no effect - clarification
23 24 25 26 27 28 29 30 31 32 33 34	•	Potentia:	EXEMPT.DEEMED ALLOWABLE. Uses designated as exempt deemed allowable in Subparagraphs (h)(1) and (i)(3) of this Rule may occurare allowed within the riparian buffer. Exempt Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable practicable, including construction, monitoring and maintenance activities. In addition, exempt deemed allowable uses shall meet requirements listed in the tableSubparagraph (h)(3) of this Rule for the specific use.  POTENTIALLY ALLOWABLE ALLOWABLE UPON AUTHORIZATION. Uses designated as potentially allowable upon authorization in Subparagraphs (h)(2) and (i)(3) of this Rule require a written Authorization Certificate from the Authority for impactsmay proceed within the riparian buffer pursuant to Rule .0606 of this Section provided that there	 Commented [HK23]: no effect - updated terminology  Commented [HK24]: no effect - clarification
23 24 25 26 27 28 29 30 31 32 33	•	Potentia:	EXEMPT.DEEMED ALLOWABLE. Uses designated as exempt_deemed allowable in Subparagraphs (h)(1) and (i)(3) of this Rule may occurare allowed within the riparian buffer. Exempt_Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable.practicable, including construction, monitoring and maintenance activities. In addition, exempt_deemed allowable uses shall meet requirements listed in the tableSubparagraph (h)(3) of this Rule for the specific use.  POTENTIALLY ALLOWABLE.ALLOWABLE UPON AUTHORIZATION. Uses designated as potentially allowable upon authorization in Subparagraphs (h)(2) and (i)(3) of this Rule require a written Authorization Certificate from the Authority for impactsmay proceed within the riparian buffer pursuant to Rule .0606 of this Section.provided that there are no practical alternatives to the requested use pursuant to this Rule. These uses require	Commented [HK23]: no effect - updated terminology  Commented [HK24]: no effect - clarification
23 24 25 26 27 28 29 30 31 32 33 34 35 36	•	Potentia:	EXEMPT.DEEMED ALLOWABLE. Uses designated as exempt deemed allowable in Subparagraphs (h)(1) and (i)(3) of this Rule may occurare allowed within the riparian buffer. Exempt Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable. practicable, including construction, monitoring and maintenance activities. In addition, exempt deemed allowable uses shall meet requirements listed in the table Subparagraph (h)(3) of this Rule for the specific use.  POTENTIALLY ALLOWABLE.ALLOWABLE UPON AUTHORIZATION. Uses designated as potentially allowable upon authorization in Subparagraphs (h)(2) and (i)(3) of this Rule require a written Authorization Certificate from the Authority for impactsmay proceed within the riparian buffer pursuant to Rule .0606 of this Section provided that there are no practical alternatives to the requested use pursuant to this Rule. These uses require written authorization from the Division of Water Quality. Some of these uses require	Commented [HK23]: no effect - updated terminology  Commented [HK24]: no effect - clarification  Commented [HK25]: no effect - updated terminology
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1		(C)	ALLOWABLE WITH MITIGATIO	N UPON	AUTHORIZAT	ION. Uses des	signated as	 Commented [HK27]: no effect – updated terminology
2			allowable with mitigation upon author	orization in	Subparagraph (	i)(3) of this Ru	le require a	
3			written Authorization Certificate from	n the Autho	ority for impacts	within the ripa	rian buffer	
4			pursuant to Rule .0606 of this Section	n and an ap	propriate mitiga	ntion strategy h	as received	
5			written approval pursuant to Paragra	ph (j) of this	s Rule.			 Commented [HK28]: no effect - moved from Subparagraph (B)
6		(3)(D)	PROHIBITED. Uses designated as p	rohibited <del>or</del>	not included in	this tablein Su	oparagraph	above
7			(i)(3) of this Rule may not proceed v	within the ri	parian buffer u	nless a variance	is granted	
8			pursuant to Rule .0606. Site specific	e mitigation	.0226 of this Se	ection. Mitigati	on may be	 Commented [HK29]: no effect - clarification
9			required as one a condition of a varia	nce approv	al.			
10		<u>(E)</u>	ALLOWABLE WITH EXCEPTION	. Uses not d	lesignated as de	emed allowable	, allowable	
11			upon authorization, allowable with	h mitigatio	n upon author	rization or pro	hibited in	
12			Subparagraph (i)(3) of this Rule requ	ire a writter	Authorization	Certificate with	Exception	
13			from the Authority for impacts with	in the ripar	ian buffer pursi	uant to Rule .0	606 of this	
14			Section and an appropriate mitigation	n strategy th	at has received	written approv	al pursuant	
15			to Paragraph (j) of this Rule.					 Commented [HK30]: Less stringent – New category – instead
16		(4) MI	TIGATION. Persons who wish to unc	dertake uses	designated as	allowable with	mitigation	of deeming all activities not listed in the table as "prohibited" they will go through buffer authorization process but still have to meet
17			shall obtain approval for a mitigation	proposal p	ursuant to 15A	NCAC 02B .06	<del>09.</del>	hardships
18	(2)	The Un	ited States Environmental Protection	Agency Er	dangered Spec	ies Protection	Program at	Commented [HK31]: no effect – moved to paragraph (j) below
19		www.ej	oa.gov/espp and NC Pesticide Board i	egulates pe	sticide applicati	on (see rules at	02 NCAC	
20		09L .22	01 through .2203).					 Commented [HK32]: no effect – moved from paragraph (l)
21	(3)	The foll	owing table sets out potential new use	s within the	riparian buffer,	or outside the	buffer with	
22		hydrolo	gical impacts on the riparian buffer, a	and designa	tes them as dee	med allowable	, allowable	
23		upon au	thorization, allowable with mitigation	upon autho	rization or proh	ibited:		 Commented [HK33]: no effect – moved from paragraph (l)
				Deemed	Allowable	Allowable	Prohibited	 Commented [HK34]: no effect – updated terminology
				Allowable	Upon	with		
					Authorization	Mitigation		
						Upon		
						Authorization		
	Airport facilitie	<u>s:</u>						
	<ul> <li>Vegetation re</li> </ul>	moval act	ivities necessary to comply with	<u>X</u>				
	Federal Av	iation Adr	ninistration requirements (e.g. line of					
	sight requir	rements) p	provided the disturbed areas are					
	stabilized a							 Commented [HK35]: no effect - codifying policy
	Airport facili	ties that ir	npact equal to or less than one-third		<u>X</u>			
	of an acre of	of riparian	buffer					
	Airport facili	ties that ir	npact greater than one-third of an acre			<u>X</u>		
	of riparian	buffer						 Commented [HK36]: no effect – moved from paragraph (l)
			7 of 34					

					_ //	
	Deemed	Allowable	Allowable	Prohibited	ı	 Commented [HK34]: no effect – updated terminology
	Allowable		with	'	17	
	1	Authorization	Mitigation		17	
	1 '		<u>Upon</u>	'	17	
	ı'		Authorization	<u> </u>	17	
Archaeological activities	<u>X</u>	<u> </u>	<u> </u>	<u> </u>	4	 Commented [HK37]: no effect – moved from paragraph (I)
Bridges	, 		1		17	
• Impact equal to or less than one-tenth of an acre of	<u>X</u>		1	'	17	
riparian buffer	<u> </u>		<b></b> '	<u> </u>	$\downarrow$	 Commented [HK38]: Less stringent – added new use to allow
• Impact greater than one-tenth of an acre of riparian	1	<u>X</u>	1		17	bridges with less than 1/10 to be deemed allowable; consistent with road impacts
<u>buffer</u>	<u> </u>	<u> </u>	<b></b> '	<u> </u>	igsqcup	 Commented [HK39]: no effect – moved from paragraph (l)
Dam maintenance activities				<del>                                     </del>	17	
Dam maintenance activities that do not cause additional	<u>X</u>		1		17	
riparian buffer disturbance beyond the footprint of the	1 '		1	'	17	
existing dam	<u> </u>		<u> </u>			 Commented [HK40]: no effect – moved from paragraph (l)
Dam maintenance activities that do cause additional riparian	1		1		17	
buffer disturbance beyond the footprint of the existing dam	<b>4</b> '	<u>X</u>	<u> </u>	<u>                                     </u>	$oldsymbol{\perp}$	 Commented [HK41]: no effect – authorization already required
Drainage of a pond subject to Paragraph (c) of this Rule	<u>X</u>			<del>                                     </del>	17	under 404/401
provided that a new riparian buffer is established by natural	1 '		1	'	17	
regeneration or planting, within 50 feet of any stream which	1		1		17	
naturally forms or is constructed within the drained pond area.	1		1		17	
Drained ponds shall be allowed to naturalize for a minimum of	1		1		17	
six months from completion of the draining activity before a	1		1		17	
stream determination is conducted pursuant to Paragraph (d) of	1		1		17	
this Rule.	<u> </u>	<u> </u>	<b></b> '	<u> </u> '		 Commented [HK42]: no effect – moved from paragraph (l)
Fences:	1		i .		17	
Fencing livestock out of surface waters	<u>X</u>	<u> </u>	<u> </u>	<u>                                     </u>		 Commented [HK43]: Less stringent – new use
Installation does not result in removal of trees	<u>X</u>		1			 Commented [HK44]: no effect – moved from paragraph (l)
Installation results in removal of trees	'	<u>X</u>				 Commented [HK45]: Less stringent – new use
Forest harvesting - see Rule .0608 of this Section						 Commented [HK46]: no effect – moved from paragraph (l)
					Г	

	Deemed	Allowable	Allowable	Prohibited		Commented [HK34]: no effect – updated terminology
	Allowable	<u>Upon</u>	<u>with</u>			
		Authorization	Mitigation			
			<u>Upon</u>			
			Authorization			
Fertilizer application:						
One-time fertilizer application at agronomic rates to	<u>X</u>					
establish replanted vegetation. This only applies to the						
one-time application of fertilizer in the riparian buffer. No						
runoff from this one-time application in the riparian buffer						
is allowed in the applicable surface water.						
Ongoing fertilizer application				<u>X</u>		Commented [HK47]: no effect – moved from paragraph (l)
Greenways, trails, sidewalks or linear pedestrian/bicycle						
transportation system:						
• In outer riparian buffer (landward of 50 feet) provided that	<u>X</u>					
no built upon area is added within the buffer						
When built upon area is added to the buffer, equal to or less		<u>X</u>				
than ten (10) feet wide with two (2) foot wide shoulders.						
Must be located landward of 50 feet unless there is no						
practical alternative						
When built upon area is added to the buffer, greater than ten			<u>X</u>			
(10) feet wide with two (2) foot wide shoulders. Must be						
located landward of 50 feet unless there is no practical						
alternative						Commented [HK48]: no effect - codifying policy
Historic preservation	X					Commented [HK49]: no effect – moved from paragraph (l)
New Landfills as defined by G.S. 130A-290	_			X		Commented [HK50]: Less stringent – Allows for landfill
Mining activities:						expansions to seek an Authorization Certificate with Exception instead of a Variance
Mining activities that are covered by the Mining Act		<u>X</u>			'	instead of a variance
provided that new riparian buffers that meet the		<u> </u>				
requirements of Paragraph (h) of this Rule and Rule .0605						
of this Section are established adjacent to the relocated						
channels						
Wastewater or mining dewatering wells with approved			<u>X</u>			
			<u> </u>			
NPDES permit				*7/		Commented [HK51]: no effect – moved from paragraph (I)
On-site sanitary sewage systems - new ones that use ground				<u>X</u>		
absorption					l	Commented [HK52]: no effect – moved from paragraph (l)

	Deemed	Allowable	Allowable	Prohibited	Commented [HK34]: no effect – updated terminology
	Allowable	<u>Upon</u>	<u>with</u>		
		Authorization	Mitigation		
			<u>Upon</u>		
			Authorization		
Maintenance access on modified natural streams or canals: a		<u>X</u>			
grassed travelway on one side of the waterbody when less					
impacting alternative forms are not practical. The width and					
specifications of the travel way shall be only that needed for					
equipment access and operation. The travelway shall be					
located to maximize stream shading.					Commented [HK53]: no effect – moved from paragraph (I)
Pedestrian access trail and associated steps leading to a surface					
water, dock, canoe or kayak access, fishing pier, boat ramp or					
other water dependent structure:					
<ul> <li>Pedestrian access trail equal to or less than six (6) feet</li> </ul>	<u>X</u>				
wide that does not result in the removal of any tree(s)					
within the riparian buffer and does not result in any					
built upon area being added to the riparian buffer					
• Pedestrian access trail equal to or less than six (6) feet		<u>X</u>			
wide where the installation or use results in the					
removal of tree(s) or addition of built upon area to the					
riparian buffer					
<ul> <li>Pedestrian access trail greater than six (6) feet wide</li> </ul>			<u>X</u>		Commented [HK54]: Less stringent – new uses
Playground equipment:					
Playground equipment on single family lots provided that	<u>X</u>				
installation and use does not result in removal of					
vegetation					
Playground equipment on single family lots where		<u>X</u>			
installation or use results in the removal of vegetation					
Playground equipment installed on lands other than single-		<u>X</u>			
family lots					Commented [HK55]: no effect – moved from paragraph (l)
Ponds created or modified by impounding streams subject to					
buffers pursuant to Paragraph (c) of this Rule and not used as					
stormwater control measures (SCMs):					
New ponds provided that a riparian buffer that meets the		<u>X</u>			
requirements of Paragraph (h) of this Rule and Rule .0605					
of this Section is established adjacent to the pond					Commented [HK56]: no effect – moved from paragraph (I)
					Commented [incoo]. no enect - moved nom paragraph (i)

	Deemed	Allowable	Allowable	Prohibited		Commented [HK34]: no effect – updated terminology
	Allowable		with		1	
	1 '	Authorization	Mitigation		1	
	1 '	'	<u>Upon</u>		1	
	I'	'	Authorization	<u>4</u>		
Protection of existing structures and facilities when this	i	<u>X</u>			1	
requires additional disturbance of the riparian buffer	<del></del> '	<u> </u>	<u></u>	<u> </u>		Commented [HK57]: no effect – moved from paragraph (I)
Public Safety - publicly owned spaces where it has been	<u>X</u>	<u> </u>			1	
determined by the head of the local law enforcement agency	1 '	'			1	
with jurisdiction over that area that the buffers pose a risk to	1 '	'		1	1	
public safety. The head of the local law enforcement agency	1 '	'			1	
shall notify the local government with land use jurisdiction	1 '	'		1	1	
over the publicly owned space and the Division of Water	1 '	'			1	
Resources of any such determination in writing.	<b></b> '	<u> </u>	<b></b>	<u> </u>		Commented [HK58]: no effect - per SL 2017-209
Removal of previous fill or debris provided that Paragraph (h)	<u>X</u>	<u> </u>			1	
of this Rule is complied with and any vegetation removed is	1 '	'		1	1	
restored	<b></b> '	<u> </u>		<u> </u>	<b></b>	Commented [HK59]: no effect – moved from paragraph (l)
Restoration or enhancement (wetland, stream) as defined in 33						
CFR Part 332 available free of charge on the internet at:	1 '	'		1	1	
http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitig	4 '	'			1	
ation_index.cfm:	1 '	'				
Wetland or stream restoration that does not require written	<u>X</u>	'				
Division approval that results in impacts to the riparian	1 '	'				
<u>buffer</u>	1 '	'			1	
Wetland or stream restoration that requires written Division	1 '	<u>X</u>			1	
approval that results in impacts to the riparian buffer	<u> </u>	<u> </u>		<u> </u>		Commented [HK60]: no effect – moved from paragraph (l)
Road, driveway or railroad impacts other than perpendicular			<u>X</u>			
crossings of streams and other surface waters subject to this	1 '	'			1	
Rule	<u> </u>	<u> </u>		!		Commented [HK61]: no effect – incorporating road, driveway
	Ī '	<u> </u>		[ ]		and railroad into one row as requirements were all the same
	1 '	'			1	
	1 '	'			1	
	1 '	'		1	1	
			1			

Deemed   Allowable   Commented [HK34]: so effect - updated seminology   Seminology   Commented [HK34]: so effect - updated seminology   Seminology   Commented [HK34]: so effect - updated seminology   Seminology   Commented [HK34]: so effect - updated seminolo							
Road, driveway or railroads: perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule or impact greater than one-tenth of an acre of riparian buffer impact greater than one-tenth of an acre of riparian buffer impact greater than one-third of an acre of riparian buffer impact greater greate		Deemed	Allowable	Allowable	Prohibited		Commented [HK34]: no effect – updated terminology
Road, driveway or railroads: perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  Impact greater than one-tenth of an acre of riparian buffer  Impact greater than one-tenth of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Agriculture roads that are exempt from permitting from the  U.S. Army Corps of fingineers per Section 404(f) of the federal Clean Water Aci  Road relocation of existing private access roads associated with public road projects where necessary for public safety;  Less than or equal to 2.500 square feet of riparian buffer impact  Scientific studies and stream gauging  Stated uncovered decks, including steps and support posts.  X which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule, 0005 of this Section and installation does not result in removal of		Allowable	<u>Upon</u>	with			
Authorization  Road, driveway or railroads: perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  Impact equal to or less than one-tenth of an acre of riparian buffer  Impact greater than one-tenth of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Agriculture roads that are exempt from the LUS. Army Corps of Engineers per Section 404(f) of the federal Clean Water Acid  U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Acid  Road relocation of existing private access roads associated with public road projects where necessary for public safety;  Less than or equal to 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  A Commented [HK64]: Less stringent new use  Commented [HK65]: no effect — moved from paragraph ()  Slated uncovered decks, including steps and support posts, which are associated with a dwide ling, provided that it meets the requirements of Paragraph (n) of this Rule and Rule .0605 of this Section and installation does not result in removal of			Authorization	Mitigation			
Road, driveway or railroads: perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule;  Impact equal to or less than one-tenth of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Agriculture roads that are exampt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Acf  Road relocation of existing private access roads associated with public road projects where necessary for public safety:  Less than or equal to 2,500 square feet of riparian buffer  X and the projects where necessary for public safety:  Less than or equal to 2,500 square feet of riparian buffer  X buffer impact  Greater than 2,500 square feet of riparian buffer impact  X commented [HK63]: Less stringent—new use to allow for ag nices to have the same exemption under the buffer rules they have under 404  Commented [HK64]: Less stringent—new use  Commented [HK65]: no effect—moved from pangraph (f) of this Rule and Rule, 0605 of this Section and installation does not result in removal of				<u>Upon</u>			
streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  Impact equal to or less than one-tenth of an acre of riparian buffer  Impact greater than one-tenth of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Agriculture noals that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Acl  Road relocation of existing private access roads associated with public road projects where necessary for public safety:  Less than or equal to 2.500 square feet of riparian buffer impact  Greater than 2.500 square feet of riparian buffer impact  Greater than 2.500 square feet of riparian buffer impact  Silent discontinuation of existing private access roads associated with a dwelling, provided that it meets the equirements of Paragraph (h) of this Rule and Rule. 0605 of this Section and installation does not result in removal of				Authorization			
perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  Impact equal to or less than one-tenth of an acre of riparian buffer  Impact greater than one-tenth of an acre but equal to or less than one-tenth of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Agriculture roads that are exempt from permitting from the  U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Acq  Road relocation of existing private access roads associated with public road projects where necessary for public safety:  Less than or equal to 2.500 square feet of riparian buffer impact  Greater than 2.500 square feet of riparian buffer impact  Greater than 2.500 square feet of riparian buffer impact  Again the same acception under the buffer rules they have under 404  Commented [HK65]: no effect — noved from paragraph (f)  Commented [HK65]: no effect — noved from paragraph (f)  Less than or equal to 2.500 square feet of riparian buffer impact  Greater than 2.500 square feet of riparian buffer impact  Greater than 2.500 square feet of riparian buffer impact  Again the same acception under the buffer rules they have under 404  Commented [HK65]: no effect — noved from paragraph (f)  Commented [HK65]: no effect — noved from paragraph (f) of this Rule and Rule .0605 of this Section and installation does not result in removal of	Road, driveway or railroads: perpendicular crossings of						
or other surface water subject to this Rule.  Impact equal to or less than one-tenth of an acre of riparian buffer  Impact greater than one-tenth of an acre but equal to or less than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act  Road relocation of existing private access roads associated with public road projects where necessary for public safety;  Less than or equal to 2,500 square feet of riparian buffer impact  Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  X  Slatted uncovered deeks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of	streams and other surface waters subject to this Rule or						
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buffer  Impact greater than one-tenth of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act  Road relocation of existing private access roads associated with public road projects where necessary for public safety:  Less than or equal to 2,500 square feet of riparian buffer impact  Greater than 2,500 square feet of riparian buffer impact  Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  X  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the equirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of	or other surface water subject to this Rule:						
Impact greater than one-third of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act  Road relocation of existing private access roads associated with public road projects where necessary for public safety:  Less than or equal to 2,500 square feet of riparian buffer impact  Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  X  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the equirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of	• Impact equal to or less than one-tenth of an acre of riparian	<u>X</u>					
than one-third of an acre of riparian buffer  Impact greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act	<u>buffer</u>						
Impact greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act  Road relocation of existing private access roads associated with public road projects where necessary for public safety:  Less than or equal to 2,500 square feet of riparian buffer impact  Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  X  Commented [HK64]: Less stringent – new use  Commented [HK65]: no effect – moved from paragraph (I)  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of	• Impact greater than one-tenth of an acre but equal to or less		<u>X</u>				
Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act  Road relocation of existing private access roads associated with public road projects where necessary for public safety:  Less than or equal to 2,500 square feet of riparian buffer impact  Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  X  Commented [HK64]: Less stringent – new use to allow for agrules to have the same exemption under the buffer rules they have under 404  Commented [HK64]: Less stringent – new use  Commented [HK64]: Less stringent – new use  Commented [HK65]: no effect – moved from paragraph (l)  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of	than one-third of an acre of riparian buffer						
Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer      Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer      Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act  Road relocation of existing private access roads associated with public road projects where necessary for public safety:      Less than or equal to 2,500 square feet of riparian buffer impact      Greater than 2,500 square feet of riparian buffer impact      Scientific studies and stream gauging      X  Commented [HK63]: Less stringent – new use to allow for agrules to have the same exemption under the buffer rules they have under 404      Commented [HK64]: Less stringent – new use  Commented [HK64]: Less stringent – new use  Commented [HK65]: no effect – moved from paragraph (l)  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of	Impact greater than one-third of an acre of riparian buffer			<u>X</u>			
disturb equal to or less than one-third of an acre of riparian buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act  Road relocation of existing private access roads associated with public road projects where necessary for public safety:  Less than or equal to 2,500 square feet of riparian buffer impact  Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  X  Commented [HK64]: Less stringent – new use  Commented [HK64]: Less stringent – new use  Commented [HK64]: Less stringent – new use  Commented [HK65]: no effect – moved from paragraph (i)  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of			<u>X</u>				
buffer  Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer  Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act  Road relocation of existing private access roads associated with public road projects where necessary for public safety:  Less than or equal to 2,500 square feet of riparian buffer impact  General than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  X  Commented [HK64]: Less stringent – new use  Commented [HK64]: Less stringent – new use  Commented [HK65]: no effect – incorporating road, driveway and railroad into one row as requirements were all the same  Commented [HK63]: Less stringent – new use to allow for ag rules to have the same exemption under the buffer rules they have under 404  Commented [HK64]: Less stringent – new use  Commented [HK64]: Less stringent – new use  Commented [HK65]: no effect – moved from paragraph (l)  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of							
Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer      Agriculture roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act      Road relocation of existing private access roads associated with public road projects where necessary for public safety:      Less than or equal to 2,500 square feet of riparian buffer impact      Greater than 2,500 square feet of riparian buffer impact      Scientific studies and stream gauging      Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of      Section and installation does not result in removal of      Commented [HK64]: Less stringent – new use      Commented [HK65]: no effect – moved from paragraph (l)							
disturb greater than one-third of an acre of riparian buffer  Agriculture roads that are exempt from permitting from the  U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act  Road relocation of existing private access roads associated with public road projects where necessary for public safety:  Less than or equal to 2,500 square feet of riparian buffer impact  Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  X  Commented [HK64]: Less stringent – new use  Commented [HK64]: Less stringent – new use  Commented [HK64]: Less stringent – new use  Commented [HK65]: no effect – moved from paragraph (1)  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of				<u>X</u>			
Agriculture roads that are exempt from permitting from the  U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act  Road relocation of existing private access roads associated with public road projects where necessary for public safety:  Less than or equal to 2,500 square feet of riparian buffer impact  Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  X  Commented [HK64]: Less stringent – new use  Commented [HK65]: no effect – moved from paragraph (l)  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of							Commented [HK62]: no effect _ incorporating road driveway
U.S. Army Corps of Engineers per Section 404(f) of the federal Clean Water Act  Road relocation of existing private access roads associated with public road projects where necessary for public safety:  Less than or equal to 2,500 square feet of riparian buffer impact  Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  X  Commented [HK64]: Less stringent – new use  Commented [HK64]: Less stringent – new use  Commented [HK65]: no effect – moved from paragraph (l)  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of	,	X					
Commented [HK63]: Less stringent – new use to allow for ag rules to have the same exemption under the buffer rules they have under 404							
Road relocation of existing private access roads associated with public road projects where necessary for public safety:  • Less than or equal to 2,500 square feet of riparian buffer impact  • Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  X  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of							Commented FUV421. Less stringent pay yes to allow for ag
with public road projects where necessary for public safety:  • Less than or equal to 2,500 square feet of riparian buffer impact  • Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  X  Commented [HK64]: Less stringent – new use  Scientific studies and stream gauging  X  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of							rules to have the same exemption under the buffer rules they have
• Less than or equal to 2,500 square feet of riparian buffer impact  • Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  Scientific studies and stream gauging  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of	<u> </u>					l	under 404
impact  Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  X  Commented [HK64]: Less stringent – new use  Scientific studies and stream gauging  X  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of	* * * * * * * * * * * * * * * * * * * *		v				
• Greater than 2,500 square feet of riparian buffer impact  Scientific studies and stream gauging  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of			<u>A</u>				
Scientific studies and stream gauging  Scientific studies and stream gauging  Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of				v		(	
Slatted uncovered decks, including steps and support posts.  which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of				<u>A</u>			
which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of		<u>X</u>					Commented [HK65]: no effect – moved from paragraph (l)
requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of	• * * * *		<u>X</u>				
this Section and installation does not result in removal of							
	* * * * * * * * * * * * * * * * * * * *						
vegetation Commented [HK66]: Less stringent – new use	this Section and installation does not result in removal of						
	<u>vegetation</u>					(	Commented [HK66]: Less stringent – new use

	Deemed	Allowable	Allowable	Prohibited	1	Commented [HK34]: no effect – updated terminology
	Allowable	Upon	with			
		Authorization	Mitigation			
			Upon			
			Authorization			
Stormwater Control Measure (SCM) as defined in 15A NCAC						
02H .1002:		<u>X</u>				
• In the outer riparian buffer (landward of 50 feet) if Paragraph		<u> </u>				
(h) of this Rule is complied with			<u>X</u>			
• In the outer riparian buffer (landward of 50 feet) if Paragraph			<u></u>			
(h) of this Rule is not complied with						Commented [HK67]: no effect – moved from paragraph (I)
Streambank or shoreline stabilization		X				
		<u>A</u>				Commented [HK68]: no effect – moved from paragraph (l)
Temporary roads, provided that the disturbed area is restored to						
pre-construction topographic and hydrologic conditions and						
replanted with comparable vegetation within two (2) months of						
when construction is complete. Tree planting may occur during						
the dormant season. At the end of five years, the restored						
wooded buffer shall comply with the restoration criteria in						
Paragraph (i) of Rule .0295 of this Section:						
• Less than or equal to 2,500 square feet of riparian buffer	<u>X</u>					
disturbance						
• Greater than 2,500 square feet of riparian buffer disturbance		<u>X</u>				
Associated with culvert installation or bridge construction or		<u>X</u>				
replacement		<u>-</u>				Commented [HK69]: no effect – moved from paragraph (l)
герисетен						Commented [HK64]. no enect – moved from paragraph (i)

1	Deemed	Allowable	Allowable	Prohibited	Commented [HK34]: no effect – updated terminology
1	Allowable	<u>Upon</u>	with		
1	1	Authorization	Mitigation		
1	1		<u>Upon</u>		
1	1		Authorization		
Temporary sediment and erosion control devices provided that					
the disturbed area is restored to preconstruction topographic	1				
and hydrologic conditions and replanted with comparable	1		ı		
vegetation within two (2) months of when construction is	1 '				
complete. Tree planting may occur during the dormant season.	1 '				
At the end of five years, the restored buffer shall comply with	1		ı		
the restoration criteria in Paragraph (i) of Rule .0295 of this	1				
Section:	1		ļ		
• In Zone 2 only provided ground cover is established within	<u>X</u>				
the timeframes required by the Sedimentation and Erosion	1		ļ		
Control Act, vegetation in Zone 1 is not compromised, and	1 '				
that discharge is released in accordance with Paragraph (h)	1		ı		
of this Rule	1		ı		
In Zones 1 and 2 to control impacts associated with uses	1	<u>X</u>			
approved by the Authority or that have received an	1				
authorization certificate with exception provided that	1				
sediment and erosion control for upland areas is addressed	1		ļ		
outside the buffer	1				
• <u>In-stream temporary erosion and sediment control measures</u>	<u>X</u>				
for work within a stream channel that is authorized under	1				
Sections 401 and 404 of the Federal Water Pollution Control	1		ļ		
Act	1		ı		
In-stream temporary erosion and sediment control measures	1	<u>X</u>			
for work within a stream channel that has written approval	1				
from the Division and the U.S. Army Corps of Engineers	1		ı		
under Sections 401 & 404 of the Federal Water Pollution	1				
Control Act	<u> </u>	<u> </u>			Commented [HK70]: no effect – moved from paragraph (l)
Utility - Sewer lines, provided that both gravity and force main					
collection systems are made of ductile iron and 50% of the	1				
collection system is cleaned annual:	l'				Commented [HK71]: no effect - Changed 3 categories of
Sanitary Sewer Overflows:					utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3)
o Emergency sanitary sewer overflow response	<u>X</u>				non-sewer aerial
	'	<u> </u>			

			Deemed	Allowable	Allowable	Prohibited	1	Commented [HK34]: no effect – updated terminology
			Allowable	Upon	with			commonted [Fine 1] no enect apartica terminology
				Authorization	Mitigation			
				- Tuttioi Luttoii	Upon			
					Authorization			
		activities, provided that the disturbed area withi	n		- Authorization			
		the buffer: is the minimum necessary to respond						
		to the emergency overflow, is restored to pre-	•					
		construction topographic and hydrologic						
		conditions, and is replanted with comparable						
		vegetation within two (2) months of when						
		disturbance is complete.						
	0	Emergency sanitary sewer overflow response		<u>X</u>				
		activities, provided the disturbed area within the		_				
		buffer: is the minimum necessary to respond to						
		the emergency overflow and is not fully restore	1					
		to pre-construction topographic and hydrologic						
		conditions. For any impacts proposed to remain						
		permanently an application for an Authorization						
		Certificate must be submitted to the authority						
		within 30 calendar days of conclusion of the						
		emergency response activities.						Commented [HK72]: Less stringent – Greater flexibility for
•	New Se	wer Line Construction Activities (including						responding quickly to SSOs
	replacer	ment/rehabilitation that does not meet the criteria	of					
	existing	use in Paragraph (f) of this Rule) provided that (	1)					
	vegetati	ve root systems and stumps are left intact to						
	maintair	n the integrity of the soil except in the trench who	ere					
	trees are	e cut, and (2) vegetation is allowed to regenerate	i <u>n</u>					
	disturbe	d areas, except within the permanent maintenance	<u>e</u>					
	corridor							
	0	Perpendicular crossings of streams and other						
		surface waters subject to this Rule or						
		perpendicular entry into the buffer that does not						
		cross a stream or other surface water subject to						
		this Rule, provided that any of the installation						Commented [HK73]: no effect - Clarify this use can include perpendicular entry into the buffer that doesn't cross a stream (e.g.
		methods are used to minimize the sediment,						connecting to existing line)
L		nutrient and other pollution through the riparian						
-								

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'	<u>Deemed</u>	Allowable	Allowable	Prohibited	Commented [HK34]: no effect – updated terminology
,	Allowable		with		
'	1 '	Authorization		'	
,	1 '	1	<u>Upon</u>	_	
	l'	l'	Authorization	<u> </u>	
buffer: underground directional boring methods,	'	'			
bore-and-jack techniques or another appropriate	1 '	1	1	'	
microtunnelling method:	1 '	1	1	'	
Less than or equal to 40 linear feet	<u>X</u>	1	1		
with a permanent maintenance	1 '	1	1	'	
corridor equal to or less than 20 feet	.  '	1	1	'	
in width.	1 '	1	1		
<ul> <li>Greater than 40 linear feet and less</li> </ul>	1 '	<u>X</u>	1	'	
than or equal to 150 linear feet, with	4	1	1		
a permanent maintenance corridor	1 '	1	1	'	
equal to or less than 20 feet in	1 '	1	1		
width.	1 '	1	1	'	
<ul> <li>Greater than 150 linear feet with a</li> </ul>	1 '	1	<u>X</u>	'	
permanent maintenance corridor	1 '	1	1	'	
equal to or less than 20 feet in	1 '	1	1	'	
width.	1 '	1	1	'	
Permanent maintenance corridor	1 '	1	<u>X</u>	'	
greater than 20 linear feet	1 '	1	1	'	
(mitigation is required only for	1 '	1	1		
impacts beyond the 20 linear feet	1 '	1	1	'	
corridor width).	<u></u> '	l'		!	Commented [HK74]: Less stringent – increased maintenance
o Impacts other than perpendicular crossings:	<u> </u>	<u> </u>	<u> </u>		corridor from 10 to 20 feet
<ul> <li>Impacts outside of the inner 50 feet</li> </ul>	<u>X</u>	1	1	'	
nearest the stream provided vegetation is		1	1		
re-established after disturbance and the	1 '	1	1	'	
function of the inner 50 feet nearest the	1 '	1	1	'	
stream is not compromised	1'	1'	l'	!	Commented [HK75]: Less stringent – changed from allowable
Less than 2,500 square feet of impacts in	4	<u>X</u>			to deemed allowable
the inner 50 feet nearest the stream when	1	1	1		
impacts are solely the result of tying into	<u> </u>	1	1	'	
an existing utility line and when	1 '	1	1	'	
grubbing or grading within 10 feet	1 '	1	1	'	

				Deemed	Allowable	Allowable	Prohibited	Commented [UK24], so effect and the land
				Allowable	<u>Upon</u>	with	Tomoned	 Commented [HK34]: no effect – updated terminology
				Allowable	Authorization			
					Authorization	Mitigation Upon		
						Authorization		
						Authorization		
			immediately adjacent to the surface					
			water is avoided		**			
		•	Impacts in the inner 50 feet nearest the		<u>X</u>			
			stream for replacement/rehabilitation					
			within the inner 50 feet nearest the					
			stream within an existing Right-of-Way					
			when land grubbing or grading within 10					
			feet immediately adjacent to the surface					
			water is avoided					
		•	Impacts to the inner 50 feet nearest the			<u>X</u>		
			stream other than noted above					 Commented [HK76]: Less stringent – changed all impacts to inner 50 feet triggering mitigation to only some triggering mitigation
•	Lift stat	ions requ	uire Supervisory Control and Data			<u>X</u>		inner 50 rect diggering inaugation to only some diggering inaugation
	Acquisi	tion Syst	tem (SCADA), telemetry, audio and visual					
	alarms,	signage	with emergency contact, daily visitation					
	(365 da	ys/year),	and documentation must be maintained					
	for 3 ye	ars of all	of the above and available upon request					 Commented [HK77]: no effect – moved from paragraph (l)
•	Vegetat	ion main	tenance activities that remove forest					
	vegetati	on for ex	xisting sewer utility right of ways/corridors					
	that do	not meet	the criteria of existing use in Paragraph (f)					
	of this I	Rule:						
	0	Impacts	s outside of the inner 50 feet nearest the	<u>X</u>				
		stream						
	0	Impacts	s in the inner 50 feet nearest the stream	<u>X</u>				
		provide	ed no clearing within 10 feet of the stream					
	0	Impacts	s in the inner 50 feet nearest the stream,	<u>X</u>				
		provide	ed the permanent maintenance corridor is					
		kept to	10 feet on either side of the existing sewer					
		line. C	learing within 10 feet of the stream may					
		occur p	rovided no grading or grubbing occurs					
		within	this area.					
	0	Impacts	s in the inner 50 feet nearest the stream,		<u>X</u>			
		provide	ed the permanent maintenance corridor is					
L						]		

	Deemed	Allowable	Allowable	Prohibited
	Allowable	Upon	with	
		Authorization	Mitigation	
			<u>Upon</u>	
			Authorization	
kept to 10 feet on either side of the existing	ig sewer			
line. Clearing, grading and grubbing can	occur			
within 10 feet of the stream provided the	grading			
and grubbing within 10 feet is less than 2	500			
square feet.				
o <u>Impacts in the inner 50 feet nearest the str</u>	<u>ream</u>		<u>X</u>	
other than those listed above				

Commented [HK34]: no effect – updated terminology

**Commented [HK78]:** Less stringent – new uses to allow for vegetation maintenance beyond the maintenance corridor

Utilities – Non-sewer underground lines:					Commented [HK79]: no effect - reorganized utilities
Perpendicular crossings of streams and other surface					
waters subject to this Rule or perpendicular entry into the					
buffer that does not cross a stream or other surface water					
subject to this Rule:					Commented [HK80]: no effect – moved from paragraph (l)
<ul> <li>Construction activities that disturb less than or</li> </ul>	<u>X</u>				
equal to 50 linear feet of riparian buffer provided					
that vegetative root systems and stumps shall be					
left intact to maintain the integrity of the soil					
except in the trench where trees are cut and that					
vegetation is allowed to regenerate in disturbed					
areas with the exception of a maintenance					
corridor equal to or less than 30 feet in width					Commented [HK81]: Less stringent – changed 40 feet to 50 feet
o Construction activities that disturb greater than 50					
linear feet and less than or equal to 150 linear feet		<u>X</u>			
of riparian buffer provided that vegetative root					
systems and stumps shall be left intact to					
maintain the integrity of the soil except in the					
trench where trees are cut and that vegetation is					
allowed to regenerate in disturbed areas with the					
exception of a maintenance corridor equal to or					
less than 30 feet in width					Commented [HK82]: no effect – moved from paragraph (I)
o Construction activities that disturb greater than					
150 linear feet of riparian buffer					Commented [HK83]: no effect – moved from paragraph (I)
<ul> <li>Any activities with a permanent maintenance</li> </ul>			<u>X</u>		
corridor greater than 30 feet in width					Commented [HK84]: Less stringent – new use
<ul> <li>Impacts other than perpendicular crossings:</li> </ul>			<u>X</u>		Commented [HK85]: no effect – moved from paragraph (l)
o Impacts outside of the inner 50 feet nearest the					
stream provided vegetation is re-established after					
disturbance and the function of the inner 50 feet	$\underline{\mathbf{X}}$				
nearest the stream is not compromised					Commented [HK86]: no effect – moved from paragraph (I)
o Impacts in the inner 50 feet nearest the stream					
less than 2,500 square feet when impacts are a					
result of tying to an existing utility line and					
provided that land grubbing or grading is not		<u>X</u>			
conducted within 10 feet immediately adjacent to					
the water					Commented [HK87]: Less stringent – changed from all impacts in inner 50 feet triggering mitigation to only impacts above 2,500 square feet when not tying into an existing line
					square reet when not typing into an existing inte

					_ /	
	Deemed	Allowable	Allowable	Prohibited		Commented [HK34]: no effect – updated terminology
	Allowable	<u>Upon</u>	<u>with</u>	'		
	'	Authorization	Mitigation	'		
	'	'	<u>Upon</u>	'		
	'	'	Authorization	·'		
o Impacts in the inner 50 feet nearest the stream	<u> </u>	· '	<u> </u>	<u> </u>		
other than listed above	<del>  '</del>	<u> </u>	<del>  '</del>	<del> </del>		Commented [HK88]: no effect – moved from paragraph (l)
Vegetation maintenance activities along an existing utility	'	1	'			
line beyond the footprint of an existing utility line	'	'	<u>X</u>	'		
maintenance corridor where the total maintenance corridor	'	'	'			
is equal to or less than 30 linear feet in width	'	<u>X</u>	'	'		
<ul> <li>Vegetation maintenance activities along an existing utility</li> </ul>	'		'	'		
line beyond the footprint of an existing utility line	'	'	'	'		
maintenance corridor where the total maintenance corridor	.  '	'	'	'		
is greater than 30 linear feet in width	<u> </u>	<u> </u>	<u>X</u>	<b></b> '		Commented [HK89]: Less stringent – new uses
Utilities – Non-sewer aerial lines:	<u> </u>	<u> </u>	<u> </u>			Commented [HK90]: no effect - reorganized utilities
Perpendicular crossings of streams and other surface	'	'	'	'		
waters subject to this Rule or perpendicular entry into	'	'	'	'		
the buffer that does not cross a stream or other surface	.  '	'	'			
water subject to this Rule:	<b></b> '	<u> </u>	<u> </u> '	<b></b> '		Commented [HK91]: no effect – moved from paragraph (l)
o <u>Disturb equal to or less than 150 linear feet</u>	<u>X</u>	'	'	'		
of riparian buffer provided that a minimum	'	'	'	'		
zone of 10 feet wide immediately adjacent to	'	'	'	'		
the water body is managed such that only	'	'	'			
vegetation that poses a hazard or has the	'	'	'	'		
potential to grow tall enough to interfere with	4 '		'	'		
the line is removed, that no land grubbing or	'		'	'		
grading is conducted in the inner 50 feet	'	'	'	'		
nearest the stream, and that that poles or	'	'	'	'		
aerial infrastructure are not installed within	'	'	'	'		
10 feet of a water body	'		'	'		
o <u>Disturb greater than 150 linear feet of buffer</u>	<u> </u>	<u>X</u>	<u> </u> '	<b></b> '		Commented [HK92]: no effect – moved from paragraph (l)
<ul> <li>Impacts other than perpendicular crossings:</li> </ul>	'	'	'	'		
o Impacts outside of the inner 50 feet nearest	<u>X</u>	'	'	'		
the stream	'	'	'			
o <u>Impacts in the inner 50 feet nearest the</u>	'	<u>X</u>	'			
stream provided that a minimum zone of 10	'	'	'	'		
					1	

	Deemed	Allowable	Allowable	Prohibited	 Commented [HK34]: no effect – updated terminology
	Allowable	<u>Upon</u>	<u>with</u>		
		Authorization	Mitigation		
			<u>Upon</u>		
			Authorization		
feet wide immediately adjacent to the water					
body is managed such that only vegetation					
that poses a hazard or has the potential to					
grow tall enough to interfere with the line is					
removed, that no land grubbing or grading is					
conducted in the inner 50 feet nearest the					
stream, and that that poles or aerial					
infrastructure are not installed within 10 feet					
of a water body					 Commented [HK93]: Less stringent – new uses
Vehicle access roads and boat ramps (excluding parking areas)					
leading to surface water, docks, fishing piers, and other water					
dependent activities:					
<ul> <li>Single vehicular access road and boat ramp to the surface</li> </ul>		<u>X</u>			
water but not crossing the surface water that are restricted					
to the minimum width practicable not to exceed 15 feet in					
width					
<ul> <li>Vehicular access roads and boat ramps to the surface water</li> </ul>			<u>X</u>		
but not crossing the surface water that are restricted to the					
minimum width practicable and exceed 15 feet in width					 Commented [HK94]: Less stringent – new uses
Vegetation management:					
• Emergency fire control measures provided that topography is	<u>X</u>				
restored					 Commented [HK95]: no effect – moved from paragraph (l)
• Placement of mulch ring around restoration plantings for a	<u>X</u>				
period of five years from the date of planting					 Commented [HK96]: Less stringent – new use
Planting non-invasive vegetation to enhance the riparian	<u>X</u>				
buffer					
Pruning forest vegetation provided that the health and	<u>X</u>				
function of the forest vegetation is not compromised					
Removal of individual trees, branches or limbs which are in	<u>X</u>				
danger of causing damage to dwellings, existing utility					
lines, other structures or human life, or are imminently					
endangering stability of the streambank provided that the					
	l	l	1		

	Deemed	Allowable	Allowable	Prohibited		Commented [HK34]: no effect – updated terminology
	Allowable	<u>Upon</u>	with			
		Authorization	Mitigation			
			Upon			
			Authorization			
stumps are left or ground in place without causing						
additional land disturbance.	X					Commented [HK97]: no effect – moved from paragraph (I)
Removal of individual trees that are dead, diseased or						Commenced [11077]. no cheet moved norm paragraph. (7)
damaged						Commented [UV00]: I assortingent may use
Removal of poison ivy, oak or sumac. If removal is	X					Commented [HK98]: Less stringent – new use
1 1	<u> </u>					
significant, then the riparian buffer shall be replanted with						
non-invasive species.						Commented [HK99]: Less stringent – added poison oak and sumac
Removal of understory nuisance vegetation as defined in:	<u>X</u>					
Smith, Cherri L. 2008. Invasive Plants of North Carolina.						
Dept. of Transportation. Raleigh, NC (available at						
http://portal.ncdenr.org/c/document_library/get_file?uuid=						
0acc6377-ea07-42dc-bb27-						
45a78d1c7ebe&groupId=38364). If removal is significant						
then the riparian buffer shall be replanted with non-						
invasive species.						Commented [HK100]: no effect – updated citation
Water dependent structures (except for boat ramps) as defined		X				
in Rule .0202 of this Section		_			_	Commented [HK101]: no effect – moved from paragraph (l)
Water wells	X					
	<u>A</u>	v				Commented [HK102]: no effect – moved from paragraph (I)
Wildlife passage structures		<u>X</u>				Commented [HK103]: Less stringent – new use

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(e) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as potentially allowable shall submit a request for a "no practical alternatives" determination to the Division of Water Quality. The applicant shall certify that the criteria identified in Subparagraph (e)(1) of this Rule are met. The Division shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

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- (1) For any request for an Authorization Certificate, the Division shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:
  - (A) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
  - (B) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.

1		(C) Plans for practices shall be used if necessary to minimize disturbance, preserve aquatic	
2		life and habitat, and protect water quality.	
3		(D) The Division of Water Quality must consider the impacts that may affect conditions	
4		required to sustain and recover the federally endangered Carolin heelsplitter (Lasmigona	
5		<del>decorata).</del>	
6	(2)	Requests for an Authorization Certificate shall be either approved or denied within 60 days of receipt	
7		of a complete submission based on the criteria in Subparagraph (e)(1) of this Rule by the Division.	
8		Failure to issue an approval or denial within 60 days shall constitute that the applicant has	
9		demonstrated "no practical alternatives." The Division of Water Quality may attach conditions to	
10		the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer	
11		protection program. Complete submissions shall include the following:	
12		(A) The name, address and phone number of the applicant;	
13		(B) The nature of the activity to be conducted by the applicant;	
14		(C) The location of the activity, including the jurisdiction;	
15		(D) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized	
16		in carrying out the activity, the location and dimensions of any disturbance in riparian	
17		buffers associated with the activity, and the extent of riparian buffers on the land;	
18		(E) An explanation of why this plan for the activity cannot be practically accomplished,	
19		reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve	
20		aquatic life and habitat and protect water quality; and	
21		(F) Plans for any practices proposed to be used to control the impacts associated with the	
22		<del>activity.</del>	
23	(3)	Any disputes over determinations regarding Authorization Certificates shall be referred to the	
24		Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4	
25		of G.S. 150B.	Commented [HK104]: no effect - moved to Rule .0606
26	(j) MITIGATIO	ON. Persons who wish to undertake uses designated as allowable upon authorization with mitigation	
27	as defined in Pa	rt (i)(1)(C) of this Rule or allowable with exception as defined in Part (i)(1)(E) of this Rule shall meet	
28	the following re	equirements in order to proceed with their proposed use.	
29	(1)	Obtain an Authorization Certificate pursuant to Rule .0606 of this Section; and	
30	(2)	Obtain written approval for a mitigation proposal pursuant to Rule .0295 of Subchapter 02B.	Commented [HK105]: no effect - moved from paragraph (d)
31	(f)(k) DELEC	SATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING	
32	RIPARIAN BU	FFERS. The following set out the requirements for delegation of the responsibility for implementing	
33	and enforcing t	he Goose Creek Watershed riparian buffer protection program, as described in Rules .0605 through	
34	.0608 of this Se	ction, to local governments.	Commented [HK106]: no effect - clarification
35	<u>(1)</u>	The Commission shall grant and rescind local government delegation of the Goose Creek Watershed	Commented [HK107]: no effect - moved rescission to
36		Riparian Buffer Protection requirements as described in Rules .0605 through .0608 of this Section	Subparagraph (7) below  Commented [HK108]: no effect - clarification
37		according to the following procedures:	Commented [FIX 100]. no effect - ciarrication

1	(1)( <u>A)</u>	Local governments within the Goose Creek Watershed may submit a written request to the	
2		Commission for authority to implement and enforce the State's-Goose Creek Watershed	
3		$riparian\ buffer\ protection\ requirements\ within\ their\ \underline{\text{\it jurisdiction.}}\underline{\text{\it jurisdiction}}\ by\ \underline{\text{\it establishing}}$	
4		a riparian buffer program to meet the requirements of Rules .0605 through .0608 of this	
5		Section. The written request to establish a riparian buffer program shall be accompanied	
6		by information that shows:include the following:	Commented [HK109]: no effect - clarification
7		(A)(i) The Documentation that the local government has land use jurisdiction for the	Commented [HK110]: no effect - grammar
8		riparian buffer buffer. This can be demonstrated by delineating the local land use	Commented [HK111]: no effect - grammar
9		jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer	Commented [HK112]: no effect - grammar
10		scale map(s);	
11		(B)(ii) The Documentation that the local government has the administrative organization,	Commented [HK113]: no effect - grammar
12		staff, legal authority, financial resources and other resources necessary to	Commented [HK114]: no effect - grammar
13		implement and enforce the State's riparian buffer protection requirements based	
14		on its size and projected amount of development;	
15		(C)(iii) The local government has adopted ordinances, resolutions, or regulations	
16		necessary to establish and maintain the State's riparian buffer protection	
17		requirements; anda riparian buffer program to meet the requirements of Rules	
18		.0605 through .0608 of this Section and G.S. 143-214.23A;	Commented [HK115]: no effect - clarification
19		(iv) Documentation that the local government's riparian buffer program complies with	
20		all requirements set forth in G.S. 143-214.23A; and	Commented [HK116]: no effect - added to comply with SL
21		(D)(iv) The local government has provided a plan to address violations with civil or	2015-246
22		criminal remedies and actions as well as remedies that shall restore buffer	
23		functions on violation sites and provide a deterrent against the occurrence of	
24		future violations.	
25	<del>(2)</del> ( <u>B)</u>	Within 90 days after the Commission has received the request for delegation, the	
26		Commission shall approve the request if the local government has complied with all of	
27		Subparagraph (f)(1) of this Rule and notify the local government whether it has been	Commented [HK117]: no effect – unnecessary language
28		approved, approved with modifications, or denied.	
29	(3)	The Commission, upon determination that a delegated local authority is failing to	
30		implement or enforce the riparian buffer protection requirements in keeping with an	
31		approved delegation, shall notify the delegated local authority in writing of the local	
32		program's inadequacies. If the delegated local authority has not corrected the deficiencies	
33		within 90 days of receipt of the written notification, then the Commission shall rescind the	
34		delegation of authority to the local government and shall implement and enforce the State's	
35		riparian buffer protection requirements.	Commented [HK118]: no effect moved to subparagraph (7)
36	(g)(2)APPOII	NTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon	below
37	receivin	g delegation, local governments shall appoint a Riparian Buffer Protection Administrator	
		24 of 34	

who shall coordinate the implementation and enforcement of the program. The Administrator shall 1 2 attend an initial training session by the Division of Water Quality and subsequent annual training Commented [HK119]: no effect - update name sessions be certified to make on-site determinations pursuant to G.S. 143-214.25A. 3 Commented [HK120]: Less stringent - the division is unable to provide subsequent annual training Administrator shall ensure that local government staffs staff working directly with the program 4 Commented [HK121]: no effect - required by statute receive training to understand, implement and enforce the program and are certified to make on-site 5 Commented [HK122]: no effect - grammar determinations pursuant to G.S. 143-214.25A. At any time that a local government does not have a 6 7 certified individual retained on staff to make on-site determinations pursuant to G.S. 143-214.25A, 8 they shall immediately notify the Division and indicate a proposed schedule to secure a certified staff member program. The local government shall coordinate with the Division to provide on-site 10 determinations until a new certified staff member is secured by the local government Commented [HK123]: Neither more nor less stringent -Ensures on-site determinations continue when local governments PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON 11 don't have anyone on staff certified to make calls. This is codifying current practice AUTHORIZATION, AND—ALLOWABLE WITH MITIGATION.MITIGATION UPON 12 13 AUTHORIZATION AND ALLOWABLE WITH EXCEPTION. Upon receiving delegation, local governments shall review applications requesting Authorization Certificate pursuant to the 14 15 requirements set forth in Rule .0606 of this Section. 16 (1) Upon receiving delegation, local authorities shall review proposed uses within the riparian 17 buffer and issue approvals if the uses meet the riparian buffer protection requirements. 18 (2) Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the requirements including provisions for mitigation set forth in Rule .0609. 19 (3) The Division of Water Quality may challenge a decision made by a delegated local authority 20 2.1 for a period of 30 days after the Authorization Certificate is issued. If the Division of Water Quality does not challenge an Authorization Certificate within 30 days of issuance, then 22 the delegated local authority's decision shall stand. 23 VARIANCES. After receiving delegation, local governments shall review variance requests and 24 make recommendations to the Commission for approval. 25 Commented [HK124]: no effect - removed language to just reference Rule .0606 LIMITS OF DELEGATED LOCAL AUTHORITY. The Commission Division has jurisdiction to 26 <del>(j)</del>(4) Commented [HK125]: no effect - update name 27 the exclusion of local governments to implement the requirements of this Rule for the following types of activities: 28 29 (1)(A) Activities undertaken by the State; 30 Activities undertaken by the United States; (2)(B)31 (3)(C) Activities undertaken by multiple jurisdictions; and Commented [HK126]: no effect - punctuation 32 (4)(D)Activities undertaken by local units of government; Commented [HK127]: no effect - updated to comply with SL 33 Forest harvest activities described in Rule .0608 of this Section; and Commented [HK128]: Less stringent - consistent with more 34 Agricultural activities. 35  $\frac{(k)(5)}{(5)}$ RECORD-KEEPING REQUIREMENTS. Delegated local authorities-governments shall maintain Commented [HK129]: no effect - update name on-site records for a minimum of five years. Delegated local authorities governments must furnish 36 Commented [HK130]: no effect - update name 37 a copy of these records to the Director Division within 30 calendar days of receipt of a written Commented [HK131]: no effect - update name Commented [HK132]: no effect - clarification

1		request for the records. The Division of the Water Quality shall inspect local riparian buffer
2		protection programs to ensure that the programs are being implemented and enforced. Each
3		delegated local authority's government's records shall include the following:
4		(1)(A) A copy of variance Authorization Certificate with exception requests;
5		(2)(B) The variance Authorization Certificate with exception request's finding of fact;
6		(3)(C) The result of the variance Authorization Certificate with exception proceedings;
7		(4)(D) A record of complaints and action taken as a result of the complaint;
8		(5)(E) Records for stream origin calls and stream ratings; and
9		(6)(F) Copies of request for authorization, records approving authorization and Authorization
10		Certificates.
11	(6)	AUDITS OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local
12		governments to ensure the local programs are being implemented and enforced in keeping with the
13		requirements of Rules .0605 through .0608 of this Section.
14	(7)	PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a
15		delegated local government is failing to implement or enforce the Goose Creek Watershed riparian
16		buffer protection requirements in keeping with the request approved under Subparagraph (k)(1)(D)
17		of this Rule, the Commission shall notify the delegated local government in writing of the local
18		program's inadequacies. If the delegated local government has not corrected the deficiencies within
19		90 calendar days of receipt of the written notification, then the Commission shall rescind the
20		delegation of authority to the local government and the Division shall implement and enforce the
21		Goose Creek Watershed riparian buffer protection requirements within their jurisdiction.
22	<u>(8)</u>	DELEGATION. The Commission may delegate its duties and powers for granting and rescinding
23		local government delegation of the Goose Creek Watershed riparian buffer protection requirements,
24		in whole or in part, to the Director.
25	(1) OTHER LA	WS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the
26	requirement to	comply with all federal, state and local regulations and laws.
27	(1) Riparian but	ffers along surface waters in this watershed shall be maintained. Some uses within riparian buffers are
28	exempt and sor	ne uses are potentially allowable. Any exempt or potentially allowed use shall require stormwater
29	control as outli	ned in Rule .0602 if the one acre threshold is met. The following chart sets out the uses and their
30	designation und	ler this Rule as exempt, potentially allowable requiring DWQ approval or potentially allowable
31	requiring both l	DWQ approval and mitigation, or prohibited as described above. The United States Environmental
32	Protection Ager	ney Endangered Species Protection Program at www.epa.gov/espp_and NC Pesticide Board regulates
33	pesticide applic	ation (see rules at 02 NCAC 09L .2201 through .2203).
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		Exempt	Potentially allowable requiring DWQ approval or Potentially allowable requiring both DWQ approval and mitigation* Note: the asterisk (X*) identifies those uses that require both DWQ approval and mitigation.	<del>Prohibited</del>
	port facilities that impact equal to or less than 150 linear		_	
	or one third of an acre of riparian buffer		X	
	port facilities that impact greater than 150 linear feet or one-		<del>X*</del>	
	d of an acre of riparian buffer			
	haeological activities	X		
Bric	lges		X	
Dar	n maintenance activities	X		
Dra	inage ditches, roadside ditches and stormwater outfalls			
thre	ough riparian buffers:	_		
•	Existing drainage ditches, roadside ditches, and	X		
	stormwater outfalls provided that they are managed to			
	minimize the sediment, nutrients including ammonia and			
	other pollution that convey to waterbodies			
•	New drainage ditches, roadside ditches and stormwater			
	outfalls provided that a stormwater management facility			
	is installed to minimize the sediment, nutrients including		X	
	ammonia and other pollution and attenuate flow before			
	the conveyance discharges through the riparian buffer			
•	New drainage ditches, roadside ditches and stormwater			
	outfalls that do not minimize the sediment, nutrients			***
	including ammonia and other pollution and attenuate			X
	flow before discharging through the riparian buffer			
•	Excavation of the streambed in order to bring it to the same			
	elevation as the invert of a ditch			

X
X
v
X
X
X
X
X
x
_

•	Wastewater or mining dewatering wells with		_	
	approved NPDES permit		<del>X</del> *	
Non-ele	ctric utility lines with impacts other than perpendicular			
crossing	es <sup>3</sup>			
•	If activity is within 50 feet of the stream		<del>X*</del>	
•	If activity is outside of the inner 50 feet nearest the		X	
	stream			
•	Wastewater collection system utility lines and lift		<del>X*</del>	
	station lines may impact the riparian zone if both			
	gravity and force main collections systems are made			
	of ductile iron and 50% of the collection system is			
	<del>cleaned annually.</del>			
•	Lift Stations require Supervisory Control and Data		<del>X*</del>	
	Acquisition System (SCADA), telemetry, audio and			
	visual alarms, signage with emergency contact, daily			
	visitation (365 days/year), and documentation must			
	be maintained for 3 years of all of the above and			
	available upon request [note: this requirement also			
	applies to collection system perpendicular crossings,			
	detailed below.]			
Non-ele	etric utility line perpendicular crossing of streams and			
other su	rface waters subject to this Rule that are not collection			
systems	3 <mark>-</mark>			
•	Perpendicular crossings that disturb equal to or less	X		
	than 40 linear feet of riparian buffer with a			
	maintenance corridor equal to or less than 10 feet in			
	width			
•	Perpendicular crossings that disturb equal to or less		X	
	than 40 linear feet of riparian buffer with a			
	maintenance corridor greater than 10 feet in width			
•	Perpendicular crossings that disturb greater than 40		X	
	linear feet but equal to or less than 150 linear feet of			
	riparian buffer with a maintenance corridor equal to			
	or less than 10 feet in width			
•	Perpendicular crossings that disturb greater than 40		<del>X*</del>	
	linear feet but equal to or less than 150 linear feet of			

	in in 1, CC id into it in the same of the			
	riparian buffer with a maintenance corridor greater		***	
	than 10 feet in width		<del>X*</del>	
•	Perpendicular crossings that disturb greater than 150			
	linear feet of riparian buffer			
Non-ele	ectric perpendicular utility line crossings that are			
collection	ons systems as defined in Rule 15A NCAC 02T .0300			
(note:	must follow constraints listed under wastewater			
collection	on system utility lines and lift stations, above):			
•	That use any of the following installation methods to		X	
	minimize the sediment, nutrient and other pollution			
	through the riparian buffer: underground directional			
	boring methods, bore and jack techniques or another			
	appropriate microtunnelling method.			X
•	That does not minimize the sediment, nutrient and			
	other pollution through the riparian buffer by the most			
	appropriate exempt method.			
On-site	sanitary sewage systems new ones that use ground			X
absorpti	<del>ion</del>			
Overhe	Overhead electric utility lines <sup>1,2,3</sup> :			
•	Stream crossings that disturb equal to or less than 150	X		
	linear feet of riparian buffer			
•	Stream crossings that disturb greater than 150 linear		<del>X*</del>	
	feet of riparian buffer			
Periodic	c maintenance of modified natural streams such as		X	
canals a	and a grassed travelway on one side of the surface water			
Playgro	ound equipment:			
•	Playground equipment on single family lots provided	X		
	that installation and use does not result in removal of			
	vegetation			
•	Playground equipment installed on lands other than		X	
	single family lots or that requires removal of			
	vegetation			
Ponds in	n natural drainage ways, excluding dry ponds:			
	New ponds provided that a riparian buffer that meets		X	
	the diffuse flow requirements of this Rule is		_	
1				
	established adjacent to the pond			

		T	
New ponds where a riparian buffer that meets the			X
diffuse flow requirements of this Rule is NOT			
established adjacent to the pond			
Protection of existing structures, facilities and streambanks		X	
when this requires additional disturbance of the riparian buffer			
or the stream channel			
Railroad impacts other than crossings of streams and other			X
surface waters subject to this Rule			
Railroad crossings of streams and other surface waters subject			
to this Rule:			
<ul> <li>Railroad crossings that impact equal to or less than 40</li> </ul>	X		
linear feet of riparian buffer			
Railroad crossings that impact greater than 40 linear		X	
feet but equal to or less than 150 linear feet of riparian			
buffer			
Railroad crossings that impact greater than 150 linear			X
feet of riparian buffer			
Removal of previous fill or debris provided that diffuse flow is	X		
maintained and any vegetation removed is restored			
Road impacts other than crossings of streams and other surface		X*	
waters subject to this Rule		A	
Road crossings of streams and other surface waters subject to			
this Rule:	**		
Road crossings that impact equal to or less than 40	X		
linear feet of riparian buffer and is perpendicular		_	
Road crossings that impact greater than 40 linear feet		X	
but equal to or less than 150 linear feet and is			
<del>perpendicular</del>			
Road crossings that impact greater than 150 linear feet		<del>X*</del>	
of riparian buffer			
Scientific studies and stream gauging	X		
Stormwater management ponds excluding dry ponds:			
<ul> <li>New stormwater management ponds provided that a</li> </ul>		X	
riparian buffer that meets the diffuse flow			
requirements of this Rule is established adjacent to the			
pond			X
		l	

•	New stormwater management ponds where a riparian			
	buffer that meets the diffuse flow requirements of this			
	Rule is NOT established adjacent to the pond			
Stream	restoration	X		
Streamb	pank stabilization		X	
Tempor	ary roads:			
•	Temporary roads that disturb less than or equal to	X		
	2,500 square feet provided that vegetation is restored			
	within six months of initial disturbance			
•	Temporary roads that disturb greater than 2,500		X	
	square feet provided that vegetation is restored within			
	six months of initial disturbance			
•	Temporary roads used for bridge construction or		X	
	replacement provided that restoration activities, such			
	as soil stabilization and revegetation, are conducted			
	immediately after construction			
Tempor	ary sediment and erosion control devices:			
•	To control impacts associated with uses approved by		X	
	the Division or that have received a variance provided			
	that sediment and erosion control for upland areas is			
	addressed to the maximum extent practical outside the			
	<del>buffer</del>			
•	In stream temporary erosion and sediment control	X		
	measures for work within a stream channel			
Underg	round electric utility lines:			
•	Impacts other than perpendicular crossings 3,4	X		
Underg	round electric utility line perpendicular crossings of			
streams	and other surface waters subject to this Rule:			
•	Perpendicular crossings that disturb less than or equal	X		
	to 40 linear feet of riparian buffer <sup>3,4</sup>			
•	Perpendicular crossings that disturb greater than 40		X	
	linear feet of riparian buffer <sup>3,4</sup>			
Vegetat	ion management:			
•	Emergency fire control measures provided that	X		
	topography is restored			
•	Planting vegetation to enhance the riparian buffer	X		

<ul> <li>Pruning forest vegetation provide</li> </ul>	I that the health and	X		
function of the forest vegetation i	not compromised			
<ul> <li>Removal of individual trees whi</li> </ul>	ch are in danger of	X		
causing damage to dwellings,	other structures or			
<del>human life</del>				
<ul> <li>Removal of poison ivy</li> </ul>		X		
<ul> <li>Removal of understory nuisance v</li> </ul>	egetation as defined			
in: Smith, Cherri L. 1998. Exot	e Plant Guidelines.	X		
Department of Environment and	Natural Resources.			
Division of Parks and Recrea	ion. Raleigh, NC.			
Guideline #30				
Water dependent structures as defined i	15A NCAC 02B		X	
<del>.0202</del>				
Water wells		X		
Wetland restoration		X		

Provided that all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternatives evaluation by the Division of Water Quality.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only
  vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.

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- No fertilizer shall be used other than a one time application to re establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and
  the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.
- Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division of Water Quality completes a no practical alternatives evaluation.
- Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.
- Provided that all of the following BMPs for underground utility lines are used.

1	If all o	of these BMPs are not used, then the underground utility line shall require a no practical alternatives					
2	evalua	tion by the Division of Water Quality.					
3	• Woody	y vegetation shall be cleared by hand. No land grubbing or grading is allowed.					
4	<ul> <li>Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except</li> </ul>						
5	in the t	trench, where trees are cut.					
6	• Underg	ground cables shall be installed by vibratory plow or trenching.					
7	• The tre	<ul> <li>The trench shall be backfilled with the excavated soil material immediately following cable installation.</li> </ul>					
8	• No fert	<ul> <li>No fertilizer shall be used other than a one-time application to re-establish vegetation.</li> </ul>					
9	• Constr	uction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and					
10	the tim	ne in which areas remain in a disturbed state.					
11	• Active	measures shall be taken after construction and during routine maintenance to ensure diffuse flow of					
12	stormv	water through the buffer.					
13	• In wetl	lands, mats shall be utilized to minimize soil disturbance.	Commented [HK140]: no effect - moved to paragraph (i) above				
14							
15	History Note:	Authority G.S. 143-214.1; 143-215.8A; 143-214.7; <u>143-214.23</u> , <u>143-214.23A</u>					
16		Eff. February 1, 2009.					
17 18							
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3	15A NCAC 02B	.0608 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE	
4		CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): MANAGE	
5		ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING	
6		REQUIREMENTS	
7	(a) PURPOSE.	The following requirements shall apply for to all forest harvesting operations and practices in the	Commented [HK1]: no effect – added header
8	<del>riparian areas.</del> su	bject to riparian buffer requirements under Rules .0601 through .0608 of this Section.	Commented [HK2]: no effect - grammar
9	(b) REQUIREM	ENTS THROUGHOUT THE BUFFER. The following requirements shall apply:	Commented [HK3]: no effect – clarification
10	(1)	All forest harvest activities within the buffer shall comply with Forest Practice Guidelines Related	Commented [HK4]: no change - added header
11		to Water Quality as defined in Title 02 NCAC 60C;	Commented [HK5]: no effect – split into two paragraphs
12	<del>(1)</del> (2)	Logging decks and sawmill sites shall not be placed in the riparian buffer.buffer:	Commented [HK6]: no effect – clarification
13	(2)	Access roads and skid trails are prohibited except for temporary and permanent stream crossings	Commented [HK7]: no effect – punctuation
14		established in accordance with 15A NCAC 011 .0203. Temporary stream crossings shall be	
15		permanently stabilized after any site disturbing activity is completed.	Commented [HK8]: less stringent - Removed prohibition
16	(3)	Timber felling shall be directed away from the stream or water body.body;	to allow for access roads and skid trails (in compliance with FPGs)
17	(4)	Skidding shall be directed away from the stream or water body and shall be done in a manner that	Commented [HK9]: no effect – punctuation
18		minimizes soil disturbance and prevents the creation of channels or ruts.ruts:	Commented [HK10]: no effect – punctuation
19	(5)	Individual trees may be treated to maintain or improve their health, form or vigor, vigor,	Commented [HK11]: no effect – punctuation
20	(6)	Harvesting of dead or infected trees or application of pesticides necessary to prevent or control	
21		extensive tree pest and disease infestation is allowed, when approved by the Division of North	
22		Carolina Forest Resources Service for a specific site in accordance with G.S. 113-60.4. A copy of	Commented [HK12]: no effect – update name
23		the Division of Forest Resources approval must be provided to the Division of Water Quality in	
24		accordance with Session Law 2001-404. The North Carolina Forest Service must notify the Division	
25		of all approvals within 60 calendar days:	Commented [HK13]: no effect - statute was not related to
26	(7)	Removal of individual trees that are in danger of causing damage to structures or human life is	this topic; requirement consistent with other buffer rules.
27		allowed.allowed:	Commented [HK14]: no effect – punctuation
28	(8)	Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to	
29		enhance the riparian buffer is allowed provided that soil disturbance is minimized.minimized:	Commented [HK15]: no effect – punctuation
30		Plantings shall consist primarily of native species.	Commented [HK16]: no effect - Removed requirement –
31	(9)	High intensity prescribed Prescribed burns shall not be allowed when conducted for forest	addressed in Rule .0607
32		management purposes; and	Commented [HK17]: no effect - "high intensity prescribed
33	(10)	Application of One-time fertilizer is not allowed except as necessary for permanent stabilization.to	burns" is not a term used by NCFS
34		establish replanted vegetation shall be allowed. This only applies to the one-time application of	
35		fertilizer in the riparian buffer. No runoff from this one-time application in the riparian buffer is	
36		allowed in the applicable surface water.	

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15A NCAC 02B .0608 is proposed for amendment as follows:

1	<u>(11)</u>	Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so					
2		that the chemicals are not applied directly to or allowed to drift into the riparian buffer.		Commented [HK18]: no effect - Clarified use of fertilizer;			
3	(b)(c) SELECTI	VE HARVEST. In the riparian buffer, forest vegetation shall be protected and maintained. Selective		consistent with other fertilizer requirements in the buffer rules.			
4							
5	value under fore	estry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest	//	Commented [HK20]: no effect - Removed repetitive			
6	management plan prepared or approved by a registered professional forester. Copies of either the approval of the language.						
7	deferment for us	e value under forestry or the forest management plan shall be produced upon request. For such forest	`	Commented [HK21]: no effect - grammar			
8	lands, selective l	narvest is allowed in accordance with the following:					
9	(1)	The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2					
10		through 277.6 or the forest lands have a forest management plan prepared or approved by a					
11		registered professional forester. Copies of either the approval of the deferment for use value under					
12		forestry or the forest management plan shall be produced upon request by the North Carolina Forest					
13		Service or the Division;		Commented [HK22]: no effect – reorganization			
14	<del>(1)</del> (2)	Tracked or wheeled vehicles are not permitted within the first 50 feet the riparian buffer top of bank					
15		landward except at stream crossings designed, constructed and maintained in accordance with 15A					
16		NCAC 011.0203.only used for the purpose of selective timber harvesting where there is no other					
17		practical alternative for removal of individual trees;		Commented [HK23]: less stringent - allow for tracked or			
18	(2)	Soil disturbingNo tracked or wheeled vehicles shall be used to conduct site preparation activities		wheeled vehicles within 50 feet is no practical alternative			
19		are not allowed.activities:		Commented [HK24]: less stringent - Clarify soil			
20	(3)	Trees shall be removed with the minimum disturbance to the soil and residual remaining		disturbance can occur but no tracked/wheeled vehicles for site prep			
21		vegetation.vegetation;		Commented [HK25]: No effect - grammar			
22	(4)	The first 10 feet of the riparian buffer directly adjacent to the stream or waterbody shall be		Commented [HK26]: no effect – punctuation			
23		undisturbed.undisturbed, except for the removal of individual high value trees. The removal of		<u> </u>			
24		individual high value tress shall only be allowed provided that no trees with exposed roots visible					
25		in the streambank are cut, unless they meet Sub-items (b)(6) or (b)(7) of this Rule;		Commented [HK27]: less stringent - allow for removal of			
26	(5)	In the zone area from 10 feet to 50 feet of the riparian buffer, a maximum of 50 percent of the trees	_	high value trees within first 10 feet			
27		greater than five inches diameter breast height (dbh) may be cut and removed. The reentry time for		Commented [HK28]: no effect – clarification of terminology			
28		harvest shall be no more frequent than every 15 years, except on forest plantations as defined in 15A					
29		NCAC 02B .0233(e)15A NCAC 02B .0702, where the reentry time shall be no more frequent than		Commented [HK29]: no effect – update citation			
30		every five years. In either case, the trees remaining after harvest shall be as evenly spaced as					
31		<del>possible.</del> possible; and		Commented [HK30]: no effect – punctuation			
32	(6)	In the outer riparian buffer (landward of 50 feet), harvesting and regeneration of the forest stand is					
33		allowedshall be allowed, provided that sufficient ground cover is maintained to provide for diffusion		Commented [HK31]: no effect - grammar			
34		and infiltration of surface runoff.					
35	(d) EXCEPTIO	NS. Persons who wish to undertake forest harvesting operations or practices different from the					
36	requirements set	forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule .0606 of					
37	this Section.			Commented [HK32]: No effect – clarification			

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2 History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;
3 Eff. February 1, 2009.

15A NCAC 02B .0610 is proposed for adoption as follows:

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## 15A NCAC 02B .0610 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: DEFINITIONS

<u>Unless the context indicates otherwise, the following words and phrases shall be interpreted as follows for the purposes of this Section:</u>

(1) "Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases "air navigation facility", "airport", or "airport protection privileges" under G.S. 63-1; the definition of "aeronautical facilities" in G.S. 63-79(1); the phrase "airport facilities" as used in G.S. 159-48(b)(1); the phrase "aeronautical facilities" as defined in G.S. 159-81 and G.S. 159-97; and the phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, aeronautic industrial facilities that require direct access to the airfield, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of "airport facilities":

- (i) Satellite parking facilities;
- (ii) Retail and commercial development outside of the terminal area, such as rental car facilities; and
- Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority, in which case they are included in the definition of "airport facilities".
- (2) "Archaeological activities" means activities conducted by a Registered Professional Archaeologist (RPA).

**Commented [HK1]:** No effect – definitions from different rules consolidated into one for ease and consistency.

2		Section to implement a riparian buffer program.
3	<u>(4)</u>	"Bridge" means any spanning structure that begins and ends at the outer edge of the approach slabs
4		and includes any support structures such as bents, pilings, footings, etc.
5	<u>(5)</u>	"Built-upon area" means the same as defined in G.S. 143-214.7(b2).
6	<u>(6)</u>	"Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by
7		erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.
8	<u>(7)</u>	"Coastal wetlands" means marshland as defined in G.S. 113-229.
9	<u>(8)</u>	"Dam" means the same as defined in G.S. 143-215.25.
10	(9)	"DBH" means diameter at breast height of a tree measured at 4.5 feet above ground surface level.
11	(10)	"Development" means the same as defined in G.S. 143-214.7.
12	(11)	"Director" means the Director of the Division.
13	(12)	"Ditch or canal" means a man-made, open drainage way or channel other than a modified natural
14		stream in or into which excess surface water or groundwater from land, stormwater runoff, or
15		floodwaters flow either ephemerally, intermittently or perennially. On the coastal plain, ditches are
16		typically dug through inter-stream divide areas.
17	(13)	"Division" means the Division of Water Resources of the North Carolina Department of
18		Environmental Quality and its successors.
19	(14)	"Ephemeral stream" means a feature that carries only stormwater in direct response to precipitation
20		with water flowing only during and shortly after large precipitation events. An ephemeral stream
21		may or may not have a well-defined channel, the aquatic bed is always above the perched or seasonal
22		high water table, and stormwater runoff is the primary source of water. An ephemeral stream
23		typically lacks the biological, hydrological, and physical characteristics commonly associated with
24		the continuous or intermittent conveyance of water.
25	(15)	"Existing lot" in Randleman Lake watershed means a lot of two acres in size or less that was platted
26		and recorded in the office of the appropriate county Register of Deeds prior to the effective date of
27		a local ordinance or ordinances enforcing Rule .0724 of Subchapter 02B. For activities listed in
28		Sub-Item (15)(b) of Rule .0724 of Subchapter 02B, 'existing lot' in the Randleman Lake watersheds
29		means a lot of two acres in size or less that was platted and recorded in the office of the appropriate
30		county Register of Deeds prior to April 1, 1999. "Existing lot" in the Neuse and Tar-Pamlico river
31		basins means a lot of two acres in size or less that was platted and recorded in the office of the
32		appropriate county Register of Deeds prior to August 1, 2000.
33	(16)	"Existing utility line maintenance corridor" means the portion of a utility right of way in which the
34		vegetation has been mowed, cut or otherwise maintained within the last 10 years.
35	<u>(17)</u>	"Fertilizer" means the same as defined in Rule .0202 of this Subchapter.
36	(18)	"Forest management plan" means the same as defined in Chapter 160A-458 5

(3) "Authority" means either the Division or a local government that has been delegated pursuant this

1	(19)	"Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a
2		plantation, the intended crop trees are planted rather than naturally regenerated from seed on the
3		site, coppice (sprouting), or seed that is blown or carried into the site.
4	(20)	"Forest vegetation" means the same as defined in Rule .0202 of this subchapter.
5	(21)	"Freshwater" means the same as defined in Rule .0202 of this subchapter.
6	(22)	"Greenway / Hiking Trails" means pedestrian trails constructed of pervious and impervious surfaces
7		and related structures including but not limited to boardwalks, steps, rails, and signage, and that
8		generally run parallel to the surface water.
9	(23)	"High value tree" means a tree that meets or exceeds the following standards: for pine species, 14-
10		inch DBH or greater or 18-inch or greater stump diameter; or for non-pine species, 16-inch DBH or
11		greater or 24-inch or greater stump diameter.
12	(24)	"Intermittent stream" means a well-defined channel that contains water for only part of the year,
13		typically during winter and spring when the aquatic bed is below the perched or seasonal high water
14		table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often
15		lacks the biological and hydrological characteristics commonly associated with the continuous
16		conveyance of water.
17	(25)	"Local government" means the same as defined in Rule .0202 of this subchapter.
18	(26)	"Modified natural stream" means an on-site channelization or relocation of a stream channel and
19		subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations
20		in the immediate watershed. A modified natural stream must have the typical biological,
21		hydrological, and physical characteristics commonly associated with at least an intermittent
22		conveyance of water.
23	(27)	"Natural drainageway" means any water course, channel, ditch or similar physiographic feature
24		draining water from land to down gradient areas.
25	(28)	"Normal water level" means the water level within a pond, lake or other type of impoundment,
26		natural or man-made (including beaver ponds), at the elevation of the outlet structure or spillway
27		(i.e., the elevation of the permanent pool). The normal water level can often be identified by the
28		lowest edge of the terrestrial vegetation.
29	(29)	"Perched water table" means a saturated soil horizon or horizon subdivision, with free water surface
30		periodically observed in a bore hole or shallow monitoring well, but generally above the normal
31		water table, or may be identified by drainage mottles or redoximorphic features, and caused by a
32		less permeable lower horizon.
33	(30)	"Perennial stream" means a well-defined channel that contains water year round during a year of
34		normal rainfall with the aquatic bed located below the perched or seasonal high water table for most
35		of the year. Groundwater is the primary source of water for a perennial stream, but it also carries
36		stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical
37		characteristics commonly associated with the continuous conveyance of water.

1	(31)	"Perennial waterbody" means a natural or man-made watershed that stores surface water
2		permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds,
3		non-stream estuaries and ocean.
4	(32)	"Perpendicular" means leading toward the nearest subject surface water at an angle between 75 and
5		105 degrees.
6	(33)	"Pruning" means the removal of dead tree or shrub branches or live tree or shrub branches with a
7		diameter of less than 4 inches.
8		(i) Pruning for Deciduous Trees: If pruning must be done on deciduous trees, then it should
9		only be performed once a year during the dormant season or immediately following an "act
10		of God" situation, such as a hurricane or ice storm that causes tree damage. Dead branches
11		on trees can be removed any time.
12		(ii) Pruning for Coniferous Trees: Conifers may be pruned any time of year. Dead branches
13		on trees can be removed any time.
14		(iii) Pruning for Shrubs: Shrubs may be pruned by selectively removing branches while
15		maintaining the natural shape of the plant. Cutting the branches of a shrub down to its
16		main trunk is not a selective removal of branches and could compromise the plant.
17	(34)	"Seasonal high water table" means the highest level that groundwater, at atmospheric pressure,
18		reaches in the soil in most years. The seasonal high water table is usually detected by the mottling
19		of the soil which results in mineral leaching.
20	(35)	"Streambank or shoreline stabilization" is the in-place stabilization of an eroding streambank or
21		shoreline.
22	(36)	"Stormwater Control Measure" or "SCM," also known as "Best Management Practice" or "BMP,"
23		means the same as defined in 15A NCAC 02H .1002.
24	(37)	"Stump diameter" means the diameter of a tree measured at six inches above the ground surface
25		<u>level.</u>
26	(38)	"Temporary road" means a road constructed temporarily for access or to maintain public traffic
27		during construction and is restored upon completion of construction.
28	(39)	"Transportation facility" means the existing road surface, road shoulders, fill slopes, ferry terminal
29		fill areas, and constructed stormwater conveyances or drainage canals adjacent to and directly
30		associated with the road.
31	<u>(40)</u>	"Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter
32		exceeding six inches.
33	<u>(41)</u>	"Wetlands" means the same as defined in Rule .0202 of this Subchapter.
34		
35	History Note:	Authority G.S. 143-215.3(a)(1).
36		<u>Eff. DATE</u>

15A NCAC 02B .0611 is proposed for adoption as follows: 1 2 15A NCAC 02B .0611 — MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION 3 CERTIFICATES 4 Commented [HK1]: Consolidate approval requirements from Randleman, Neuse and Tar-Pam into one rule for 5 (a) PURPOSE. The following requirements shall apply to persons who wish to undertake uses designated as allowable consistency and ease of implementation 6 upon authorization, allowable with mitigation upon authorization, or allowable with exception within the protected Commented [HK2]: No effect – updated terminology 7 riparian buffer area as specified in the applicable buffer protection rule of this Section and Section .0700 in SubChapter 8 9 (b) AUTHORIZATION CERTIFICATES. Persons who wish to undertake uses designated in the applicable buffer 10 protection rule of this Section as allowable upon authorization or allowable with mitigation upon authorization shall 11 submit an application requesting an Authorization Certificate from the Authority. Commented [HK3]: No effect - clarification 12 The application shall specify: 13 The name, address and phone number of the applicant; 14 If the property owner is different than the applicant, specify the name, address and phone 15 number of the property owner and provide authorization from the owner for the application; 16 (B) If the applicant is a corporation, the state in which it is domesticated, the name of its 17 principal officers, the name and address of the North Carolina process agency, and the 18 name, address and phone number of the individual who shall be primarily responsible for the conduct of the activity for which certification is sought; 19 Commented [HK4]: Clarification – similar to requirement for 401 WOC The nature of the activity to be conducted by the applicant; 20 2.1 The location of the activity, including the jurisdiction; 22 A map of sufficient detail to accurately delineate the boundaries of the land to be utilized 23 in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land; 24 25 An explanation of why this plan for the activity cannot be practically accomplished, (F) 26 reduced, relocated or reconfigured to avoid or better minimize disturbance to the riparian 27 buffer, preserve aquatic life and habitat and protect water quality; 28 Plans for any best management practices proposed to be used to control the impacts 29 associated with the activity; and 30 For uses designated as allowable with mitigation upon authorization or allowable with 31 exception, a mitigation proposal in accordance with Rule .0704 of this Section. Commented [HK5]: No effect - clarification 32 The applicant shall certify that the project meets all the following criteria for finding "no practical (2) 33 alternatives": 34 The basic project purpose cannot be practically accomplished in a manner that would better 35 minimize disturbance, preserve aquatic life and habitat, and protect water quality; The use cannot practically be reduced in size or density, reconfigured or redesigned to 36 37 better minimize disturbance, preserve aquatic life and habitat, and protect water quality;

1		(C) Best management practices shall be used if necessary to minimize disturbance, preserve	
2		aquatic life and habitat, and protect water quality; and	
3		(D) Why alternatives cannot be practically accomplished to avoid or minimize the disturbance.	Commented [HK6]: Clarification
4	(3)	Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs	
5		(b)(1) and (b)(2) of this Rule, the Authority shall issue an Authorization Certificate if the Authority	
6		makes a finding of "no practical alternatives" and the applicant satisfies other applicable	
7		requirements as described in Subparagraphs (b)(1) and (b)(2) of this Rule. Failure to act within 60	
8		calendar days of receipt of a complete application shall be construed as a finding of "no practical	
9		alternatives" and an Authorization Certificate shall be issued by the Authority to the applicant unless	
10		one of the following occurs:	
11		(A) The applicant agrees, in writing, to a longer period:	
12		(B) The applicant fails to furnish information necessary for the Authority's decision:	
13		(C) The applicant refuses Authority staff access to its records or premises for the purpose of	
14		gathering information necessary for the Authority's decision; or	
15		(D) Information necessary for the Authority's decision is unavailable.	Commented [HK7]: Clarification – similar to 401 WQC
16	<u>(4)</u>	The Authority may attach conditions to the Authorization Certificate that support the purpose, spirit	rules
17		and intent of the riparian buffer protection program.	
18	(5)	Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to	
19		G.S. 150B. Requests for appeals of Authorization Certificates issued by the delegated local	
20		authority shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-	
21		<u>388.</u>	
22	(c) AUTHORIZ	ZATION CERTIFICATES WITH EXCEPTION. Persons who wish to undertake uses designated in	
23	the applicable by	uffer protection rule of this Section as allowable with exception shall submit an application requesting	
24	an Authorization	n Certificate with Exception. The Authorization Certificate with Exception review procedure shall be	
25	as follows:		Commented [HK8]: For uses not listed in the table,
26	(1)	An Authorization Certificate with Exception shall require that all of the following conditions are	instead of requesting a minor or major variance, applicants will request an authorization certificate with exception.
27		met:	Commented [HK9]: Clarify that these conditions must b
28		(A) There are practical difficulties or unnecessary hardships that prevent compliance with the	met to receive an authorization certificate with exception. Simplified hardships. Remove requirement that property
29		riparian buffer protection requirements.	must be purchased prior to the rule.
30		(B) If the applicant complies with the provisions of this Rule, he or she can secure no	
31		reasonable return from, nor make reasonable use of, his or her property. Merely proving	
32		that the Authorization Certificate with Exception would allow a greater profit from the	
33		property shall not be considered adequate justification for an Authorization Certificate with	
34		Exception. Moreover, the Authority shall consider whether the Authorization Certificate	
35		with Exception is the minimum possible deviation from the terms of this Rule that shall	
36		make reasonable use of the property possible	Commented [HK10]: Removed hardship: "The hardship
			results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship."

1		(C)	The hardship is due to the physical nature of the applicant's property, such as its size, shape,		Commented [HK11]: Removed hardship: "The hardship is
2			or topography.		unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally
3		(D)	The applicant did not cause the hardship:		subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to
4		(E)	The requested Authorization Certificate with Exception is in harmony with the general		others, and would not promote equal justice;"
5			spirit, purpose and intent of the State's riparian buffer protection requirements, will protect	// $'$	Commented [HK12]: Removed "which is different from
6			water quality, will secure public safety and welfare, and will preserve substantial justice.	,	that of neighboring property."  Commented [HK13]: Removed "by knowingly or
7	(2)		R EXCEPTIONS. An Authorization Certificate with Minor Exception request pertains to	//	unknowingly violated this Rule"
8			ble with exception activities that are proposed to impact equal to or less than one-third of an	// /	Commented [HK14]: Removed hardship: "The applicant
9			riparian buffer.	///	did not purchase the property after the effective date of this Rule, and then requesting an appeal."
10 11		(A)	Authorization Certificate with Minor Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.	///	Commented [HK15]: No effect – combined two similar
12		(B)	Within 60 calendar days of receipt of a complete application package that addresses	\ \	hardships into one
13		( <b>D</b> )	Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall issue an	\ \	Commented [HK16]: Changed "Minor Variance" to "Minor Exception"
14			Authorization Certificate with Minor Exception if the Authority makes a finding that the	/ /	Commented [HK17]: Changed requirement for a minor
15			criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant		from impacts to Zone 2 only, to impacts to either zone, totally no more than 1/3 of an acre of buffer
16			satisfies other applicable requirements as described in Paragraph (b) and Subparagraph	\	Commented [HK18]: Establish timelines to process minor
17			(c)(1) of this Rule. If the Authority determines that all of the requirements in		exceptions
18			Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a		
19			final decision denying the Authorization Certificate with Minor Exception.		
20	(3)	MAJO	R EXCEPTIONS. An Authorization Certificate with Major Exception request pertains to		Commented [HK19]: Changed "Major Variance" to
21		allowa	ble with exception activities that are proposed to impact greater than one-third of an acre of		"Major Exception"
22		riparia	n buffer_		Commented [HK20]: Changed requirement for a major
23		(A)	Authorization Certificate with Major Exception requests shall be reviewed based on the		from any impacts to Zone 1 to impacts to either zone more than 1/3 of an acre of buffer
24			criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.		
25		(B)	Within 60 calendar days of receipt of a complete application package that addresses		Commented [HK21]: Establishes a timeframe to process
26			Subparagraphs (b)(1), (b)(2) and (c)(1) of this Rule, the Authority shall prepare a		major exceptions
27			preliminary finding as to whether the criteria in Subparagraphs (b)(2) and (c)(1) of this		
28			Rule have been met.		
		<u>(C)</u>	Notice of each pending complete application for an Authorization Certificate with Major		
29					
29 30			Exception, including the preliminary finding prepared by the Authority, shall be posted on		
			Exception, including the preliminary finding prepared by the Authority, shall be posted on the Division's website and sent to all individuals on the Mailing List, as described in 15A		
30					
30 31			the Division's website and sent to all individuals on the Mailing List, as described in 15A		Commented [HK22]: Because these are not variances,
30 31 32		(D)	the Division's website and sent to all individuals on the Mailing List, as described in 15A NCAC 02H .0503 (g), at least 30 calendar days prior to proposed final action by the		they will not come before the EMC for a decision. A public
30 31 32 33		(D)	the Division's website and sent to all individuals on the Mailing List, as described in 15A NCAC 02H .0503 (g), at least 30 calendar days prior to proposed final action by the Authority on the application.		
30 31 32 33 34		(D)	the Division's website and sent to all individuals on the Mailing List, as described in 15A NCAC 02H .0503 (g), at least 30 calendar days prior to proposed final action by the Authority on the application.  Within 60 calendar days following the notice as described in SubPart (c)(3)(C) of this Rule,		they will not come before the EMC for a decision. A public notice will be provided of all major exception requests.
30 31 32 33 34 35		(D)	the Division's website and sent to all individuals on the Mailing List, as described in 15A NCAC 02H .0503 (g), at least 30 calendar days prior to proposed final action by the Authority on the application.  Within 60 calendar days following the notice as described in SubPart (c)(3)(C) of this Rule, upon the Authority's determination that all of the requirements in Subparagraphs (b)(2)		they will not come before the EMC for a decision. A public notice will be provided of all major exception requests.  Commented [HK23]: Establishes a timeframe to process

1		Subparagraphs (b)(2) and (c)(1) of this Rule have not been met, the Authority shall issue a
2		final decision denying the Authorization Certificate with Major Exception.
3	<u>(4)</u>	The Authority may attach conditions to the Authorization Certificate with Exception that support
4		the purpose, spirit and intent of the riparian buffer protection program.
5	<u>(5)</u>	Requests for appeals of Authorization Certificates with Exception issued by the Division shall be
6		made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception
7		issued by the delegated local authority shall be made to the appropriate Board of Adjustment under
8		G.S. 153A-345 or G.S. 160A-388.
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1	History Note:	Authority 143-214.1; 143-214.5; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-
2		215.6C; 143 215.8B; 143B-282(c); 143B-282(d) S.L. 1999-329, s. 7.1.; S.L. 2005-190; S.L. 2006-
3		259; S.L. 2009-216; S.L. 2009-484;
4		Eff. DATE

15A NCAC 02B .0612 is proposed for adoption as follows: 1 2 15A NCAC 02B .0612 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST 3 HARVESTING REQUIREMENTS 4 Commented [HK1]: Consolidate forestry requirements from Randleman, Neuse, Tar-Pam and Catawba into one rule 5 (a) PURPOSE. The following requirements shall apply to all forest harvesting operations and practices subject to for consistency and ease of implementation 6 riparian buffer requirements under rules of this Section and Section .0700 in SubChapter 02B, except for the Goose 7 Creek Water Quality Management Plan [15A NCAC 02B .0605 to .0608]. Those Rules include: 8 Catawba River Basin [15A NCAC 02B .0614]; 9 Neuse River Basin [15A NCAC 02B .0714]; 10 (3) Randleman Lake Watershed [15A NCAC 02B .0724]; and 11 Tar-Pamlico River Basin [15A NCAC 02B .0734]. (b) REQUIREMENTS THROUGHOUT THE BUFFER. The following requirements shall apply: 12 13 All forest harvest activities within the buffer shall comply with Forest Practice Guidelines Related 14 to Water Quality as defined in Title 02 NCAC 60C; Commented [HK2]: No effect - clarification 15 (2) Logging decks and sawmill sites shall not be placed in the riparian buffer; 16 (3) Timber felling shall be directed away from the stream or waterbody; 17 Skidding shall be directed away from the stream or water body and shall be done in a manner that 18 minimizes soil disturbance and prevents the creation of channels or ruts; Individual trees may be treated to maintain or improve their health, form or vigor; 19 (5) 20 Harvesting of dead or infected trees or application of pesticides as necessary to prevent or control the spread of tree pest and disease infestation shall be allowed. These practices must be approved 2.1 22 by the North Carolina Forest Service for a specific site. The North Carolina Forest Service must notify the Division of all approvals within 60 calendar days; 23 Commented [HK3]: Added timeframe to provide notification to DWR Removal of individual trees that are in danger of causing damage to structures or human life shall 24 (7) 25 be allowed; (8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to 26 Commented [HK4]: Removed requirement for plantings to consist primarily of native species. 27 enhance the riparian buffer shall be allowed provided that soil disturbance is minimized; 28 Prescribed burns shall be allowed when conducted for forest management purposes; and (9) 29 (10)One-time fertilizer application to establish replanted vegetation shall be allowed. This only applies 30 to the one-time application of fertilizer in the riparian buffer. No runoff from this one-time 31 application in the riparian buffer is allowed in the applicable surface water. (c) REQUIREMENTS IN ZONE 1 OF THE BUFFER. Selective forest harvesting is allowed In Zone 1, as defined 32 33 by the applicable Rule of this Section, provided that: 34 The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2 35 through 277.6 or the forest lands have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under 36

1		forestry or the forest management plan shall be produced upon request by the North Carolina Forest	
2		Service or the Division;	
3	<u>(2)</u>	Tracked or wheeled vehicles are only used for the purpose of selective timber harvesting where	Commented [HK5]: Changed language to allow for
4		there is no other practical alternative for removal of individual trees;	tracked or wheeled vehicles in Zone 1 provided activities comply with FPGs
5	(2)	No tracked or wheeled vehicles shall be used to conduct site preparation activities;	
6	(3)	Trees removed with the minimum disturbance to the soil and remaining vegetation;	Commented [HK6]: Changed "residual" to "remaining" –
7	<u>(4)</u>	The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed, except	No effect - grammar
8		$\underline{\text{for the removal of individual high value trees.}} \ \ \underline{\text{The removal of individual high value trees shall only}}$	
9		be allowed provided that no trees with exposed primary roots visible in the streambank are cut,	
10		unless they meet Sub-items (b)(6) or (b)(7) of this Rule; and	
11	(5)	A maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The	
12		reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations	
13		as defined in 15A NCAC 02B .0702 where the reentry time shall be no more frequent than every	
14		five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.	
15	(d) REQUIRE	MENTS IN ZONE 2 OF THE BUFFER. In Zone 2, harvesting and regeneration of the forest stand	
16	shall be allowed,	provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface	
17	runoff.		
18	(e) EXCEPTIO	NS. Persons who wish to undertake forest harvesting operations or practices different from the	
19	requirements set	forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule .0705 of	
20	this Section.		Commented [HK7]: No effect - clarification
21			
22	History Note:	Authority 143-214.1; 143-214.5; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143	
23	,	215.8B; 143B-282(c); 143B-282(d) S.L. 1999-329, s. 7.1.; S.L. 2005-190; S.L. 2006-259; S.L. 2009-	
24		216; S.L. 2009-484;	
25		Eff. DATE	
		2 of 2	

[.0243 is proposed for amendment and transfer to 15A NCAC 02B .0614] Last Revised December 14, 2017

15A NCAC 02B .0243 is proposed for amendment as follows:

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## 15A NCAC 02B 0243.0614 CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF

## EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin.

- (1) PURPOSE. The purpose of this Rule shall be to maintain and protect and preserve existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin in order to maintain their pollutant removal functions as an aid in protecting the water quality of the lakes and connecting river segments.
- (2) DEFINITIONS. For the purpose of Rules 15A NCAC 02B .0243 and 15A NCAC 02B .0244,this Rule, these terms shall be defined as found in Rule .0610 of this Section and as follows:
  - (a) "Authority" means either the Division or a local government that has been delegated pursuant this Rule to implement the riparian buffer program.
  - (b) "Riparian buffer" means the area as defined in Item (4) of this Rule.
  - (a) "Access Trails" means pedestrian trails constructed of pervious or impervious surfaces, and related structures to access a surface water including boardwalks, steps, rails, signage, etc.
  - (b) "Archaeological Activities" means activities conducted by a Registered Professional Archaeologist (RPA).
  - "Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases "air navigation facility," "airport," or "airport protection privileges" under G.S. 63-1; the definition of "aeronautical facilities" in G.S. 63-79(1); the phrase "airport facilities" as used in G.S. 159-48(b)(1); the phrase "aeronautical facilities" as defined in G.S. 159 81 and G.S. 159 97; and the phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements

Commented [HK1]: No effect - update citation

Commented [HK2]: No effect - grammar

Commented [HK3]: No effect - .0244 repealed

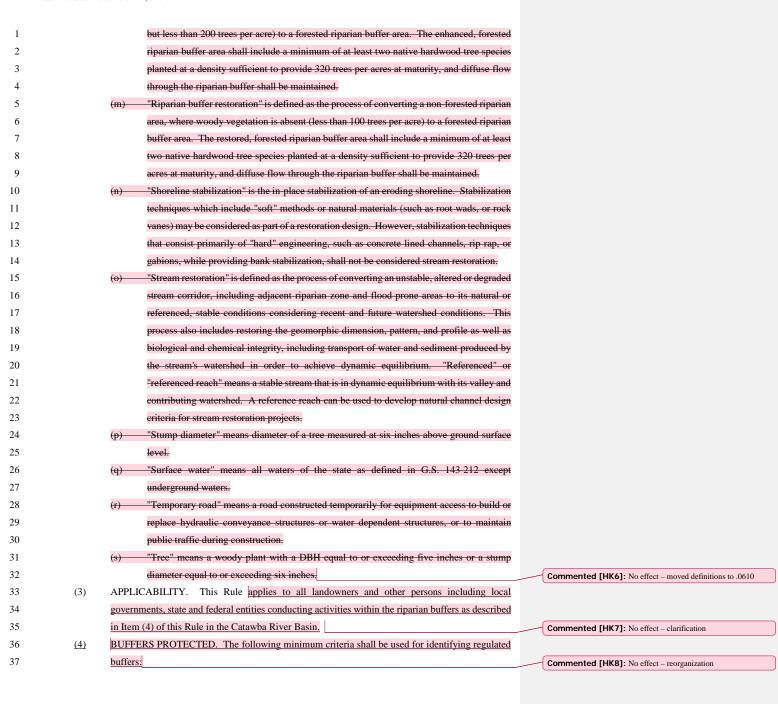
Commented [HK4]: No effect – moved definitions to .0610

Commented [HK5]: No effect - clarification

[.0243 is proposed for amendment and transfer to 15A NCAC 02B .0614] Last Revised December 14, 2017

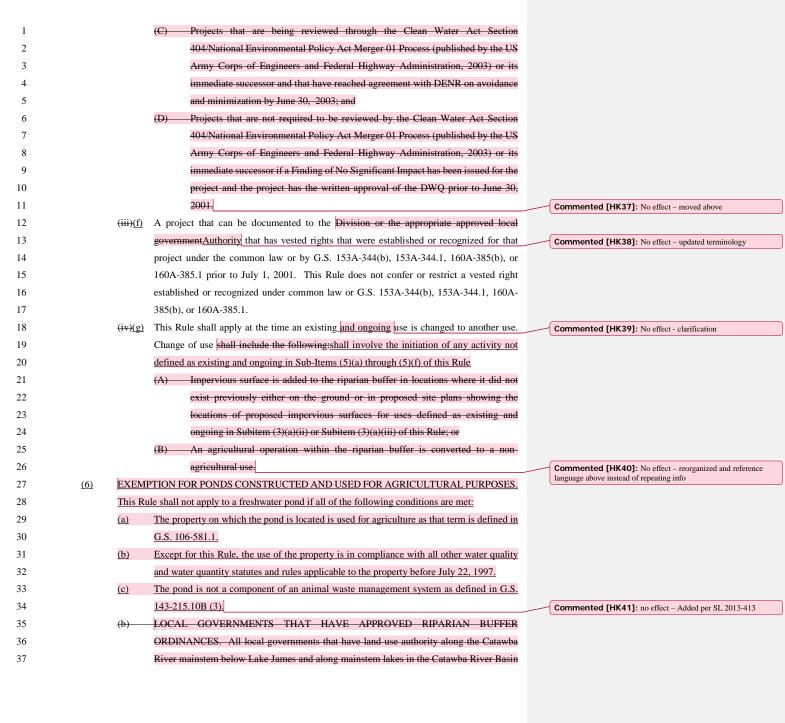
1 through, or other interests in, air space over land or water, interests in airport hazards 2 outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the 3 landing areas of airports and restricted landing areas, and the safe and efficient operation 4 thereof; and any combination of any or all of such facilities. Notwithstanding the 5 foregoing, the following shall not be included in the definition of "Airport Facilities": 6 7 satellite parking facilities; 8 (ii) retail and commercial development outside of the terminal area, such as rental car facilities; and 10 (iii) other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly 11 12 associated with the operation of the airport, and are not operated by a unit of 13 government or special governmental entity such as an airport authority. 14 (d) "Approved local government" means any government with a riparian buffer ordinance 15 approved by the Division pursuant to Subparagraph (3)(b) of this Rule. 16 "Channel" means a natural water carrying trough cut vertically into low areas of the land 17 surface by erosive action of concentrated flowing water or a ditch or canal excavated for 18 the flow of water. "DBH" means diameter at breast height of a tree measured at 4.5 feet above ground surface 19 20 2.1 (g) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally 22 23 regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site 24 25 (h)(c) "Full Pond Level" is a term used by Duke Energy Inc. that refers to the project water level, referenced to mean sea level, for each of the seven mainstem lakes along the Catawba 26 27 River. The landward edge of the lakes at full pond level represents the project boundary for each lake. 28 29 "Greenway / Hiking Trails" means pedestrian trails constructed of pervious and impervious 30 surfaces and related structures including but not limited to boardwalks, steps, rails, signage, 31 etc. 32 "High Value Tree" means a tree whose stump diameter is equal to or exceeding 18-inches. 33 (k)(d) "Mainstem lakes" means the following impoundments created along the mainstem of the Catawba River: Lake James, Lake Rhodhiss, Lake Hickory, Lookout Shoals Lake, Lake 34 35 Norman, Mountain Island Lake and Lake Wylie (North Carolina portion). "Riparian buffer enhancement" is defined as the process of converting a non-forested 36 37 riparian area, where woody vegetation is sparse (greater than or equal to 100 trees per acre

[.0243 is proposed for amendment and transfer to 15A NCAC 02B .0614] Last Revised December 14, 2017



1		<u>(a)</u>	This Rule shall apply to activities conducted within 50-foot wide riparian buffer buffers	Commented [HK9]: No effect - grammar
2			along the Catawba River mainstem below Lake James and along the mainstem lakes in the	Commented [HK10]: No effect - clarification
3			Catawba River Basin, excluding wetlands.	Commented [HK11]: No effect - grammar
4		<u>(b)</u>	Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered	Commented [HK12]: No effect - clarification
5			as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506.	
6		<u>(c)</u>	Stormwater runoff from activities conducted outside the riparian buffer shall comply with	
7			Item (8) of this Rule.	Commented [HK13]: No effect - reorganization
8		<u>(d)</u>	Riparian The riparian buffers protected by this Rule shall be measured pursuant to Item	Commented [HK14]: No effect - punctuation
9			(4)(7) of this Rule.	Commented [HK15]: No effect – updated citation
10		<u>(e)</u>	A riparian buffer may be exempt from this Rule as described in Items (5) and (6) of this	
11			Rule.Riparian buffers along the Catawba River mainstem below Lake James and along	
12			mainstem lakes shall be subject to this Rule unless one of the following applies.	Commented [HK16]: No effect - reorganization
13		<u>(f)</u>	No new clearing, grading or development shall take place nor shall any new building	
14			permits be issued in violation of this Rule.	Commented [HK17]: no effect - Clarification – wording in
15	(a)(5)	EXEM	PTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not	Jordan buffer rules
16		apply t	o portions of the riparian buffer where a use is existing and ongoing. Only the portion of the	
17		riparia	buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.	
18		The de	termination of whether a use is existing and ongoing will be made either by the Division or	
19		approv	ed local government; whichever is appropriate according to the administration of the buffer	
20		progra	m. A use is existing and ongoing when it is a completed and maintained activity, an activity	
21		with ap	propriate valid permits, or an activity with documentation for unexpired vested rights, as	
22		describ	ed below:	Commented [HK18]: No effect – reorganized and deleted
23		( <u>i)(a)</u>	A use that shall be considered existing if:	duplicative language
24			(i) It was present within the riparian buffer as of June 30, 2001 and has continued to	Commented [HK19]: No effect - grammar  Commented [HK20]: No effect - grammar
25			exist since that time.time;	Commented [HK21]: No effect - punctuation
26			(ii) It was a deemed allowable activity as listed in Item (9) of this Rule;	(
27			(iii) It was conducted and maintained pursuant to an Authorization Certificate or	
28			Variance issued by the Authority, or	Commented [HK22]: No effect - clarification
29			(iv) The project or proposed development are determined by the Authority to meet at	
30			least one of the following criteria:	
			(A) Project requires a 401 Certification/404 permit and these were issued	
31				
31 32			prior to June 30, 2001 and are still valid;	
			(B) Projects that require a state permit, such as landfills, NPDES wastewater	
32				
32 33			(B) Projects that require a state permit, such as landfills, NPDES wastewater	
32 33 34			(B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities,	
32 33 34 35			(B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and	
32 33 34 35			(B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and	
32 33 34 35			(B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and	
32 33 34 35			(B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and	

Projects that are being reviewed through the Clean Water Act Section 1 2 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway 3 4 Administration, 2003) or its immediate successor and that have reached agreement with the Department on avoidance and minimization by June 5 30, 2003; or 6 7 Projects that are not required to be reviewed by the Clean Water Act (D) 8 Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway 10 Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the 11 written approval of the Division prior to June 30, 2001. 12 Commented [HK23]: No effect - moved from below 13 (b) Existing and ongoing uses shall include include, but not be limited to, agriculture, Commented [HK24]: No effect - clarification 14 buildings, industrial facilities, commercial areas, transportation facilities, maintained Commented [HK25]: No effect - clarification 15 lawns, lawns (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. Commented [HK26]: no effect - clarification 16 vegetation management has occurred within the last ten years) utility lines-line corridors Commented [HK27]: no effect - clarification Commented [HK28]: no effect - Clarification; codifying policy 17 and on-site sanitary sewage systems, systems, any of which involve either specific periodic 18 management of vegetation or displacement of vegetation by structures or regular activity. Commented [HK29]: no effect - Clarification Only the portion of the riparian buffer that contains the footprint of the existing and 19 20 ongoing use is exempt from this Rule. Commented [HK30]: no effect - Clarification Change of ownership through purchase or inheritance is not a change of use. 2.1 (d) Activities necessary to maintain existing and ongoing uses are allowed provided that the 22 (e) Commented [HK31]: No effect - clarification site remains similarly vegetated, no impervious surfacebuilt upon area is added within 50 23 Commented [HK32]: No effect - updated terminology feet of the surface waterthe riparian buffer where it did not previously exist as of the 24 Commented [HK33]: No effect - clarification effective date of the Rule, prior to June 30, 2001, and existing diffuse flow is 25 Commented [HK34]: No effect - referencing original adoption maintained.the site is in compliance with Item (8) of this Rule. Grading and revegetating 26 Commented [HK35]: no effect – Referencing stormwater Item 27 Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained. 28 Commented [HK36]: No effect - language repeated below 29 A use that can be documented to the Division or the appropriate approved local government 30 that meets at least one of the following criteria: 31 (A) Project requires a 401 Certification/404 Permit, these were issued prior to June 32 30, 2001 and are still valid; 33 Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have 34 35 begun construction or are under contract to begin construction and had received all required state permits prior to June 30, 2001; 36



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may adopt local riparian buffer ordinances to protect water quality. The Division shall approve the local riparian buffer ordinance within 30 days after receiving the request from local governments, if the Division determines that the local riparian buffer ordinance provides equal to or greater water quality protection than this Rule. This Rule shall not apply in any area where a local government has obtained the Division's approval of the local riparian buffer ordinance, provided that the local government is implementing and enforcing the approved local riparian buffer ordinance. The Division, upon determination that the local government is failing to implement or enforce the approved local buffer ordinance, shall notify the local government in writing of the local program inadequacies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification, then the Division shall implement and enforce the provisions of this Rule. RIPARIAN AREAS AND ACTIVITIES NOT REGULATED UNDER AN APPROVED LOCAL GOVERNMENT ORDINANCE. The Division shall be responsible for the

implementation of this rule for all riparian areas and activities not regulated under a Division-approved local government ordinance.

(4)(7) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

Zone 1 shall consist of a forested vegetated area that is undisturbed except for uses provided (a) for in Item  $\frac{(6)(9)}{(9)}$  of this Rule. The location of Zone 1 shall be as follows:

- For the Catawba River mainstem below Lake James, Zone 1 shall begin at the most landward limit of the top of the bank and extend landward a distance of 30 feet on all sides of the surface water, river, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank.the river.
- (ii) For the mainstem lakes located on the Catawba River mainstem, Zone 1 shall begin at the most landward limit of the full pond level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the full pond level.the lake.
- (b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Item (6)(9) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to a vertical line marking the outer edge of Zone 1.the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin.

Commented [HK42]: no effect - Moved to Item 11

Commented [HK43]: No effect – updated terminology

Commented [HK44]: No effect - updated citation

Commented [HK45]: No effect - clarification

Commented [HK46]: No effect - grammar

Commented [HK47]: No effect - grammar

Commented [HK48]: No effect - updated citation

Commented [HK49]: No effect - grammar

1	(5)	DIFF	USE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian	
2		buffer	by dispersing concentrated flow and reestablishing vegetation.	
3		<del>(a)</del>	Concentrated runoff from new ditches or manmade conveyances shall be converted to	
4			diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer.	
5		(b)	Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the	
6			formation of erosion gullies.	
7		(c) N	o new stormwater conveyances are allowed through the buffers except for stormwater	
8			management ponds provided for in Item (6) of this Rule.	Commented [HK50]: less stringent - Removed diffuse flow
9	(8)	STOR	MWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances	requirement; instead provide options for stormwater discharges
10		includ	e drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater	
11		conve	yances through the riparian buffer are either deemed allowable or allowable upon	
12		author	ization, as defined in Sub-Item (9)(a) of this Rule, provided that they do not erode through	
13		the bu	ffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through	
14		the rip	arian buffer that are not listed below shall be allowable with exception as defined in Sub-Item	
15		(9)(a)	(v) of this Rule:	Commented [HK51]: less stringent - Removed diffuse flow
16		(a)	The following are deemed allowable as defined in Sub-Item (9)(a)(i) of this rule:	requirement; instead provide options for stormwater discharges
17			(i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H	Commented [HK52]: No effect – Organization
18			.1002, when the Primary SCM is designed to treat the drainage area to the	
19			conveyance and that comply with a stormwater management plan reviewed and	
20			approved under a state stormwater program or a state-approved local government	
21			stormwater program:	Commented [HK53]: less stringent - New use – allows for
22			(ii) New stormwater flow to existing drainage conveyances provided that the addition	DWR to accept local government review of a SMP without having to review for meeting diffuse flow
23			of new flow does not result in the need to alter the conveyance.	Commented [HK54]: No change – moved from table of uses
24		<u>(b)</u>	The following are allowable upon authorization as defined in Sub-Item (9)(a)(ii) of this	
25			Rule:	Commented [HK55]: No effect – Organization
26			(i) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H	
27			.1002 when the Primary SCM is provided to treat the drainage area to the	
28			conveyance but are not approved under a state stormwater program or a state-	
29			approved local government stormwater program;	Commented [HK56]: No change – moved from table
30			(ii) New drainage conveyances when the flow rate of the conveyance is less than 0.5	
31			cubic feet per second during the peak flow from the 0.75 inch per hour storm;	Commented [HK57]: less stringent - New use
32			(iii) New stormwater runoff that has been treated through a level spreader-filter strip	
33			that complies with 15A NCAC 02H .1059;	Commented [HK58]: No change – from diffuse flow language
34			(iv) Realignment of existing roadside drainage conveyances applicable to publicly	above
35			funded and maintained linear transportation facilities when retaining or improving	
36			the design dimensions provided that no additional travel lanes are added and the	

	Last Revised Dec	cember 14,	2017		
1				minimum required roadway typical section is used based on traffic and safety	
2				considerations;	 Commented [HK59]: less stringent - New use
3		(	v)	Realignment of existing drainage conveyances retaining or improving the design	
4				dimensions provided that the size of the drainage area and the percent built-upon	
5				area within the drainage area remain the same;	 Commented [HK60]: less stringent - New use
6		(	vi)	New or altered drainage conveyances applicable to publicly funded and	
7				maintained linear transportation facilities provided that SCMs, or BMPs from the	
8				NCDOT Stormwater Best Management Practices Toolbox, are employed:	 Commented [HK61]: less stringent - New Use
9		(	vii)	New drainage conveyances applicable to publicly funded and maintained linear	
10				transportation facilities that do not provide a stormwater management facility due	
11				to topography constraints provided other measures are employed to protect	
12				downstream water quality to the maximum extent practical;	 Commented [HK62]: less stringent - New use
13		(	viii)	New drainage conveyances where the drainage area to the conveyance has no new	
14				built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is	
15				necessary for bypass of existing drainage only.	 Commented [HK63]: less stringent - New use
16	<del>(6)</del> (9)	TABLE C	F USE	S. Uses within the riparian buffer, or outside the buffer with hydrological impacts	
17		on the rip	parian b	ouffer, shall be designated as deemed allowable, allowable upon authorization,	
18		allowable	with m	itigation upon authorization, or prohibited.	
19		<u>(a)</u> <u>F</u>	otentia	l new uses shall have the following requirements:	 Commented [HK64]: No effect – Moved from (7) below
20		(	<u>i)</u>	DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items	 Commented [HK65]: Updated terminology
21				(8)(a) and (9)(b) of this Rule may occur within the riparian buffer. Deemed	
22				allowable uses shall be designed, constructed and maintained to minimize	
23				vegetation and soil disturbance and to provide the maximum water quality	
24				protection practicable, including construction, monitoring, and maintenance	
25				activities. In addition, deemed allowable uses shall meet requirements listed in	
26				Sub-Item (9)(b) of this Rule for the specific use.	 Commented [HK66]: No effect – moved from (7) below
27		(	ii)	ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon	 Commented [HK67]: No effect – Updated terminology
28				authorization in Sub-Items (8)(b) and (9)(b) of this Rule require a written	
29				Authorization Certificate from the Authority for impacts within the riparian buffer	
30				pursuant to Rule .0611 of this Section.	 Commented [HK68]: No effect – moved from (7) below
31		(	iii)	ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses	 Commented [HK69]: No effect – Updated terminology
32				designated as allowable with mitigation upon authorization in Sub-Item (9)(b) of	
33				this Rule require a written Authorization Certificate from the Authority for	
34				impacts within the riparian buffer pursuant to Rule .0611 of this Section and an	
35				appropriate mitigation strategy has received written approval pursuant to Item	
36				(10) of this Rule.	 Commented [HK70]: No effect – moved from (7) below

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PROHIBITED. Uses designated as Prohibited in Sub-Item (9)(b) of this Rule may not proceed within the riparian buffer unless a Variance is granted pursuant to Rule .0226 of this Section. Mitigation may be required as a condition of variance approval.

(v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in Sub-Item (9)(b) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Item (10) of this Rule.

The following chart\_table sets out the potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and their category designation under this Ruledesignates them as exempt, allowable, or allowable with mitigation. Any uses, which are not listed in the table, are prohibited. The requirements for each category listed in the table as well as prohibited uses not set out in the table are given in Item (7) of this Rule.deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited:

Commented [HK71]: No effect – clarify variance process set out in Rule .0226

Commented [HK72]: less stringent - New category – instead of deeming all activities not listed in the table as "prohibited" they will go through the buffer authorization process but still have to meet hardships

Commented [HK73]: No effect - grammar

Commented [HK74]: No effect - clarification

Commented [HK75]: No effect – clarification

Commented [HK76]: No effect - grammar

Commented [HK77]: No effect – updated terminology

Use	Exempt	Allowable	Allowable	Commented [HK78]: No effect – updated terminology
	Deemed	Upon	with	
	Allowable	Authorization	Mitigation	
			Upon	
			Authorization	
Access trails: Pedestrian access trails leading to the surface				
water, docks, fishing piers, boat ramps and other water				
dependent activities:				
Pedestrian access trails that are restricted to the minimum width	X			
practicable and do not exceed4 feet in width of buffer				
disturbance, and provided that installation and use does not				
result in removal of trees as defined in this Rule and no				
impervious surface is added to the riparian buffer				
• Pedestrian access trails that exceed 4 feet in width of buffer				
disturbance, the installation or use results in removal of trees as		X		
defined in this Rule or impervious surface is added to the				
riparian buffer				

Use	Exempt	Allowable	Allowable	Pre Commented [HK78]: No effect – updated terminology
	Deemed	<u>Upon</u>	with	
	Allowable	Authorization	Mitigation	
			Upon	
			Authorization	
At a control			<u>×</u>	Commented [HK79]: no effect - Combined all access trails uses into one use later in the table
Airport facilities:	37			
Vegetation removal activities necessary to comply with	<u>X</u>			
Federal Aviation Administration requirements (e.g. line of				
sight requirements) provided the disturbed areas are stabilized		X		
and revegetated		Λ		Commented [HK80]: no effect - Codifying policy
• Airport or airstrip facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer			X	Commented [HK81]: No effect – airstrip is included within the definition of airport in .0610
Airport or airstrip facilities that impact greater than 150 linear.			Λ	Commented [HK82]: no effect - Removed linear feet; will just reference square feet for ease of implementation
feet or one-third of an acre of riparian buffer				Commented [HK83]: No effect – airstrip is included within the
Archaeological activities	X			definition of airport in .0610
Bridges	Λ			Commented [HK84]: no effect - Removed linear feet; will just reference square feet for ease of implementation
Impact equal to or less than one-tenth of an acre of	X			
riparian buffer	<u>A</u>			
Impact greater than one-tenth of an acre of riparian buffer		X		Commented [HK85]: less stringent - Added new use to allow
Canoe Access provided that installation and use does not	X			bridges with less than 1/10 to be deemed allowable; consistent with road impacts
result in removal of trees as defined in this Rule and no	71			road impacts
impervious surface is added to the buffer				Commented [HK86]: no effect - Combined all access trails into
Dam maintenance activities:				one use later in the table
Dam maintenance activities that do not cause additional riparian	X			Commented [HK87]: No effect - clarification
buffer disturbance beyond the footprint of the existing dam or				
those covered under the U.S. Army Corps of Engineers				
Nationwide Permit No. 3		X		Commented [HK88]: less stringent – allows for impacts beyond
• Dam maintenance activities that do cause additional riparian				those covered under a NW 3
buffer disturbance beyond the footprint of the existing dam of				Commented [HK89]: No effect - clarification
	1	1	l	

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Use	Exempt	Allowable	Allowable	Pre Commented [HK78]: No effect – updated terminology
	Deemed	<u>Upon</u>	with	
	Allowable	Authorization	Mitigation	
			<u>Upon</u>	
			Authorization	
those not covered under the U.S. Army Corps of Engineers				
Nationwide Permit No. 3				Commented [HK90]: less stringent – allows for impacts beyond those covered under a NW 3
Drainage ditches, roadside ditches and stormwater outfalls				linose covered diader a TVW 3
through riparian buffers:				
• Existing drainage ditches, roadside ditches, and stormwater	X			
outfalls provided that they are managed to minimize the				
sediment, nutrients and other pollution that convey to				
waterbodies				
<ul> <li>New drainage ditches, roadside ditches and stormwater</li> </ul>				
outfalls provided that a stormwater management facility is		X		
installed to control pollutants and attenuate flow before the				
conveyance discharges through the riparian buffer				
• New stormwater discharges to existing man-made				
conveyances (including, but not limited to, drainage ditches,		X		Commented [HK91]: No effect - Moved to Item (8) above
roadside ditches, and stormwater outfalls) provided that the				
new stormwater discharge does not result in the need to alter				
the existing man-made conveyances				
Driveway crossings of surface waters subject to this Rule:				
Driveway crossings on single family residential lots subdivided	X			
or recorded prior to the effective date of this Rule that disturb				
equal to or less than 25 linear feet or 2,500 square feet of				
<del>riparian buffer</del>		X		
Driveway crossings on single family residential lots subdivided				
or recorded prior to the effective date of this Rule that disturb				
greater than 25 linear feet or 2,500 square feet of riparian buffer		X		
• In a subdivision that cumulatively disturbs equal to or less than				
150 linear feet or one third of an acre of riparian buffer			X	Commented [HK92]: No effect - Moved below with road
• In a subdivision that cumulatively disturbs greater than 150				impacts
linear feet or one third of an acre of riparian buffer				
Fences:				
Fencing livestock out of surface waters	<u>X</u>			Commented [HK93]: less stringent - New deemed allowable
				use

Use	Exempt	Allowable	Allowable	Pre Command HW701 No. 65 of additional land
USC	Deemed		with	Commented [HK78]: No effect – updated terminology
	Allowable	<u>Upon</u> Authorization	Mitigation	
	Allowable	Authorization	C	
			Upon Authorization	
	X		Authorization	
• Fences provided that disturbance is minimized and	A			
installationInstallation does not result in removal of trees as		v		
defined in this Rule		X		Commented [HK94]: No effect - grammar
• Fences provided that disturbance is minimized and				
installationInstallation results in removal of trees as defined in				
this Rule				Commented [HK95]: No effect - grammar
Forest harvesting - see Item (11) of this Rule .0612 of this				
Section				Commented [HK96]: No effect – updated citation
<u>Fertilizer</u>				
One-time fertilizer application to establish replanted	<u>X</u>			
vegetation. This only applies to the one-time application of				
fertilizer in the riparian buffer. No runoff from this one-				
time application in the riparian buffer is allowed in the				
applicable surface water.				Commented [HK97]: less stringent - New use
Ongoing fertilizer application				Commented [HK98]: No effect - clarification
Grading and revegetation in Zone 2 only provided that diffuse	X			
flow and the health of existing vegetation in Zone 1 is not				
compromised compromised, Item (8) of this Rule is complied				
with, and disturbed areas are stabilized and revegetated				Commented [HK99]: No effect – clarification and updated
Greenway / hiking trails Greenways, trails, sidewalks or linear				citation
pedestrian/bicycle transportation system:				
On publicly owned property	<u>X</u>			Commented [HK100]: no effect - Added per SL 2017-209
• In Zone 2 provided that no built upon area is added within the	X			Commented [HK101]: no effect - Codifying policy
<u>buffer</u>				
• When built upon area is added to the buffer, equal to or less		X		
than ten (10) feet wide with two (2) foot wide shoulders. Must				
be located outside Zone 1 unless there is no practical				
alternative				
When built upon area is added to the buffer, greater than ten			<u>X</u>	
(10) feet wide with two (2) foot wide shoulders. Must be				
located outside Zone 1 unless there is no practical alternative				

Use	Exempt	Allowable	Allowable	Commented [HK78]: No effect – updated terminology
	Deemed	Upon	with	
	Allowable	Authorization	Mitigation	
			Upon	
			Authorization	
Historic preservation	X			
New Landfills				Commented [HK102]: less stringent - Allows for landfill
Mining activities:				expansions to seek an Authorization Certificate with Exception instead of a Variance
• Mining activities that are covered by the Mining Act provided		X		
that new riparian buffers that meet the requirements of Items (4)				
and (5)(7) and (8) of this Rule are established adjacent to the				Commented [HK103]: No effect – updated citation
relocated channels				
• Mining activities that are not covered by the Mining Act OR			X	
where new riparian buffers that meet the requirements of Items				
(7) and (8)(4) and (5) of this Rule are not established adjacent				Commented [HK104]: No effect – updated citation
to the relocated channels				Commented [HK105]: less stringent - Allows mining activities
◆ Wastewater or mining dewatering wells with approved NPDES	<u>X</u>			that do not relocate channels to pursue an authorization certificate
permit				Commented [HK106]: less stringent - New deemed allowable
Non electric utility lines:				use
<ul> <li>Impacts other than perpendicular crossings in Zone 2 only<sup>4</sup></li> </ul>		X		
• Impacts other than perpendicular crossings in Zone 1-4			X	Commented [HK107]: no effect - Moved to below
Non-electric utility line perpendicular crossings of surface waters				
subject to this Rule 1:				
• Perpendicular crossings that disturb equal to or less than 40	X			
linear feet of riparian buffer with a maintenance corridor equal				
to or less than 10 feet in width				
• Perpendicular crossings that disturb equal to or less than 40		X		
linear feet of riparian buffer with a maintenance corridor greater				
than 10 feet in width				
• Perpendicular crossings that disturb greater than 40 linear feet		X		
but equal to or less than 150 linear feet of riparian buffer with a				
maintenance corridor equal to or less than 10 feet in width				
• Perpendicular crossings that disturb greater than 40 linear feet				
but equal to or less than 150 linear feet of riparian buffer with a			X	
maintenance corridor greater than 10 feet in width				
			X	

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Use	Exempt	Allowable	Allowable	Commented [HK78]: No effect – updated terminology
	Deemed	<u>Upon</u>	with	
1	Allowable	Authorization	Mitigation	
		1	Upon	
			Authorization	
Perpendicular crossings that disturb greater than 150 linear feet				
of riparian buffer regardless of the width of the maintenance	'	1		
corridor	<u> </u>			Commented [HK108]: no effect - Moved to below
Overhead electric utility lines:				
• Impacts other than perpendicular crossings in Zone 2 only <sup>1</sup>	X			
Impacts other than perpendicular crossings in Zone 1 <sup>1,2,3</sup>	X			Commented [HK109]: no effect - Moved to below
Overhead electric utility line perpendicular crossings of surface				
waters subject to this Rule <sup>1</sup> :	ĺ '			
• Perpendicular crossings that disturb equal to or less than 150	X			
linear feet of riparian buffer 2				
• Perpendicular crossings that disturb greater than 150 linear feet		X		
of riparian buffer <sup>-2, 3</sup>	ļ'			Commented [HK110]: no effect - Moved to below
	<u> </u>	<u>,I</u>	<u> </u>	

Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°. New water intakes and new outfall lines which may be required to extend to or cross part of waterbodies will be implemented and enforced under this category.

<sup>2</sup>-Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only
  vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where
  trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.

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- No fertilizer shall be used other than a one time application to re establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.
- <sup>3</sup> Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.

**Commented [HK111]:** no effect - Moved relevant footnotes into the Table

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Use	Exempt	Potentially	Potentially	Prob	Comm	ented [HK112]: No effect – updated terminology
	Deemed	Allowable	Allowable	1111	Comme	THE LIKTIZI. No effect – updated terminology
	Allowable	Anowabic	with			
	Allowabic		Mitigation			
On site assistant association and the state of the state			ivittigation	X		
On-site sanitary sewage systems – new ones that use ground absorption				Δ		
*					Comme	ented [HK113]: No effect – clarification
Pedestrian access trail and associated steps leading to a surface water,						
dock, canoe or kayak access, fishing pier, boat ramp or other water						
dependent structure:						
Pedestrian access trail equal to or less than six (6) feet wide  that the second of the description of the second of the se	<u>X</u>					
that does not result in the removal of any tree(s) within the						
riparian buffer and does not result in any built upon area						
being added to the riparian buffer		X				
Pedestrian access trail equal to or less than six (6) feet wide						
where the installation or use results in the removal of tree(s)						
or addition of built upon area to the riparian buffer			<u>X</u>			
Pedestrian access trail greater than six (6) feet wide					Comme	ented [HK114]: no effect - Combined uses from above
Playground equipment:						
• Playground equipment on single family lots provided that installation	X					
and use does not result in removal of trees as defined in this	,					
Rulevegetation						
• Playground equipment on single family lots where installation and on						
use requires results in the removal of trees as defined in this		X				
Rulevegetation						
• Playground equipment installed on lands other than single family lots		<u>X</u>				ented [HK115]: No effect – clarifications and separated
Properties that have been subdivided by a preliminary subdivision					bullets fo	or clarification
plat <sup>4</sup> plat approved by local governments within the Catawba River						
Basin within 2 years prior to June 30, 2001 for conventional						
subdivisions and within 5 years prior to June 30, 2001 for phased						
subdivisions: subdivisions. The submitted preliminary subdivision						
plan stall include all of the following: total acreage of land proposed						
for platting, boundaries of the tract or portion thereof to be						
subdivided, with all bearings and distances accurately shown,						
including dimensions of all lot lines; location and use of all existing						
and proposed easements, including easements for drainage and						

Use	Exempt	Potentially	Potentially	Proh Commer	nted [HK112]: No effect – updated terminology
	Deemed	Allowable	Allowable		
	Allowable		with		
			Mitigation		
utilities, location, width of rights-of-way and all proposed streets,					
location of all utilities installations, distance to nearest public water					
supply and sanitary sewerage systems, significant natural features					
including existing riparian buffer areas, existing wetlands, lakes or					
rivers, or other natural features affecting the site, and existing					
physical features including buildings, streets, railroads, power lines,					
drainage ways, sewer and water or spring heads, and town limit lines	X				
both to or adjacent to the land to be subdivided.					
• Uses in Zone 2 provided that the ground is stabilized and Item (8) of					
this Rule is complied with diffuse flow is maintained					
• Uses in Zone 1 provided that the ground is stabilized and Item (8) of	ļ	X			
this Rule is complied with diffuse flow is maintained. On-site waste				Commer	nted [HK116]: No effect – updated citation
systems, septic tanks and drainfields are not allowed in Zone 1					nted [HK117]: No effect – incorporated footnote into
Properties that are included on a recorded subdivision plan prior to				main text	
June 30, 2001:					
• Uses in Zone 2 provided that the ground is stabilized and Item (8) of	X				
this Rule is complied with diffuse flow is maintained	ļ				
• Uses in Zone 1 provided that the ground is stabilized and Item (8) of		X			
this Rule is complied with diffuse flow is maintained. On-site waste				Commer	nted [HK118]: No effect – updated citations
systems, septic tanks and drainfields are not allowed in Zone 1					
Protection of existing structures, structures and facilities and shoreline		X		Commer	nted [HK119]: No effect – shorelines addressed below,
when this requires additional disturbance of the riparian buffer or the				clarify this	s includes existing utility lines
channel					nted [HK120]: less stringent - Removed to only
Public Safety - publicly owned spaces where it has been determined	<u>X</u>			reference of	disturbance of the buffer
by the head of the local law enforcement agency with jurisdiction	ļ				
over that area that the buffers pose a risk to public safety. The head					
of the local law enforcement agency shall notify the local government					
with land use jurisdiction over the publicly owned space and the					
Division of Water Resources of any such determination in writing.				Commer	nted [HK121]: no effect - per SL 2017-209
Pumps for agricultural irrigation in Zone 1 provided that installation					
and use does not result in removal of trees as defined in this Rule	X				
	<u> </u>				

<sup>4</sup> The submitted preliminary subdivision plat shall include all the following information:

• Total acreage of land proposed for platting.

1

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3 4

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- The boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown, including dimensions of all lot lines.
- Location and use of all existing and proposed easements. This includes easements for drainage and utilities.
- Location, width of rights of way and all proposed streets.
- Location of all utilities installations.
- Distance to nearest public water supply and sanitary sewerage systems.
- Significant natural features including existing riparian buffer areas, existing wetlands, lakes or rivers, or
  other natural features affecting the site.
- Existing physical features including buildings, streets, railroads, power lines, drainage ways, sewer and
  water or spring heads, and town limit lines both to or adjacent to the land to be subdivided.

Commented [HK122]: no effect - Moved relevant footnotes into the Table

Use	Exempt	Potentially	Potentially	Proh	Comme	nted [HK123]: No effect – updated terminology
	Deemed	Allowable	Allowable			
	Allowable		with			
			Mitigation			
Railroad impacts other than crossings of surface waters subject to this			X			
Rule					Comme	nted [HK124]: no effect - Moved to below
Recreational and accessory structures:						
• Recreational and accessory structures such as decks, gazebos and						
sheds provided the total cumulative footprint of all structures within	X					
the buffer does not exceed 150 square feet, that the structures are						
elevated above pervious ground, that installation does not result in						
removal of trees as defined in this Rule, and that they are not						
otherwise prohibited under the local water supply watershed						
ordinance						
• Recreational and accessory structures such as decks, gazebos, and		X				
sheds with a cumulative footprint of more than 150 square feet		71				
provided that the structures are elevated above pervious ground, that						
installation does not result in removal of trees as defined in this Rule,						
and that they are not otherwise prohibited under the local water						
supply watershed ordinance						nted [HK125]: no effect - Removed this use; these
Removal of previous fill or debris provided that Item (8) of this Rule	X					will fall under "allowable with exception" except for ich are addressed below
is complied withdiffuse flow is maintained and any vegetation					Comme	nted [HK126]: No effect – updated citation
removed is restored						

Use	Exempt	Potentially	Potentially	Proh Commented [HK123]: No effect – updated terminology
CSC	Deemed	Allowable	Allowable	Commented [FIX 123]. No enect – updated terminology
	Allowable	Allowabic	with	
	Allowable		Mitigation	
			Wittigation	
Restoration or enhancement (wetland, stream) as defined in 33 CFR				
Part 332 available free of charge on the internet at:				
http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_				
index.cfm:				
Wetland or stream restoration that does not require written	<u>X</u>			
Division approval that results in impacts to the riparian buffer				
Wetland or stream restoration that requires written Division				
approval that results in impacts to the riparian buffer		<u>X</u>		Commented [HK127]: no effect - Clarification
RoadRoad, driveway or railroad impacts other than perpendicular			X	
crossings of surface waters subject to this Rule				Commented [HK128]: no effect - Incorporating road, driveway
Road Road, driveway or railroads: perpendicular crossings of surface				and railroad into one row of requirements for ease and consistency
waters subject to this Rule or perpendicular entry into the buffer that				Commented [HK129]: no effect - Incorporating road, driveway and railroad into one row of requirements for ease and consistency
does not cross a stream or other surface water subject to this Rule:				Commented [HK130]: no effect - Clarification
Road crossings that impact Impact equal to or less than 40	X			Commented [HK131]: No effect - grammar
linear feetone-tenth of an acre of riparian buffer				Commented [HK132]: No effect – will just reference square feet for ease of implementation
Road crossings that impact greater than 40 linear		X		Commented [HK133]: No effect - grammar
feetone-tenth of an acre but equal to or less than 150 linear				
feet or one-third of an acre of riparian buffer				Commented [HK134]: No effect – will just reference square feet for ease of implementation
Road crossings that impact Impact greater than 150 linear feet			X	Commented [HK135]: No effect - grammar
or one-third of an acre of riparian buffer				Commented [HK136]: No effect – will just reference square
<ul> <li>Driveway crossings in a subdivision that cumulatively disturb</li> </ul>		<u>X</u>		feet for ease of implementation
equal to or less than one-third of an acre of riparian buffer				
<ul> <li>Driveway crossings in a subdivision that cumulatively disturb</li> </ul>			<u>X</u>	
greater than one-third of an acre of riparian buffer				Commented [HK137]: No effect – moved from above
Agriculture roads that are exempt from permitting from the	<u>X</u>			
U.S. Army Corps of Engineers per Section 404(f) of the				
federal Clean Water Act				Commented [HK138]: Less stringent – new use to allow for ag
Road relocation of existing private access roads associated with				rules to have the same exemption under the buffer rules they have under 404
public road projects where necessary for public safety:				
• Less than or equal to 2,500 square feet of riparian buffer impact		<u>X</u>		
Greater than 2,500 square feet of riparian buffer impact			<u>X</u>	Commented [HK139]: less stringent - New use
Scientific studies and gauging station	X			
	1	1	1	

Use	Exempt	Potentially	Potentially	Proh Commented [HK123]: No effect	t – updated terminology
	Deemed	Allowable	Allowable		
	Allowable		with		
			Mitigation		
Stormwater management ponds excluding dry ponds:Control					
Measure (SCM) as defined in 15A NCAC 02H .1002:					
• In Zone 2 if Item (8) of this Rule is complied with New stormwater		X			
management ponds provided that a riparian buffer that meets the					
requirements of Items (4) and (5) of this Rule is established adjacent					
to the pond					
• In Zone 1 New stormwater management ponds where a riparian			X		
buffer that meets the requirements of Items (4) and (5) of this Rule is					
NOT established adjacent to the pond					
Stormwater constructed wetland and bio-retention area		X		Commented [HK140]: less strin	
Shoreline stabilization		X		SCM in the buffer instead of just well	ponds
Temporary roads: roads, provided that the disturbed area is restored to					
pre-construction topographic and hydrologic conditions and replanted	]				
with comparable vegetation within two (2) months of when	]				
construction is complete. Tree planting may occur during the					
dormant season. At the end of five years, the restored wooded buffer					
shall comply with the restoration criteria in Paragraph (i) of Rule	]				
.0295 of this Section:	X			Commented [HK141]: no effect	- Clarification
Temporary roads that disturb lessLess than or equal to 2,500 square				Commented [HK142]: No effect	t - grammar
feet provided that vegetation is restored within six months of initial					
disturbance of riparian buffer disturbance		X		Commented [HK143]: no effect	- Moved to wording above
• Temporary roads that disturb greater Greater than 2,500 square feet				Commented [HK144]: No effect	t - grammar
provided that vegetation is restored within six months of initial					
disturbance of riparian buffer disturbance		X		Commented [HK145]: no effect	- Moved to wording above
• Temporary roads used for Associated with culvert installation,				Commented [HK146]: No effect	t – grammar
bridge construction or replacement provided that restoration					
activities, such as soil stabilization and revegetation, are conducted					
immediately after construction				Commented [HK147]: no effect	- Moved to wording above
Temporary sediment and erosion control devices: devices provided					
that the disturbed area is restored to preconstruction topographic and					
hydrologic conditions and replanted with comparable vegetation					
within two (2) months of when construction is complete. Tree					

Use    Exempt   Deemed   Allowable   Potentially   Deemed   Allowable   Allowa
planting may occur during the dormant season. At the end of five years, the restored buffer shall comply with the restoration criteria in  Paragraph (i) of Rule .0295 of this Section:  In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act. that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow-in accordance with Item (5)(8) of this Rule  In Zones 1 and 2 to control impacts associated with uses approved by the Division-Authority or that have received a variancean authorization with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer  Allowable  With Mitigation  Commented [HK148]: no effect - Added language for restoring temporarily disturbed area; consistent with requirement for temporary roads  Commented [HK149]: no effect - Incorporate compliance with the E&SC plan  Commented [HK150]: No effect - updated citation  X  Commented [HK150]: No effect - updated terminology  Commented [HK151]: No effect - updated terminology  Commented [HK152]: No effect - updated terminology  Commented [HK152]: No effect - updated terminology  control for upland areas is addressed to the maximum extent practical outside the buffer
planting may occur during the dormant season. At the end of five years, the restored buffer shall comply with the restoration criteria in  Paragraph (i) of Rule .0295 of this Section:  In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act.  That the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5)(8) of this Rule  In Zones 1 and 2 to control impacts associated with uses approved by the Division Authority or that have received a variancean authorization with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer  Mitigation  Commented [HK148]: no effect - Added language for restoring temporary roads  Commented [HK149]: no effect - Incorporate compliance with the E&SC plan  Commented [HK150]: No effect - updated citation  Commented [HK151]: No effect - updated terminology  Commented [HK151]: No effect - updated terminology  control for upland areas is addressed to the maximum extent practical outside the buffer  Commented [HK153]: no effect - Removed unnecessary
planting may occur during the dormant season. At the end of five years, the restored buffer shall comply with the restoration criteria in  Paragraph (i) of Rule .0295 of this Section:  In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5)(8) of this Rule  In Zones 1 and 2 to control impacts associated with uses approved by the Division Authority or that have received a variancean authorization with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer  Commented [HK153]: no effect - Added language for restoring temporary roads  Commented [HK148]: no effect - Incorporate compliance with the E&SC plan  Commented [HK150]: No effect - updated citation  X  Commented [HK151]: No effect - updated terminology  Commented [HK151]: No effect - updated terminology  Commented [HK152]: no effect - updated terminology  Commented [HK153]: no effect - Removed unnecessary
years, the restored buffer shall comply with the restoration criteria in  Paragraph (i) of Rule .0295 of this Section:  In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act.  that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5)(8) of this Rule  In Zones 1 and 2 to control impacts associated with uses approved by the Division Authority or that have received a variancean authorization with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer  Commented [HK152]: No effect - updated terminology control for upland areas is addressed to the maximum extent practical outside the buffer  Commented [HK152]: no effect - Removed unnecessary
Paragraph (i) of Rule .0295 of this Section:  In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5)(8) of this Rule  In Zones 1 and 2 to control impacts associated with uses approved by the Division—Authority or that have received a variancean authorization with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer  Commented [HK152]: no effect - Added language for restoring temporarily disturbed area; consistent with requirement for temporary roads  Commented [HK149]: no effect - Incorporate compliance with the E&SC plan  Commented [HK150]: No effect - updated citation  X  Commented [HK151]: No effect - updated terminology  Commented [HK152]: No effect - updated terminology  Commented [HK152]: no effect - updated terminology  Commented [HK153]: no effect - Removed unnecessary
• In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act.  **That the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5)(8) of this Rule  • In Zones 1 and 2 to control impacts associated with uses approved by the Division—Authority or that have received a variancean with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer  • Commented [HK150]: No effect – updated terminology  **Commented [HK151]: No effect – updated terminology  **Commented [HK152]: No effect – updated terminology  **Commented [HK152]: No effect – updated terminology  **Commented [HK153]: no effect – Removed unnecessary
• In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act.  that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5)(8) of this Rule  • In Zones 1 and 2 to control impacts associated with uses approved by the Division Authority or that have received a variancean authorization with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer  • Commented [HK150]: No effect – updated terminology  Commented [HK152]: No effect – updated terminology  Commented [HK152]: No effect – updated terminology  Commented [HK153]: no effect – Removed unnecessary
that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5)(8) of this Rule  In Zones 1 and 2 to control impacts associated with uses approved by the Division Authority or that have received a variancean X  Commented [HK150]: No effect – updated terminology  authorization with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer  Commented [HK151]: No effect – updated terminology  Commented [HK152]: No effect – updated terminology  Commented [HK153]: no effect – Removed unnecessary
is released as diffuse flow in accordance with Item (5)(8) of this Rule  • In Zones 1 and 2 to control impacts associated with uses approved by the Division Authority or that have received a variancean X  Commented [HK151]: No effect – updated terminology authorization with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer  Commented [HK153]: no effect - Removed unnecessary
is released as diffuse flow in accordance with Item (5)(8) of this  Rule  In Zones 1 and 2 to control impacts associated with uses approved by the Division Authority or that have received a variancean X  Commented [HK150]: No effect – updated terminology  authorization with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer  Commented [HK153]: no effect – Removed unnecessary
Rule  In Zones 1 and 2 to control impacts associated with uses approved by the Division Authority or that have received a variancean X  Commented [HK151]: No effect – updated terminology authorization with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer  Commented [HK152]: no effect – Removed unnecessary
by the Division Authority or that have received a variancean X  Commented [HK151]: No effect – updated terminology  authorization with exception provided that sediment and erosion  control for upland areas is addressed to the maximum extent practical outside the buffer  Commented [HK152]: No effect – updated terminology  Commented [HK153]: no effect - Removed unnecessary
authorization with exception provided that sediment and erosion  control for upland areas is addressed to the maximum extent  practical outside the buffer  Commented [HK153]: no effect - updated terminology  Commented [HK153]: no effect - Removed unnecessary
control for upland areas is addressed to the maximum extent  practical outside the buffer  Commented [HK153]: no effect - Removed unnecessary
practical outside the buffer Commented [HK153]: no effect - Removed unnecessary
language; this will be reviewed as part of the no practical
In-stream temporary erosion and sediment control measures for      In-stream temporary erosion and sediment control measures for  alternatives analysis
work within a stream channel that is authorized under Sections 401 X
and 404 of the Federal Water Pollution Control Act  Commented [HK154]: no effect - clarification
Underground electric utility lines:
• Impacts other than perpendicular crossings in Zone 2 only <sup>1</sup>
• Impacts other than perpendicular crossings in Zone 1 <sup>1,5</sup> X  Commented [HK155]: no effect - Moved to below
Underground electric utility line perpendicular crossings of surface
waters subject to this Rule: †
Perpendicular crossings that disturb less than or equal to 40 linear  X
feet of riparian buffer 5
Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer.       Commented [HK156]: no effect - Moved to below
Utility – Sewer lines:  Commented [HK157]: no effect - Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric
Sanitary Sewer Overflows:  underground to (1) sewer lines, (2) non-sewer underground and (3)  non-sewer aerial
o Emergency sanitary sewer overflow response X
activities, provided that the disturbed area within
the buffer: is the minimum necessary to respond to
the emergency overflow, is restored to pre-
construction topographic and hydrologic

Use	Exempt	Potentially	Potentially	Proh Commented [HK123]: No effect – updated terminology
	Deemed	Allowable	Allowable	
	Allowable		with	
			Mitigation	
conditions, and is replanted with comparable				
vegetation within two (2) months of when				
disturbance is complete.				
o Emergency sanitary sewer overflow response		<u>X</u>		
activities, provided the disturbed area within the				
buffer: is the minimum necessary to respond to the				
emergency overflow and is not fully restored to				
pre-construction topographic and hydrologic				
conditions. For any impacts proposed to remain				
permanently an application for an Authorization				
Certificate must be submitted to the authority				
within 30 calendar days of conclusion of the				
emergency response activities.				Commented [HK158]: less stringent - Greater flexibility for responding quickly to SSOs
New Sewer Line Construction Activities (including				responding quickly to 5508
replacement/rehabilitation that does not meet the criteria of				
existing use in Item (5) of this Rule) provided that (1)				
vegetative root systems and stumps are left intact to				
maintain the integrity of the soil except in the trench where				
trees are cut, and (2) vegetation is allowed to regenerate in				
disturbed areas, except within the permanent maintenance				
corridor:				
<ul> <li>Perpendicular crossings of streams and other</li> </ul>				
surface waters subject to this Rule or perpendicular				
entry into the buffer that does not cross a stream or				
other surface water subject to this Rule:				Commented [HK159]: no effect - Clarify this use can include perpendicular entry into the buffer that doesn't cross a stream (e.g.
<ul> <li>Less than or equal to 40 linear feet with a</li> </ul>	<u>X</u>			connecting to existing line)
permanent maintenance corridor equal to				
or less than 20 feet in width.				
• Greater than 40 linear feet and less than or		<u>X</u>		
equal to 150 linear feet, with a permanent				
maintenance corridor equal to or less than				
20 feet in width.				
• Greater than 150 linear feet with a			<u>X</u>	

Use	Exempt	Potentially	Potentially	Proh Commer	nted [HK123]: No effect – updated terminology
	Deemed	Allowable	Allowable		
	Allowable		with		
			Mitigation		
permanent maintenance corridor equal to					
or less than 20 feet in width.					
<ul> <li>Permanent maintenance corridor greater</li> </ul>			<u>X</u>		
than 20 linear feet (mitigation is required					
only for impacts beyond the 20 linear feet					
corridor width).					nted [HK160]: less stringent - increased maintenance rom 10 to 20 feet
o Impacts other than perpendicular crossings:				Corridor II	om 10 to 20 feet
■ Zone 2 only.	<u>X</u>				nted [HK161]: less stringent - changed from allowable
<ul> <li>Zone 1 impacts to less than 2,500 square</li> </ul>		<u>X</u>		to decined	anowane
feet when impacts are solely the result of					
tying into an existing utility line and when					
grubbing or grading within 10 feet					
immediately adjacent to the surface water					
is avoided;					
■ Zone 1 impacts for		<u>X</u>			
replacement/rehabilitation within an					
existing Right of Way when land grubbing					
or grading within 10 feet immediately					
adjacent to the surface water is avoided;					
<ul> <li>Zone 1 impacts other than those listed</li> </ul>			<u>X</u>		
above.					nted [HK162]: less stringent - changed all impacts to ggering mitigation to only some triggering mitigation.
Vegetation Maintenance Activities that remove forest					
vegetation for existing sewer utility right of ways/corridors					
that do not meet the criteria of existing use in Item (5) of this					
Rule:	37				
o Zone 2 impacts	<u>X</u>				
o Zone 1 impacts provided no clearing within 10 feet	<u>X</u>				
of the stream	37				
o Zone 1 impacts, provided the permanent	<u>X</u>				
maintenance corridor is kept to 10 feet on either					
side of the existing sewer line. Clearing within 10					
feet of the stream may occur provided no grading					
or grubbing occurs within this area.					

Use	Exempt	Potentially	Potentially	Proh	Comme	ented [HK123]: No effect – updated terminology
	Deemed	Allowable	Allowable			
	Allowable		with			
			Mitigation			
Zone 1 impacts, provided the permanent		X				
maintenance corridor is kept to 10 feet on either		<u>A</u>				
•						
side of the existing sewer line. Clearing, grading						
and grubbing can occur within 10 feet of the stream						
provided the grading and grubbing within 10 feet is						
less than 2,500 square feet.			v			
o Zone 1 impacts other than those listed above			<u>X</u>			ented [HK163]: less stringent - new uses to allow for n maintenance beyond the maintenance corridor
Utilities – Non-sewer underground lines:				<u> </u>		ented [HK164]: no effect - Changed 3 categories of
Perpendicular crossings of streams and other surface waters						rom (1) non-electric, (2) electric aerial and (3) electric und to (1) sewer lines, (2) non-sewer underground and (3)
subject to this Rule or perpendicular entry into the buffer that					non-sewe	er aerial
does not cross a stream or other surface water subject to this	<u>X</u>			_		
Rule:						ented [HK165]: no effect - Clarify this use can include cular entry into the buffer that doesn't cross stream (e.g.,
o Construction activities that disturb less than or equal						ng to an existing line)
to 50 linear feet of riparian buffer provided that						
vegetative root systems and stumps shall be left						
intact to maintain the integrity of the soil except in						
the trench where trees are cut and that vegetation is						
allowed to regenerate in disturbed areas with the						
exception of a maintenance corridor equal to or less		<u>X</u>				
than 30 feet in width						ented [HK166]: less stringent - Changed 40 feet to 50 ded language re maintenance corridor
o Construction activities that disturb greater than 50					icei. Au	led language te maintenance corridor
linear feet and less than or equal to 150 linear feet of						
riparian buffer provided that vegetative root systems						
and stumps shall be left intact to maintain the						
integrity of the soil except in the trench where trees						
are cut and that vegetation is allowed to regenerate						
in disturbed areas with the exception of a			<u>X</u>			
maintenance corridor equal to or less than 30 feet in						
<u>width</u>			<u>X</u>			
o Construction activities that disturb greater than 150						
linear feet of riparian buffer						nted [HK167]: less stringent - Changed 40 feet to 50
o Any activities with a permanent maintenance	<u>X</u>				reet. Add	ded language re maintenance corridor
corridor greater than 30 feet in width				(	Comme	ented [HK168]: less stringent - New use

Use	Exempt	Potentially	Potentially	Proh	Comme	ented [HK123]: No effect – updated terminology
	Deemed	Allowable	Allowable			
	Allowable		with			
			Mitigation			
Impacts other than perpendicular crossings:						
o Impacts in Zone Two provided vegetation is re-		<u>X</u>				
established after disturbance and the function of						
Zone 1 is not compromised					Comme	ented [HK169]: No change
o Impacts in Zone One less than 2500 square feet when						
impacts are a result of tying to an existing utility line						
and provided that land grubbing or grading is not			<u>X</u>			
conducted within 10 feet immediately adjacent to the		<u>X</u>				
water						
o Impacts in Zone One other than listed above						ented [HK170]: no effect - changed impacts to zone 1 to
<ul> <li>Vegetation maintenance activities along an existing utility</li> </ul>						2500 square feet when not tying into an existing line before g mitigation
line beyond the footprint of an existing utility line			<u>X</u>			
maintenance corridor where the total maintenance corridor is						
equal to or less than 30 linear feet in width						
<ul> <li>Vegetation maintenance activities along an existing utility</li> </ul>						
line beyond the footprint of an existing utility line						
maintenance corridor where the total maintenance corridor is						
greater than 30 linear feet in width						ented [HK171]: less stringent: New uses to allow for n maintenance beyond the maintenance corridor
Utilities – Non-sewer aerial lines:						ented [HK172]: no effect - Changed 3 categories of
Perpendicular crossings of streams and other surface waters					utilities f	rom (1) non-electric, (2) electric aerial and (3) electric und to (1) sewer lines, (2) non-sewer underground and (3)
subject to this Rule or perpendicular entry into the buffer that					non-sewe	
does not cross a stream or other surface water subject to this	<u>X</u>					
Rule <u>:</u>						ented [HK173]: no effect - Clarify this use can include cular entry into the buffer that doesn't cross stream (e.g.,
o <u>Disturb equal to or less than 150 linear feet of</u>						ng to an existing line)
riparian buffer provided that a minimum zone of 10						
feet wide immediately adjacent to the water body is						
managed such that only vegetation that poses a						
hazard or has the potential to grow tall enough to						
interfere with the line is removed, that no land						
grubbing or grading is conducted in Zone 1, and that		**				
that poles or aerial infrastructure are not installed		<u>X</u>				
within 10 feet of a water body		V				
o <u>Disturb greater than 150 linear feet of buffer</u>		<u>X</u>				

**		75 11	D 11	D 1		
Use	Exempt	Potentially	Potentially	Pron	Comme	ented [HK123]: No effect – updated terminology
	Deemed	Allowable	Allowable			
	Allowable		with			
			Mitigation			
<ul> <li>Impacts other than perpendicular crossings:</li> </ul>			<u>X</u>			
o Impacts in Zone Two					Comme	ented [HK174]: No change
o Impacts in Zone One provided that a minimum zone						
of 10 feet wide immediately adjacent to the water						
body is managed such that only vegetation that poses						
a hazard or has the potential to grow tall enough to						
interfere with the line is removed, that no land						
grubbing or grading is conducted in Zone 1, and that						
that poles or aerial infrastructure are not installed						
within 10 feet of a water body						ented [HK175]: no change – incorporated wording from
Vehicle access roads and boat ramps (excluding parking areas)					footnotes	
leading to the surface water, docks, fishing piers, and other water					Comme	ented [HK176]: no effect - clarification
dependent activities:						
• Vehicular Single vehicular access roads road and boat ramps ramp to					Comme	ented [HK177]: no effect - clarification
the surface water but not crossing the surface water that are restricted		X			Comme	ented [HK178]: no effect - grammar
to the minimum width practicable not to exceed 10-15 feet in width					Comme	ented [HK179]: less stringent - increased width from 10
Vehicular access roads and boat ramps to the surface water but not					to 15 fee	t
crossing the surface water that are restricted to the minimum width						
practicable and exceed 10-15 feet in width			X		Comme	ented [HK180]: less stringent - increased width from 10
View corridors:					to 15 fee	t -
• Thinning of underbrush, shrubs, and limbs up to 50% of individual	X					
tree height to enhance a lake view provided soils are undisturbed,						
Item (8) of this Rule is complied with diffuse flow is maintained and						
no stems of woody vegetation larger than 3" DBH are removed						
Thinning of underbrush, shrubs, and limbs above 50% of individual						
tree height to enhance a lake view provided soils are undisturbed,						
Item (8) of this Rule is complied with diffuse flow is maintained and		X			Comme	ented [HK181]: no effect – updated citations
no stems of woody vegetation larger than 3" DBH are removed						
, , , , , , , , , , , , , , , , , , , ,	]					

<sup>5</sup> Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Division.

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Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.

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- Except as specified within this footnote, vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- · Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

Commented [HK182]: no effect - Moved relevant footnotes into the Table

Use	Exempt	Potentially	Potentially	
	Deemed	Allowable	Allowable	
	Allowable		with	
			Mitigation	
Vegetation management:				
• Emergency fire control measures provided that topography is	X			
restored				
Periodic mowing and harvesting of plant products in Zone 2 only	X			
• Placement of mulch ring around restoration plantings for a period of				
five years from the date of planting	<u>X</u>			Commented [HK183]: less stringent - new use
• Planting non-invasive vegetation to improve water quality protection				
function of enhance the riparian buffer	X			Commented [HK184]: no effect - clarification
Pruning forest vegetation provided that the health and function of the				
forest vegetation is not compromised				
• Removal of individual trees trees, branches or limbs which are in	X			Commented [HK185]: less stringent - allows for removal of
danger of causing damage to dwellings, existing utility lines, other				branches or limbs instead of just an entire tree
structures or human life, or are imminently endangering stability of	X			
the streambank provided that the stumps are left or ground in place				
without causing additional land disturbance.life	X			Commented [HK186]: no effect - clarification
Removal of individual trees which are dead, diseased or damaged				
• Removal of poison ivyivy, oak or sumac. Removal can include	X			
application of pesticides within the riparian buffer if the pesticides				
are certified by EPA for use in or near aquatic sites and are applied	X			
in accordance with the manufacturer's instructions. If removal is				
significant, then the riparian buffer shall be replanted with non-				
invasive species				Commented [HK187]: less stringent - allows for removal of
	l	l	l	additional nuisance species and allows for use of pesticides

• Removal of understory nuisance vegetation listed in Appendix III				
of: Smith, Cherri L. 2008. Invasive Plants of North Carolina.				
Dept. of Transportation. Raleigh, NC (available at				
http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377				
-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364). Removal can				
include application of pesticides within the riparian buffer is the				
pesticides are certified by EPA for use in or near aquatic sites and				
are applied in accordance with the manufacturer's instructions. If				
removal is significant, then the riparian buffer shall be replanted				
with non-invasive species. 1998. Exotic Plant Guidelines.				
Department of Environment and Natural Resources. Division of				
Parks and Recreation. Raleigh, NC. Guideline #30			 	Commented [HK188]: no effect - updated citation; allow for use of pesticides
Water dependent structures:				use of pesucides
• Water dependent structures as defined in 15A NCAC 02B .0202				
where installation and use do not result in disturbance to riparian	X			
buffers				
Water dependent structures as defined in 15A NCAC 02B .0202				
where installation and use result in disturbance to riparian		X		
buffersstructures (except for boat ramps) as defined in Rule .0202 of				
this Section			 	Commented [HK189]: no effect - consistent with other buffer rules; boat ramps addressed above
Water wells:				Tutes, took ramps addressed above
• Single family residential water wells	X	×		
All other water wellswells		*	 	Commented [HK190]: less stringent - changed all wells to be deemed allowable
Wetland, stream and buffer restoration that results in impacts to the				deemed allowable
riparian buffers:				
Wetland, stream and buffer restoration that requires DWQ approval				
for the use of a 401 Water Quality Certification	X			
Wetland, stream and buffer restoration that does not require DWQ				
approval for the use of a 401 Water Quality Certification		V	 	Commented [HK191]: no effect - moved to above
WP1 WC		X		
Wildlife passage structures		<u>X</u>		Commented [HK192]: less stringent - new use
Slatted uncovered decks (and associated steps and support posts)		<u>X</u>		
associated with a dwelling that are in Zone 1 or 2 and are at least 8				
feet in height and vegetation is not removed from Zone 1 for the				
installation and that it meets the requirements of Items (7) and (8) of				
this Rule.				Commented [HK193]: no effect - moved from recreational

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- (7) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, and allowable with mitigation in Item (6) of this Rule and prohibited in this Rule shall have the following requirements:
  - (a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.
  - (b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and that disturbance to the buffer is minimized. These uses require prior written authorization from the Division or from a local government with an approved riparian buffer ordinance pursuant to Sub Item (3)(b) of this Rule.
  - (c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the approved local government.
  - (d) PROHIBITED. All uses not designated as exempt, allowable or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.
- (8) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the approved local government. The applicant shall certify that the criteria identified in Sub Item (8)(a) of this Rule are met. The Division or the approved local government shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:
  - (a) For any request for an Authorization Certificate, the Division or the approved local government shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:
    - (i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.

Commented [HK194]: No effect – moved to Item (9)(a) above

1		(ii) The use cannot practically be reduced in size or density, reconfigured or
2		redesigned to better minimize disturbance, preserve aquatic life and habitat, and
3		protect water quality.
4		(iii) Best management practices shall be used if necessary to minimize disturbance
5		preserve aquatic life and habitat, and protect water quality.
6	(b)	Requests for an Authorization Certificate shall be reviewed and either approved or denied
7		within 60 days of receipt of a complete submission based on the criteria in Sub-Item (8)(a
8		of this Rule by either the Division or the approved local government. Failure to issue at
9		approval or denial within 60 days shall constitute that the applicant has demonstrated "no
10		practical alternatives." An Authorization Certificate shall be issued to the applicant, unless
11		(i) The applicant agrees, in writing, to a longer period;
12		(ii) Applicant fails to furnish requested information necessary to the Division's or
13		approved local government's decision; or
14		(iii) Information necessary to the Division's or approved local government's decision
15		The Division or the approved local government may attach conditions to the Authorization
16		Certificate that support the purpose, spirit and intent of the riparian buffer protection
17		program. Complete submissions to the Division shall use the appropriate Pre-Construction
18		Notification (PCN) Application Form and shall submit the completed form to the Division
19		Complete submissions to the delegated local government shall include the following unless
20		otherwise identified within an approved local government ordinance:
21		(i) The name, address and phone number of the applicant;
22		(ii) The nature of the activity to be conducted by the applicant;
23		(iii) The location of the activity, including the jurisdiction;
24		(iv) A map of sufficient detail to accurately delineate the boundaries of the land to be
25		utilized in carrying out the activity, the location and dimensions of any
26		disturbance in riparian buffers associated with the activity, and the extent of
27		riparian buffers on the land;
28		(v) An explanation of why this plan for the activity cannot be practically
29		accomplished, reduced or reconfigured to better minimize disturbance to the
30		riparian buffer, preserve aquatic life and habitat and protect water quality; and
31		(vi) Plans for any best management practices proposed to be used to control the
32		impacts associated with the activity.
33	(c)	Any disputes over determinations regarding Authorization Certificates shall be referred to
34		the Director for a decision. The Director's decision is subject to review as provided in G.S.
35		150B Articles 3 and 4.

(9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. 1 2 The Division or the appropriate approved local government shall make all of the following findings of fact and may grant variances. The variance request procedure shall be as follows: 3 (a) For any variance request, the Division or the approved local government shall make a finding of fact to insure that the following requirements have been met: 5 (i) There are practical difficulties or hardships that prevent compliance with the 6 7 riparian buffer protection requirements. Practical difficulties or unnecessary 8 hardships shall be evaluated in accordance with the following: (A) If the applicant complies with the provisions of this Rule, he or she can secure no 10 reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would permit a greater profit from the property shall not 11 12 be considered adequate justification for a variance. Moreover, the Division or the 13 approved local government shall consider whether the variance is the minimum 14 possible deviation from the terms of this Rule that shall make reasonable use of 15 the property possible. 16 The hardship results from application of this Rule to the property rather than from 17 other factors such as deed restrictions or other hardship. 18 (C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property. 19 (D) The applicant did not cause the hardship by knowingly or unknowingly violating 20 2.1 this Rule 22 (E) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the 23 hardship created in the restriction, then granting a variance would be a special 24 25 privilege denied to others, and would not promote equal justice. The variance is in harmony with the general purpose and intent of the Catawba 26 27 River Basin's riparian buffer protection requirements and preserves its spirit; and In granting the variance, the public safety and welfare have been assured, water 28 29 quality has been protected, and justice has been done. 30 Variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) 31 of this Rule by either the Division or the approved local government pursuant to G.S. 153A, 32 Article 18, or G.S. 160A, Article 19. The Division or the approved local 33 government may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions 34 35 made by the Division shall be made to the Office of Administrative Hearings. Request for

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appeals of decisions made by the approved local government shall be made to the

appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345 for 1 2 determinations made by the approved local government. MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation upon 3 (10)4 authorization as defined in Sub-Item (9)(a)(iii) of this Rule or allowable with exeption as defined in Sub-Item (9)(a)(v) of this Rule shall meet the following requirements in order to proceed with their 5 proposed use.use: 6 7 Obtain a determination of "no practical alternatives" to the proposed usean Authorization 8 Certificate pursuant to Item (8) of this Rule. Rule .0611 of this Section; and Obtain written approval for a mitigation proposal pursuant to 15A NCAC 02B .0244.Rule (b) .0295 of Subchapter 02B. 10 (11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall 11 12 apply for forest harvesting operations and practices. 13 The following measures shall apply in Zone 1 of the riparian buffer: 14 (i) Logging decks and sawmill sites shall not be placed in the riparian buffer. 15 (ii) Timber felling shall be directed away from the water body. 16 (iii) Skidding shall be directed away from the water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or 17 ruts in accordance with 15A NCAC 011 .0203 as enforced by the Division of 18 Forest Resources. 19 20 (iv) Individual trees may be treated to maintain or improve their health, form or vigor. 2.1 (v) Harvesting of dead or infected trees or application of pesticides necessary to 22 prevent or control tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site 23 pursuant to this Rule. The Division of Forest Resources must notify the Division 24 25 of all approvals. Removal of individual trees that are in danger of causing damage to structures or 26 27 human life shall be allowed. Natural regeneration of forest vegetation and planting of trees, shrubs, or ground 28 29 cover plants to enhance the riparian buffer shall be allowed provided that soil 30 disturbance is minimized. Plantings shall consist primarily of native species. 31 (viii) Prescribed burns shall not be allowed. 32 Application of fertilizer shall not be allowed except as necessary for permanent 33 stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or 34 35 allowed to drift into the riparian buffer. In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as 36 37 provided for below is allowed on forest lands that have a deferment for use value under

Commented [HK195]: no effect - Moved to Rule .0611

**Commented [HK196]:** No effect – clarification and updated citation

Commented [HK197]: No effect – punctuation

Commented [HK198]: No effect – updated terminology

Commented [HK199]: No effect – update citation

Commented [HK200]: No effect - clarification

Commented [HK201]: no effect – update citation

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forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:

- (i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 011.0203 as enforced by the Division of Forest Resources.
- (ii) Soil disturbing site preparation activities are not allowed.
- (iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.
- (iv) The following provisions for selective harvesting shall be met:
  - (A) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined.
  - (B) In the outer 20 feet of Zone 1, trees greater than 12 inch diameter stump may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.
- (c) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 011.0100 \_\_.0200 as enforced by the Division of Forest Resources.
- PREVIOUSLY APPROVED DELEGATION OF AUTHORITY FOR THE PROTECTION AND

  MAINTENANCE OF EXISTING RIPARIAN BUFFER. The following set out the requirements
  for delegation of the responsibility for implementing and enforcing the Catawba River riparian
  buffer protection program, as described in this Rule, to local governments previously approved by
  the Division:
  - (a) All local governments that have land use authority along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin may adopt local riparian buffer ordinances to protect water quality. The Division shall approve the local riparian buffer ordinance within 30 days after receiving the request from local governments, if the Division determines that the local riparian buffer ordinance provides equal to or greater water quality protection than this Rule. This Rule shall not apply in any area where a local government has obtained the Division's approval of the local riparian buffer ordinance, provided that the local government is implementing and enforcing the approved local riparian buffer ordinance. The Division, upon determination that the local government is failing to implement or enforce the approved local buffer ordinance, shall notify the local government in writing of the local program inadequacies. If the local

Commented [HK202]: no effect - Moved to Rule .0612

government has not corrected the deficiencies within 90 days of receipt of written 1 2 notification, then the Division shall implement and enforce the provisions of this Rule. The Division shall be responsible for the implementation of this rule for all riparian areas 3 (b) and activities not regulated under a Division-approved local government ordinance. Commented [HK203]: No effect - moved from (5) above DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF 5 (12)EXISTING RIPARIAN BUFFER. The following set out the requirements for delegation of the 6 7 responsibility for implementing and enforcing the Catawba River riparian buffer protection 8 program, as described in this Rule, to local governments not previously approved by the Division: Commented [HK204]: no effect - Moved from (3) above The Commission shall grant local government delegation of the Catawba River Riparian Buffer Protection requirements as described in this Rule according to the following 10 11 procedures: Local governments within the Catawba River may submit a written request to the 12 13 Commission for authority to implement and enforce the Catawba River riparian 14 buffer protection requirements within their jurisdiction by establishing a riparian 15 buffer program to meet the requirements of this Rule. The written request to 16 establish a riparian buffer program shall include the following: 17 Documentation that the local government has land use jurisdiction along 18 the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin. This can be demonstrated by 19 delineating the local land use jurisdictional boundary on the USGS 20 2.1 1:24,000 topographical map(s) or other finer scale map(s); Documentation that the local government has the administrative 22 23 organization, staff, legal authority, financial resources and other resources necessary to implement and enforce the State's riparian buffer 24 25 protection requirements based on its size and projected amount of 26 development; Commented [HK205]: No substantive effect - Changed approval from Division to Commission; Clarifications – requirements for delegation consistent with all other buffer rules 27 The local government ordinances, resolutions, or regulations necessary to establish a riparian buffer program to meet the requirements of this 28 29 Rule and G.S. 143-214.23A. Commented [HK206]: no effect - Added to comply with SL 30 Documentation that the local government's riparian buffer program 31 complies with all requirements set forth in G.S. 143-214.23A Commented [HK207]: no effect - Added to comply with SL 32 A plan to address violations with civil or criminal remedies and actions 33 as well as remedies that shall restore buffer functions on violation sites and provide a deterrent against the occurrence of future violations. 34 Commented [HK208]: no effect - Clarification - requirements for delegation consistent with all other buffer rules 35 Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, 36 37 approved with modifications, or denied. Commented [HK209]: no effect - Added to comply with SL

1		(b) The Division has jurisdiction to the exclusion of local governments to implement the	
2		requirements of this Rule for the following types of activities:	Commented [HK210]: no effect - Moved from (3) above
3		(i) Activities undertaken by the State;	
4		(ii) Activities undertaken by the United States:	
5		(iii) Activities undertaken by multiple jurisdictions;	
6		(iv) Activities undertaken by local units of government:	Commented [HK211]: no effect - Clarification
7		(v) Forest harvest activities described in Rule .0612 of this Section; and	Commented [HK212]: no effect - Added to comply with SL 2005-447
8		(vi) Agricultural activities.	Commented [HK213]: no effect - Clarification; consistent with
9		(c) Delegated local governments shall maintain on-site records for a minimum of five years.	more recent buffer rules
10		Delegated local governments must furnish a copy of these records to the Division within	
11		30 calendar days of receipt of a written request for the records. Each delegated local	
12		government's records shall include the following:	
13		(i) A copy of Authorization Certificate with Exception requests;	
14		(ii) The Authorization Certificate with Exception request's finding of fact;	
15		(iii) The result of the Authorization Certificate with Exception proceedings;	
16		<ul><li>(iv) A record of complaints and action taken as a result of the complaint;</li></ul>	
17		(v) Records for stream origin calls and stream ratings; and	
18		(vi) Copies of request for authorization, records approving authorization and	
19		Authorization Certificates.	
20		(d) The Division shall regularly audit delegated local governments to ensure the local	
21		programs are being implemented and enforced in keeping with the requirements of this	
22		Rule.	Commented [HK214]: no effect - Clarification – requirements
23		(e) Upon determination by the Division that a delegated local government is failing to	for delegation consistent with all other buffer rules
24		implement or enforce the Catawba River riparian buffer protection requirements in keeping	
25		with the request approved under Sub-Item (14)(a)(iv) of this Rule, the Commission shall	
26		notify the delegated local government in writing of the local program's inadequacies. If	
27		the delegated local government has not corrected the deficiencies within 90 calendar days	
28		of receipt of the written notification, then the Commission shall rescind the delegation of	
29		authority to the local government and the Division shall implement and enforce the	
30		Catawba River riparian buffer protection requirements within their jurisdiction.	
31		(f) The Commission may delegate its duties and powers for granting and rescinding local	
32		government delegation of the Catawba River riparian buffer protection requirements, in	
33		whole or in part, to the Director.	Commented [HK215]: no effect - Moved from (3) above
34	(13)	OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does	
35		not preclude the requirement to comply with all federal, state and local regulations and laws.	
36		Whichever regulation is more restrictive shall apply.	Commented [HK216]: no effect - Removed – unnecessary
37			language

1	History Note:	Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1999, c. 329, s. 7.1; S.B 824-2003;
2		$Temporary\ Adoption\ Eff.\ June\ 30,\ 2001;\ (exempt\ from\ 270\ day\ requirement\ -\ S.L.\ 2001-418\ \&\ S.L.$
3		2003-340).
4		Eff. August 1, 2004.
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7		

15A NCAC 02B .0233 is proposed for amendment as follows: 1 2 15A NCAC 02B .0233.0714 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS 3 Commented [HK1]: No effect – update citation MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF 4 EXISTING RIPARIAN BUFFERS 5 6 The following is the management strategy for maintaining and protecting existing riparian buffers in the Neuse River 7 Basin. 8 (1) PURPOSE. The purpose of this Rule shall be to maintain and protect and preserve existing riparian Commented [HK2]: No effect - grammar buffers in the Neuse River Basin, including the Falls of the Neuse Reservoir watershed, to 9 Commented [HK3]: no effect - clarification maintain their nutrient removal functions. Terms used in this Rule shall be as defined in Rule .0610 10 in Subchapter 02B. 11 Commented [HK4]: No effect – moved definitions to .0610 DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows: 12 13 'Channel' means a natural water carrying trough cut vertically into low areas of the land 14 surface by erosive action of concentrated flowing water or a ditch or canal excavated for 15 the flow of water. (current definition in Forest Practice Guidelines Related to Water 16 Quality, 15A NCAC 011.0102) 'DBH' means Diameter at Breast Height of a tree, which is measured at 4.5 feet above 17 18 ground surface level. 'Ditch or canal' means a man-made channel other than a modified natural stream 19 20 constructed for drainage purposes that is typically dug through inter-stream divide areas. 2.1 A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent 22 23 streams. 'Ephemeral (stormwater) stream' means a feature that carries only stormwater in direct 24 25 response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, 26 27 the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical 28 29 characteristics commonly associated with the continuous or intermittent conveyance of 30 water. 31 'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. 32 On a plantation, the intended crop trees are planted rather than naturally regenerated from 33 seed on the site, coppice (sprouting), or seed that is blown or carried into the site. 'High Value Tree' means a tree that meets or exceeds the following standards: for pine 34 35 species, 14-inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter. 36

Commented (HKS): No circumstance and supplies that contains water for only pure of the separation of the separation of the separation bed is below the water table. The down may be heavily supplemented by stemswater unsuff. An intermittent stream them that the second second is acts. The biological and hydrological characteristics commonly associated with the conveyance of water.				
Row may be heavily supplemented by stormwater runoff. An intermittent stream often lacks—the biological and hydrological characteristics—commonly—associated—with—the conveyance of water.   (ii)	1		(g) Intermittent stream' means a well defined channel that contains water for only part of the	
	2		year, typically during winter and spring when the aquatic bed is below the water table. The	
conveyance of water  (b) Modified natural stream means an on-site channelization of refocation of a stream channel  (b) Modified natural stream means an on-site channelization of refocation of a stream channel  (c) and subsequent relocation of the intermittent or percantile flow as evidenced by topographic  alterations in the immediate watershed. A modified natural stream must have the typical  biological, hydrological, and physical characteristics commonly associated with the  continuous conveyance of water.  (d) Percanial stream imans a well defined channel that contains water year round during a  year of normal rainfall with the aquatic bed located below the water table for most of the  year of normal rainfall with the aquatic bed located below the water table for most of the  year of normal rainfall with the aquatic bed located below the water table for most of the  year of normal rainfall with the aquatic bed located below the water table for most of the  year of normal rainfall with the aquatic bed located below the water table for most of the  year of normal rainfall with the aquatic bed located below the water table for most of the  year of normal rainfall with the aquatic bed located below the water table for most of the  year of normal rainfall with the aquatic bed located below the water table for most of the  year of normal vineting and principles and	3		flow may be heavily supplemented by stormwater runoff. An intermittent stream often	
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Commented [HKS]: No effect - clarification   Commented [HKS]: No	8		alterations in the immediate watershed. A modified natural stream must have the typical	
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29 watershed   Commented [HK6]: No effect - clarification   30 (3) BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated   31 buffers:   Commented [HK7]: No effect - clarification   32 (a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references:   34 (i) The most recent version of the published manuscript of the soil survey map that   35 shows stream layers prepared by the Natural Resources Conservation Service of	27		governments, state and federal entities conducting activities within the riparian buffers as described	
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A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references:  (i) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of	31		buffers:	Commented [HK8]: No effect – reorganization
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34 (i) The most recent version of the published manuscript of the soil survey map that 35 shows stream layers prepared by the Natural Resources Conservation Service of	33		of the following references:	
35 shows stream layers prepared by the Natural Resources Conservation Service of	34			
	35		shows stream layers prepared by the Natural Resources Conservation Service of	
•	36		the United States Department of Agriculture;	

1		(ii) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle	
2		topographic maps prepared by the United States Geologic Survey (USGS); or	Commented [HK9]: No effect – moved from below
3		(iii) Other maps approved by the Geographic Information Coordinating Council and	
4		by the Environmental Management Commission as more accurate than those	
5		identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps may be	
6		submitted to the Division for review and recommendation to the Environmental	
7		Management Commission. Prior to recommendation to the Environmental	
8		Management Commission, the Division shall issue a 30-calendar day public	
9		notice through the Division's Mailing List in accordance with 15A NCAC 02H	
10		.0503. Division staff shall present recommendations including comments	
11		received during the public notice period to the Environmental Management	
12		Commission for a final decision. Maps approved under this Sub-Item shall not	
13		apply to projects that are existing and ongoing within the meaning of this Rule as	
14		set out in Item (6) of this Rule;	Commented [HK10]: less stringent - Added flexibility for a 3 <sup>rd</sup>
15	<u>(b)</u>	This Rule shall apply to activities conducted within 50-foot wide riparian buffers directly	map to be used – language from SL 2009-484 for Jordan buffer rules
16		adjacent to surface waters in the Neuse River Basin (intermittent streams, perennial	Commented [HK11]: No effect - clarification
17		streams, lakes, ponds, reservoirs and estuaries), excluding wetlands; wetlands. Except as	Commented [HK12]: No effect - clarification
18		described in Sub-Item (4)(a)(iii) of this Rule, wetlands	,
19	<u>(c)</u>	Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered	Commented [HK13]: No effect – reorganization
20		as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506:	Commented [HK14]: No effect - punctuation
21	<u>(d)</u>	Stormwater runoff from activities conducted outside the riparian buffer shall comply with	
22		Item (9) of this Rule;	Commented [HK15]: No effect – reorganization
23		The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this	
24		Rule. For the purpose of this Rule, a surface water shall be present if the feature is	
25		approximately shown on either the most recent version of the soil survey map prepared	
26		by the Natural Resources Conservation Service of the United States Department of	
27		Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle	
28		topographic maps prepared by the United States Geologic Survey (USGS).	
29		Riparian buffers adjacent to surface waters that do not appear on either of the maps shall	
30		not be subject to this Rule. Riparian buffers adjacent to surface waters that appear on the	
31		maps shall be subject to this Rule unless one of the following applies.	Commented [HK16]: No effect – moved to (3)(a) above
32	<u>(e)</u>	Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;	Commenced [Fix 10]. No circut moved to (5)(a) above
33	(f)	A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of	
34	<u>~~</u>	this Rule; and	Commented [HK17]: No effect - reorganization
35	(g)	No new clearing, grading or development shall take place nor shall any new building	Commenced [11(17], 10 check learnamen
36	727	permits be issued in violation of this Rule.	Commented [HK18]: No effect – Clarification – wording in
50		permits be issued in Abdution of this Auto.	Jordan buffer rule
		3 of 37	
		2 01 27	

1	(a)(4)	EXEMP	TION WHEN AN ON-SITE DETERMINATION SHOWS THAT SURFACE WATERS	
2		ARE NO	OT PRESENT. DETERMINATION. When a landowner or other affected party believes that	Commented [HK19]: No effect - reorganization
3		the map	s listed in Sub-Item (3)(a) of this Rule have inaccurately depicted surface waters, waters or	Commented [HK20]: No effect – clarification
4		the spec	ific origination point of a stream, or the specific origination point of a stream is in question	
5		or uncle	ar, he or she shall consult request the Division or the appropriate delegated local authority.	Commented [HK21]: No effect - clarification
6		Upon re	equest, the Division or delegated local authority shall Authority to make an on-site	Commented [HK22]: No effect - grammar
7		determin	nations.determination. On-site determinations shall be made by Authority staff that are	Commented [HK23]: No effect - grammar
8		certified	pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General	
9		Statutes	who are employees of the North Carolina Forest Service of the Department of Agriculture	
10		and Cor	nsumer Services can make on-site determinations for forest harvesting operations and	
11		practice	s. On-site determinations shall expire five years from the date of the determination. Any	Commented [HK24]: No effect – incorporating statute
12		disputes	over on-site determinations shall be referred to the Director in writing within 60	Commented [HK25]: No effect – Codifying policy. Consistent with timeframe of Corps determinations.
13		calenda	days of written notification from the Authority. A determination of the Director as to the	Commented [HK26]: No effect – Codifying policy. Consistent
14		accurac	y or application of the maps The Director's determination is subject to review as provided in	with timeframes for appeal in G.S. 150B.
15		Articles	3 and 4 of G.S. 150B.	Commented [HK27]: No effect - grammar
16	<u>(5)</u>	EXEMP	TION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps	Commented [HK28]: No Effect – update citation
17		listed in	Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination	Commented [HK29]: No effect – added header
18		shows tl	nat they fall into one of the following categories:	Commented [HK30]: No effect – clarification  Commented [HK31]: No effect - punctuation
19		(i)(a)	Ditches and manmade conveyances other than modified natural streams unless constructed	Commented [FIKS 1]. No enect - punctuation
20			for navigation or boat access.	
21		(ii)(b)	Manmade ponds and lakes that are located outside natural drainage ways.not fed by an	
22			intermittent or perennial stream or do not have a direct discharge point to an intermittent	
23			or perennial stream.	Commented [HK32]: No effect – Codifying policy
24		(iii)(c)	Ephemeral (stormwater) streams.	
25		(d)	The absence on the ground of a corresponding perennial waterbody, intermittent	
26			waterbody, lake, pond or estuary.	Commented [HK33]: No effect - reorganization
27	<del>(b)</del> (6)	EXEMP	TION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not	Commonde [moo] To enset reargaments.
28	(=) <u>1=7</u>		portions of the riparian buffer where a use is existing and ongoing according to the	
29		11.5	te: ongoing.	Commented [HK34]: No effect – clarification
30		(i)(a)	A use shall be considered existing ifif:	Commented [HK35]: No effect – punctuation
31		(1) <u>(u)</u>	(i) it-It was present within the riparian buffer as of July 22, 1997.1997 and has	Commented [HK36]: No effect – punctuation
32			continued to exist since that time;	
33			(ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or	Commented [HK37]: No effect - clarification
34			(iii) It was conducted and maintained pursuant to an Authorization Certificate or	
35			Variance issued by the Authority.	Commented IIII/201, No. 65 1 . 15
36		(b)	Existing and ongoing uses shall include, but not be limited to, agriculture, buildings,	Commented [HK38]: No effect - clarification
		<u>(b)</u>		Commented [HK39]: No effect – clarification
37			industrial facilities, commercial areas, transportation facilities, maintained lawns, lawns	

1			(i.e. can be moved without a chainsaw or bush-hog), maintained (i.e vegetation	Commented [HK40]: no effect – clarification
2			management has occurred within the last ten years) utility lines-line corridors and on-site	Commented [HK41]: No effect – Clarification; codifying policy
3			sanitary sewage systems, any of which involve either specific periodic	
4			management of vegetation or displacement of vegetation by structures or regular activity	Commented [HK42]: No effect – Clarification
5		<u>(c)</u>	Only the portion of the riparian buffer that contains the footprint of the existing and	
6			ongoing use is exempt from this Rule.	Commented [HK43]: No effect – clarification
7		<u>(d)</u>	Change of ownership through purchase or inheritance is not a change of use.	Commented [HK44]: No effect – Clarification
8		<u>(e)</u>	Activities necessary to maintain existing and ongoing uses are allowed provided that no	Commented [HK45]: No effect - clarification
9			additional vegetation is removed from Zone 1 except that grazed or trampled by	
10			livestockthe site remains similarly vegetated, no built upon area is added within the riparian	
11			buffer where it did not exist prior to July 22, 1997, and the site is in compliance with Item	
12			(9) of this Rule.existing diffuse flow is maintained. Grading and revegetating Zone 2 is	Commented [HK46]: No effect – Clarification
13			allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground	
14			is stabilized and existing diffuse flow is maintained.	Commented [HK47]: No effect - language repeated below
15		<u>(f)</u>	This Rule shall apply at the time an existing and ongoing use is changed to another use.	
16			Change of use shall involve the initiation of any activity not defined as existing and	
17			ongoing in Sub-Items (6)(a) through (6)(e) of this Rule.	Commented [HK48]: No effect – moved from (ii) below
18		(ii)	At the time an existing use is proposed to be converted to another use, this Rule shall apply.	
19			An existing use shall be considered to be converted to another use if any of the following	
20			applies:	Commented [HK49]: No effect – Moved to (f) above
21		(A)	Impervious surface is added to the riparian buffer in locations where it did not exist	
22			<del>previously.</del>	
23		<del>(B)</del>	An agricultural operation within the riparian buffer is converted to a non-agricultural use.	
24		(C)	A lawn within the riparian buffer ceases to be maintained.	Commented [HK50]: No effect – Removed
25	<u>(7)</u>	EXEMI	PTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES.	
26		This Ru	ale shall not apply to a freshwater pond if all of the following conditions are met:	
27		<u>(a)</u>	The property on which the pond is located is used for agriculture as that term is defined in	
28			G.S. 106-581.1.	
29		<u>(b)</u>	Except for this Rule, the use of the property is in compliance with all other water quality	
30			and water quantity statutes and rules applicable to the property before July 22, 1997.	
31		<u>(c)</u>	The pond is not a component of an animal waste management system as defined in G.S.	
32			143-215.10B (3).	Commented [HK51]: No effect – Added per SL 2013-413
33	<del>(4)</del> (8)	ZONES	S OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as	
34		follows	:	
35		(a)	Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in	
36			Item (6)(10) of this Rule. The location of Zone 1 shall be as follows:	Commented [HK52]: No effect – update citation

1		(i)	For intermittent and perennial streams, Zone 1 shall begin at the most landward	
2			limit of the top of bank or the rooted herbaceous vegetation and extend landward	
3			a distance of 30 feet on all sides of the surface water, stream, measured	Commented [HK53]: No effect - clarification
4			horizontally on a line perpendicular to the surface water-stream (where an	
5			intermittent or perennial stream begins or ends, including when it goes	
6			underground, enters or exits a culvert, or enters or exits a wetland, the required	
7			distance shall be measured as a radius around the beginning or the end).	Commented [HK54]: No effect – Codifying policy
8		(ii)	For ponds, lakes and reservoirs located within a natural drainage way, Zone 1	
9			shall begin at the most landward limit of the normal water level or the rooted	Commented [HK55]: No effect – clarification
10			herbaceous vegetation and extend landward a distance of 30 feet, measured	Commented [HK56]: No effect – removed for simplicity
11			horizontally on a line perpendicular to the surface water.	
12		(iii)	For surface waters within the 20 Coastal Counties (defined in <b>15A NCAC 02B</b>	
13			.0202),0202 of this Subchapter) and within the jurisdiction of the Division of	Commented [HK57]: No effect – updated citation
14			Coastal Management, Zone 1 shall begin at the most landward limit of:	
15			(A) the normal high water level;	
16			(B) the normal water level; or	
17			the landward limit of coastal wetlands as defined by the Division of	
18			Coastal Management;	
19			of the normal high water level or the normal water level and extend landward a	Commented [HK58]: No effect – Edited per SL 2015-246
20			distance of 30 feet, measured horizontally on a line perpendicular to the surface	
21			water, whichever is more restrictive.	
22		(b) Zone 2	2 shall consist of a stable, vegetated area that is undisturbed except for activities and	
23			rovided for in Item (6)(10) of this Rule. Grading and revegetating Zone 2 is allowed	Commented [HK59]: No effect – update citation
24		•	led that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin	Commission France - Lance - La
25		•	outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line	
26			ndicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet	
27		• •	sides of the surface water.	
28	(5)		OW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian	
29	(3)		rsing concentrated flow and reestablishing vegetation.	
30			entrated runoff from new ditches or manmade conveyances shall be converted to	
31		. ,	e flow before the runoff enters the Zone 2 of the riparian buffer.	
32			lic corrective action to restore diffuse flow shall be taken if necessary to impede the	
33			tion of erosion gullies.	O-companied HW/Ol. I
34	<u>(9)</u>		ER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances	Commented [HK60]: less stringent - Removed diffuse flow requirement; instead provide options for stormwater discharges.
35	(2)		te ditches, roadside ditches, and stormwater conveyances. The following stormwater	
36		-	hrough the riparian buffer are either deemed allowable or allowable upon	
		•	as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through	
37		aumonzanon, a	s defined in Sub-Rein (10)(a) of this kule, provided that they do not crode unough	
			6 of 27	

1	the buf	fer and do	o not cause erosion to the receiving waterbody. Stormwater conveyances through	
2	the ripa	arian buffe	er that are not listed below shall be allowable with exception as defined in Sub-Item	
3	(10)(a)	(v) of this	Rule.	 Commented [HK61]: less stringent - Removed diffuse flow
4	(a)	The foll	owing are deemed allowable as defined in Sub-Item (10)(a)(i) of this rule:	requirement; instead provide options for stormwater discharges
5		(i)	New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H	Commented [HK62]: No effect – Organization
6			.1002, when the Primary SCM is designed to treat the drainage area to the	
7			conveyance and that comply with a stormwater management plan reviewed and	
8			approved under a state stormwater program or a state-approved local government	
9			stormwater program:	 Commented [HK63]: less stringent - New use – allows for
10		<u>(ii)</u>	New stormwater flow to existing drainage conveyances provided that the addition	DWR to accept local government review of a SMP without having to review for meeting diffuse flow
11			of new flow does not result in the need to alter the conveyance.	 Commented [HK64]: No change – moved from table
12	<u>(b)</u>	The foll	lowing are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this	
13		Rule:		 Commented [HK65]: No effect – Organization
14		<u>(i)</u>	New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H	
15			.1002 when the Primary SCM is provided to treat the drainage area to the	
16			conveyance but are not approved under a state stormwater program or a state-	
17			approved local government stormwater program;	 Commented [HK66]: No change – moved from table
18		(ii)	New drainage conveyances when the drainage area to the conveyance is	
19			demonstrated via approved nutrient calculation methodologies to meet the	
20			nutrient loading goal of 3.6 pounds per acre per year of Nitrogen (N) outside of	
21			the Falls of the Neuse Reservoir Watershed. Within the Falls of the Neuse	
22			Reservoir Watershed, new drainage conveyances when the drainage area to the	
23			conveyance is demonstrated via approved nutrient calculation methodologies to	
24			meet the nutrient loading goal of 2.2 pounds per acre per year of Nitrogen (N) and	
25			0.33 pounds per acre per year of Phosphorus (P);	 Commented [HK67]: less stringent - New use
26		(iii)	New drainage conveyances when the flow rate of the conveyance is less than 0.5	
27			cubic feet per second during the peak flow from the 0.75 inch per hour storm;	 Commented [HK68]: less stringent - New use
28		(iv)	New stormwater runoff that has been treated through a level spreader-filter strip	
29			that complies with 15A NCAC 02H .1059;	 Commented [HK69]: No change – from diffuse flow language
30		(v)	Realignment of existing drainage conveyances applicable to publicly funded and	above
31			maintained linear transportation facilities when retaining or improving the design	
32			dimensions provided that no additional travel lanes are added and the minimum	
33			required roadway typical section is used based on traffic and safety	
34			considerations:	 Commented [HK70]: less stringent - New use
35		(vi)	Realignment of existing drainage conveyances retaining or improving the design	
36			dimensions provided that the size of the drainage area and the percent built-upon	
37			area within the drainage area remain the same;	 Commented [HK71]: less stringent - New use
			7 of 37	

1		(vii)	New or altered drainage conveyances applicable to publicly funded and	
2			maintained linear transportation facilities provided that SCMs, or BMPs from the	
3			NCDOT Stormwater Best Management Practices Toolbox, are employed: Commented [HK72]: less stringent - New Use	
4		(viii	i) New drainage conveyances applicable to publicly funded and maintained linear	
5			transportation facilities that do not provide a stormwater management facility due	
6			to topography constraints provided other measures are employed to protect	
7			downstream water quality to the maximum extent practical; Commented [HK73]: less stringent - New use	
8		<u>(ix)</u>	New drainage conveyances where the drainage area to the conveyance has no new	
9			built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is	
10			necessary for bypass of existing drainage only.  Commented [HK74]: less stringent - New use	
11	<del>(6)</del> (10)	TABLE OF	USES. Uses within the riparian buffer, or outside the buffer with hydrological impacts	
12		on the ripar	ian buffer, shall be designated as deemed allowable, allowable upon authorization,	
13		allowable wi	ith mitigation upon authorization, allowable with exception or prohibited.	
14		(a) Pote	ential new uses shall have the following requirements:  Commented [HK75]: No effect – Moved from (7) below	
15		<u>(i)</u>	DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items Commented [HK76]: No effect – Update terminology	$\tilde{\cap}$
16			(9)(a) and (10)(b) of this Rule may occur within the riparian buffer. Deemed	
17			allowable uses shall be designed, constructed and maintained to minimize	
18			vegetation and soil disturbance and to provide the maximum water quality	
19			protection practicable, including construction, monitoring, and maintenance	
20			activities. In addition, deemed allowable uses shall meet the requirements listed	
21			in Sub-Item (10)(b) of this Rule for the specific use.  Commented [HK77]: No effect – moved from (7) below	
22		<u>(ii)</u>	ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon Commented [HK78]: No effect – Update terminology	$\tilde{\supset}$
23			authorization in Sub-Items (9)(b) and (10)(b) of this Rule require a written	
24			Authorization Certificate from the Authority for impacts within the riparian buffer	
25			pursuant to Rule .0611 of this Section. Commented [HK79]: No effect – moved from (7) below	
26		<u>(iii)</u>	ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses Commented [HK80]: No effect – Update terminology	Ĭ
27			designated as allowable with mitigation upon authorization in Sub-Item (10)(b)	
28			of this Rule require a written Authorization Certificate from the Authority for	
29			impacts within the riparian buffer pursuant to Rule .0611 of this Section and an	
30			appropriate mitigation strategy that has received written approval pursuant to Item	
31			(11) of this Rule. Commented [HK81]: No effect – moved from (7) below	
32		<u>(iv)</u>		
33			may not proceed within the riparian buffer unless a Variance is granted pursuant	
34			to Rule .0226 of this Section. Mitigation may be required as a condition of	
35			variance approval.  Commented [HK82]: No effect – Changed to variance process	
36		(v)	set out in Rule, 0226	
37			allowable upon authorization, allowable with mitigation upon authorization or	
			8 of 37	
				/ /

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prohibited in Sub-Item (10)(b) of this Rule require a written Authorization
•
Certificate with Exception from the Authority for impacts within the riparian
* * * * * * * * * * * * * * * * * * * *
buffer pursuant to Rule .0611 of this Section and an appropriate mitigation
strategy that has received written approval pursuant to Item (11) of this Rule.

(b) The following charttable sets out the potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and their designation under this Ruledesignates them as exempt, deemed allowable, allowable, allowable upon authorization, allowable with mitigation, or prohibited in Item (7) of this Rule.

Commented [HK83]: less stringent - New category – instead of deeming all activities not listed in the table as "prohibited" they will go through buffer authorization process but still have to meet hardships.

Commented [HK84]: No effect – update terminology

Commented [HK85]: No effect - grammar

Commented [HK86]: No effect - clarification

Commented [HK87]: No effect - grammar

Commented [HK88]: No effect – update terminology

Commented [HK89]: No effect – update terminology

Commented [HK90]: No effect – update terminology

Commented [HK91]: No effect - puntuation

Commented [HK92]: No effect – Moved to (a) above

·						
	Exempt	Allowable	Allowable	Prohibited		
	Deemed	<u>Upon</u>	with			
	Allowable	Authorization	Mitigation		_	Commented [HK93]: No effect – updated terminology
			Upon			Commented [HK94]: No effect – updated terminology
			Authorization			Commented [HK95]: No effect – updated terminology
Airport facilities:						
Vegetation removal activities necessary to comply with	<u>X</u>					
Federal Aviation Administration requirements (e.g. line of						
sight requirements) provided the disturbed areas are						
stabilized and revegetated						Commented [HK96]: No effect – Codifying policy
• Airport facilities that impact equal to or less than 150 linear		X				
feet or one-third of an acre of riparian buffer						Commented [HK97]: No effect – Removed linear feet; will just
• Airport facilities that impact greater than 150 linear feet or			X			reference square feet for ease of implementation
one-third of an acre of riparian buffer						Commented [HK98]: No effect – Removed linear feet; will just reference square feet for ease of implementation
Archaeological activities	X					
Bridges						
• Impact equal to or less than one-tenth of an acre of	<u>X</u>					
riparian buffer						
• Impact greater than one-tenth of an acre of riparian		X				
<u>buffer</u>						Commented [HK99]: less stringent - Added new use to allow
Dam maintenance activities						bridges with less than 1/10 to be deemed allowable; consistent with road impacts
Dam maintenance activities that do not cause additional	X					
riparian buffer disturbance beyond the footprint of the						
existing dam						
Dam maintenance activities that do cause additional riparian						
buffer disturbance beyond the footprint of the existing dam		<u>X</u>				Commented [HK100]: no effect -authorization already required
						under 404/401

,	Exempt	Allowable	Allowable	Prohibited	i	
'	Deemed	<u>Upon</u>	with	'	i	
'	Allowable	Authorization	Mitigation	<u> </u> '	_	Commented [HK93]: No effect – updated terminology
,		1	<u>Upon</u>	'		Commented [HK94]: No effect – updated terminology
1		1	Authorization	<u> </u>	<b></b>	Commented [HK95]: No effect – updated terminology
Drainage ditches, roadside ditches and stormwater outfalls					i	
through riparian buffers:		'	'	'	1	
• Existing drainage ditches, roadside ditches, and stormwater	X	1		'	i	
outfalls provided that they are managed to minimize the		'	'	'	1	
sediment, nutrients and other pollution that convey to		1	1	'	1	
waterbodies		1	1	'	1	
New drainage ditches, roadside ditches and stormwater		1		'	i	
outfalls provided that a stormwater management facility is		1	1	'	1	
installed to control nitrogen and attenuate flow before the		X	1	'	1	
conveyance discharges through the riparian buffer		1	1	'	1	
New drainage ditches, roadside ditches and stormwater		'	'	X	1	
outfallsthat do not provide control for nitrogen before		1		'	i	
discharging through the riparian buffer		1		'	i	
• Excavation of the streambed in order to bring it to the same		1		X	i	
elevation as the invert of a ditch		<u> </u>		'		Commented [HK101]: No effect – Moved to Item (9) above
Drainage of a pond in a natural drainage way subject to Item	X				ĺ	
(3) of this Rule provided that a new riparian buffer that meets	<u>'</u>	 	 			Commented [HK102]: No effect - clarification
the requirements of Items (4) and (5) of this Rule is established	1	,	,		ĺ	
adjacent to the new channel by natural regeneration or planting,	4	1		'	i	
within 50 feet of any stream which naturally forms or is		1	1	'	1	
constructed within the drained pond area. Drained ponds shall		'	'	'	i	
be allowed to naturalize for a minimum of six months from		'	'	'	i	
completion of the draining activity before a stream		1	1	'	1	
determination is conducted pursuant to Item (4) of this Rule.			<u> </u>	<u> </u>		Commented [HK103]: No effect - Clarification of regeneration
						process after pond is drained

	Exempt	Allowable	Allowable	Prohibited	
	Deemed	Upon	with		
	Allowable	Authorization	Mitigation		 Commented [HK93]: No effect – updated terminology
			Upon		Commented [HK94]: No effect – updated terminology
			Authorization		 Commented [HK95]: No effect – updated terminology
Driveway crossings of streams and other surface waters subject					
to this Rule:					
<ul> <li>Driveway crossings on single family residential lots that</li> </ul>	X				
disturb equal to or less than 25 linear feet or 2, 500 square					
feet of riparian buffer					
Driveway crossings on single family residential lots that		X			
disturb greater than 25 linear feet or 2,500 square feet of					
riparian buffer					
In a subdivision that cumulatively disturb equal to or less		X			
than 150 linear feet or one third of an acre of riparian					
buffer			X		
• In a subdivision that cumulatively disturb greater than 150					
linear feet or one third of an acre of riparian buffer					 Commented [HK104]: No effect - Moved below with road
Fences:					impacts
Fencing livestock out of surface waters	<u>X</u>				 Commented [HK105]: less stringent - New deemed allowable
• Fences provided that disturbance is minimized and	X				use
installation Installation does not result in removal of forest					
vegetation <u>trees</u>		<u>X</u>			 Commented [HK106]: No effect - grammar
Installation results in removal of trees					 Commented [HK107]: less stringent - New allowable use
Forest harvesting - see Item (11) of this Rule .0612 of this					
Section					 Commented [HK108]: No effect – update citation
Fertilizer application:					
One-time fertilizer application to establish replanted	X				
vegetation vegetation. This only applies to the one-time					
application of fertilizer in the riparian buffer. No runoff					
from this one-time application in the riparian buffer is					
allowed in the applicable surface water.					 Commented [HK109]: No effect - Clarification
Ongoing fertilizer application				X	
				l	

	Exempt	Allowable	Allowable	Prohibited	i		
	Deemed	<u>Upon</u>	with		i		
	Allowable	Authorization	Mitigation	<u> </u> '	_	{	Commented [HK93]: No effect – updated terminology
			<u>Upon</u>		1	4	Commented [HK94]: No effect – updated terminology
		1	Authorization	ļ!	<b> </b>		Commented [HK95]: No effect – updated terminology
Grading and revegetation in Zone 2 only provided that diffuse	X				i		
flow and the health of existing vegetation in Zone 1 is not		1	1		i		
compromised compromised, Item (9) of this Rule is complied		1	1		i		
with, and disturbed areas are stabilized and revegetated	ļ	<u> </u>		<u> </u> '	<b> </b>		Commented [HK110]: No effect – clarification and updated
Greenway/hiking trailsGreenways, trails, sidewalks or linear					i		citation
pedestrian/bicycle transportation system:		1	1		i		
• In Zone 2 provided that no built upon area is added within	<u>X</u>	1			i		
the buffer		1			i		
When built upon area is added to the buffer, equal to or less		X			i		
than ten (10) feet wide with two (2) foot wide shoulders.		1			i		
Must be located outside Zone 1 unless there is no practical			1		i		
<u>alternative</u>					i		
• When built upon area is added to the buffer, greater than ten			<u>X</u>		i		
(10) feet wide with two (2) foot wide shoulders. Must be					i		
located outside Zone 1 unless there is no practical		1			i		
<u>alternative</u>	<u> </u>	<u> </u>	ļ	<u> </u>	<u> </u>	{	Commented [HK111]: No effect - Codifying policy
Historic preservation	X				1		
New Landfills as defined by G.S. 130A-290				X	<u> </u>		Commented [HK112]: less stringent - Allows for landfill
Mining activities:					i		expansions to seek an Authorization Certificate with Exception instead of a Variance
Mining activities that are covered by the Mining Act		X			i		
provided that new riparian buffers that meet the		1			i		
requirements of Items (4)(8) and (5)(9) of this Rule are					<u></u>		Commented [HK113]: No effect – update citation
established adjacent to the relocated channels				[	1		
• Mining activities that are not covered by the Mining Act OR					i		
where new riparian buffers that meet the requirements or			X		i		
Items (4)(8) and (5)(9) of this Rule are not established					L		Commented [HK114]: No effect – update citation
adjacent to the relocated channels					<u> </u>	<u> </u>	Commented [HK115]: less stringent - Allows mining activities
Wastewater or mining dewatering wells with approved	X			[	1		that do not relocate channels to pursue an authorization certificate
NPDES permit					i		
	<u> </u>						

	Exempt	Allowable	Allowable	Prohibited		
	Deemed	<u>Upon</u>	with			
	Allowable	Authorization	Mitigation		_	Commented [HK93]: No effect – updated terminology
			Upon			Commented [HK94]: No effect – updated terminology
			Authorization			Commented [HK95]: No effect – updated terminology
Non-electric utility lines:						
• Impacts other than perpendicular crossings in Zone 2 only <sup>3</sup>		X				
Impacts other than perpendicular crossings in Zone 1 <sup>3</sup>		ļ	X			Commented [HK116]: No effect - Moved to below
Non-electric utility line perpendicular crossing of streams and						
other surface waters subject to this Rule <sup>3</sup> :		1				
Perpendicular crossings that disturb equal to or less than 40	X	1				
linear feet of riparian buffer with a maintenance corridor		1				
equal to or less than 10 feet in width						
<ul> <li>Perpendicular crossings that disturb greater than 40 linear</li> </ul>		X				
feet of riparian buffer with a maintenance corridor greater		1				
than 10 feet in width		1				
Perpendicular crossings that disturb greater than 40 linear		X				
feet but equal to or less than 150 linear feet of riparian		1				
buffer with a maintenance corridor equal to or less than 10		1				
feet in width		1				
Perpendicular crossings that disturb greater than 40 linear		1	X			
feet but equal to or less than 150 linear feet of riparian		1				
buffer with a maintenance corridor greater than 10 feet in		1				
width			1			
Perpendicular crossings that disturb greater than 150 linear		1	X			
feet of riparian buffer		<u> </u>	<u> </u>			Commented [HK117]: No effect - Moved to below
On-site sanitary sewage systems - new ones that use ground				X		
absorption						
Overhead electric utility lines:						
• Impacts other than perpendicular crossings in Zone 2 only <sup>3</sup>	X		'			
• Impacts other than perpendicular crossings in Zone 1 1.2.3	X	<u> </u>	<u> </u>			Commented [HK118]: No effect - Moved to below
		<u></u> '	'			

	Exempt	Allowable	Allowable	Prohibited		
	Deemed	<u>Upon</u>	with			
	Allowable	Authorization	Mitigation		_	Commented [HK93]: No effect – updated terminology
	'		<u>Upon</u>			Commented [HK94]: No effect – updated terminology
	'		Authorization			Commented [HK95]: No effect – updated terminology
Overhead electric utility line perpendicular crossings of						
streams and other surface waters subject to this Rule <sup>3</sup>	'					
Perpendicular crossings that disturb equal to or less than 150	X					
linear feet of riparian buffer <sup>1</sup>	'					
Perpendicular crossings that disturb greater than 150 linear	'	X				
feet of riparian buffer 1,2	<u> </u>					Commented [HK119]: No effect - Moved to below
Periodic maintenance of Maintenance access on modified		X				
natural streams such asor canals: and a grassed travelway on	'					
one side of the surface-waterbody when less impacting	'					
alternative forms of maintenance access are not practical. The	'					
width and specifications of the travel way shall be only that	'					
needed for equipment access and operation. The travelway	'					
shall be located to maximize stream shading.						Commented [HK120]: No effect - Clarifications
Pedestrian access trail and associated steps leading to a surface						
water, dock, canoe or kayak access, fishing pier, boat ramp or	'					
other water dependent structure:	'					
Pedestrian access trail equal to or less than six (6) feet	<u>X</u>					
wide that does not result in the removal of any tree(s)	'					
within the riparian buffer and does not result in any	<u>'</u>					
built upon area being added to the riparian buffer	<u>'</u>					
<ul> <li>Pedestrian access trail equal to or less than six (6) feet</li> </ul>	<u>'</u>					
wide where the installation or use results in the	<u>'</u>	<u>X</u>				
removal of tree(s) or addition of built upon area to the	<u>'</u>					
riparian buffer	<u>'</u>					
Pedestrian access trail greater than six (6) feet wide	<u>'</u>					Commented [HK121]: less stringent - New use to allow for
			<u>X</u>			impacts to buffer for access trails to surface waters and associated docking facilities
	<u> </u>	<u> </u>				doesing memory

	Exempt	Allowable	Allowable	Prohibited		
	Deemed	<u>Upon</u>	with			
	Allowable	Authorization	Mitigation		_	Commented [HK93]: No effect – updated terminology
			<u>Upon</u>			Commented [HK94]: No effect – updated terminology
	1		Authorization			Commented [HK95]: No effect – updated terminology
Playground equipment:						
Playground equipment on single family lots provided that	X					
installation and use does not result in removal of	] 1	1				
vegetation	1					
Playground equipment on single family lots where	]	<u>X</u>				
installation or use results in the removal of vegetation	]					
• Playground equipment installed on lands other than single-	]	X				
family lots or that requires removal of vegetation						Commented [HK122]: No effect – split out into two bullets for
Ponds in natural drainage ways, excluding dry ponds: Ponds						clarification
created or modified by impounding streams subject to buffers	]					
pursuant to Item (3) of this Rule and not used as stormwater	]					
control measures (SCMs):		X				Commented [HK123]: No effect - clarification
New ponds provided that a riparian buffer that meets the	]					
requirements of Items (4)(8) and (5)(9) of this Rule is		<u> </u>				Commented [HK124]: No effect – update citation
established adjacent to the pond	]					
New ponds where a riparian buffer that meets the	] 1	1	X			
requirements of Items (4)(8) and (5)(9) of this Rule is						Commented [HK125]: No effect – update citation
NOT established adjacent to the pond						
Protection of existing structures, facilities and streambanks		X				
structures and facilities, when this requires additional	]					
disturbance of the riparian buffer or the stream channel		<u> </u>				Commented [HK126]: No effect – streambanks in table below;
Public Safety - publicly owned spaces where it has been	X					clarify "structures and facilities" includes existing utility lines
determined by the head of the local law enforcement agency	]					
with jurisdiction over that area that the buffers pose a risk to	]					
public safety. The head of the local law enforcement agency	]					
shall notify the local government with land use jurisdiction	]					
over the publicly owned space and the Division of Water	1					
Resources of any such determination in writing.		<u> </u>				Commented [HK127]: No effect - per SL 2017-209
Railroad impacts other than crossings of streams and other			X			
surface waters subject to this Rule						Commented [HK128]: No effect - Moved to below
	<u> </u>		1			

	Exempt	Allowable	Allowable	Prohibited		
	Deemed	Upon	with			
	Allowable	Authorization	Mitigation		 -	Commented [HK93]: No effect – updated terminology
			Upon		4	Commented [HK94]: No effect – updated terminology
			Authorization		 -	Commented [HK95]: No effect – updated terminology
Railroad crossings of streams and other surface waters subject						
to this Rule:						
• Railroad crossings that impact equal to or less than 40 linear	X					
feet of riparian buffer						
• Railroad crossings that impact greater than 40 linear feet but		X				
equal to or less than 150 linear feet or one third of an acre						
of riparian buffer						
• Railroad crossings that impact greater than 150 linear feet or			X			
one third of an acre of riparian buffer					 	Commented [HK129]: No effect - Moved to below
Removal of previous fill or debris provided that diffuse flow is	X					
maintained Item (9) of this Rule is complied with and any					 	Commented [HK130]: No effect – update citation
vegetation removed is restored						
Residential Properties: Where application of this Rule would						
preclude construction or expansion of a single-family residence						
and necessary infrastructure, the single-family residence may						
encroach in the buffer if all of the following conditions are						
met: (1) the residence is set back the maximum feasible						
distance from the top of the bank, rooted herbaceous						
vegetation, normal high-water level, or normal water level,						
whichever is applicable, on the existing lot; (2) the residence is						
designed to minimize encroachment into the riparian buffer; (3)						
the residence complies with Item (9) of this Rule; and (4) if the						
residence will be served by an on-site wastewater system, no						
part of the septic tank or drainfield may encroach into the						
<u>riparian buffer.</u>						
• The residence or necessary infrastructure impact Zone 2 only		<u>X</u>			 	Commented [HK131]: No effect - Incorporating SL 2011-394
• The residence or necessary infrastructure impact Zone 1			<u>X</u>		ļ	and SL 2012-200
• Impacts other than the residence or necessary infrastructure			<u>X</u>		 	Commented [HK132]: less stringent - New use to allow
						impacts to Zone 1 for single-family residences without having to go through the variance process
					Y	Commented [HK133]: less stringent - New use to allow
						impacts other than those for a residence or necessary infrastructure without having to go through the variance process

'	Exempt	Allowable	Allowable	Prohibited		
1	Deemed	<u>Upon</u>	with			
	Allowable	Authorization	Mitigation			Commented [HK93]: No effect – updated terminology
'			<u>Upon</u>			Commented [HK94]: No effect – updated terminology
			Authorization			Commented [HK95]: No effect – updated terminology
Restoration or enhancement (wetland, stream) as defined in 33						
CFR Part 332 available free of charge on the internet at:	'					
http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitig	į.					
ation_index.cfm:						
Wetland or stream restoration that does not require written	<u>X</u>					
Division approval that results in impacts to the riparian						
buffer						
Wetland or stream restoration that requires written Division		<u>X</u>				
approval that results in impacts to the riparian buffer	<u> </u>					Commented [HK134]: No effect - Moved from below
Road Road, driveway or railroad impacts other than			X			
perpendicular crossings of streams and other surface waters	<u> </u>					Commented [HK135]: No effect, incorporating road, driveway
subject to this Rule						and railroad into one row as requirements were all the same
Road Road, driveway or railroads: perpendicular crossings of						Commented [HK136]: No effect, incorporating road, driveway
streams and other surface waters subject to this Rule:Rule or						and railroad into one row as requirements were all the same
perpendicular entry into the buffer that does not cross a stream	X					
or other surface water subject to this Rule:	<u> </u>					Commented [HK137]: No effect - Clarification
Road crossings that impact Impact equal to or less than 40		X				Commented [HK138]: No effect - grammar
linear feetone-tenth of an acre of riparian buffer						Commented [HK139]: No effect - Removed linear feet; will
Road crossings that impact Impact greater than 40 linear	<u> </u>					just reference square feet for ease of implementation
feetone-tenth of an acre but equal to or less than 150 linear	<i>i</i>		X			Commented [HK140]: No effect - grammar
feet or one-third of an acre of riparian buffer						Commented [HK141]: No effect - Removed linear feet; will
Road crossings that impact Impact greater than 150 linear		<u>X</u>				just reference square feet for ease of implementation
feet or one-third of an acre of riparian buffer						Commented [HK142]: No effect - grammar
Driveway crossings in a subdivision that cumulatively						Commented [HK143]: No effect - Removed linear feet; will just reference square feet for ease of implementation
disturb equal to or less than one-third of an acre of riparian			<u>X</u>			
buffer						
Driveway crossings in a subdivision that cumulatively						
disturb greater than one-third of an acre of riparian buffer						Commented [HK144]: No effect – moved from above
Agriculture roads that are exempt from permitting from the	<u>X</u>					Continuented [11x177]. No cited more more more
U.S. Army Corps of Engineers per Section 404(f) of the						
federal Clean Water Act					_	Commented FIVAAET, Less stringent, now use to allow for an
ieuciai Cicali water Acq		<u> </u>	<u> </u>	<u> </u>		Commented [HK145]: Less stringent – new use to allow for ag rules to have the same exemption under the buffer rules they have
						under 404

	Exempt	Allowable	Allowable	Prohibited		
	Deemed	<u>Upon</u>	with	'		
	Allowable	Authorization	Mitigation	<u> </u>		Commented [HK93]: No effect – updated terminology
'	'	1	<u>Upon</u>	'		Commented [HK94]: No effect – updated terminology
	1 '	'	Authorization	<b></b> '		Commented [HK95]: No effect – updated terminology
Road relocation of existing private access roads associated						
with public road projects where necessary for public safety:	'	'	'	'		
• Less than or equal to 2,500 square feet of riparian buffer	1 '	<u>X</u>		'		
<u>impact</u>	1 '			'		
Greater than 2,500 square feet of riparian buffer impact	<b>↓</b> '	<u> </u>	<u>X</u>	<u> </u>		Commented [HK146]: less stringent - New use
Scientific studies and stream gauging	X					
Slatted uncovered decks, including steps and support posts,	'			'		
which are associated with a dwelling, provided that it meets the	4 '			'		
requirements of Items (8) and (9) of this Rule and:	1 '			'		
• Installation does not result in removal of vegetation in Zone	1 '	<u>X</u>		'		
1	1 '		'	'		
Installation results in removal of vegetation in Zone 1	<b></b> '	<u> </u>	<u>X</u>	<u> </u>		Commented [HK147]: less stringent - New use
Stormwater Control Measure (SCM) as defined in 15A NCAC						
02H .1002:management ponds excluding dry ponds:	1 '			'		
New stormwater management ponds provided that a riparian	1 '	X		'		
buffer that meets the requirements of Items (4) and (5) of	1 '			'		
this Rule is established adjacent to the pondIn Zone 2 if	1 '			'		
Item (9) of this Rule is complied with	'	1	'	'		
New stormwater management ponds where a riparian buffer	'	'	'	'		
that meets the requirements of Items (4) and (5) of this	1 '			'		
Rule is NOT established adjacent to the pondIn Zone 1	<b></b> '	<u> </u>	X	<u> </u>		Commented [HK148]: less stringent - Changes use to allow any
Stream restoration	X					SCM in the buffer instead of just wet ponds.  Commented [HK149]: No effect - Moved above
Streambank or shoreline stabilization		X				Commented [HK150]: No effect - Moved above
					J	Confinence [Fix 196]. To enect charmonics.

	Exempt	Allowable	Allowable	Prohibited	
	Deemed	Upon	with		
	Allowable	Authorization	Mitigation		 Commented [HK93]: No effect – updated terminology
			Upon		Commented [HK94]: No effect – updated terminology
			Authorization		 Commented [HK95]: No effect – updated terminology
Temporary roads; roads, provided that the disturbed area is					
restored to pre-construction topographic and hydrologic					
conditions and replanted with comparable vegetation within					
	,				
two (2) months of when construction is complete. Tree planting					
may occur during the dormant season. At the end of five years,					
the restored wooded buffer shall comply with the restoration					
criteria in Paragraph (i) of Rule .0295 of this Section:					 Commented [HK151]: No effect - Clarification
• Temporary roads that disturb less Less than or equal to 2,500					 Commented [HK152]: No effect - grammar
square feet provided that vegetation is restored within six	X				
months of initial disturbance of riparian buffer disturbance					 Commented [HK153]: No effect - Moved to wording above
• Temporary roads that disturb greater Greater than 2,500					 Commented [HK154]: No effect - grammar
square feet provided that vegetation is restored within six					
months of initial disturbance of riparian buffer disturbance		X			 Commented [HK155]: No effect - Moved to wording above
Temporary roads used for Associated with culvert installation					Commented [
or bridge construction or replacement provided that					OAllus for which
					 Commented [HK156]: less stringent - Allow for culvert installation in addition to bridges
restoration activities, such as soil stabilization and					
revegetation, are conducted immediately after construction		N/			 Commented [HK157]: No effect - Moved to wording above
		X			

	Exempt	Allowable	Allowable	Prohibited		
	Deemed	<u>Upon</u>	with			
	Allowable	Authorization	Mitigation			Commented [HK93]: No effect – updated terminology
	1		Upon			Commented [HK94]: No effect – updated terminology
	'		Authorization			Commented [HK95]: No effect – updated terminology
Temporary sediment and erosion control devices: devices						
provided that the disturbed area is restored to preconstruction	1 '	'				
topographic and hydrologic conditions and replanted with	1 '	'				
comparable vegetation within two (2) months of when	'					
construction is complete. Tree planting may occur during the	'					
dormant season. At the end of five years, the restored buffer	'	'	İ			
shall comply with the restoration criteria in Paragraph (i) of	1 '	'				
Rule .0295 of this Section:	l'	!	i'			Commented [HK158]: No effect - Added language for restoring
• In Zone 2 only provided that the vegetation in Zone 1 is not	X					temporarily disturbed area; consistent with requirement for temporary roads
compromised ground cover is established within the	'					
timeframes required by the Sedimentation and Erosion	'		, 			
Control Act, vegetation in Zone 1 is not compromised, and	1 '	'				Commented [HK159]: No effect - Incorporate compliance with
that discharge is released as diffuse flow in accordance						E&SC plan
with Item (5)(9) of this Rule	1 '	'				Commented [HK160]: no effect – update citation
• In Zones 1 and 2 to control impacts associated with uses		X				Commence Encresive and a second second
approved by the Division Authority or that have received a	1 '		, 			Commented [HK161]: no effect – update name
variance an authorization certificate with exception						Commented [HK162]: no effect – update terminology
provided that sediment and erosion control for upland						Commence [110 102]. no enect – update terminology
areas is addressed to the maximum extent practical outside	1 '	'	1		_	Commented [HK163]: No effect - removed unnecessary
the buffer	X					language; this will be reviewed as part of the no practical
In-stream temporary erosion and sediment control measures		'				alternatives analysis
for work within a stream channel that is authorized under		'				
Sections 401 and 404 of the Federal Water Pollution Control			, 			
	1 '	'				
Act		X				Commented [HK164]: No effect - Clarification
• In-stream temporary erosion and sediment control measures		<u> </u>	İ			
for work within a stream channel that has written approval						
from the Division and the U.S. Army Corps of Engineers			, 			
under Sections 401 & 404 of the Federal Water Pollution	1 '	'	İ			
Control Act	<u> </u>	<u> </u>	<sup> </sup>	<u> </u>		Commented [HK165]: No effect - Clarification

	Exempt	Allowable	Allowable	Prohibited		
	Deemed	<u>Upon</u>	with			
	Allowable	Authorization	Mitigation	ļ'	_	Commented [HK93]: No effect – updated terminology
	1	'	<u>Upon</u>			Commented [HK94]: No effect – updated terminology
	1	'	Authorization	<u> </u>		Commented [HK95]: No effect – updated terminology
Underground electric utility lines:						
• Impacts other than perpendicular crossings in Zone 2 only <sup>2</sup>	X	'				
<ul> <li>Impacts other than perpendicular crossings in Zone 1<sup>3,4</sup></li> </ul>	<u>├</u> '	'		'		Commented [HK166]: No effect - Moved to below
	X	'				
Underground electric utility line perpendicular crossings of	<del>                                     </del>	<del>                                     </del>				
streams and other surface waters subject to this Rule:3	'	'				
Perpendicular crossings that disturb less than or equal to 40	X	'				
linear feet of riparian buffer <sup>3,4</sup>	1	'		İ		
Perpendicular crossings that disturb greater than 40 linear	'	X		!		
feet of riparian buffer <sup>3,4</sup>	1	'				Commented [HK167]: No effect - Moved to below
Utility – Sewer lines:	<b></b>	<u> </u>				
Sanitary Sewer Overflows:	<u> </u>	<del> </del>				Commented [HK168]: No effect - Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric
	X	'		İ		underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial
<ul> <li>Emergency sanitary sewer overflow response activities, provided that the disturbed area</li> </ul>	<u>A</u>	'		İ		
	'	'		!		
within the buffer: is the minimum necessary	'	'		!		
to respond to the emergency overflow, is	'	'		!		
restored to pre-construction topographic and	1	'		İ		
hydrologic conditions, and is replanted with	<u> </u>	'				
comparable vegetation within two (2) months	4	'				
of when disturbance is complete.	_	'				
o Emergency sanitary sewer overflow response		<u>X</u>				
activities, provided the disturbed area within	'	'				
the buffer: is the minimum necessary to	1	'				
respond to the emergency overflow and is	1	'				
not fully restored to pre-construction	'	'		!		
topographic and hydrologic conditions. For				!		
any impacts proposed to remain permanently	.  '	'		!		
an application for an Authorization				!		
Certificate must be submitted to the authority	1	'		!		
within 30 calendar days of conclusion of the	'	'		!		
emergency response activities.	'	·'		'		Commented [HK169]: less stringent - Greater flexibility for
New Sewer Line Construction Activities (including)		,				responding quickly to SSOs
	<u> </u>				i	

	Exempt	Allowable	Allowable	Prohibited		
	Deemed	<u>Upon</u>	with			
	Allowable	Authorization	Mitigation		<	Commented [HK93]: No effect – updated terminology
			Upon			Commented [HK94]: No effect – updated terminology
			Authorization			Commented [HK95]: No effect – updated terminology
replacement/rehabilitation that does not meet the						
criteria of existing use in Item (6) of this Rule)						
provided that (1) vegetative root systems and stumps						
are left intact to maintain the integrity of the soil						
except in the trench where trees are cut, and (2)						
vegetation is allowed to regenerate in disturbed areas,						
except within the permanent maintenance corridor:						
<ul> <li>Perpendicular crossings of streams and other</li> </ul>						
surface waters subject to this Rule or						
perpendicular entry into the buffer that does						
not cross a stream or other surface water						
subject to this Rule:						Commented [HK170]: No effect - Clarify this use can include
Less than or equal to 40 linear feet	<u>X</u>					perpendicular entry into the buffer that doesn't cross a stream (e.g. connecting to existing line)
with a permanent maintenance						
corridor equal to or less than 20 feet						
in width.						
Greater than 40 linear feet and less		<u>X</u>				
than or equal to 150 linear feet, with						
a permanent maintenance corridor						
equal to or less than 20 feet in						
width.						
• Greater than 150 linear feet with a			<u>X</u>			
permanent maintenance corridor						
equal to or less than 20 feet in						
width.						
Permanent maintenance corridor			<u>X</u>			
greater than 20 linear feet			_			
(mitigation is required only for						
impacts beyond the 20 linear feet						
corridor width).						Commented [HK171]: less stringent- increased maintenance
Impacts other than perpendicular crossings:						corridor from 10 to 20 feet
Zone 2 only.	X					Commented [HK172]: less stringent - changed from allowable
Pour T Tarry 1						to deemed allowable

Learner   Allowable   Allowable   Prohibited	
Allowable Authorization Mitigation Commen	nted [HK93]: No effect – updated terminology
	nted [HK94]: No effect – updated terminology
Authorization	nted [HK95]: No effect – updated terminology
■ Zone 1 impacts to less than 2,500 X	
square feet when impacts are solely	
the result of tying into an existing	
utility line and when grubbing or	
grading within10 feet immediately	
adjacent to the surface water is	
avoided;	
■ Zone 1 impacts for X	
replacement/rehabilitation within an	
existing Right of Way when land	
grubbing or grading within 10 feet	
immediately adjacent to the surface	
water is avoided;	
■ Zone 1 impacts other than those X	
	nted [HK173]: less stringent - changed all impacts to
Vegetation Maintenance Activities that remove forest	ggering mitigation to only some triggering mitigation.
vegetation for existing sewer utility right of	
ways/corridors that do not meet the criteria of existing	
use in Item (6) of this Rule:	
o Zone 2 impacts X	
o Zone 1 impacts provided no clearing within X	
10 feet of the stream	
o Zone 1 impacts, provided the permanent X	
maintenance corridor is kept to 10 feet on	
either side of the existing sewer line.	
Clearing within 10 feet of the stream may	
occur provided no grading or grubbing	
occurs within this area.	
o Zone 1 impacts, provided the permanent X	
maintenance corridor is kept to 10 feet on	
either side of the existing sewer line.	
Clearing, grading and grubbing can occur	

	Exempt	Allowable	Allowable	Prohibited	
	Deemed	Upon	with		
	Allowable	Authorization	Mitigation		 Commented [HK93]: No effe
			<u>Upon</u>		Commented [HK94]: No effe
			Authorization		 Commented [HK95]: No eff
within 10 feet of the stream provided the					
grading and grubbing within 10 feet is less					
than 2,500 square feet.					
o Zone 1 impacts other than those listed above			X		 Commented [HK174]: less s

ffect – updated terminology

ffect – updated terminology

ffect – updated terminology

Commented [HK174]: less stringent - new uses to allow for vegetation maintenance beyond the maintenance corridor

es – Non-s	sewer underground lines:					<del> </del>	Commented [HK175]: no effect - Changed 3 categories of
Perpend	dicular crossings of streams and other surface		1		] ]	1	utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (
waters	subject to this Rule or perpendicular entry into		1		] ]	1	non-sewer aerial
the buff	ffer that does not cross a stream or other surface		1			1	
water si	subject to this Rule:	<u> </u>	<u> </u>			<b></b>	Commented [HK176]: no effect - Clarify this use can include
0	Construction activities that disturb less than or	<u>X</u>	1			1	perpendicular entry into the buffer that doesn't cross stream (e.g. connecting to an existing line)
	equal to 50 linear feet of riparian buffer		1		] ]	1	
	provided that vegetative root systems and		1		] ]	1	
	stumps shall be left intact to maintain the		1		] ]	1	
	integrity of the soil except in the trench where					i	
	trees are cut and that vegetation is allowed to		1			1	
	regenerate in disturbed areas with the		1		] ]	1	
	exception of a maintenance corridor equal to		1			1	
	or less than 30 feet in width	·	<u></u>			<u> </u>	Commented [HK177]: less stringent - Change 40 feet to 50
0	Construction activities that disturb greater		<u>X</u>			1	feet. Added language re maintenance corridor.
	than 50 linear feet and less than or equal to		1			1	
	150 linear feet of riparian buffer provided that		1		] ]	1	
	vegetative root systems and stumps shall be		1			1	
	left intact to maintain the integrity of the soil		1			1	
	except in the trench where trees are cut and		1			1	
	that vegetation is allowed to regenerate in		1			1	
	disturbed areas with the exception of a		1			1	
	maintenance corridor equal to or less than 30		1			1	
	feet in width	!	<u> </u>			<u> </u>	Commented [HK178]: less stringent - Change 40 feet to 50
0	Construction activities that disturb greater		1	<u>X</u>		1	feet. Added language re maintenance corridor
	than 150 linear feet of riparian buffer	!	<u> </u>			<u> </u>	Commented [HK179]: no change
0	Any activities with a permanent maintenance		1	<u>X</u>		1	
	corridor greater than 30 feet in width	! 	<u> </u>			<b></b>	Commented [HK180]: less stringent - new use
Impacts	s other than perpendicular crossings:	!	<u></u>				Commented [HK181]: No change
0	Impacts in Zone Two provided vegetation is	<u>X</u>				1	
	re-established after disturbance and the		1		] ]	1	
	function of Zone 1 is not compromised	!	<u> </u>				Commented [HK182]: No change
0	Impacts in Zone One less than 2,500 square		<u>X</u>			1	
	feet when impacts are a result of tying to an		1			1	
	existing utility line and provided that land		1		] ]	1	
	grubbing or grading is not conducted within		1			1	
	10 feet immediately adjacent to the water	,	Ĭ		1	1	

					т			
		Exempt	Allowable	Allowable	Prohibited			
		Deemed	<u>Upon</u>	with			_	
	Į.	Allowable	Authorization			<	、 ≻	Commented [HK93]: No effect – updated terminology
				<u>Upon</u>	]			Commented [HK94]: No effect – updated terminology
		<u>.                                    </u>		Authorization	<del></del>		C	Commented [HK95]: No effect – updated terminology
	o Impacts in Zone One other than listed above	'		<u>X</u>				Commented [HK183]: less stringent – changing from all impact in Zone 1 triggering mitigation to some
•	Vegetation maintenance activities along an existing		<u>X</u>				-	1 Zone 1 uiggering muganon to some
	utility line beyond the footprint of an existing utility			'				
	line maintenance corridor where the total maintenance			'				
	corridor is equal to or less than 30 linear feet in width			'				
•	Vegetation maintenance activities along an existing			<u>X</u>				
	utility line beyond the footprint of an existing utility			1				
	line maintenance corridor where the total maintenance			'				
	corridor is greater than 30 linear feet in width	,!	<u> </u>	<b></b> '	<u>                                     </u>			Commented [HK184]: less stringent - New uses to allow for
Utilities	s – Non-sewer aerial lines:	<del></del>	<u> </u>				$\succeq$	regetation maintenance beyond the maintenance corridor
•	Perpendicular crossings of streams and other surface			1			u	Commented [HK185]: no effect - Changed 3 categories of tillities from (1) non-electric, (2) electric aerial and (3) electric
	waters subject to this Rule or perpendicular entry into			'				inderground to (1) sewer lines, (2) non-sewer underground and (3) ion-sewer aerial
	the buffer that does not cross a stream or other surface			'				
	water subject to this Rule:	!	<u> </u>	<u> </u>	<u> </u>			Commented [HK186]: no effect - Clarify this use can include
	o Disturb equal to or less than 150 linear feet of	<u>X</u>		<u> </u>				erpendicular entry into the buffer that doesn't cross stream (e.g., onnecting to an existing line)
	riparian buffer provided that a minimum zone			'				
	of 10 feet wide immediately adjacent to the							
	water body is managed such that only			'				
	vegetation that poses a hazard or has the			1				
	potential to grow tall enough to interfere with							
	the line is removed, that no land grubbing or			1				
	grading is conducted in Zone 1, and that that			'				
	poles or aerial infrastructure are not installed			'				
	within 10 feet of a water body			'			C	Commented [HK187]: No change
	o Disturb greater than 150 linear feet of buffer		<u>X</u>				$\succeq$	Commented [HK188]: No change
	Impacts other than perpendicular crossings:				T T		$\succeq$	Commented [HK189]: No change
	o Impacts in Zone Two	<u>X</u>					$\succeq$	Commented [HK190]: No change
	o Impacts in Zone One provided that a	<del></del>	<u>X</u>					on monted [two. 76]. The commige
	minimum zone of 10 feet wide immediately		-	'				
	adjacent to the water body is managed such			1				
	that only vegetation that poses a hazard or has			'				
	the potential to grow tall enough to interfere		1	'				
	the potential to grow tall clough to interfere	'		'				

	Exempt	Allowable	Allowable	Prohibited	ı		
'	Deemed	<u>Upon</u>	with	'	i		
1	Allowable	Authorization		<del> </del> '	<	-{	Commented [HK93]: No effect – updated terminology
1	'		<u>Upon</u>	'	1	7	Commented [HK94]: No effect – updated terminology
1	'		Authorization	<u> </u>	<b> </b>	-{	Commented [HK95]: No effect – updated terminology
with the line is removed, that no land grubbing	4				ı		
or grading is conducted in Zone 1, and that	4 '			'	1		
that poles or aerial infrastructure are not	4 '	1	1		1		
installed within 10 feet of a water body	<u> </u>	<u> </u>	<u> </u>	<u> </u> '	<b> </b>	-	Commented [HK191]: no change – incorporated wording from
Vehicle access roads and boat ramps (excluding parking areas)					1		footnotes
leading to surface water, docks, fishing piers, and other water	'			'	1		
dependent activities:	'			'	1		
Single vehicular access road and boat ramp to the surface	'	<u>X</u>	1	'	1		
water but not crossing the surface water that are restricted	'			'	ı		
to the minimum width practicable not to exceed 15 feet in	'	1	1	'	1		
width width	'			'	ı		
Vehicular access roads and boat ramps to the surface water	'		<u>X</u>	'	1		
but not crossing the surface water that are restricted to the	'	1	1	'	1		
minimum width practicable and exceed 15 feet in width	<u> </u>	<u> </u>	<u> </u>	<u> </u>	L	-	Commented [HK192]: less stringent - New use to allow for
Vegetation management:					1		vehicle access roads and boats ramps to surface waters and associated docking facilities
• Emergency fire control measures provided that topography is	s X	1	1	'	1		
restored	'			'	ı		
• Periodic mowing and harvesting of plant products in Zone 2	X			'	ı		
only	'			'	ı		
Placement of mulch ring around restoration plantings for a	<u>X</u>	1	1	'	1		
period of five years from the date of planting	'			'	I	-	Commented [HK193]: less stringent - new use
Planting non-invasive vegetation to enhance the riparian	X			[!		-	Commented [HK194]: no effect - clarification
buffer	<u> </u>						-
Pruning forest vegetation provided that the health and	X			'	ı		
function of the forest vegetation is not compromised	'	1	1	'	1		
Removal of individual trees trees, branches or limbs which	X	1	1	'	ı	{	Commented [HK195]: less stringent - allows for removal of
are in danger of causing damage to dwellings, existing							branches or limbs instead of just an entire tree
utility lines, other structures or human lifelife, or are	'	'	'	'	ı	-{	Commented [HK196]: no effect – clarification
imminently endangering stability of the streambank					1		
provided that the stumps are left or ground in place	'	1	1	'	1		
without causing additional land disturbance.	<u>X</u>			'	I	{	Commented [HK197]: no effect - clarification
			,				

	Exempt	Allowable	Allowable	Prohibited	1	
	Deemed	<u>Upon</u>	with	'	1	
	Allowable	Authorization	Mitigation	<u> </u> '		Commented [HK93]: No effect – updated terminology
		'	<u>Upon</u>	'		Commented [HK94]: No effect – updated terminology
		'	Authorization	<u> </u>		Commented [HK95]: No effect – updated terminology
Removal of individual trees that are dead, diseased or						
damaged	X	<u> </u>	<u> </u>	<u> </u> '		Commented [HK198]: less stringent - new use
<ul> <li>Removal of poison ivyivy, oak or sumac. Removal can</li> </ul>		'	1	'		
include application of pesticides within the riparian buffer	<u> </u>	'	1	'		
if the pesticides are certified by EPA for use in or near		'	1	'		
aquatic sites and are applied in accordance with the		'	1	'		
manufacturer's instructions. If removal is significant, there	<u>a</u>	'	1	'		
the riparian buffer shall be replanted with non-invasive		'	1	'		
species.	X	<u> </u> '	l	<u></u> '		Commented [HK199]: less stringent - allows for removal of
• Removal of understory nuisance vegetation as defined in:	'					additional nuisance species and allows for use of pesticides
Smith, Cherri L. 1998. Exotic Plant Guidelines.	1	'	1	'		
Department of Environment and Natural Resources.		'	1	'		
Division of Parks and Recreation. Raleigh, NC. Guideline	<u>.</u>	'	1	'		
#302008. Invasive Plants of North Carolina. Dept. of	1	'	1	'		
Transportation. Raleigh, NC (available at	1	'	1	'		
http://portal.ncdenr.org/c/document_library/get_file?uuid=	4	'	1	'		
0acc6377-ea07-42dc-bb27-	1	'	1	'		
45a78d1c7ebe&groupId=38364). Removal can include	1	'	1	'		
application of pesticides within the riparian buffer is the		'	1	'		
pesticides are certified by EPA for use in or near aquatic		'	1	'		
sites and are applied in accordance with the		'	1	'		
manufacturer's instructions. If removal is significant then	<u>.                                    </u>	'	1	'		
the riparian buffer shall be replanted with non-invasive		'	1	'		
species.			<u>X</u>	<u> </u>		Commented [HK200]: no effect - Update citations; allow for
Removal of woody vegetation in Zone 1 provided that Item	<u> </u>					use of pesticides
(9) of this Rule is complied with		<u> </u>		<u> </u> '		Commented [HK201]: no effect - Per SL 2015-246
Water dependent structures (except for boat ramps) as defined	<u> </u>	X				Commented [HK202]: No effect – boat ramps addressed above
in Rule .0202 of this Section	'	<u> </u>		<u> </u>		Commented [HK203]: No effect – update citation

	Exempt	Allowable	Allowable	Prohibited	
	Deemed	Upon	with		
	Allowable	Authorization	Mitigation		Commented [HK93]: No effect – updated terminology
			<u>Upon</u>		Commented [HK94]: No effect – updated terminology
			Authorization		Commented [HK95]: No effect – updated terminology
Water supply reservoirs:					
New reservoirs provided that a riparian buffer that meets the		X			
requirements of Items (4)(8) and (5)(9) of this Rule is					Commented [HK204]: No effect – update citation
established adjacent to the reservoir					
New reservoirs where a riparian buffer that meets the					
requirements of Items $\frac{(4)(8)}{(4)(8)}$ and $\frac{(5)(9)}{(4)}$ of this Rule is			X		Commented [HK205]: No effect – update citation
NOT established adjacent to the reservoir					
Water wells	X				
Wildlife passage structures		X			Commented [HK206]: less stringent - New use
Wetland restoration	X				Commented [HK207]: no effect - Moved above
Provided that, in Zone 1, all of the following BMPs for overhe	ad utility lin	nes are used. If	all of these BN	APs are not	
A minimum zone of 10 feet wide immediately adjacent vegetation that poses a hazard or has the potential to gr  Woody vegetation shall be cleared by hand. No land gr  Vegetative root systems shall be left intact to maintain trees are cut.  Rip rap shall not be used unless it is necessary to stabil  No fertilizer shall be used other than a one time applied Construction activities shall minimize the removal of wand the time in which areas remain in a disturbed state.	row tall enough the integrity ize a tower, ation to re-e	ugh to interfere grading is allow y of the soil. Stu stablish vegetat	with the line is ed. umps shall rem	removed.	
Active measures shall be taken after construction and d		ne maintenance	to ensure diffu	se flow of	
stormwater through the buffer.	C				
☐ In wetlands, mats shall be utilized to minimize soil dist					
<sup>2</sup> Provided that poles or towers shall not be installed within 10 fo	eet of a wate	er body unless t	he Division co	mpletes a	
no practical alternative evaluation.					
<sup>3</sup> Perpendicular crossings are those that intersect the surface water	er at an ang	ele between 75°	and 105 <sup>-</sup> .		
<sup>4</sup> Provided that, in Zone 1, all of the following BMPs for underg	round utilit	y lines are used	. If all of these	BMPs are	
not used, then the underground utility line shall require a no prac		ati	n by the Divisi	on	
not used, then the underground durity line shan require a no pra-	<del>cticai aitern</del>	<del>anves evaruano</del>	ii by the Divisi		
<ul> <li>Woody vegetation shall be cleared by hand. No land grule</li> </ul>					
•	bbing or gra	ading is allowed	-		

3	<ul> <li>No fertiliza</li> </ul>	ter shall be used other than a one time application to re establish vegetation.	
4	<ul> <li>Construct</li> </ul>	ion activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and	
5	the time in	n which areas remain in a disturbed state.	
6	<ul> <li>Active me</li> </ul>	easures shall be taken after construction and during routine maintenance to ensure diffuse flow of	
7	stormwate	er through the buffer.	
8	<ul> <li>In wetland</li> </ul>	ls, mats shall be utilized to minimize soil disturbance.	Commented [HK208]: no effect - Necessary language from
9	(7)	REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable,	footnotes incorporated into relevant use within the Table above.
10		allowable with mitigation and prohibited in Item (6) of this Rule shall have the following	
11		requirements:	
12		(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses	
13		shall be designed, constructed and maintained to minimize soil disturbance and to provide	
14		the maximum water quality protection practicable. In addition, exempt uses shall meet	
15		requirements listed in Item (6) of this Rule for the specific use.	
16		(b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer	
17		provided that there are no practical alternatives to the requested use pursuant to Item (8) of	
18		this Rule. These uses require written authorization from the Division or the delegated local	
19		authority.	
20		(c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may	
21		proceed within the riparian buffer provided that there are no practical alternatives to the	
22		requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has	
23		been approved pursuant to Item (10) of this Rule. These uses require written authorization	
24		from the Division or the delegated local authority.	
25		(d) PROHIBITED. Uses designated as prohibited may not proceed within the riparian buffer	
26		unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required	
27		as one condition of a variance approval.	Commented [HK209]: no effect - Moved to (10) ahove
28	(8)	DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake	
29		uses designated as allowable or allowable with mitigation shall submit a request for a "no practical	
30		alternatives" determination to the Division or to the delegated local authority. The applicant shall	
31		certify that the criteria identified in Sub-Item (8)(a) of this Rule are met. The Division or the	
32		delegated local authority shall grant an Authorization Certificate upon a "no practical alternatives"	
33		determination. The procedure for making an Authorization Certificate shall be as follows:	
34		(a) For any request for an Authorization Certificate, the Division or the delegated local	
35		authority shall review the entire project and make a finding of fact as to whether the	
36		following requirements have been met in support of a "no practical alternatives"	
37		determination:	

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Underground cables shall be installed by vibratory plow or trenching.

• The trench shall be backfilled with the excavated soil material immediately following cable installation.

31 of 37

1		(i) The basic project purpose cannot be practically accomplished in a manner that
2		would better minimize disturbance, preserve aquatic life and habitat, and protect
3		water quality.
4		(ii) The use cannot practically be reduced in size or density, reconfigured or
5		redesigned to better minimize disturbance, preserve aquatic life and habitat, and
6		protect water quality.
7		(iii) Best management practices shall be used if necessary to minimize disturbance
8		preserve aquatic life and habitat, and protect water quality.
9	(b)	Requests for an Authorization Certificate shall be reviewed and either approved or denied
10		within 60 days of receipt of a complete submission based on the criteria in Sub Item (8)(a)
11		of this Rule by either the Division or the delegated local authority. Failure to issue an
12		approval or denial within 60 days shall constitute that the applicant has demonstrated "no
13		practical alternatives." The Division or the delegated local authority may attach conditions
14		to the Authorization Certificate that support the purpose, spirit and intent of the riparian
15		buffer protection program. Complete submissions shall include the following:
16		(i) The name, address and phone number of the applicant;
17		(ii) The nature of the activity to be conducted by the applicant;
18		(iii) The location of the activity, including the jurisdiction;
19		(iv) A map of sufficient detail to accurately delineate the boundaries of the land to be
20		utilized in carrying out the activity, the location and dimensions of any
21		disturbance in riparian buffers associated with the activity, and the extent of
22		riparian buffers on the land;
23		(v) An explanation of why this plan for the activity cannot be practically
24		accomplished, reduced or reconfigured to better minimize disturbance to the
25		riparian buffer, preserve aquatic life and habitat and protect water quality; and
26		(vi) Plans for any best management practices proposed to be used to control the
27		impacts associated with the activity.
28	<del>(c)</del>	Any disputes over determinations regarding Authorization Certificates shall be referred to
29		the Director for a decision. The Director's decision is subject to review as provided in
30		Articles 3 and 4 of G.S. 150B.
31	(9) VARIA	NCES. Persons who wish to undertake uses designated as prohibited may pursue a variance
32	The Di	vision or the appropriate delegated local authority may grant minor variances. The variance
33	request	procedure shall be as follows:
34	<del>(a)</del>	For any variance request, the Division or the delegated local authority shall make a finding
35		of fact as to whether the following requirements have been met:
36		(i) There are practical difficulties or unnecessary hardships that prevent compliance
37		with the strict letter of the riparian buffer protection requirements. Practical

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difficulties or unnecessary hardships shall be evaluated in accordance with the following:

- (A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or delegated local authority shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.
- (B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.
- (C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.
- (D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.
- (E) The applicant did not purchase the property after the effective date of this Rule, and then requesting an appeal.
- (F) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;
- (ii) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and
- (iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (b) MINOR VARIANCES. A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by the either the Division or the delegated local authority pursuant to G.S. 153A Article 18, or G.S. 160A Article 19. The Division or the delegated local authority may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals made by the delegated local

G.S. 153A	<del>345.</del>	
(c) MAJOR V	ARIANCES. A major variance request pertains to activities that are proposed	
to impact ar	y portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer.	
If the Divisi	on or the delegated local authority has determined that a major variance request	
meets the re	quirements in Sub Item (9)(a) of this Rule, then it shall prepare a preliminary	
finding and	submit it to the Commission. Preliminary findings on major variance requests	
shall be revi	ewed by the Commission within 90 days after receipt by the Director. Requests	
for appeals	of determinations that the requirements of Sub Item (9)(a) of this Rule have	
not been m	et shall be made to the Office of Administrative Hearings for determinations	
made by th	Division or the appropriate Board of Adjustments under G.S. 160A-388 or	
G.S. 153A	345 for determinations made by the delegated local authority. The purpose of	
the Commi	ssion's review is to determine if it agrees that the requirements in Sub Item	
(9)(a) of the	is Rule have been met. Requests for appeals of decisions made by the	
Commission	shall be made to the Office of Administrative Hearings. The following	
actions sha	1 be taken depending on the Commission's decision on the major variance	
request:		
<del>(i) U</del> p	on the Commission's approval, the Division or the delegated local authority	
sha	Ill issue a final decision granting the major variance.	
<del>(ii) U</del> p	on the Commission's approval with conditions or stipulations, the Division or	
the	delegated local authority shall issue a final decision, which includes these	
co	nditions or stipulations.	
<del>(iii) U</del> p	on the Commission's denial, the Division or the delegated local authority shall	
iss	ue a final decision denying the major variance.	Commented [HK210]: no effect - Moved to Rule .0611
(10)(11) MITIGATION. Pers	ons who wish to undertake uses designated as allowable with mitigation upon	
authorization as defin	ned in Sub-Item (10)(a)(iii) of this Rule or allowable with exception as defined	
in Sub-Item (10)(a)(	of this Rule shall meet the following requirements in order to proceed with	Commented [HK211]: No effect – clarification and updated
their proposed use.		citations
(a) Obtain <mark>a de</mark>	termination of "no practical alternatives" to the proposed usean Authorization	
Certificate	oursuant to Item (8) of this Rule.Rule .0611 of this Section; and	Commented [HK212]: No effect – updated terminology
(b) Obtain writ	en approval for a mitigation proposal pursuant to 15A NCAC 02B .0242.Rule	Commented [HK213]: No effect – update citation
.0295 of Su	ochapter 02B.	Commented [HK214]: No effect - clarification
(11) REQUIREMENTS :	SPECIFIC TO FOREST HARVESTING. The following requirements shall	Commented [HK215]: No effect – update citation
apply for forest harv-	esting operations and practices.	
(a) The followi	ng measures shall apply in the entire riparian buffer:	
(i) Lo	gging decks and sawmill sites shall not be placed in the riparian buffer.	
	(e) MAJOR VA to impact an If the Divisi meets the re finding and shall be revi for appeals not been me made by the G.S. 153A: the Commis (9)(a) of th Commission actions shall request: (i) Up sha (ii) Up the eor (iii) Up the cor authorization as defir in Sub-Item (10)(a)(x) their proposed use. (a) Obtain a dei Certificate [ (b) Obtain writt 0295 of Sul  (11) REQUIREMENTS S apply for forest harve (a) The followin	(e) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. If the Division or the delegated local authority has determined that a major variance request meets the requirements in Sub Item (9)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission. Preliminary findings on major variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Sub Item (9)(a) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division or the appropriate Board of Adjustments under G.S. 160A 388 or G.S. 153A 345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees that the requirements in Sub-Item (9)(a) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:  (i) Upon the Commission's approval, the Division or the delegated local authority shall issue a final decision approval with conditions or stipulations, the Division or the delegated local authority shall issue a final decision denying the major variance.  (ii) Upon the Commission's denial, the Division or the delegated local authority shall issue a final decision denying the major variance.  (iii) Upon the Commission's denial, the Division or the delegated local authority shall issue a final decision denying the major variance.  (iii) Upon the Commission's denial, the Division or the delegated local authority shall issue a final decision denying the major variance.  (iii) Upon the Commission's denial, the Division or the delegated local authority shall issue a final decision denying the major varia

authority shall be made to the appropriate Board of Adjustment under G.S. 160A 388 or

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1		(ii)	Access roads and skid
2			permanent stream crossin
3			Temporary stream cross
4			disturbing activity is com
5		(iii)	Timber felling shall be di
6		(iv)	Skidding shall be directed
7			in a manner that minimize
8			or ruts.
9		(v)	Individual trees may be tr
10		(vi)	Harvesting of dead or in
11			prevent or control extens
12			These practices must be
13			specific site. The Division
14			approvals.
15		(vii)	Removal of individual tre
16			human life shall be allow
17		(viii)	Natural regeneration of fo
18			cover plants to enhance
19			disturbance is minimized
20		(ix)	High intensity prescribed
21		(x)	Application of fertilizer s
22			stabilization. Broader
23			forest stand shall be cond
24			allowed to drift into the ri
25	(b)	In Zon	e 1, forest vegetation sha
26		provide	d for below is allowed on
27		forestry	in accordance with G.S. 10
28		a forest	t management plan prepar
29		Copies	of either the approval of the
30		manage	ement plan shall be produce
31		is allow	red in accordance with the
32		(i)	Tracked or wheeled vel
33			designed, constructed and
34		(ii)	Soil disturbing site prepar
35		(iii)	Trees shall be removed
36			vegetation.
37	(iv)	The foll	lowing provisions for selec

- trails shall be prohibited except for temporary and gs established in accordance with 15A NCAC 011.0203. sings shall be permanently stabilized after any site pleted.
- rected away from the stream or water body.
- d away from the stream or water body and shall be done es soil disturbance and prevents the creation of channels
- reated to maintain or improve their health, form or vigor.
- nfected trees or application of pesticides necessary to sive tree pest and disease infestation shall be allowed. approved by the Division of Forest Resources for a on of Forest Resources must notify the Division of all
- ees that are in danger of causing damage to structures or
- orest vegetation and planting of trees, shrubs, or ground the riparian buffer shall be allowed provided that soil . Plantings shall consist primarily of native species.
- burns shall not be allowed.
- shall not be allowed except as necessary for permanent ast application of fertilizer or herbicides to the adjacent ucted so that the chemicals are not applied directly to or iparian buffer.
- all be protected and maintained. Selective harvest as forest lands that have a deferment for use value under 05-277.2 through G.S. 277.6 or on forest lands that have red or approved by a registered professional forester. he deferment for use value under forestry or the forest ed upon request. For such forest lands, selective harvest following:
  - hicles are not permitted except at stream crossings d maintained in accordance with 15A NCAC 01I .0203.
  - ration activities are not allowed.
  - with the minimum disturbance to the soil and residual
- tive harvesting shall be met:

1			(A)	The fir	st 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be	
2				undistu	rbed except for the removal of individual high value trees as defined	
3				provide	ed that no trees with exposed primary roots visible in the streambank be	
4				<del>cut.</del>		
5			<del>(B)</del>	In the	outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than	
6				five inc	thes dbh may be cut and removed. The reentry time for harvest shall be no	
7				more fi	equent than every 15 years, except on forest plantations where the reentry	
8				time sl	nall be no more frequent than every five years. In either case, the trees	
9				remain	ing after harvest shall be as evenly spaced as possible.	
10			<del>(C)</del>	In Zor	e 2, harvesting and regeneration of the forest stand shall be allowed	
11				provide	ed that sufficient ground cover is maintained to provide for diffusion and	
12				infiltra	ion of surface runoff.	Commented [HK216]: no effect - Moved to Rule .0612
13	(12)	REQU	IREMEN	TS SP	ECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER	
14		PROG	RAMS F	OR NITI	ROGEN CONTROL. Local governments that are required to have local	
15		stormw	vater prog	rams pui	suant to 15A NCAC 02BRule .0235 of this Section shall have two options	Commented [HK217]: No effect – update citation
16		for ens	uring prot	tection of	riparian buffers on new developments within their jurisdictions as follows.	
17		(a)	Obtain	authority	to implement a local riparian buffer protection program pursuant to 15A	
18			NCAC	02B .024	44.Rule .0715 of this Section.	Commented [HK218]: No effect – update citation
19		(b)	Refrain	from iss	uing local approvals for new development projects unless either:	
20			(i)	The pe	rson requesting the approval does not propose to impact the riparian buffer	
21				of a sur	face water that appears on either the most recent versions of the soil survey	
22				maps 1	orepared by the Natural Resources Conservation Service of the United	
23				States 1	Department of Agriculture or the most recent versions of the 1:24,000 scale	
24				<del>(7.5 mi</del>	nute quadrangle) topographic maps prepared by the United States Geologic	
25				Survey	(USGS).as described in Item (3) of this Rule.	Commented [HK219]: No effect – removed repetitive language to just reference language above
26			(ii)	-	rson requesting the approval proposes to impact the riparian buffer of a	to just reference ranguage above
27				surface	water that appears on the mapsas described in Sub-Item (12)(b)(i)Item (3)	Commented [HK220]: No effect - grammar
28				of this	Rule and either:	Commented [HK221]: No effect – update citation
29				(A)	Has received an on-site determination from the Division Authority	Commented [HK222]: No effect – update name
30					pursuant to Sub Item (3)(a) Item (4) of this Rule that surface waters are	Commented [HK223]: No effect – update citation
31					not present;	
32				(B)	Has received an Authorization Certificate from the Division Authority	Commented [HK224]: No effect – update name
33					pursuant to Item (8) of this Rule .0611 of this Section for uses designated	Commented [HK225]: No effect – update citation
34					as Allowable allowable upon authorization under this Rule;	Commented [HK226]: No effect – update terminology
35				(C)	Has received an Authorization Certificate from the Division Authority	Commented [HK227]: No effect – update name
36					pursuant to tem (8) of this Rule .0611 of this Section and obtained the	Commented [HK228]: No effect – update citation
37					Division's Authority's approval on a mitigation plan pursuant to Item	Commented [HK229]: No effect – update name

1		(10)(11) of this Rule for uses designated as Allowable with							
2		Mitigation allowable with mitigation upon authorization under this Rule;							
3		or							
4		(D) Has received a variance from the Commissionan Authorization							
5		Certificate with Exception from the Authority pursuant to Item (9) of this							
6		Rule .0611 of this Section.							
7	(13)	OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does							
8		not preclude the requirement to comply with all federal, state and local regulations and laws.							
9									
10	History Note:	Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1995, c. 572; S.L 2011, c. 394; S.L							
11		2012, c. 200; S.L 2013, c. 413; S.L 2015 c. 246;							
12		Temporary Adoption Eff. July 22, 1997;							
13		Temporary Adoption Eff. June 22, 1999; April 22, 1998; January 22, 1998;							
14		Eff. August 1, 2000.							
15									

Commented [HK230]: No effect – update citation

Commented [HK231]: No effect – update terminology

Commented [HK232]: No effect – update terminology

Commented [HK233]: No effect – update citation

15A NCAC 02B .0241 is proposed for amendment as follows: 1 2 15A NCAC 02B .0241.0715 NEUSE RIVER BASIN: 3 NUTRIENT SENSITIVE WATERS Commented [HK1]: No effect - update citation MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE 4 PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS 5 (a) PURPOSE. This Rule sets out the requirements for delegation of the responsibility for implementing and 6 7 enforcing the Neuse Basin existing riparian buffer protection program, as described in Rule 15A NCAC 2B Commented [HK2]: No effect - grammar 8 .0233, 0714 of this Section, to local governments. Commented [HK3]: No effect - update citation (b) PROCEDURES FOR GRANTING AND RESCINDING DELEGATION. The Commission shall grant and 9 Commented [HK4]: No effect - Moved to paragraph (i) rescind local government delegation of the Neuse River Basin Riparian Buffer Protection requirements requirements 10 Commented [HK5]: No effect - Moved to paragraph (i) as described in Rule .0714 of this Section, according to the following procedures: 11 Local governments within the Neuse River Basin may submit a written request to the Commission 12 (1) Commented [HK6]: No effect - punctuation 13 for authority to implement and enforce the State's Neuse River Basin riparian buffer protection Commented [HK7]: No effect - clarification 14 requirements within their jurisdiction jurisdiction by establishing a riparian buffer program to meet Commented [HK8]: No effect - punctuation 15 the requirements of Rule .0714 of this Section. The written request to establish a riparian buffer Commented [HK9]: No effect - clarification 16 program shall be accompanied by information that shows:include the following: Commented [HK10]: No effect - clarification 17 The Documentation that the local government has land use jurisdiction for the riparian Commented [HK11]: No effect - clarification 18 buffer buffer. This can be demonstrated by delineating the local land use jurisdictional Commented [HK12]: No effect - grammar boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s); 19 Commented [HK13]: No effect - clarification The Documentation that the local government has the administrative organization, staff, 20 (B) Commented [HK14]: No effect - grammar legal authority, financial resources and other resources necessary to implement and enforce 2.1 Commented [HK15]: No effect - grammar the State's Neuse River Basin riparian buffer protection requirements based on its size and 22 Commented [HK16]: No effect - clarification 23 projected amount of development; Commented [HK17]: No effect - grammar (C) The local government has adopted ordinances, resolutions, or regulations necessary to 24 Commented [HK18]: No effect - clarification establish and maintain the State's riparian buffer protection requirements; anda riparian 25 Commented [HK19]: No effect - grammar buffer program to meet the requirements of Rule .0714 of this Section and G.S. 143-26 Commented [HK20]: No effect - clarification 27 214.23A; Documentation that the local government's riparian buffer program complies with all 28 (D) 29 requirements set forth in G.S. 143-214.23A; and Commented [HK21]: No effect - Added to comply with SL 2015-246 30 The local government has provided aA plan to address violations with appropriate remedies (D)(E) Commented [HK22]: No effect - grammar 31 and actions including, but not limited to, civil or criminal remedies that shall restore buffer 32 nutrient removal functions on violation sites and provide a deterrent against the occurrence 33 of future violations. 34 (2)Within 90 days after the Commission has received the request for delegation, the Commission shall 35 notify the local government whether it has been approved, approved with modifications, or denied. The Commission, upon determination that a delegated local authority is failing to implement or 36 37 enforce the Neuse Basin riparian buffer protection requirements in keeping with a request approved

1	under Sub-item (b)(2) of this Rule, shall notify the delegated local authority in writing of the local		
2	program's inadequacies. If the delegated local authority has not corrected the deficiencies within		
3	90 days of receipt of the written notification, then the Commission shall rescind the delegation of		
4	authority to the local government and shall implement and enforce the State's riparian buffer		
5	protection requirements.		Commented [HK23]: No effect – Moved to (i) below
6	(4) The Commission may delegate its duties and powers for granting and rescinding local government		
7	delegation of the State's riparian buffer protection requirements, in whole or in part, to the Director.		Commented [HK24]: No effect – Moved to (j) below
8	(c) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation,		
9	local governments shall appoint a Riparian Buffer Protection Administrator who shall coordinate the implementation		
10	and enforcement of the program. The Administrator shall attend an initial training session by the Division and		
11	subsequent annual training sessions be certified to make on-site determinations pursuant to G.S. 143-214.25A. The		Commented [HK25]: less stringent - The division is
12	Administrator shall ensure that local government staffs staff working directly with the program receive training to		unable to provide subsequent annual training
13	understand, implement and enforce the program.program and are certified to make on-site determinations pursuant to		Commented [HK26]: No effect – Required by statute
14	G.S. 143-214.25A. At any time that a local government does not have a certified individual retained on staff to make		Commented [HK27]: No effect - grammar
15	on-site determinations pursuant to G.S. 143-214.25A, they shall immediately notify the Division and indicate a		
16	proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to		
17	provide on-site determinations until a new certified staff member is secured by the local government.		Commented [HK28]: No effect – Ensures on-site
18	(d) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON		determinations continue when local governments don't have anyone on staff certified to make calls. This is codifying
19	AUTHORIZATION AND ALLOWABLE WITH MITIGATION.MITIGATION UPON AUTHORIZATION Upon		current practice.
20	receiving delegation, local authorities governments shall review proposed uses within the riparian buffer and issue	/	Commented [HK29]: No effect – updated terminology
21	approvals if the uses meet the State's riparian buffer protection requirements. Delegated local authorities shall issue	/,	Commented [HK30]: No effect – updated terminology
22	an Authorization Certificate for uses if the proposed use meets the State's riparian buffer protection requirements, or		Commented [HK31]: No effect – updated terminology
23	provides for appropriate mitigated provisions to the State's riparian buffer protection requirements. The Division may		
24	challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is		
25	issued. If the Division does not challenge an Authorization Certificate within 30 days of issuance, then the delegated		
26	${\color{blue} \textbf{local authority's decision shall stand.}} \underline{\textbf{applications requesting an Authorization Certificate pursuant to the requirements}}$		
27	set forth in Rule .0705 of this Section.		Commented [HK32]: less stringent - Remove ability for
28	(e) VARIANCES. EXCEPTIONS. After Upon receiving delegation, local governments shall review variance		DWR to over-rule local government decisions; instead just reference process set out in Rule .0705
29	requests, provide approvals for minor variance requests and make recommendations to the Commission for major		Commented [HK33]: No effect – update terminology
30	variance requests pursuant to the State's riparian buffer protection program-applications requesting an Authorization		Commented [HK34]: No effect - grammar
31	Certificate with Exception pursuant to the requirements set forth in Rule .0705 of this Section.		Commented [HK35]: No effect – Removed language to
32	(f) LIMITS OF DELEGATED LOCAL AUTHORITY. The Commission Division shall have jurisdiction to the		just reference process set out in Rule .0705
33	$exclusion \ of \ local \ governments \ to \ implement \ the \ State's \ riparian \ buffer \ protection \ requirements \ for \ the \ following \ types$		Commented [HK36]: No effect – updated name
34	of activities:		
35	(1) Activities conducted under the authority of the State;		
36	(2) Activities conducted under the authority of the United States;		
37	(3) Activities conducted under the authority of multiple jurisdictions; and		Commented [HK37]: No effect - punctuation

1	(4)	Activities conducted under the authority of local units of government.government;		Commented [HK38]: No effect - punctuation
2	<u>(5)</u>	Forest harvesting activities described in Rule .0706 of this Section; and		Commented [HK39]: No effect – Updated to comply with
3	<u>(6)</u>	Agricultural activities.		SL 2005-447
4	(g) RECORD-I	KEEPING REQUIREMENTS. Delegated local authorities governments shall maintain on-site records		Commented [HK40]: less stringent - Consistent with more recent buffer rules
5	for a minimum	of five years. Delegated local authorities governments must furnish a copy of these records to the		Commented [HK41]: No effect – update name
6	Director Division	on within 30 calendar days of receipt of a written request for the records. The Division shall inspect		Commented [HK42]: No effect – update name
7	local riparian bu	affer protection programs to ensure that the programs are being implemented and enforced in keeping		Commented [HK43]: No effect – update name
8	with a request a	approved under Sub-item (b)(2) of this Rule. Each delegated local authority's governments records	_ \	Commented [HK44]: No effect - clarification
9	shall include the	e following:		Commented [HK45]: No effect – Moved to (h) below
10	(1)	A copy of variance Authorization Certificate with exception requests;	_ \	Commented [HK46]: No effect – update name
11	(2)	The wariance Authorization Certificate with exception request's finding of fact;		Commented [HK47]: No effect – update terminology
12	(3)	The result of the variance Authorization Certificate with exception proceedings;		Commented [HK48]: No effect – update terminology
13	(4)	A record of complaints and action taken as a result of the complaint;		Commented [HK49]: No effect – update terminology
14	(5)	Records for stream origin calls and stream ratings; and		
15	(6)	$Copies\ of\ request\ for\ authorization,\ records\ approving\ authorization\ and\ Authorization\ Certificates.$		
16	(h) AUDITS O	F LOCAL AUTHORITIES. The Division shall regularly audit delegated local governments to ensure		
17	the local progra	ms are being implemented and enforced in keeping with the requirements of this Rule and Rule .0714		
18	of this Section.			Commented [HK50]: No effect – moved from (g) above
19	(i) PROCEDUI	RES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local		
20	government is fa	ailing to implement or enforce the Neuse Basin riparian buffer protection requirements in keeping with		
21	the request app	proved under Subparagraph (b)(4) of this Rule, the Commission shall notify the delegated local		
22	government in	writing of the local program's inadequacies. If the delegated local government has not corrected the		
23	deficiencies wit	hin 90 calendar days of receipt of the written notification, then the Commission shall rescind the		
24	delegation of au	thority to the local government and the Division shall implement and enforce the Neuse River Basin		
25	riparian buffer p	protection requirements within their jurisdiction.		Commented [HK51]: No effect – moved from (b) above
26	(j) DELEGAT	TION. The Commission may delegate its duties and powers for granting and rescinding local		
27	government del	egation of the Neuse River Basin riparian buffer protection requirements, in whole or in part, to the		
28	Director.			Commented [HK52]: No effect – moved from (b) above
29				
30	History Note:	Authority 143-214.1; 143-214.7; <u>143-214.23, 143-214.23A,</u> 143-215.3(a)(1); S.L. 1998 c. 221; <u>S.L.</u>		
31		<u>2015 c. 246</u>		
32		Eff. August 1, 2000.		
33		Amended Eff. INSERT DATE		
34				

1 15A NCAC 02B .0248 is proposed for amendment as follows: 2 3 15A NCAC 02B <del>.0248</del> .0720 RANDLEMAN <del>LAKE WATER SUPPLY WATERSHED:</del> NUTRIENT MANAGEMENT STRATEGY STRATEGY: PURPOSE AND SCOPE 4 5 PURPOSE. The purpose of the Randleman nutrient strategy is to attain the designated uses of 6 Randleman Lake. All waters of the Randleman Lake (Deep River) water supply watershed are Commented [HJ1]: Change: Added purpose statement to provide clarity to purpose of the nutrient management 7 classified for water supply uses and designated by the Environmental Management Commission as a strategy 8 Critical Water Supply Watershed pursuant to G.S. 143-214.5(b). Effect: No Impact 9 SCOPE AND LIMITATION. The Randleman nutrient strategy rules require controls to reduce (b) 10 significant nutrient sources throughout the Randleman Lake watershed. These Rules do not address 11 sources for which there is insufficient scientific knowledge to base regulation. The Commission may 12 undertake additional rulemaking in the future or make recommendations to other rulemaking bodies as 13 deemed appropriate to more fully address nutrient sources to Randleman Lake. Commented [HJ2]: Change: Added Scope & Limitation Language explaining what sources are addressed under the RULES ENUMERATED. The following rules rules, which together shall constitute the Randleman 14 (c) rules and the Commissions ability to undertake additional rulemaking. 15 nutrient strategy, shall be implemented for the entire drainage area upstream of the Randleman Lake 16 Effect: No impact on implementation. Consistency across watersheds and improved clarity. 17 (1) Rule .0249 of this Section for Wastewater Discharges, 18 (2) Rule .0250 of this Section for Protection and Maintenance of Riparian Areas, and (3) Rule .0251 of this Section for Urban Stormwater Management. 19 20 (1) Rule .0721 of this Section for Urban Stormwater Management. 21 (2) Rule .0722 of this Section for Wastewater Discharges, and 22 (3) Rule .0723 of this Section for Protection and Maintenance of Riparian Areas Commented [HJ3]: Change: Provides updated Rule References to point to new .0700 Rule numbers 23 (b)(d) PENALTIES. Failure to meet the requirements of the Rules in this Section may result in the Effect: No Impact 24 imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-25 215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief). Commented [HJ4]: Change: Added title to paragraph Effect: No Impact 26History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 27 Eff. April 1, 1999; 28 Amended Eff. May 1, 2010; 29 Amended Eff. [New Date] 30

15A NCAC 02B .0251 is proposed for amendment as follows:

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## 15A NCAC 02B .0251.0721 RANDLEMAN LAKE WATER SUPPLY WATERSHED: STORMWATER REQUIREMENTS

The following is the urban stormwater management strategy for the Randleman Lake watershed:

- (1) IMPLEMENTING AUTHORITY. The requirements of this Rule shall be implemented by AH local governments that have land use authority within the Randleman Lake watershed watershed, shall comply with stormwater management requirements as outlined in this Rule. Although the management requirements for the upper and the lower portions of the watershed are similar, additional density-related stormwater requirements apply to the lower portion of this watershed that do not apply to the upper portion of the watershed. The upper portion of the watershed is defined as those waters and lands of the Deep River watershed which drain to the Oakdale-Cotton Mill Dam. The lower portion of the watershed are those waters and lands of the Deep River upstream and draining to the Randleman Lake Dam, from the Oakdale Cotton Mill Dam to the Randleman Dam. State agencies shall also comply with this Rule insofar as required by G.S. 143-214.5 and in accordance with Rule .0622 of this Subchapter.
- (2) To meet the requirements of this Rule, the local governments with jurisdictions in the upper portion of the Randleman Reservoir watershed shall meet the state's rules for a WS-IV classification as specified in 15A NCAC 2B .0104, .0202 and .0216, the conditions specified in their existing ordinances, the riparian area protection requirements of Rule .0250 of this Section, along with the stormwater planning requirements set forth in Sub-Items (4), (5), and (6) of this Rule.
- (3) To meet the requirements of this Rule, local governments with jurisdictions in the lower portion of the Randleman Lake watershed shall meet the provisions of Sub-Items (4), (5) and (6) of this Rule along with the following:
  - (a) Within 270 days of the effective date of this Rule, the affected jurisdictions, in coordination with the Piedmont Triad Regional Water Authority, shall submit local water supply ordinances to the Environmental Management Commission for approval. The ordinances shall at least meet the state's minimum rules for a WS-IV classification as specified in 15A NCAC 2B .0104, .0202 and .0216, except that the requirements of this Sub-Item shall replace the nonpoint source requirements in 15A NCAC 2B .0216(3)(b) for the lower portion of the Randleman Lake watershed.
  - (b) The local ordinances shall provide for review and approval of stormwater management plans for new developments to ensure that the following conditions can be met:
    - Stormwater pollution control criteria for the Randleman Lake watershed outside of critical area;

Commented [A1]: Change: This language moved to Item (2)
Effect: No Impact

and the state of t

Commented [A2]: Change: Statement added to clarify how state agencies comply with the Rule.

Effect: No Impact

<u>Commented [A3]: Change: Moved to Item (5) and updated rule references</u>

Effect: No Impact

**Commented [A4]:** Change: Language moved to Item (6) and updated rule references

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- (A) Low Density Option: For each development project, development density must be limited to either no more than one dwelling unit per acre of single family detached residential development (or 40,000 square foot lot excluding roadway right of way) or 12 percent built upon area for all other residential and non-residential development. Stormwater runoff shall be transported primarily by vegetated conveyances. Conveyance system shall not include a discrete stormwater collection system as defined in 15A NCAC 2B .0202;
- (B) High Density Option: If new development exceeds the low density option requirements as stated in Sub Item (2)(b)(i) of this Rule, then engineered stormwater controls must be used to control runoff from the first inch of rainfall. Engineering controls may consist of wet detention ponds designed in accordance with 15A NCAC 2H .1000 or alternative stormwater management systems consisting of other treatment options, or a combination of options, that are approved by the Director of the Division of Water Quality in accordance with 15A NCAC 2B .0104(g). New residential and non residential development shall not exceed 50 percent built upon area, unless an alternative high density option is submitted to the Commission as part of the submittal of the local water supply watershed protection ordinance and determined by the Commission to provide equal or greater water quality protection in Randleman Reservoir and its tributaries;
- (C) Cluster development shall be allowed on a project by project basis as follows:
  - (I) overall density of the project meets associated density or stormwater control requirements of this Section;
  - (II) buffers meet the minimum statewide water supply watershed protection requirements and those specified for the Randleman Lake watershed riparian areas in Rule .0250 of this Section;
  - (III) built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;

Commented [A5]: Change: This BUA information was moved to Table form in Sub-Item (6)(a)

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- (IV) areas of concentrated development are located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;
- (V) remainder of tract to remain in vegetated or natural state by utilization of one of the methods provided in Sub-Item 3(b)(i)(C)(VI) of this Rule;
- (VI) area in the vegetated or natural state may be conveyed to a property owners association; a local government for preservation as a park or greenway; a conservation organization; or placed in a permanent conservation or farmland preservation easement;
- (VII) a maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and
- (VIII) cluster development that meets the applicable low density option requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;
- (D) If local governments choose the high density development option which requires engineered stormwater controls, then they shall assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104 of this Subchapter;
- (E) Impervious cover shall be minimized to the maximum extent practical through clustering, narrower and shorter paved areas (streets, driveways, sidewalks, cul-de-sacs, and parking lots), and spreading rooftop and other impervious area runoff over pervious areas. Land clearing during the construction process shall be limited to the maximum extent practical. The local government permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the plans and specifications approved by the local governments;
- (F) The project is in compliance with the riparian area protection requirements as specified in 15A NCAC 2B .0250 (Randleman Lake riparian area rule);
- (G) No new development shall be allowed within 50 feet of waters affected by the Randleman riparian area rule 15A NCAC 2B .0250;
- (H) New development meeting the high density option shall be located at least 100 feet from perennial waters as identified on topo or soil survey maps; however, within the area between 50 and 100 feet adjacent to the perennial

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**Commented [A6]:** Changed: Removed this language as it is redundant of language already present in the Water Supply Rule.

Effect: No Impact

**Commented [A7]:** Change: Removed this language as it is already covered in the Buffer Rule

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water body, water dependent structures, or other structures, such as flag poles, signs and security lights, which result in only diminimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built upon surface area, divert runoff away from surface waters and maximize the utilization of BMPs;

For local governments that do not use the high density option, a maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on April 1, 1999 may be developed with new development projects and expansions to existing development of up to 70 percent built upon surface area in addition to the new development approved in compliance with the appropriate requirements of Sub-Item (3)(b)(ii)(A) of this Rule. For expansions to existing development, the existing built upon surface area shall not be counted toward the allowed 70 percent built upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10 percent/70 percent land area to local government within the watershed upon submittal of a joint resolution for review by the Commission. When the designated water supply watershed area is composed of public land, such as National Forest land, local governments may count the public land acreage within the designated watershed area outside of the critical area in figuring the acreage allowed under this provision. Each project shall, to the maximum extent practicable, minimize built-upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices to minimize water quality impacts;

(ii) Stormwater pollution control criteria for critical areas of the watershed:

- (A) Low Density Option: Development density must be limited to either no more than one dwelling unit per two acres of single family detached residential development (or 80,000 square foot lot excluding roadway right of way) or six percent built upon area for all other residential and non-residential development. Stormwater runoff shall be transported primarily by vegetated conveyances to the maximum extent practicable;
- (B) High Density Option: If new development exceeds the low density option requirements as stated in Sub-Item (3)(b)(ii) of this Rule, then engineered stormwater controls must be used to control runoff from the first inch of

**Commented [A8]:** Change: This language moved to Sub-Item (6)(b)

Effect: No Impact

**Commented [A9]:** Changed: Removed this language as it is redundant of language already present in the Water Supply Rule.

rainfall. New residential and non residential development shall not exceed 1 2 30 percent built-upon area; (6)(b)3 No new permitted sites for land application of residuals or petroleum Effect: No Impact 4 contaminated soils shall be allowed; No new landfills shall be allowed; and 5 Sub-Items (3)(b)(i)(C)-(H) of this Rule also apply to the critical area. 6 7 (2) SUBWATERSHEDS. For the purpose of this Rule, the Randleman Lake Watershed is divided into 8 subwatersheds as follows: 9 (a) the upper portion of the watershed is defined as those waters and lands of the Deep River 10 watershed which drain to the Oakdale-Cotton Mill Dam; the lower portion of the watershed are those waters and lands of the Deep River upstream and 11 draining to the Randleman Lake Dam, from the Oakdale-Cotton Mill Dam to the Randleman 12 Dam; 13 Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake; 14 High Point Lake subwatershed is defined as all land areas draining to High Point Lake, East 15 16 Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam; and Deep River 1 subwatershed is defined as all land areas draining to the Deep River from High 17 18 Point Lake Dam to Freeman Mill Dam. previous Sub-Item (4)(a). (4)(3) COMPREHENSIVE STORMWATER MANAGEMENT PLANS. Within 12 months of the effective 19 20 date of adoption of this Rule, all All local governments with jurisdictions jurisdiction in the Effect: No Impact 21 Randleman Lake watershed shall develop implement and maintain comprehensive stormwater management plans and submit those plans to the Commission for review and approval. 22 23 Comprehensive stormwater management plans meeting that meet or exceed the criteria set forth in 24 Subparts (4)(a) through (4)(f) Sub-Items (3)(a) through (3)(f) of this Rule shall be approved. Rule. 25 Within six months of the Commission's approval of the local plan, subject local governments shall adopt and implement their approved plan. Those Stormwater management plans shall include, but not <u>26</u> 27 be limited to, the following: current Evaluation evaluation of existing land use within Oak Hollow Lake subwatershed, High Point 28 Lake subwatershed and Deep River 1 subwatershed in the Randleman Lake watershed with <u>29</u> Effect: No Impact 30 recommendations that show how overall built-upon area (for existing and future development) for each subwatershed can be minimized and high intensity land uses can be 31 targeted away from surface waters and sensitive areas. Oak Hollow Lake subwatershed is 32 defined as all land areas draining to Oak Hollow Lake. High Point Lake subwatershed is 33 <u>34</u> defined as all land areas draining to High Point Lake, East Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam. Deep River 1 subwatershed is defined as all land 35

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areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam. This

1 evaluation shall be done by the local governments having jurisdiction in those watersheds, 2 working in cooperation with the PTRWA; Piedmont Triad Regional Water Authority; Effect: No Impact Coordination coordination between all affected jurisdictions to encourage their development 3 (b) in the existing urban areas. The planning effort shall include provisions for areas of 4 contiguous open space to be protected through conservation easements or other long-term 5 protection measures and provisions to direct infrastructure growth towards existing urban 6 7 development corridors rather than to rural lands; 8 Evaluation evaluation of existing ordinances, municipal programs (maintenance, street 9 cleaning, etc.) and other local policies to identify opportunities for stormwater quality 10 improvements including reducing the amount of built-upon area that is required for uses such as parking, building setbacks, road widths and cul-de-sacs. The evaluations shall consider 11 12 development options such as multiple story buildings, mixed use to encourage pedestrian travel and mass transit and an identification of municipal activities and procedures that may 13 <u>14</u> be modified to allow for stormwater pollution prevention opportunities; (d) <u>15</u> Implementation implementation of watershed protection public education programs; 16 Identification identification and removal of illegal discharges; and Identification identification of suitable locations for potential stormwater retrofits (such as 17 18 riparian areas) that could be funded by various sources. 19 Local governments may submit a more stringent local stormwater management program plan. Local Effect: No Imapct 20 stormwater management programs and modifications to these programs shall be kept on file by the 21 Division of Water Quality. If a local government fails to submit an acceptable local stormwater management program plan within 22 23 the time frames established in this Rule or fails to properly implement an approved plan, then Effect: No Impact 24 stormwater management requirements for existing and new urban areas within its jurisdiction shall be 25 administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126 which shall include at a minimum: <u>26</u> Subject local governments shall be required to develop and implement comprehensive 27 stormwater management programs for both existing and new development. development; 28 These stormwater management programs shall provide all components that are required of <u>29</u> 30 local government stormwater programs in this Rule. rule; and (c) Local governments that are subject to an NPDES permit shall be covered by the permit for at 31 least one permitting cycle (five years) before they are eligible to submit a revised local 32 33 stormwater management component of their water supply watershed protection program for <u>34</u> consideration and approval by the EMC. and Item (8) RANDLEMAN LAKE WATERSHED ORDINANCES. Local governments with jurisdiction in the <u>35</u> Randleman Lake watershed shall implement local ordinances that meet or exceed the provisions of Effect: No Impact 36

Commented [A13]: Change: Relocated to Item (2)

Commented [A14]: Change: Editorial

Commented [A15]: Change: Removed redundant language already covered in existing statues.

Commented [A16]: Change: Language moved to Item (7)

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Items (5) and (6) of this Rule in accordance with their location in the Randleman Lake watershed and in coordination with the Piedmont Triad Regional Water Authority. All revisions to these local ordinances shall be submitted to the Commission for review and approval. Ordinances that meet or exceed the provisions of Items (5) and (6) of this Rule shall be approved by the Commission.

- (5) REQUIREMENTS FOR THE UPPER PORTION OF THE WATERSHED. Local governments with jurisdiction in the upper portion of the Randleman Lake watershed shall adopt ordinances that meet or exceed the state's minimum rules for a Class WS-IV watershed as specified in 15A NCAC 02B .0216 (Fresh Surface Water Quality Standards for WS-IV Waters) and 15A NCAC 02B .0620 through .0624 (Water Supply Watershed Protection Program) in addition to meeting the riparian area protection requirements of 15A NCAC 02B .0723.
- (6) REQUIREMENTS FOR THE LOWER PORTION OF THE WATERSHED. Local governments with jurisdiction in the lower portion of the Randleman Lake watershed shall adopt ordinances that meet the riparian area protection requirements set forth in15A NCAC 02B .0723. Local ordinances shall also meet or exceed the state's minimum requirements for a Class WS-IV watershed set forth in15A NCAC 02B .0620 through .0624 except that the following requirements shall supersede the equivalent provisions of 15A NCAC 02B .0624 as specified:
  - (a) the following maximum allowable project densities and minimum lot sizes shall supersede the requirements of 15A NCAC 02B .0624(4) and shall apply to a project according to its relative location in the watershed (Critical Area versus Protected Area), its project density (low density versus high density), and the type of development (single-family detached residential versus all other types):

	Maximum Allowable Project Density or Minimum Lot Size					
Location in the	Low Density	High Density  Development				
Watershed	Single-family detached	Non-residential and all other	All types			
	residential	residential				
Critical Area	1 dwelling unit per 2 acres or 80,000 square foot lot or 6% built-upon area	6% built-upon area	6 to 30% built- upon area			
Protected Area	1 dwelling unit per acre or	12% built-upon area	12 to 50% built- upon area;			

Commented [A17]: Change: Language moved from Item (2)

Effect: No Impact

Commented [A18]: Change: Language moved from Item (3)

Effect: No Impact

**Commented [A19]: Change:** Information moved into this table from Sub-Item (3) (a) and (b)

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40,000 square	
foot lot or 12%	
built-upon area	

(b) for high density development, the following vegetated setback requirements shall be in addition to the riparian area protection requirements set forth in 15A NCAC 02B .0723 and shall supersede the requirements of 15A NCAC 02B .0624(12):

(i) vegetated setbacks for high density development shall be located at least 100 feet from perennial waterbodies and perennial streams indicated on the most recent versions of the United States Geological Survey (USGS) 1:24,000 scale (7.5 minute) quadrangle topographic maps, which are herein incorporated by reference and are available at no cost at http://www.usgs.gov/pubprod/, or the most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resources Conservation Service of the United States Department of Agriculture, which are herein incorporated by reference and are available at no cost at http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/survey/;

(ii) the width of a vegetated setback shall be measured horizontally from the normal pool elevation of impounded structures, from the top of bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline;

(iii) vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation; and

(iv) no new built-upon area shall be allowed in the vegetated setback except for publicly-funded linear projects such as roads, greenways, and sidewalks, water dependent structures such as docks, and minimal footprint uses such as poles, signs, utility appurtenances, and security lights where it is not practical to locate the built-upon area elsewhere. Built-upon area associated with these uses shall be minimized and the channelization of stormwater runoff shall be avoided.

(c) outside of the critical areas, a local government may submit an alternative high density option to the Commission as part of the submittal of the local water supply watershed protection ordinance in order to allow development to exceed 50 percent built-upon area. The alternative ordinance shall be approved by the Commission if the Commission determines that it provides equal or greater water quality protection to the Randleman Lake reservoir and its tributaries;

(d) no new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed in the critical areas; and

**Commented [A20]:** Change: Language Moved from (3)(H)

Effect: No Impact

Commented [A21]: Change: Added web link for where maps can be located

Effect: No Impact

Commented [A22]: Change: Moved from Sub-Item (3)(b)

Effect: No Impact

Commented [A23]: Change: Language moved from Sub-Item (3)(H)

Effect: No Impact

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Impact: No change

1		(e) no new landfills shall be allowed in the critical areas.
2	(7)	Local governments shall have the option to develop more stringent local stormwater management
3		plans and watershed ordinances. Local stormwater management programs and ordinances, and
<u>4</u>		modifications to these programs and ordinances, shall be submitted to the Commission for review and
<u>5</u>		approval and kept on file by the Division.
<u>6</u>	(8)	If a local government fails to properly implement an approved plan, then stormwater management
<u>7</u>		requirements for existing and new urban areas within its jurisdiction shall be administered through the
<u>8</u>		NPDES municipal stormwater permitting program per 15A NCAC 2H .0126 which shall include at a
<u>9</u>		minimum:
0		(a) subject local governments shall be required to develop and implement comprehensive
1		stormwater management programs for both existing and new development;
2		(b) these stormwater management programs shall provide all components that are required of
3		local government stormwater programs in this Rule; and
4		(c) local governments that are subject to an NPDES permit shall be covered by the permit for at
5		least one permitting cycle (five years) before they are eligible to submit a revised local
6		stormwater management component of their water supply watershed protection program for
7		consideration and approval by the Commission.
8		
9	History Note:	Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.1; 143-215.3(a)(1);
20		Eff. April 1, 1999.
21		Amended Eff. [New Date].
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**Commented [A25]:** Change: Language moved from Sublem (5)(b)

15A NCAC 02B .0249 is proposed for amendment and recodification as follows: 1 2 3 15A NCAC 02B .0249.0722 RANDLEMAN LAKE WATER SUPPLY WATERSHED: WASTEWATER 4 DISCHARGE REQUIREMENTS 5 The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management 6 strategy for the Randleman Lake watershed. For purposes of this Rule, permitted wastewater discharges means those 7 facilities permitted to discharge domestic wastewater or wastewaters containing phosphorus: 8 The City of High Point=s Eastside facilityPoint East Side Eastside Wastewater Treatment Plant 9 (WWTP) shall meet a total phosphorus concentration predicted to provide a level of water quality 10 in the Randleman Lake which meets all designated uses of those waters. (2) There shall be no new or expanding permitted wastewater discharges in the watershed with the 11 12 exception that the City of High Point Eastside wastewater treatment plant WWTP may be allowed 13 to expand provided that any new permit contains concentration and mass limits predicted to provide 14 a level of water quality in the Randleman Lake which meets all designated uses of those waters. 15 16 History Note: Authority G. S. 143-214.1; 143-214.5; 143-215.3(a)(1); 17 Eff. April 1, 1999.1999;

Amended Eff. <date>.

18 19 Commented [TM1]: Change: This and other nutrient management rules for several river basins are being moved to a new section 02B .0700, and requirements common to multiple basins are being consolidated.

Effect: Improved organization of the rules.

**Commented [TM2]:** Change: Corrected the name of the affected facility.

Effect: Technical correction.

15A NCAC 02B .0250 is proposed for amendment as follows:

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## 15A NCAC 02B .0250.0724 RANDLEMAN LAKE WATER SUPPLY WATERSHED: PROTECTION

## AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

Protection of the pollutant removal and other water quality services provided by riparian buffers throughout the watershed is an important element of the overall Randleman water supply pollutant strategy. The following is the management strategy for maintaining and protecting riparian areas in the Randleman Lake watershed:

- PURPOSE. The purposes of this Rule shall be for the local governments listed in this Rule, and in certain cases stated in this Rule the Division, to maintain and protect and preserve existing riparian buffers throughout the Randleman Lake watershed as generally described in this Rule, in order to maintain their nutrient removal and stream protection functions. Additionally this Rule will help protect the water supply uses of Randleman Lake and of designated water supplies throughout the Randleman Lake water supply watershed. Terms used in this Rule shall be as defined in Rule .0610 in Subchapter 02B Local governments with jurisdictions in Randleman Lake watershed shall establish programs to meet or exceed the minimum requirements of this Rule. However, the Division shall assume responsibility for applying the requirements of this Rule to activities listed in Item (3) of this Rule. The requirements of this Rule shall supersede all buffer requirements stated in Rules 15A NCAC 02B .0214 through .0216 as applied to WS II, WS III, and WS IV waters in the Randleman Lake watershed. Parties subject to this Rule may choose to implement more stringent rules, including the one hundred foot buffer requirement set out in Sub item (3)(b)(i) of Rules 15A NCAC 02B .0214 through .0216 for high density developments.
- (2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:
- 'Access Trails' means pedestrian trails constructed of pervious or impervious surfaces, and related structures to access a surface water including (but not limited to) boardwalks, steps, rails, signage;
- (b) 'Archaeological Activities' means activities conducted by a Registered Professional Archaeologist (RPA);
- 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definition or uses of the words or phrases 'air navigation facility', 'airport', or 'airport protection privileges' under G.S. 63-1; the definition of 'aeronautical facilities' in G.S. 63-79(1); the phrase 'airport facilities' as used in G.S. 159-81 and G.S. 159-97; and the phrase 'airport facilities and improvements' as used in Article V, Section 13, of the North Carolina Constitution. Airport facilities shall include without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights of way; restricted landing areas; any

Commented [HK1]: no effect - update citation

Commented [HK2]: no effect - grammar

Commented [HK3]: No effect - moved definitions to .0610

Commented [HK4]: No effect – moved to item (12) below

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structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of 'airport facilities':

- (i) Satellite parking facilities;
- (ii) Retail and commercial development outside of the terminal area, such as rental car facilities; and
- (iii) Other secondary development, such as hotels, industrial facilities, free standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority;
- (d) 'Channel' means a natural water carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water;
- (e) 'DBH' means diameter at breast height of a tree measured at 4.5 feet above ground surface level;
- (f) Ditch means a man-made, open drainage way in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either continuously or intermittently;
- (g) 'Ephemeral stream' means a feature that carries stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water;
- (h) 'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site;
- (i) 'Greenway / Hiking Trails' means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the surface water;
- (j) High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter;
- (k) 'Intermittent stream' means a well-defined channel that contains a continuous flow of water for only part of the year, typically during winter and spring when the aquatic bed is below the water table.

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The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water;

- (1) 'Modified natural stream' means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water:
- (m) 'Perennial stream' means a well defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water;
- (n) 'Perennial waterbody' means a natural or man-made watershed that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream);
- (o) 'Shoreline stabilization' is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, rip rap, or gabions, while providing bank stabilization, shall not be considered stream restoration;
- (p) 'Stream restoration' is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. 'Referenced' or 'referenced reach' means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects. 'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface;
- (q) Stump diameter means the diameter of a tree measured at six inches above the ground surface level;
- (r) 'Surface waters' means all waters of the state as defined in G.S. 143-212 except underground waters and wetlands:
- (s) Temporary road' means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts or pipes or water dependent structures, or to maintain public traffic during construction; and

1	(t)	Tree' means a woody plant with a DBH equal to or exceeding five inches or a stump diameter	
2		exceeding six inches.	Commented [HK5]: no effect – moved to Rule .0610
3	<del>(3)</del> (2)	APPLICABILITY. This Rule shall apply to all local governments with jurisdictions landowners and	
4		other persons including local governments, state and federal entities conducting activities within the	
5		riparian buffers as described in Item (3) of this Rule in the Randleman Lake watershed.	Commented [HK6]: no effect - clarification
6		governments shall develop riparian buffer protection programs for approval by the Division	
7		incorporating the minimum standards set out throughout this Rule and shall apply the requirements	
8		of this Rule throughout their jurisdictions within the Randleman watershed except where the	
9		Division shall exercise jurisdiction. For the following types of buffer activities in the Randleman	
10		watershed, wherever local governments are referenced in this Rule, the Division shall implement	
11		applicable requirements to the exclusion of local governments:	
12	<del>(a)</del>	Activities conducted under authority of the State;	
13	<del>(b)</del>	Activities conducted under the authority of the United States;	
14	<del>(c)</del>	Activities conducted under the authority of multiple jurisdictions;	
15	<del>(d)</del>	Activities conducted under the authority of local units of government;	
16	<del>(e)</del>	Forest harvesting activities described in Item 16 of this Rule; and	
17	<del>(f)</del>	Agricultural activities.	Commented [HK7]: No effect – moved to item (12) below
18	<del>(4)</del> (3)	REQUIREMENTS.BUFFERS PROTECTED. The following minimum criteria shall be used for	Commented [HK8]: no effect – reorganization
19		identifying regulated buffers: All local governments subject to this Rule shall develop	Commented [HK9]: no effect - punctuation
20		riparian buffer protection programs and ordinances for approval by the Commission, incorporating	
21		the minimum standards contained in Rule.	Commented [HK10]: No effect – moved to item (12) below
22		(a) A surface water shall be subject to this Rule if the feature is approximately shown on any	
23		of the following references, or if there is other site specific evidence that indicates to the	
24		Authority the presence of waters not shown on any of these references:	
25		(i) The most recent version of the United States Geological Survey (USGS) 1:24,000	
26		scale (7.5 minute quadrangle) topographic maps;	
27		(ii) The most recent version of the published manuscript of the soil survey map that	
28		shows stream layers prepared by the Natural Resource Conservation Service of	
29		the United States Department of Agriculture; or	
30		(iii) Other maps approved by the Geographic Information Coordinating Council and	
31		by the Environmental Management Commission as more accurate than those	
32		identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps may be	
33		submitted to the Division for review and recommendation to the Environmental	
34		Management Commission. Prior to recommendation to the Environmental	
35		Management Commission, the Division shall issue a 30-day public notice through	
36		the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division	
37		staff shall present recommendations including comments received during the	

public notice period to the Environmental Management Commission for a final 1 2 decision. Maps approved under this Sub-Item shall not apply to projects that are existing and ongoing within the meaning of this Rule as set out in Item (6) of this 3 Rule; Commented [HK11]: no effect - moved from below 5 This Rule shall apply to activities conducted within 50 foot wide riparian buffers directly Commented [HK12]: no effect - clarification adjacent to surface waters in the Randleman watershed (intermittent and perennial streams, 6 7 lakes, reservoirs, and ponds) excluding wetlands; Commented [HK13]: no effect - punctuation 8 Wetlands adjacent to surface waters or within 50 feet of surface waters, waters shall be (c) Commented [HK14]: no effect - punctuation considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H. 10 0506.02H .0506; Commented [HK15]: no effect - punctuation Stormwater runoff from activities conducted outside the riparian buffer shall comply with 11 (d) Item (9) of this Rule; 12 Commented [HK16]: no effect - reorganization 13 Surface waters shall be subject to this Rule if the feature is approximately shown on any 14 of the following references, or if there is other site specific evidence that indicates to the 15 Division or local government the presence of waters not shown on any of these maps: 16 (i) The most recent version of the United States Geological Survey 1:24,000 scale 17 (7.5 minute quadrangle) topographic maps; 18 (ii) The most recent version of the hardcopy soil survey maps developed by USDA-Natural Resource Conservation Service; or 19 (iii) A map approved by the Geographic Information Coordinating Council and by the 20 2.1 Commission. Prior to approving a map under this sub division the Commission shall provide a 30-day public notice and opportunity for comment; 22 Commented [HK17]: No effect – moved to (3)(a) above Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule; 23 (e) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of (f) 24 this Rule; and 25 No new clearing, grading, or development shall take place nor shall any new building 26 27 permits be issued in violation of this Rule. Where the specific origination point of an intermittent or perennial stream is in question, 28 29 parties subject to this Rule shall use the Division publication, Identification Methods for 30 the Origins of Intermittent and Perennial Streams, v 3.1 February 28, 2005 available at: 31 http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations to 32 establish that point; 33 Local governments may develop stream network maps for the watershed based on maps referenced in Sub-Item (4)(a) of this Rule or criteria identified in Sub-Item (4)(b) and of 34 35 this Rule. These maps shall be submitted to the Director for review to establish that proper methods were used by any local government wishing to use such maps for implementation 36 37 of riparian area protection. The local map must be at least as accurate as the map identified

1		F	in Sub Items (4)(a)(i) and (4)(a)(ii) and must use the stream identification manual as	
2		1	referenced in Item (4)(b) of this Rule. Riparian areas shall be protected and maintained in	
3		1	accordance with this Rule on all sides of surface waters in the Randleman Lake watershed	
4		1	as delineated on these approved stream network maps;	 Commented [HK18]: no effect – reorganization
5		( <del>d)</del>	Personnel from delegated local governments that are assigned to perform stream	
6		1	determinations, shall successfully complete the Division's Surface Water Identification	
7		,	Training and Certification Class within three years of the effective revision date of this	
8		7	Rule. A delegated local government shall retain personnel on staff who have successfully	
9		T	completed the Division's class at all times with the exception of staff vacancies and class	
10		T	scheduling problems. At any time that a local government does not have a certified	
11		I	individual retained on staff they shall notify the Division and indicate a proposed schedule	
12		T	to secure a certified staff member;	
13		(e)	All local governments that have land use authority within the Randleman Lake water	
14		F	supply watershed shall adopt and enforce this Rule through local water supply and other	
15		F	local ordinances. Ordinances shall require that all riparian protection areas are recorded on	
16		1	new or modified plats. No new clearing, grading, or development shall take place and no	
17		1	new building permits shall be issued in violation of this Rule; and	 Commented [HK19]: No effect – moved to item (12) below
18		(f)	Parties subject to this Rule shall abide by all State rules and laws regarding waters of the	
19		F	state including Rules 15A NCAC 02H .0500, 15A NCAC 02H .1300, and Sections 401	
20		F	and 404 of the Federal Clean Water Act.	 Commented [HK20]: No effect – moved to item (13) below
21	<del>(5)</del> (4)	EXEMP	TION REQUIREMENTS TO WHEN AN ON-SITE DETERMINATION SHOWS THAT	
22		SURFAC	CE WATERS ARE NOT PRESENT, DETERMINATION. When a landowner or other	 Commented [HK21]: no effect – reorganization
23		affected !	party believes that the maps listed in Sub-Item (3)(a) of this Rule have inaccurately depicted	 Commented [HK22]: no effect - clarification
24		surface 🔻	waters, waters or the specific origination point of a stream, or the specific origination point	
25		of a strea	am is in question or unclear, he or she shall consult request the delegated local authority.	 Commented [HK23]: no effect - clarification
26		Upon re	equest, the delegated local authority shall Authority to make an onsite on-site	
27		determin	nations, determination. On-site determinations shall be made by Authority staff that are	 Commented [HK24]: no effect - grammar
28		certified	pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General	
29			who are employees of the North Carolina Forest Service of the Department of Agriculture	
30		and Con	nsumer Services can make on-site determinations for forest harvesting operations and	
31		practices	Local governments may also accept the results of site assessments an on-site	 Commented [HK25]: no effect – incorporating statute
32		determin	nation made by other parties who have successfully completed the Division's Surface Water	 Commented [HK26]: no effect - grammar
33		Identifica	ation Training Certification course, its successor, or other equivalent training curriculum	
34		approved	d by the Division. course and are sanctioned by the Division to make such determinations.	 Commented [HK27]: no effect - clarification
35			determinations shall expire five years from the date of the determination. Any disputes over	 Commented [HK28]: No effect – Codifying policy. Consistent
36		on-site d	determinations shall be referred to the local Board of Adjustment or other local appeals	with timeframes for appeal in G.S. 150B
37		process i	in writing. For projects proposed for state and federal lands, any disputes shall be referred	
		•		
			- 244	

1		to the Director in writing writing within 60 calendar days of written notification from the Authority.	
2		A determination of the Director as to the accuracy or application of the mapsThe Director's	
3		determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.	Commented [HK29]: No effect – consistent with other buffer
4	(5)	EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps	programs.
5		listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination	Commented [HK30]: No effect – added header  Commented [HK31]: no effect - clarifiation
6		shows that they fall into one of the following categories:	Commented [11K31]. no enect - Carmation
7		(a) Ditches and manmade conveyances, to include manmade stormwater conveyances, other	
8		than modified natural streams, unless the ditch or manmade conveyance delivers untreated	
9		stormwater runoff from an adjacent source directly to an intermittent or perennial stream;	
10		(b) Areas mapped as intermittent streams, perennial streams, lakes, ponds, or estuaries on the	
11		most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute	
12		quadrangle) topographic maps, hard copy soil survey maps or other EMC approved stream	
13		maps where no The absence on the ground of a corresponding perennial waterbody,	
14		intermittent waterbody, lake, reservoir or pond; pond or estuary actually exists on the	
15		<del>ground;</del>	Commented [HK32]: No effect – reorganization
16		(c) Ephemeral streams; and	
17		(d) PondsManmade ponds and lakes created for animal watering, irrigation, or other	
18		agricultural uses that are not part of a natural drainage way that is classified in accordance	
19		with 15A NCAC 02B .0100. Ponds are part of a natural drainage way when they are	
20		hydrologically connected (i.e. the pond is fed by an intermittent or perennial stream)stream	
21		nor or when they have a direct discharge point to an intermittent or perennial stream.	Commented [HK33]: No effect – Codifying policy
22	(6)	EXEMPTION TO REQUIREMENTS WHEN EXISTING USES ARE PRESENT AND	Commented [HK34]: No effect - grammar
23	-	ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and	
24		ongoing according to the following:ongoing.	Commented [HK35]: no effect - clarification
25		(a) A use shall be considered existing and ongoing ifif:	Commented [HK36]: no effect - grammar
26		(i) <u>itIt</u> was present within the riparian buffer as of the effective date of the local	
27		ordinance or local ordinances enforcing this Rule and has continued to exist since	Commented [HK37]: No effect - grammar
28		that time. For state and federal entities, activities listed in Sub-Item (12)(b), a use	Commented [HK38]: No effect - clarification
29		shall be considered existing and ongoing if it was present within the riparian	Commence Linear .
30		buffer as of the effective date of this RuleApril 1, 1999 and has continued to exist	Commented [HK39]: No effect – Clarification to reflect original
31		since that time.time;	adoption of the rule
32		(ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or	
33		(iii) It was conducted and maintained pursuant to an Authorization Certificate or	
34		Variance issued by the Authority; or	Commented [HK40]: No effect – clarification
35		(iv) The project or proposed development are determined by the Authority to meet at	Commented [HK41]: No effect – update terminology
36		least one of the following criteria:	Commence [11071]. 10 cheer upage eminology
50		ions one of the following entertain	
		7.444	

1		(A)	Project requires a 401 Certification/404 permit and these were issued	
2			prior to the effective date of the local ordinance or ordinances enforcing	
3			this Rule, or for activities listed in Sub-Item (12)(b), prior to April 1,	
4			1999, and are still valid;	
5		(B)	Projects that require a state permit, such as landfills, NPDES wastewater	
6			discharges, land application of residuals and road construction activities,	
7			and have begun construction or are under contract to begin construction,	
8			and have received all required state permits and certifications prior to the	
9			effective date of the local ordinance or ordinances implementing this	
10			Rule, or for activities listed in Sub-Item (12)(b), prior to April 1, 1999;	
11		(C)	Projects that are being reviewed through the Clean Water Act Section	
12			404/National Environmental Policy Act Merger 01 Process (published	
13			by the US Army Corps of Engineers and Federal Highway	
14			Administration, 2003) or its immediate successor and that have reached	
15			agreement with the Department on avoidance and minimization prior to	
16			April 1, 1999; or	
17		(D)	Projects that are not required to be reviewed by the Clean Water Act	
18			Section 404/National Environmental Policy Act Merger 01 Process	
19			(published by the US Army Corps of Engineers and Federal Highway	
20			Administration, 2003) or its immediate successor if a Finding of No	
21			Significant Impact has been issued for the project and the project has the	
22			written approval of the Division prior to April 1, 1999.	 Commented [HK42]: No effect – moved from below; updated
23	<u>(b)</u>	Existing and or	going uses shall include, but not be limited to, agriculture, buildings,	terminology, dates and citations
24		industrial facili	ies, commercial areas, transportation facilities, maintained lawns, lawns	Commented [HK43]: no effect - clarification  Commented [HK44]: No effect - grammar
25		(i.e. can be m	owed without a chainsaw or bush-hog), maintained ((i.e vegetation	Commented [HK45]: no effect – clarification
26		management ha	s occurred within the last ten years) utility lines line corridors and on-site	 Commented [HK46]: No effect – clarification; codifying poli
27		sanitary sewag	e systems systems, any of which involve either specific, periodic	 Commented [HK47]: No effect - grammar
28		management of	vegetation or displacement of vegetation by structures or regular activity.	
29	<u>(c)</u>	Only the portion	n of the riparian buffer that contains the footprint of the existing and	
30		ongoing use is e	xempt from this Rule.	 Commented [HK48]: no effect - clarification
31	<u>(d)</u>	Change of owne	ership through purchase or inheritance is not a change of use.	
32	<u>(e)</u>	Activities neces	sary to maintain existing and ongoing uses are allowed provided that the	 Commented [HK49]: No effect – clarification
33		site remains sim	ilarly vegetated, no impervious surface built upon area is added within 50	
34		feet of the surfa	ce waterthe riparian buffer where it did not previously exist as of prior to	
35		the effective da	te of the local ordinance or <del>local ordinances</del> enforcing this Rule, <u>or for</u>	
36		activities listed	in Sub-Item (12)(b) prior to April 1, 1999, and the site is in compliance	
37		with Item (9) of	this Rule existing diffuse flow is maintained. Grading and revegetating	 Commented [HK50]: No effect – clarification

Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, 1 2 the ground is stabilized and existing diffuse flow is maintained; Commented [HK51]: No effect - language repeated below A use shall be considered existing if projects or proposed development are determined by 3 4 the local government, or the Director for the cases involving state or federal entities, to meet at least one of the following criteria: 5 (i) Project requires a 401 Certification/404 permit and these were issued prior to the 6 7 effective date of the local program enforcing this Rule, and prior to the effective 8 date of this Rule for Division administered activities listed in Item (3) of this Rule; Projects that require a state permit, such as landfills, NPDES wastewater 10 discharges, land application of residuals and road construction activities, have 11 begun construction or are under contract to begin construction and had received 12 all required state permits and certifications prior to the effective date of the local 13 program implementing this Rule, and prior to the effective date of this Rule for 14 Division administered activities listed in Item (3) of this Rule; 15 Projects that are being reviewed through the Clean Water Act Section 16 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its 17 immediate successor and that have reached agreement with DENR on avoidance 18 and minimization by the effective date of the local program enforcing this Rule, 19 and prior to the effective date of this Rule for state and federal entities; or 20 2.1 (iv) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US 22 23 Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the 24 25 project and the project has the written approval of the local government prior to the effective date of the local program enforcing this Rule, or the written approval 26 27 of the Division prior to the effective date of this Rule for state and federal entities: 28 Commented [HK52]: No effect - moved to (6)(a)(iv) above 29 (c)(f) This Rule shall apply at the time an existing use is changed to another use. Change of use 30 shall include, but not limited to involve the initiation of any activity not defined as existing Commented [HK53]: no effect - grammar 31 and ongoing in either Sub-Item (6)(a) or (6)(b)Sub-Items (6)(a) through (6)(e) of this Rule. Commented [HK54]: no effect - updating citations EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. 32 <u>(7)</u> 33 This Rule shall not apply to a freshwater pond if all of the following conditions are met: The property on which the pond is located is used for agriculture as that term is defined in 34 35 G.S. 106-581.1. Except for this Rule, the use of the property is in compliance with all other water quality 36 37 and water quantity statutes and rules applicable to the property before April 1, 1999.

1		<u>(c)</u>	The pond is not a component of an animal waste management system as defined in G.S.	
2			143-215.10B (3).	Commented [HK55]: No effect – Added per SL 2013-413
3	<del>(7)</del> (8)	ZONES	S OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as	
4		follows	:	
5		(a)	Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in	
6			Item (9)(10) of this Rule. The location of Zone 1 shall be as follows:	Commented [HK56]: No effect – update citation
7			(i) For intermittent and perennial streams, Zone 1 shall begin at the most landward	
8			limit of the top of the bank or the rooted herbaceous vegetation and extend	
9			landward a distance of 30 feet on all sides of the surface water, stream, measured	Commented [HK57]: No effect – clarification
10			horizontally on a line perpendicular to a vertical line marking the edge of the top	
11			of the bank; the stream (where an intermittent or perennial stream begins or ends,	
12			including when it goes underground, enters or exits a culvert, or enters or exits a	
13			wetland, the required distance shall be measured as a radius around the beginning	
14			or the end); and	Commented [HK58]: No effect – Clarification and codifying
15			(ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1	policy
16			shall begin at the most landward limit of the normal water level or the rooted	Commented [HK59]: No effect – Clarification
17			herbaceous vegetation and extend landward a distance of 30 feet, measured	Commented [HK60]: No effect – Removed for simplicity
18			horizontally on a line perpendicular to a vertical line marking the edge of the	
19			surface water or rooted herbaceous vegetation: and the surface water.	Commented [HK61]: No effect – Clarification
20		(b)	Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided	
21			for in Item (9)(10) of this Rule. Grading and revegetating Zone 2 is allowed provided that	Commented [HK62]: No effect – update citation
22			the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer	
23			edge of Zone 1 and extend landward 20 feet as measured horizontally on a line	
24			perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet	
25			on all sides of the surface water.	
26	(8)	DIFFU	SE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian	
27		<del>buffer t</del>	by dispersing concentrated flow and reestablishing vegetation.	
28		(a)	Concentrated runoff from new ditches or manmade conveyances shall be converted to	
29			diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer;	
30		(b)	Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the	
31			formation of erosion gullies; and	
32		<del>(c)</del>	No new stormwater conveyances are allowed through the buffers except for those specified	
33			in Item (9) of this Rule addressing stormwater management ponds drainage ditches,	
34			roadside ditches, and stormwater conveyances.	Commented [HK63]: less stringent - Removed diffuse flow
35	(9)	STORM	MWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances	requirement; instead provide options for stormwater discharges
36		include	drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater	
37		convey	ances through the riparian buffer are either deemed allowable or allowable upon	

1	author	ization, as	defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through	
2	the bu	ffer and d	o not cause erosion to the receiving waterbody. Stormwater conveyances through	
3	the rip	arian buff	er that are not listed below shall be allowable with exception as defined in Sub-Item	
4	(10)(a)	(v) of this	Rule.	 Commented [HK64]: less stringent - Removed diffuse flow
5	<u>(a)</u>	The fol	lowing are deemed allowable as defined in Sub-Item (10)(a)(i) of this rule:	requirement; instead provide options for stormwater discharges
6		<u>(i)</u>	New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H	Commented [HK65]: No effect – Organization
7			.1002, when the Primary SCM is designed to treat the drainage area to the	
8			conveyance and that comply with a stormwater management plan reviewed and	
9			approved under a state stormwater program or a state-approved local government	
10			stormwater program;	 Commented [HK66]: less stringent - New use – allows for
11		(ii)	New stormwater flow to existing drainage conveyances provided that the addition	DWR to accept local government review of a SMP without having to review for meeting diffuse flow
12			of new flow does not result in the need to alter the conveyance.	 Commented [HK67]: No change – moved from table
13	<u>(b)</u>	The fol	lowing are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this	
14		Rule:		 Commented [HK68]: No effect – Organization
15		<u>(i)</u>	New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H	
16			.1002 when the Primary SCM is provided to treat the drainage area to the	
17			conveyance but are not approved under a state stormwater program or a state-	
18			approved local government stormwater program;	 Commented [HK69]: No change – moved from table
19		(ii)	New drainage conveyances when the flow rate of the conveyance is less than 0.5	
20			cubic feet per second during the peak flow from the 0.75 inch per hour storm;	 Commented [HK70]: less stringent - New use
21		(iii)	New stormwater runoff that has been treated through a level spreader-filter strip	
22			that complies with 15A NCAC 02H .1059;	 Commented [HK71]: No change – from diffuse flow language
23		(iv)	Realignment of existing roadside drainage conveyances applicable to publicly	above
24			funded and maintained linear transportation facilities when retaining or improving	
25			the design dimensions provided that no additional travel lanes are added and the	
26			minimum required roadway typical section is used based on traffic and safety	
27			considerations;	 Commented [HK72]: less stringent - New use
28		(v)	Realignment of existing drainage conveyances retaining or improving the design	
29			dimensions provided that the size of the drainage area and the percent built-upon	
30			area within the drainage area remain the same;	 Commented [HK73]: less stringent - New use
31		(vi)	New or altered drainage conveyances applicable to publicly funded and	
32			maintained linear transportation facilities provided that SCMs, or BMPs from the	
33			NCDOT Stormwater Best Management Practices Toolbox, are employed;	 Commented [HK74]: less stringent - New Use
34		(vii)	New drainage conveyances applicable to publicly funded and maintained linear	
35			transportation facilities that do not provide a stormwater management facility due	
36			to topography constraints provided other measures are employed to protect	
37			downstream water quality to the maximum extent practical;	 Commented [HK75]: less stringent - New use
			11 of 44	

1	<u>(vi</u>	New drainage conveyances where the drainage area to the conveyance has no new	
2		built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is	
3	,	necessary for bypass of existing drainage only.	Commented [HK76]: less stringent - New use
4	, , ,	ZUSES. <u>Uses within the riparian buffer</u> , or outside the buffer with hydrological impacts	
5	*	urian buffer, shall be designated as deemed allowable, allowable upon authorization,	
6		vith mitigation upon authorization, or prohibited.	
7		stential new uses shall have the following requirements:	Commented [HK77]: No effect – Moved from below
8	<u>(i)</u>		Commented [HK78]: No effect – New terminology
9		(9)(a) and (10)(b) of this Rule may occur within the riparian buffer. Deemed	
10		allowable uses shall be designed, constructed and maintained to minimize	
11		vegetation and soil disturbance and to provide the maximum water quality	
12		protection practicable, including construction, monitoring, and maintenance	
13		activities. In addition, deemed allowable uses shall meet requirements listed in	
14		Sub-Item (10)(b) of this Rule for the specific use.	Commented [HK79]: No effect – Moved from below
15	<u>(ii</u>	ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon	Commented [HK80]: No effect – New terminology
16		authorization in Sub-Items (9)(b) and (10)(b) of this Rule require a written	
17		Authorization Certificate from the Authority for impacts within the riparian buffer	
18		provided that there are no practical alternatives to the requested use pursuant to	
19		Rule .0611 of this Section.	Commented [HK81]: No effect – Moved from below
20	<u>(iii</u>	i) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses	Commented [HK82]: No effect – New terminology
21		designated as allowable with mitigation upon authorization in Sub-Item (10)(b)	
22		of this Rule require a written Authorization Certificate from the Authority for	
23		impacts within the riparian buffer provided that there are no practical alternatives	
24		to the requested use pursuant to Rule.0611 of this Section. and an appropriate	
25		mitigation strategy has received written approval pursuant to Item (11) of this	
26		Rule.	Commented [HK83]: No effect – Moved from below
27	<u>(iv</u>	PROHIBITED. Uses designated as prohibited in Sub-Item (10)(b) of this Rule	
28		may not proceed within the riparian buffer unless a Variance is granted pursuant	
29		to Rule .0226 of this Section. Mitigation may be required as a condition of	
30		variance approval.	Commented [HK84]: No effect – Changed to variance process
31	<u>(v)</u>	ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable,	set out in Rule .0226.
32		allowable upon authorization, allowable with mitigation upon authorization or	
33		prohibited in Sub-Item (10)(b) of this Rule require a written Authorization	
34		Certificate with Exception from the Authority for impacts within the riparian	
35		buffer pursuant to Rule .0611 of this Section and an appropriate mitigation	
36		strategy that has received written approval pursuant to Item (11) of this Rule.	Commented [HK85]: less stringent - New category - instead of deeming all activities not listed in the table as "prohibited" they will go through buffer authorization process but still have to meet
			hardships.
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(b)

The following chart table sets out the potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and their designation under this Ruledesignates them as exempt, deemed allowable, potentially allowable, allowable upon authorization or potentially—allowable with mitigation upon authorization:mitigation. All uses not designated as exempt, potentially allowable, or potentially allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to Item (12) of this Rule. The requirements for each category are given in Item (10) of this Rule.

Commented [HK86]: No effect – update terminology

Commented [HK87]: No effect - grammar

Commented [HK88]: No effect - clarification
Commented [HK89]: No effect - grammar

Commented [HK90]: No effect – updated terminology

Commented [HK91]: less stringent – Removed – see (v) above

F					1	
Use	Exempt	Potentiall	Potentially	Prohib		
	<u>Deeme</u>	y	Allowable	ited		Commented [HK92]: No effect – Updated terminology
	<u>d</u>	Allowable	with			
	Allowa	<u>Upon</u>	Mitigation			
	<u>ble</u>	<u>Authoriza</u>	Upon			
		tion	Authorizati			
			<u>on</u>			
Access trails: Pedestrian access trails leading to the surface						
water, docks, fishing piers, boat ramps and other water						
dependent activities:						
Pedestrian access trails that are restricted to the minimum	X					
width practicable and do not exceed 4 feet in width of buffer						
disturbance, and provided that installation and use does not						
result in removal of trees as defined in this Rule and no						
impervious surface is added to the riparian buffer						
Pedestrian access trails that exceed 4 feet in width of buffer		X				
disturbance, the installation or use results in removal of trees						
as defined in this Rule or impervious surface is added to the						
<mark>riparian buffer</mark>						Commented [HK93]: No effect – Moved to below
Airport facilities:						
Airport facilities that impact equal to or less than 150 linear		X				
feet or one-third of an acre of riparian buffer						Commented [HK94]: No effect – Removed linear feet; will just
Airport facilities that impact greater than 150 linear feet or			X			reference square feet for east of implementation
one-third of an acre of riparian buffer						Commented [HK95]: No effect – Removed linear feet; will just reference square feet for east of implementation
Activities Vegetation removal activities necessary to comply	<u>X</u>	X				
with FAA-Federal Aviation Administration requirements (e.g.						
radar uses or landing strips) <sup>1</sup> line of sight requirements)						
provided the disturbed areas are stabilized and revegetated						Commented [HK96]: No effect – Codifying policy
	l	<u> </u>	l .		J	

Use	F	Potentiall	Potentially	D., 1. 1.	
Ose	Exempt		,	Prohib	
	<u>Deeme</u>	y	Allowable	ited	 Commented [HK92]: No effect – Updated terminology
	<u>d</u>	Allowable	with		
	Allowa	<u>Upon</u>	Mitigation		
	<u>ble</u>	<u>Authoriza</u>	<u>Upon</u>		
		<u>tion</u>	<u>Authorizati</u>		
			<u>on</u>		
Archaeological activities activities:	X				
In Zones 1 and 2 and are designed, constructed and maintained					
to provide the maximum sediment removal and erosion					
protection, to have the least adverse effects on aquatic life and					
habitat, and to protect water quality to the maximum extent					
<del>practical.</del>					 Commented [HK97]: No effect – Removed for simplicity
Bridges					
Impact equal to or less than one-tenth of an acre of	<u>X</u>				
riparian buffer					
<ul> <li>Impact greater than one-tenth of an acre of riparian buffer</li> </ul>		X			 Commented [HK98]: less stringent - Added new use to allow bridges with less than 1/10 to be deemed allowable, consistent with
Canoe access provided that installation and use does not result in	X				road impacts
removal of trees as defined in the Rule and no impervious					
surface is added to the buffer.					 Commented [HK99]: No effect – Moved to below
Dam maintenance activities:					
Dam maintenance activities that do not cause additional buffer	X				
disturbance beyond the footprint of the existing dam or those					
covered under a U.S. Army Corps of Engineers Nationwide					
Permit					 Commented [HK100]: less stringent - Allows for any Corps
Dam maintenance activities that do cause additional buffer		X			permit, including Regional General Permits or Individual Permits
disturbance beyond the footprint of the existing dam or those					
not covered under a U.S. Army Corps of Engineers					
Nationwide Permit					 Commented [HK101]: less stringent - Allows for any Corps
	l	<u>I</u>	<u> </u>	1	permit, including Regional General Permits or Individual Permits

Use	Exempt	Potentiall	Potentially	Prohib	
	Deeme	y	Allowable	ited	 Commented [HK92]: No effect – Updated terminology
	d	Allowable	with	1100	Commence [11072]. No enect – Epuace terminology
	Allowa	Upon	Mitigation		
	ble	Authoriza	Upon		
	<u> </u>	tion	Authorizati		
		tion	on		
Drainage ditches, roadside ditches and stormwater conveyances			<u>on</u>		
through riparian buffers:					
New stormwater flows to existing drainage ditches, roadside	<u>X</u>				
Ç Ç	<u> </u>				
ditches, and stormwater conveyances provided flows do not					
alter or result in the need to alter the conveyance and are					
managed to minimize the sediment, nutrients and other					
pollution that convey to waterbodies		v			
Realignment of existing roadside drainage ditches retaining the		<u>X</u>			
design dimensions, provided that no additional travel lanes are					
added and the minimum required roadway typical section is					
used based on traffic and safety considerations		**			
New or altered drainage ditches, roadside ditches and		<u>X</u>			
stormwater outfalls provided that a stormwater management					
facility is installed to control nitrogen and attenuate flow					
before the conveyance discharges through the riparian buffer					
New drainage ditches, roadside ditches and stormwater			X		
conveyances applicable to linear projects that do not provide a					
stormwater management facility due to topography constraints					
provided that other practicable BMPs are employed					 Commented [HK102]: No effect – Moved to Item (9) below
Drainage of a pond subject to Item (4) of this Rule in a natural	X				
drainage way provided that a new riparian buffer that meets the					 Commented [HK103]: No effect - clarification
requirements of Items (7) and (8) of this Rule is established					
adjacent to the new channel. by natural regeneration or planting,					
within 50 feet of any stream which naturally forms or is					
constructed within the drained pond area. Drained ponds shall					
be allowed to naturalize for a minimum of six months from					
completion of the draining activity before a stream determination					
is conducted pursuant to Item (4) of this Rule.					 Commented [HK104]: No effect – Clarification of regeneration process after pond is drained

					/	
Use	Exempt	Potentiall	Potentially	Prohib	1 /	
	Deeme	y	Allowable	ited	-	Commented [HK92]: No effect – Updated terminology
!	<u>d</u>	Allowable	with	'		
!	Allowa	<u>Upon</u>	Mitigation	'		
!	<u>ble</u>	Authoriza	<u>Upon</u>	'		
!	1	tion	<u>Authorizati</u>	'		
'	'		<u>on</u>	'		
Driveway crossings of streams and other surface waters subject						
to this Rule:	'		1 '	'		
<ul> <li>Driveway crossings on single family residential lots that</li> </ul>	X		1 '	'		
disturb equal to or less than 25 linear feet or 2,500 square feet	'		1	'		
of riparian buffer	'		1	'		
• Driveway crossings on single family residential lots that	'	X	1	'		
disturb greater than 25linear feet or 2,500 square feet of	'		1	'		
<mark>riparian buffer</mark>	'		1	'		
• In a subdivision that cumulatively disturb equal to or less than	'	X	1 '	'		
150 linear feet or one third of an acre of riparian buffer	1		1 '	'		
• In a subdivision that cumulatively disturb greater than 150	'		X	'		
linear feet or one third of an acre of riparian buffer	<b></b> '	<u> </u>	<u> </u>	<u>                                     </u>		Commented [HK105]: No effect – Moved below with road
Driveway impacts other than crossing of a stream or other			X			impacts
surface waters subject to this Rule	<u> </u>	<u> </u>	<u> </u>	<u>                                     </u>		Commented [HK106]: No effect – Moved below with road
Fences:						impacts
Fencing livestock out of surface waters	<u>X</u>	<u> </u>	<u> </u>	⊥'		Commented [HK107]: less stringent - New deemed allowable
• Fences provided that disturbance is minimized and	X	<u> </u>	Ţ '	[ '		use
installation does not result in removal of trees as	1		1 '	'		
defined in this Rule	<u> </u>		<u> </u>	<u> </u>		Commented [HK108]: No effect - grammar
• Fences provided that disturbance is minimized and installation	1	X	1 '	'		
Installation results in removal of trees as defined in this Rule	<u> </u>	<u> </u>	<u> </u>	<u>                                     </u>		Commented [HK109]: No effect –grammar
Forest harvesting - see [tem (16) of this Rule .0612 of this		<del> </del>				
Section.	<u> </u>	<u> </u>	<u> </u>	<u>                                     </u>		Commented [HK110]: No effect – update citation

Use	Exempt	Potentiall	Potentially	<u>Prohib</u>	
	Deeme	<del>y</del>	Allowable	ited	 Commented [HK92]: No effect – Updated terminology
	<u>d</u>	Allowable	with		
	Allowa	<u>Upon</u>	Mitigation		
	<u>ble</u>	<u>Authoriza</u>	<u>Upon</u>		
		<u>tion</u>	<u>Authorizati</u>		
			<u>on</u>		
Fertilizer Application:					
One-time fertilizer application to establish	X				
vegetationvegetation. This only applies to the one-time					
application of fertilizer in the riparian buffer. No runoff					
from this one-time application in the riparian buffer is					
allowed in the applicable surface water.					 Commented [HK111]: No effect – Clarification
Ongoing fertilizer application				<u>X</u>	
Grading and revegetation in Zone 2 provided that diffuse flow	X				
and the health of existing vegetation in Zone 1 is not					
compromised compromised, Item (9) of this Rule is complied					
with, and disturbed areas are revegetated with native					
vegetationstabilized and revegetated					 Commented [HK112]: No effect – clarification and updated
Greenway / hiking trails:					citation
Designed, constructed and maintained to provide the maximum					
nutrient removal and erosion protection, to have the least adverse					
effects on aquatic life and habitat, and to protect water quality to					
the maximum extent practical. Greenways, trails, sidewalks or					
linear pedestrian/bicycle transportation system:					
In Zone 2 provided that no built upon area is added within	<u>X</u>				
the buffer					
When built upon area is added to the buffer, equal to or less		X			
than ten (10) feet wide with two (2) foot wide shoulders.					
Must be located outside Zone 1 unless there is no practical					
alternative					
When built upon area is added to the buffer, greater than ten			<u>X</u>		
(10) feet wide with two (2) foot wide shoulders. Must be					
located outside Zone 1 unless there is no practical alternative					 Commented [HK113]: No effect – Clarify, consolidate and
					codify policy

Use	Exempt	Potentiall	Potentially	Prohib	
, 	Deeme	y	Allowable	ited	 Commented [HK92]: No effect – Updated terminology
, ,	<u>d</u>	Allowable	with		
, ,	Allowa	<u>Upon</u>	Mitigation		
, ,	ble	Authoriza	<u>Upon</u>		
, , , , , , , , , , , , , , , , , , ,	'	tion	Authorizati		
, ,	'		<u>on</u>		
Historic preservation:	X				
Designed, constructed and maintained to provide the maximum	'				
nutrient removal and erosion protection, to have the least adverse	'				
effects on aquatic life and habitat, and to protect water quality to	'				
the maximum extent practical preservation	<u> </u>				 Commented [HK114]: No effect – Removed for simplicity
New Landfills as defined by G.S. 130A-290				<u>X</u>	 Commented [HK115]: less stringent - Allows for landfill
Maintenance access of modified natural streams: a grassed travel		X			expansions to seek an Authorization Certificate with Exception instead of a Variance; New Landfills will need a variance; consistent
way on one side of the water body when less impacting	'				with other buffer rules
alternatives are not practical. The width and specifications of the	'		!		
travel way shall be only that needed for equipment access and	'				
operation. The travel way shall be located to maximize stream	'				
shading.	'				
Mining activities:			•		
Mining activities that are covered by the Mining Act provided	'	X	!		
that new riparian buffers that meet the requirements of Items	'		!		
(7)(8) and (8)(9) of this Rule are established adjacent to the	<u> </u>		!		 Commented [HK116]: No effect – update citation
relocated channels					
Mining activities that are not covered by the Mining Act or	'		X		
where new riparian buffers that meet the requirements or Items	'		!		
(7)(8) and (8)(9) of this Rule are not established adjacent to the	<u> </u>				 Commented [HK117]: No effect – update citation
relocated channels	<u> </u>				 Commented [HK118]: less stringent - Allows mining activities
Wastewater or mining dewatering wells with approved	X				that do not relocate channels to pursue an authorization certificate
NPDES permit	'				
•			<u> </u>		

Use	Exempt	Potentiall	Potentially	<u>Prohib</u>	
	Deeme	<del>y</del>	Allowable	ited	Commented [HK92]: No effect – Updated terminology
	<u>d</u>	Allowable	with	'	
	Allowa	<u>Upon</u>	Mitigation	'	
	ble	<u>Authoriza</u>	<u>Upon</u>	'	
		tion	<u>Authorizati</u>	'	
			<u>on</u>	'	
Pedestrian access trail and associated steps leading to a surface		<u> </u>			
water, dock, canoe or kayak access, fishing pier, boat ramp or				'	
other water dependent structure:				'	
• Pedestrian access trail equal to or less than six (6) feet	<u>X</u>			'	
wide that does not result in the removal of any tree(s)				'	
within the riparian buffer and does not result in any				'	
built upon area being added to the riparian buffer				'	
• Pedestrian access trail equal to or less than six (6) feet		<u>X</u>		'	
wide where the installation or use results in the removal				'	
of tree(s) or addition of built upon area to the riparian				'	
<u>buffer</u>				'	
Pedestrian access trail greater than six (6) feet wide		<u> </u>	<u>X</u>	<u> </u>	Commented [HK119]: No effect – Moved and consolidated
Playground equipment:		† ·			from other uses above
Playground equipment on single family lots provided that	X			'	
installation and use does not result in removal of vegetation				'	
• Playground equipment on single family lots where installation		<u>X</u>		'	
or use results in the removal of vegetation				'	
Playground equipment installed on lands other than single-		X		'	
family lots or that requires removal of vegetation				<u> </u>	Commented [HK120]: No effect – split into two bullets for
Ponds in natural drainage ways, excluding dry ponds:created or		<u> </u>			clarification
modified by impounding streams subject to buffer pursuant to				'	
Item (3) of this Rule and not used at stormwater control				'	
measures (SCMs):		'		<u>'</u>	Commented [HK121]: No effect – clarification
• New ponds provided that a riparian buffer that meets the		X		'	
requirements of Items (7)(8) & (8)(9) of this Rule is			<u></u>	'	Commented [HK122]: No effect – update citation
established adjacent to the pond		'		<u> </u>	
• New ponds where a riparian buffer that meets the requirements			X	'	
of Items (7)(8) & (8)(9) of this Rule is NOT established		<u></u>		<u> </u>	Commented [HK123]: No effect – update citation
		,		,	

Use	Exempt	Potentiall	Potentially	Prohib		
	Deeme	y	Allowable	ited		Commented [HK92]: No effect – Updated terminology
	<u>d</u>	Allowable	with	'		
l '	Allowa	<u>Upon</u>	Mitigation	'		
	<u>ble</u>	Authoriza	<u>Upon</u>	'		
	1 '	tion	Authorizati	'		
	1 '		on	'		
Protection of existing structures, facilities and stream banks		X			-	
structures and facilities, when this requires additional	1 '			'		
disturbance of the riparian buffer-or the stream channel	<u> </u> '	<u> </u>	<u> </u>	<u> </u>		Commented [HK124]: No effect – streambanks in table below;
Public Safety - publicly owned spaces where it has been	<u>X</u>	<del> </del>	<del>                                     </del>			clarified this includes existing utility lines
determined by the head of the local law enforcement agency with	1 '			'		
jurisdiction over that area that the buffers pose a risk to public	1 '			'		
safety. The head of the local law enforcement agency shall	1 '			'		
notify the local government with land use jurisdiction over the	1 '			'		
publicly owned space and the Division of Water Resources of	1 '			'		
any such determination in writing.	<u> </u>	<u> </u>	<u> </u>	<u> </u>		Commented [HK125]: No effect – per SL 2017-209
Railroad impacts other than crossings of streams and other			X	<del>                                     </del>	-	
surface waters subject to this Rule.	<u> </u> '	<u> </u>	<u> </u>	<u> </u>		Commented [HK126]: No effect – Moved to below
Railroad crossings of streams and other surface waters subject to		<u> </u>			-	
this Rule:	1					
Railroad crossings that impact equal to or less than 40 linear	X			'		
feet of riparian buffer	1 '			'		
Railroad crossings that impact greater than 40 linear feet but	1 '	X		'		
equal to or less than 150 linear feet or one third of an acre of	1 '			'		
<del>riparian buffer</del>	1 '			'		
Railroad crossings that impact greater than 150 linear feet or	1 '		X	'		
one third of an acre of riparian buffer		<u> </u>		<u> </u>		Commented [HK127]: No effect – Moved to below

Use	Exempt	Potentiall	Potentially	Prohib	
	Deeme	y	Allowable	ited	Commented [HK92]: No effect – Updated terminology
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	Allowa	Upon	Mitigation		
	<u>ble</u>	Authoriza	Upon		
		tion	Authorizati		
			<u>on</u>		
Recreational and accessory structures:					
Total footprint of gazebos and sheds in Zone 2, provided they		X			
are not prohibited under local water supply ordinance less than					
or equal to 150 square feet per lot					
Total footprint gazebos and sheds in Zone 2, provided they are			X		
not prohibited under local water supply ordinance of more than					
150 square feet per lot					
• Wooden slatted decks (and associated steps) that are at least 8		X			
feet in height and vegetation is not removed from Zone 1 for					
the installation and that it meets the requirements of Items (7)					
and (8) of this Rule					
Wooden slatted decks (and associated steps) that are not at			X		
least 8 feet in height or vegetation is removed from Zone 1 for					
the installation and that it meets the requirements of Items (7)					
and (8) of this Rule	ļ				Commented [HK128]: No effect – Moved to below
Removal of previous fill or debris provided that Item (9) of this	X				
Rule is complied with diffuse flow is maintained and any					
vegetation removed is restored					Commented [HK129]: No effect – update citation and grammar

Use	Exempt	Potentiall	Potentially	Prohib	1	
	Deeme	<del>y</del>	Allowable	ited		Commented [III/02]. No. 65 of Highest Association
	d	Allowable	with	ited		Commented [HK92]: No effect – Updated terminology
	Allowa	Upon	Mitigation			
	ble	Authoriza	Upon			
	<u>bic</u>	tion	Authorizati			
		uon				
Residential Properties: Where application of this Rule would			<u>on</u>			
* **						
preclude construction of a single-family residence and necessary						
infrastructure, the single-family residence may encroach in the						
buffer if all of the following conditions are met: (1) the residence						
is set back the maximum feasible distance from the top of the						
bank, rooted herbaceous vegetation, normal high-water level, or						
normal water level, whichever is applicable, on the existing lot;						
(2) the residence is designed to minimize encroachment into the						
riparian buffer; (3) the residence complies with Item (9) of this						
Rule; and if the residence will be served by an on-site						
wastewater system, no part of the septic tank or drainfield may						
encroach into the riparian buffer.						
The residence and necessary infrastructure impact Zone 2		<u>X</u>				
<u>only</u>						Commented [HK130]: No effect – Incorporating SL 2011-394 and SL2012-200
The residence or necessary infrastructure impact Zone 1			<u>X</u>			Commented [HK131]: less stringent - New use to allow
• Impacts other than the residence or necessary			<u>X</u>			impacts to Zone 1 for single-family residences
infrastructure						Commented [HK132]: less stringent - New use to allow
Restoration or enhancement (wetland, stream) as defined in 33						impacts other than those for a residence or necessary infrastructure without having to go through the variance process
CFR Part 332 available free of charge on the internet at:						
http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigat						
ion_index.cfm						
Wetland or stream restoration that does not require	<u>X</u>					
written Division approval results in impacts to the						
riparian buffer						
Wetland or stream restoration that does require written		<u>X</u>				
Division approval that results in impacts to the riparian						
buffer						Commented [HK133]: No effect – Moved from below
						255

Use	Exempt	Potentiall	Potentially	Prohib	
	Deeme	y	Allowable	ited	 Commented [HK92]: No effect – Updated terminology
	<u>d</u>	Allowable	with		
	Allowa	<u>Upon</u>	Mitigation		
	<u>ble</u>	<u>Authoriza</u>	<u>Upon</u>		
		tion	Authorizati		
			<u>on</u>		
Road_Road, driveway or railroad: perpendicular crossings of					 Commented [HK134]: No effect – incorporating road, driveway
streams and other surface waters subject to this Rule or					and railroad into one row as requirements were all the same
perpendicular entry into the buffer that does not cross a stream or					
other surface water subject to this Rule:					 Commented [HK135]: No effect – Clarification
• Road crossings that impact Impact equal to or less than 40	X				 Commented [HK136]: No effect - grammar
linear feetone-tenth of an acre of riparian buffer					 Commented [HK137]: No effect – Removed linear feet; will
• Road crossings that impact Impact greater than one-tenth of an		X			just reference square feet for ease of implementation
acre40 linear feet but equal to or less than 150 linear feet or					Commented [HK138]: No effect - grammar  Commented [HK139]: No effect - Removed linear feet; will
one-third of an acre of riparian buffer					just reference square feet for ease of implementation
• Road crossings that impact Impact greater than 150 linear feet			X		 Commented [HK140]: No effect - grammar
or one-third of an acre of riparian buffer					 Commented [HK141]: No effect – Removed linear feet; will
• Driveway crossings in a subdivision that cumulatively disturb		<u>X</u>			just reference square feet for ease of implementation
equal to or less than one-third of an acre of riparian buffer					
• Driveway crossings in a subdivision that cumulatively disturb			<u>X</u>		
greater than one-third of an acre of riparian buffer					 Commented [HK142]: No effect – moved from above
• Agriculture roads that are exempt from permitting from the	<u>X</u>				
U.S. Army Corps of Engineers per Section 404(f) of the					
federal Clean Water Act					 Commented [HK143]: Less stringent – new use to allow for ag
Road-Road, driveway or railroad impacts other than			X		rules to have the same exemption under the buffer rules they have under 404
perpendicular crossings of streams and other surface waters					 Commented [HK144]: No effect – incorporating road, driveway
subject to this Rule					and railroad into one row as requirements were all the same
Road relocation of existing private access roads associated with					
public road projects where necessary for public safety:					
• Less than or equal to 2,500 square feet of buffer impact		X			
• Greater than 2,500 square feet of buffer impact			X		
	l .	l .	l .	l .	

Scientific studies and stream gauging:  In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical-gauging  Streambank or shoreline stabilization  I Emporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation within two (2) months of when construction is complete, vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252; 0295 of this Section:  • Less than or equal to 2,500 square feet of buffer disturbance  • Greater than 2,500 square feet of buffer disturbance  • Greater than 2,500 square feet of buffer disturbance  • Associated with culvert installation, bridge construction or						
Allowable Allowa	Use	Exempt		Potentially		
Allowa ble Authorization Dion Authorization Washington Authorization Windows and Stormwater BMPs Control Measure (SCM) as defined in 15A NCAC 02H .1002:  In Zone 2 if Item (9) of this Rule is complied withWeld detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1  Wet detention, bioretention, and constructed wetlands in In Zone 1  Zone 1  Wet detention, bioretention, and constructed wetlands in In Zone 1  X  Scientific studies and stream gaugings In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical gauging  Streambank or shoreline stabilization  Imporary roads provided that the disturbed area is restored to pre-construction to prographic and hydrologic conditions immediately effer construction is complete, wegetation, except that the tree Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish wegetation. At the end of five years years, the restored buffer shall comply with the restoration criteria in Hem (9)Paragraph (1) of Rule 15A NCAC 02B .0252: 0252 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or		Deeme	y	Allowable	ited	 Commented [HK92]: No effect – Updated terminology
Stormwater BMPs-Control Measure (SCM) as defined in 15A NCAC 02H-1002:  In Zone 2 if Item (9) of this Rule is complied withWed detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1  Wet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1  Newt detention, bioretention, and constructed wetlands in In Zone 1  Newt detention, bioretention, and constructed wetlands in In Zone 1  Newt detention, bioretention, and constructed wetlands in In Zone 1  Newt detention, bioretention, and constructed wetlands in In Zone 1  Newt detention, bioretention, and constructed wetlands in In Zone 1  Newt detention, bioretention, and constructed wetlands in In Zone 1  Newt detention, bioretention, and constructed wetlands in In Zone 1  Newt detention, bioretention, and constructed wetlands in In In Zone 1  Newt detention, bioretention, and constructed wetlands in In In Zone 1  Newt detention, bioretention, and constructed wetlands in In In Zone 1  Newt detention, bioretention, and constructed wetlands in In In Zone 1  Newt detention, bioretention, and constructed wetlands in In In Zone 1  Newt detention, bioretention, and constructed wetlands in In In Zone 1  Newton In Zone 1  Newt detention, bioretention, and constructed wetlands in In In In Zone 1  Newton In Zone 1  Nextention, biotectention In Zone 1  Newton In Zone 1  Newton In Zo		<u>d</u>	Allowable	with		
Stormwater BMPs-Control Measure (SCM) as defined in 15A NCAC 02H .1002:  In Zone 2 if Item (9) of this Rule is complied withWer detention, bioretention, and constructed wellands in Zone 2 if diffuse flow of discharge is provided into Zone 1  Wet detention, bioretention, and constructed wellands in In Zone 1  Zone 1  Scientific studies and stream gauging: In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical gauging  Streambank or shoreline stabilization  Itemporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately after construction is complete. vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish regetation. At the end of five years years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B. 0252, 0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or		Allowa	Upon	Mitigation		
Stormwater BMPs-Control Measure (SCM) as defined in 15A NCAC O2H 1002:  • In Zone 2 if Item (9) of this Rule is complied withWet detention, bioretention, and constructed wetlands in Zone 1  • Wet detention, bioretention, and constructed wetlands in In Zone 1  • Wet detention, bioretention, and constructed wetlands in In Zone 1  • Wet detention, bioretention, and constructed wetlands in In Zone 1  • Wet detention, bioretention, and constructed wetlands in In Zone 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical gauging  Streambank or shoreline stabilization  Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately after construction is complete. vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252, 0255 of this Section:  • Less than or equal to 2,500 square feet of buffer disturbance  • Associated with culvert installation, bridge construction or		ble	Authoriza	<u>Upon</u>		
Stormwater BMPs:Control Measure (SCM) as defined in 15A  NCAC 02H 1002:  In Zone 2 if Item (9) of this Rule is complied withWet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1  Wet detention, bioretention, and constructed wetlands in In Zone 1  Wet detention, bioretention, and constructed wetlands in In Zone 1  Wet detention, bioretention, and constructed wetlands in In Zone 1  Wet detention, bioretention, and constructed wetlands in In Zone 1  Wet detention, bioretention, and constructed wetlands in In Zone 1  Wet detention, bioretention, and constructed wetlands in In Zone 1  Wet detention, bioretention, and constructed wetlands in In Zone 2 if diffuse flow and the Construction is complete. Wetlands in In Zone 1  Note that the part of the Wetlands in In Zone 2 if Zone 1  Wetlands and Stream gauging:  Note that the first water quality to the maximum extent prractical, gauging  Streambank or shoreline stabilization  Itemporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately after construction is complete and replanted immediately after construction is complete. Vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (1) of Rule 15A NCAC 02B .0252: 0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or			tion	Authorizati		
NCAC 02H.1002:  In Zone 2 if Item (9) of this Rule is complied withWest detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1  Wet detention, bioretention, and constructed wetlands in In Zone 1  Scientific studies and stream gauging:  In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical gauging  Streambank or shoreline stabilization  X  Immediately after construction is complete and replanted immediately with comparable vegetation within two (2) months of when construction is complete. vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 145. NCAC 02B 0252; 0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or				on		
■ In Zone 2 if Item (9) of this Rule is complied withWet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1  ■ Wet detention, bioretention, and constructed wetlands in In Zone 1  ■ Wet detention, bioretention, and constructed wetlands in In Zone 1  ■ Tones I and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical gauging  ■ Streambank or shoreline stabilization  Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately with comparable vegetation within two (2) months of when construction is complete, vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years-years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 145 NCAC 02B -0252; 0295 of this Section:  ■ Less than or equal to 2,500 square feet of buffer disturbance  ■ Greater than 2,500 square feet of buffer disturbance  ■ Associated with culvert installation, bridge construction or	Stormwater BMPs:Control Measure (SCM) as defined in 15A					
detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1  • Wet detention, bioretention, and constructed wetlands in In Zone 1  Scientific studies and stream gauging: In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical-gauging  Streambank or shoreline stabilization  [Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete, wegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years-years, the restored buffer shall comply with the restoration criteria in Item (9) Paragraph (i) of Rule 15A NCAC 02B -0252,0295 of this Section:  • Less than or equal to 2,500 square feet of buffer disturbance  • Associated with culvert installation, bridge construction or	NCAC 02H .1002:		<u>X</u>			
diffuse flow of discharge is provided into Zone 1  Wet detention, bioretention, and constructed wetlands in In Zone 1  Scientific studies and stream gauging:  In Zones I and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical gauging  Streambank or shoreline stabilization  Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation within two (2) months of when construction is complete, vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years years, the restored buffer shall comply with the restoration criteria in Isem (9)Paragraph (i) of Rule 45A NCAC 02B -0252±0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or	• In Zone 2 if Item (9) of this Rule is complied with Wet					
Wet detention, bioretention, and constructed wetlands in In Zone 1  Scientific studies and stream gauging: In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical gauging  Streambank or shoreline stabilization  Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation.—At the end of five years years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252; 0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or	detention, bioretention, and constructed wetlands in Zone 2 if					
Zone I  Scientific studies and stream gaugings In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical gauging  Streambank or shoreline stabilization  Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete—and replanted immediately with comparable vegetation within two (2) months of when construction is complete—vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years-years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252;0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or	diffuse flow of discharge is provided into Zone 1			<u>X</u>		
Scientific studies and stream gauging:  In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical gauging  Streambank or shoreline stabilization  Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately-with comparable vegetation within two (2) months of when construction is complete. vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252;0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or	• Wet detention, bioretention, and constructed wetlands in In					
Scientific studies and stream gauging: In Zones 1 and 2 if they are designed, constructed and maintained to protect water quality to the maximum extent practical gauging  Streambank or shoreline stabilization  Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately-with comparable vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years-years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B -0252; 0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or	Zone 1					 Commented [HK145]: less stringent - Changes uses to allow
maintained to protect water quality to the maximum extent practical-gauging  Streambank or shoreline stabilization  Imporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation within two (2) months of when construction is complete, vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years-years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252; 0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or	Scientific studies and stream gauging:	X				any SCM in the buffer instead of just wet ponds
Streambank or shoreline stabilization  Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation within two (2) months of when construction is complete, vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation.—At the end of five years years, the restored buffer shall comply with the restoration criteria in Hem (9)Paragraph (i) of Rule 15A NCAC 02B .0252; .0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or	In Zones 1 and 2 if they are designed, constructed and					
Streambank or shoreline stabilization  Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation within two (2) months of when construction is complete. vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years years, the restored buffer shall comply with the restoration criteria in Hem (9)Paragraph (i) of Rule 15A NCAC 02B .0252: 0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or	maintained to protect water quality to the maximum extent					
Temporary roads provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation within two (2) months of when construction is complete. vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252:.0295 of this Section:  • Less than or equal to 2,500 square feet of buffer disturbance  • Associated with culvert installation, bridge construction or	<del>practical</del> .gauging					
pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation within two (2) months of when construction is complete. vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years-years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252:.0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance Associated with culvert installation, bridge construction or	Streambank or shoreline stabilization		X			simplicity
immediately after construction is complete and replanted immediately with comparable vegetation within two (2) months of when construction is complete. vegetation, except that the tree Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years-years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252: 0295 of this Section:  • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance  • Associated with culvert installation, bridge construction or	Temporary roads provided that the disturbed area is restored to					
immediately with comparable vegetation within two (2) months of when construction is complete. vegetation, except that the tree Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252; 0295 of this Section:  • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance  • Associated with culvert installation, bridge construction or	pre-construction topographic and hydrologic conditions					
of when construction is complete. vegetation, except that the tree-Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252:.0295 of this Section:  • Less than or equal to 2,500 square feet of buffer disturbance  • Greater than 2,500 square feet of buffer disturbance  • Associated with culvert installation, bridge construction or	immediately after construction is complete and replanted					
tree Tree planting may occur during the dormant season. A one time application of fertilizer may be utilized to establish vegetation. At the end of five years years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252:.0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or	immediately with comparable vegetation within two (2) months					
time application of fertilizer may be utilized to establish  vegetation.—At the end of five years years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i)  of Rule 15A NCAC 02B .0252;.0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or	of when construction is complete. vegetation, except that the					
<ul> <li>vegetation. At the end of five years years, the restored buffer shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252:.0295 of this Section:</li> <li>Less than or equal to 2,500 square feet of buffer disturbance</li> <li>Greater than 2,500 square feet of buffer disturbance</li> <li>Associated with culvert installation, bridge construction or</li> </ul> X X X X	tree Tree planting may occur during the dormant season. A one					
shall comply with the restoration criteria in Item (9)Paragraph (i) of Rule 15A NCAC 02B .0252:.0295 of this Section:  • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance • Associated with culvert installation, bridge construction or	time application of fertilizer may be utilized to establish					
of Rule 15A NCAC 02B .0252:.0295 of this Section:  Less than or equal to 2,500 square feet of buffer disturbance  Greater than 2,500 square feet of buffer disturbance  Associated with culvert installation, bridge construction or	vegetation. At the end of five years-years, the restored buffer					
<ul> <li>Less than or equal to 2,500 square feet of buffer disturbance</li> <li>Greater than 2,500 square feet of buffer disturbance</li> <li>Associated with culvert installation, bridge construction or</li> <li>X</li> <li>X</li> <li>X</li> </ul>	shall comply with the restoration criteria in Item (9)Paragraph (i)					
<ul> <li>Greater than 2,500 square feet of buffer disturbance</li> <li>Associated with culvert installation, bridge construction or</li> <li>X</li> <li>X</li> </ul>	of Rule 45A NCAC 02B .0252:.0295 of this Section:					
Associated with culvert installation, bridge construction or	• Less than or equal to 2,500 square feet of buffer disturbance	X				
- Absoluted with current installation, study constitution of	• Greater than 2,500 square feet of buffer disturbance		X			
	Associated with culvert installation, bridge construction or		X			
replacement Commented [HK147]: No effect – Clarification	replacement					 Commented [HK147]: No effect – Clarification

Temporary sediment and erosion control devices provided that						
the disturbed area is restored to pre-construction topographic and	1		'	1		
hydrologic conditions immediately after construction is complete	1		'	1		
and replanted immediately with comparable vegetation, except	1		'	1		
that tree vegetation within two (2) months of when construction	1		'	1		
is complete. Tree planting may occur during the dormant	1		'	1		
season. A one time application of fertilizer may be used to			'			
establish vegetationAt the end of five years years, the restored	1		'	1		
buffer shall comply with the restoration criteria in Item (9) of	1		'	1		
Rule 15A NCAC 02B .0252:Paragraph (i) of Rule .0295 of this	1		'	1		
Section:	1		'	1		
• In Zone 2 only provided ground cover is established within the	X		'	1		
timeframes required by the Sedimentation and Erosion	1		'	1		
Control Act and that Act, the vegetation in Zone 1 is not	1		'	1		
compromised and that discharge is released as diffuse flow in	1		'	1		
accordance with Item (8)(9) of this Rule	1		'	1		
In Zones 1 and 2 to control impacts associated with uses	1	X	'	1		
approved by the local government Authority or that have			'			
received a variance an exception provided that sediment and	1		'			
erosion control for upland areas is addressed to the maximum	1		'	1		
extent practical outside the buffer			'			
In-stream temporary erosion and sediment control measures	X		'			
for work within a stream channel that is authorized under	1		'	1		
Section 401 and 404 of the Federal Water Pollution Control			'			
Act			'			
In stream temporary erosion and sediment control measures	1	X	'	1		
for authorized work within a stream channel In-stream			'			
temporary erosion and sediment control measures for work			'			
within a stream that has written approval from the Division	1		'			
and the U.S. Army Corps of Engineers under Sections 401 &	1		'	1		
404 of the Federal Water Pollution Control Act	<b></b>		<u> </u> '	<u>                                     </u>		Commented [HK148]: No effect – Clarification
Utility Non electric utility lines:			7			
• Impacts other than perpendicular crossings in Zone 2 only <sup>4,5</sup>	1	X	'	1		
Impacts other than perpendicular crossings in Zone 1 only <sup>4,5</sup>	<u> </u>		X	<u>                                     </u>		Commented [HK149]: No effect – Moved to below
			'			
Utility Non electric utility line perpendicular crossings of						
streams and other surface waters subject to this Rule <sup>4,5</sup> :	1		'			
					i.	

Use	Exempt	Potentiall	Potentially	Prohib	
	Deeme	<del>y</del>	Allowable	ited	 Commented [HK92]: No effect – Updated terminology
	<u>d</u>	Allowable	with		
	Allowa	Upon	Mitigation		
	ble	Authoriza	Upon		
		tion	Authorizati		
			on		
Perpendicular crossings that disturb equal to or less than 40	X				
linear feet of riparian buffer with a maintenance corridor equal					
to or less than 10 feet in width					
Perpendicular crossings that disturb equal to or less than 40		X			
linear feet of riparian buffer with a maintenance corridor					
greater than 10 feet in width					
Perpendicular crossings that disturb greater than 40 linear feet		X			
but equal to or less than 150 linear feet of riparian buffer with					
a maintenance corridor equal to or less than 10 feet in width					
Perpendicular crossings that disturb greater than 40 linear feet			X		
but equal to or less than 150 linear feet of riparian buffer with					
a maintenance corridor greater than 10 feet in width					
			X		
Perpendicular crossings that disturb greater than 150 linear  Control of the control of the					
feet of riparian buffer					 Commented [HK150]: No effect – Moved to below
Utility Overhead electric utility lines:					
<ul> <li>Impacts other than perpendicular crossings in Zone 2 only<sup>4,5</sup></li> </ul>		X			
• Impacts other than perpendicular crossings in Zone 1-2-3-4-5			X		 Commented [HK151]: No effect – Moved to below
Utility Overhead electric utility line perpendicular crossings of					
streams and other surface waters subject to this Rule 2,3,4,5;					
• Perpendicular crossings that disturb equal to or less than 150	X				
linear feet of riparian buffer					
• Perpendicular crossings that disturb greater than 150 linear feet		X			
of riparian buffer					 Commented [HK152]: No effect – Moved to below
Utility Underground electric utility lines:					
• Impacts other than perpendicular crossings in Zone 2 only <sup>2</sup>	X				
• Impacts other than perpendicular crossings in Zone 1 <sup>+,4</sup>	X				 Commented [HK153]: No effect – Moved to below

Deemie g Allowable Allowa He Allowable Allowa He Allowable Allowable Allowa He Allowable Allowa He Allowable Allowab	Use	Exempt	Potentiall	Potentially	Prohib	
Allowable   Allo			y	Allowable		 Commented [HK92]: No effect – Updated terminology
Dility Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:   Perpendicular crossings that disturb less than or equal to 40 linear feet of righter buffer.		d	Allowable	with		
Lithity Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:  Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer*  Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  No effect of perpendicular greater than 40 linear feet of riparian buffer*  No effect of perpendicular greater than 40 linear feet of riparian buffer*  No effect of perpendicular greater than 40 linear feet of riparian buffer*  No effect of perpendicular greater than 40 linear feet of riparian buffer*  No effect of perpendicular greater than 40 linear feet of riparian buffer*  No effect of perpendicular greater than 40 linear feet of riparian and (1) monsewer acrial linear greater linear greater linear greater linear greater linear greater linear greater linear greater linear greater linear greater linear greater linear greater linear greater linear greater linear greater linear greater lin		Allowa	Upon	Mitigation		
Utility Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:  Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer***  Perpendicular crossings that disturb greater than 10 linear feet of riparian buffer**  Negroundicular crossings that disturb greater than 10 linear feet of riparian buffer**  Sanitary Sewer Overflows:  Sanitary Sewer Overflows:  Emergency sanitary sewer overflow response activities, provided that the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two (2) months of when disturbance is complete.  Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificane must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria		ble	Authoriza	Upon		
Ditility Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule!   Perpendicular crossings that disturb less than or equal to 40 linear feet of riparians buffer*			tion	Authorizati		
of streams and other surface waters subject to this Rule  Perpendicular crossings that disturb less than or equal to 40 finear feet of riparian buffer **  Perpendicular crossings that disturb less than or equal to 40 finear feet of riparian buffer **  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer **  Sanitary Sewer Direct  Sanitary Sewer Overflows:  Sanitary Sewer Overflows:  Emergency sanitary sewer overflow response activities, provided that the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two (2) months of when disturbance is complete.  Sanitary Sewer overflow response activities, provided the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow response activities, provided the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria				on		
Perpendicular crossings that disturb less than or equal to 40 linear feet of linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer*  Sanitary Sewer lines:  Sanitary Sewer lines:  Sanitary Sewer lines:  Sanitary Sewer Overflows:  Sanitary Sewer overflow response activities, provided that the disturbed area within the buffer is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and bydrologic conditions, and is replanted with comparable vegetation within two (2) months of when disturbance is complete.  Sanitary Sewer Overflow response activities, provided the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow response activities, provided the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  Perpendicular crossings that disturbed area within the disturbed area within the buffer; is the minimum necessary to response activities.  Commented [HK156]: less stringen. Creater flexibility for reoponding quickly to SSOs.	Utility Underground electric utility line perpendicular crossings					
incar fect of riparian buffer  Perpendicular crossings that disturb greater than 40 linear feel of riparian buffer  Namitury Sewer Diens  Emergency sanitary sewer overflow response activities, provided that the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two (2) months of when disturbance is complete.  Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions, provided the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	of streams and other surface waters subject to this Rule:					
Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer seed  of riparian buffer seed  Natifity – Sewer lines  Sanitary Sewer Overflows:  Emergency sanitary sewer overflow response activities, provided that the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two (2) months of when disturbance is complete.  Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	Perpendicular crossings that disturb less than or equal to 40	X				
Commented [HK154]: No effect — Moved to below     Utility — Sewer lines	linear feet of riparian buffer <sup>3, 4, 5</sup>					
Utility – Sewer lines:  Sanitary Sewer Overflows:  Definition – Sewer Interview   Sewer Overflows:  Definition   Sewer Overf	Perpendicular crossings that disturb greater than 40 linear feet		X			
Sanitary Sewer Overflows:  Emergency sanitary sewer overflow response activities, provided that the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two (2) months of when disturbance is complete.  Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	of riparian buffer <sup>3, 4, 5</sup>					 Commented [HK154]: No effect – Moved to below
Sanitary Sewer Overflows:  Demergency sanitary sewer overflow response activities, provided that the disturbed area within the buffer is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two (2) months of when disturbance is complete.  Demergency sanitary sewer overflow response activities, provided the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	Utility – Sewer lines:					
activities, provided that the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two (2) months of when disturbance is complete.  • Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  • New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	<ul> <li>Sanitary Sewer Overflows:</li> </ul>					underground to (1) sewer lines, (2) non-sewer underground and (3)
within the buffer: is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two (2) months of when disturbance is complete.  • Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  • New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	o Emergency sanitary sewer overflow response	<u>X</u>				non-sewer aerial
respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two (2) months of when disturbance is complete.  • Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  • New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	activities, provided that the disturbed area					
to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation within two (2) months of when disturbance is complete.  • Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  • New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	within the buffer: is the minimum necessary to					
conditions, and is replanted with comparable vegetation within two (2) months of when disturbance is complete.  o Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	respond to the emergency overflow, is restored					
vegetation within two (2) months of when disturbance is complete.  • Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  • New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	to pre-construction topographic and hydrologic					
disturbance is complete.  Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer; is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	conditions, and is replanted with comparable					
Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	vegetation within two (2) months of when					
activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  Commented [HK156]: less stringent - Greater flexibility for responding quickly to SSOs	disturbance is complete.					
the buffer: is the minimum necessary to respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  Commented [HK156]: less stringent - Greater flexibility for responding quickly to SSOs	<ul> <li>Emergency sanitary sewer overflow response</li> </ul>		<u>X</u>			
respond to the emergency overflow and is not fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  • New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	activities, provided the disturbed area within					
fully restored to pre-construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  Commented [HK156]: less stringent - Greater flexibility for responding quickly to SSOs	the buffer: is the minimum necessary to					
and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  Commented [HK156]: less stringent - Greater flexibility for responding quickly to SSOs	respond to the emergency overflow and is not					
proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  Commented [HK156]: less stringent - Greater flexibility for responding quickly to SSOs  replacement/rehabilitation that does not meet the criteria	fully restored to pre-construction topographic					
for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  Commented [HK156]: less stringent - Greater flexibility for responding quickly to SSOs  replacement/rehabilitation that does not meet the criteria	and hydrologic conditions. For any impacts					
submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  Commented [HK156]: less stringent - Greater flexibility for responding quickly to SSOs  New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	proposed to remain permanently an application					
days of conclusion of the emergency response  activities.  New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	for an Authorization Certificate must be					
<ul> <li>New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria</li> </ul>	submitted to the authority within 30 calendar					
New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria	days of conclusion of the emergency response					
New Sewer Line Construction Activities (including     replacement/rehabilitation that does not meet the criteria	activities.					
	<ul> <li>New Sewer Line Construction Activities (including</li> </ul>					responding quickly to SSOs
of existing use in Item (6) of this Rule) provided that (1)	replacement/rehabilitation that does not meet the criteria					
	of existing use in Item (6) of this Rule) provided that (1)					

				D	D 111		
Ise		Exempt	Potentiall	Potentially	Prohib		
		<u>Deeme</u>	<del>y</del>	Allowable	ited		Commented [HK92]: No effect – Updated terminology
		<u>d</u>	Allowable	with			
		Allowa	<u>Upon</u>	Mitigation			
		<u>ble</u>	<u>Authoriza</u>	<u>Upon</u>			
			tion	<u>Authorizati</u>			
				<u>on</u>			
vegeta	ative root systems and stumps are left intact to						
maint	ain the integrity of the soil except in the trench						
where	trees are cut, and (2) vegetation is allowed to						
regen	erate in disturbed areas, except within the						
perma	nent maintenance corridor:						
0	Perpendicular crossings of streams and other						
	surface waters subject to this Rule or						
	perpendicular entry into the buffer that does						
	not cross a stream or other surface water						
	subject to this Rule:						Commented [HK157]: No effect – Clarify this use can incl
	Less than or equal to 40 linear feet	X					perpendicular entry into the buffer that doesn't cross a stream (e connecting to existing line)
	with a permanent maintenance					(	connecting to existing line)
	corridor equal to or less than 20 feet						
	in width.						
	Greater than 40 linear feet and less		X				
	than or equal to 150 linear feet, with a						
	permanent maintenance corridor equal						
	to or less than 20 feet in width.						
	Greater than 150 linear feet with a			X			
	permanent maintenance corridor equal			<u>A</u>			
	to or less than 20 feet in width.						
	Permanent maintenance corridor			X			
				<u>A</u>			
	greater than 20 linear feet (mitigation						
	is required only for impacts beyond					(	
	the 20 linear feet corridor width).						<b>Commented [HK158]:</b> less stringent - increased maintenant corridor from 10 to 20 feet
0							
	Zone 2 only.						<b>Commented [HK159]:</b> less stringent - changed from allow to deemed allowable
	Zone 1 impacts to less than 2,500	X					
	square feet when impacts are solely		<u>X</u>				
	the result of tying into an existing	1					

Use	Exempt	Potentiall	Potentially	Prohib	
	Deeme	y	Allowable	ited	 Commented [HK92]: No effect – Updated terminology
	<u>d</u>	Allowable	with		
	Allowa	Upon	Mitigation		
	ble	Authoriza	Upon		
		tion	Authorizati		
			<u>on</u>		
utility line and when grubbing or					
grading within 10 feet immediately					
adjacent to the surface water is					
avoided:					
■ Zone 1 impacts for					
replacement/rehabilitation within an		<u>X</u>			
existing Right of Way when land					
grubbing or grading within 10 feet					
immediately adjacent to the surface					
water is avoided;					
<ul> <li>Zone 1 impacts other than those listed</li> </ul>					
above.			<u>X</u>		 Commented [HK160]: less stringent - changed all impacts to
<ul> <li>Vegetation Maintenance Activities that remove forest</li> </ul>					Zone 1 triggering mitigation to only some triggering mitigation.
vegetation for existing sewer utility right of					
ways/corridors that do not meet the criteria of existing					
use in Item (6) of this Rule:					
o Zone 2 impacts					
o Zone 1 impacts provided no clearing within 10	<u>X</u>				
feet of the stream	<u>X</u>				
<ul> <li>Zone 1 impacts, provided the permanent</li> </ul>					
maintenance corridor is kept to 10 feet on	<u>X</u>				
either side of the existing sewer line. Clearing					
within 10 feet of the stream may occur					
provided no grading or grubbing occurs within					
this area.					
<ul> <li>Zone 1 impacts, provided the permanent</li> </ul>					
maintenance corridor is kept to 10 feet on		<u>X</u>			
either side of the existing sewer line. Clearing,					
grading and grubbing can occur within 10 feet					
of the stream provided the grading and					

Use	Exempt	Potentiall	Potentially	<u>Prohib</u>		
	Deeme	y	Allowable	ited		Commented [HK92]: No effect – Updated terminology
	<u>d</u>	Allowable	with	'		
	Allowa	<u>Upon</u>	Mitigation	'		
	<u>ble</u>	Authoriza	<u>Upon</u>	'		
		tion	Authorizati	'		
			<u>on</u>	'		
grubbing within 10 feet is less than 2,500				'		
square feet.				'		
o Zone 1 impacts other than those listed above	<u> </u>	<u> </u>	<u>X</u>	<b></b> '		Commented [HK161]: less stringent - new uses to allow for vegetation maintenance beyond the maintenance corridor
Utilities – Non-sewer underground lines:				<u> </u>		Commented [HK162]: No effect – Changed 3 categories of
<ul> <li>Perpendicular crossings of streams and other surface</li> </ul>				'		utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3)
waters subject to this Rule or perpendicular entry into the			,	'		underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial
buffer that does not cross a stream or other surface water	'			'		
subject to this Rule:	<u> </u>	<u> </u>	<u> </u>	<u> </u> '		Commented [HK163]: No effect – Clarify this use can include
o Construction activities that disturb less than or				'		perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)
equal to 50 linear feet of riparian buffer	<u>X</u>		1	'		
provided that vegetative root systems and	1	1	1	'		
stumps shall be left intact to maintain the				'		
integrity of the soil except in the trench where				'		
trees are cut and that vegetation is allowed to	1	1	1	'		
regenerate in disturbed areas with the exception				'		
of a maintenance corridor equal to or less than			1	'		
30 feet in width	<u> </u>	<u> </u>	<u> </u>	<u> </u> '		Commented [HK164]: less stringent - Changed 40 feet to 50
o Construction activities that disturb greater than	1	1	1	'		feet. Added language re maintenance corridor.
50 linear feet and less than or equal to 150 linear	1	<u>X</u>	1	'		
feet of riparian buffer provided that vegetative			1	'		
root systems and stumps shall be left intact to			1	'		
maintain the integrity of the soil except in the			1	'		
trench where trees are cut and that vegetation is			1	'		
allowed to regenerate in disturbed areas with the				'		
exception of a maintenance corridor equal to or				'		
less than 30 feet in width	<u> </u>		<u> </u>	<u> </u> '		Commented [HK165]: less stringent - Changed 40 feet to 50
o Construction activities that disturb greater than	1	1	1	'		feet. Added language re maintenance corridor
150 linear feet of riparian buffer	<u> </u>	<u> </u>	<u>X</u>	<u> </u> '		Commented [HK166]: no change
o Any activities with a permanent maintenance				'		
corridor greater than 30 feet in width	<u> </u>		<u>X</u>	<u> </u> '		Commented [HK167]: less stringent - New use
·	<u> </u>	<u> </u>	<u> </u>	ш	J	

Exempt   Deeme   Potentially   Potentially   Potentially   Prohib	gy
Allowable Allowa ble Upon Authoriza tion Authorizati on  Commented [HK168]: No change  Impacts in Zone Two provided vegetation is reestablished after disturbance and the function of Zone 1 is not compromised  Impacts in Zone One less than 2500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water  Impacts in Zone One other than listed above  Commented [HK169]: No change  Commented [HK169]: No change  Commented [HK169]: No change	gy
Allowa ble	
Muthorization   Lipon   Authorization	
• Impacts other than perpendicular crossings:  o Impacts in Zone Two provided vegetation is regestablished after disturbance and the function of Zone I is not compromised  o Impacts in Zone One less than 2500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water  o Impacts in Zone One other than listed above    Commented [HK168]: No change	
• Impacts other than perpendicular crossings:  o Impacts in Zone Two provided vegetation is reestablished after disturbance and the function of Zone 1 is not compromised  o Impacts in Zone One less than 2500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water  o Impacts in Zone One other than listed above  Commented [HK169]: No change  X  X  Commented [HK169]: No change  Commented [HK169]: No change  Commented [HK169]: No change	
Impacts other than perpendicular crossings:      Impacts in Zone Two provided vegetation is reestablished after disturbance and the function of Zone 1 is not compromised      Impacts in Zone One less than 2500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water      Impacts in Zone One other than listed above  Commented [HK168]: No change  Commented [HK169]: No change  X   Impacts in Zone One other than listed above  Commented [HK170]: less stringent – changing from Impacts in Zone I triegering mitigation to some	
o Impacts in Zone Two provided vegetation is reestablished after disturbance and the function of Zone 1 is not compromised  o Impacts in Zone One less than 2500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water  o Impacts in Zone One other than listed above  Commented [HK169]: No change  X  Impacts in Zone One other than listed above  Commented [HK170]: less stringent – changing from in Zone 1 triegering mitigation to some	
established after disturbance and the function of  Zone 1 is not compromised  Impacts in Zone One less than 2500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water  Impacts in Zone One other than listed above  Commented [HK170]: less stringent – changing from in Zone I triegering mitigation to some	
Zone 1 is not compromised    Impacts in Zone One less than 2500 square feet   When impacts are a result of tying to an existing   Utility line and provided that land grubbing or   grading is not conducted within 10 feet   immediately adjacent to the water    Impacts in Zone One other than listed above   Commented [HK170]: less stringent – changing from in Zone I triegering mitigation to some	
o Impacts in Zone One less than 2500 square feet when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water  o Impacts in Zone One other than listed above  Commented [HK170]: less stringent – changing fro in Zone I triegering mitigation to some	
when impacts are a result of tying to an existing utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water  Impacts in Zone One other than listed above  Commented [HK170]: less stringent – changing fro in Zone I triegering mitigation to some	
utility line and provided that land grubbing or grading is not conducted within 10 feet immediately adjacent to the water  o Impacts in Zone One other than listed above  Commented [HK170]: less stringent – changing from in Zone I triegering mitigation to some	
grading is not conducted within 10 feet immediately adjacent to the water  o Impacts in Zone One other than listed above  Commented [HK170]: less stringent – changing fro in Zone I triegering mitigation to some	
immediately adjacent to the water  o Impacts in Zone One other than listed above  Commented [HK170]: less stringent – changing fro in Zone I triggering mitigation to some	
Commented [HK170]: less stringent – changing fro in Zone I triegering mitigation to some	
in Zone 1 triggering mitigation to some	
in Zone 1 triggering mitigation to some	n all impact
Vegetation maintenance activities along an existing	
utility line beyond the footprint of an existing utility line $\underline{X}$	
maintenance corridor where the total maintenance $\underline{X}$	
corridor is equal to or less than 30 linear feet in width	
• Vegetation maintenance activities along an existing	
utility line beyond the footprint of an existing utility line	
maintenance corridor where the total maintenance	
corridor is greater than 30 linear feet in width	llow for
Utilities – Non-sewer aerial lines:	
Commented [HK172]: No effect – Changed 3 category utilities from (1) non-electric, (2) electric aerial and (3) equal to the control of t	
waters subject to this Rule or perpendicular entry into the	
buffer that does not cross a stream or other surface water	
	in abada
perpendicular entry into the buffer that doesn't cross stre	
o Disturb equal to or less than 150 linear feet of riparian buffer provided that a minimum zone	
of 10 feet wide immediately adjacent to the	
water body is managed such that only	
vegetation that poses a hazard or has the	
potential to grow tall enough to interfere with	
the line is removed, that no land grubbing or	

Use	Exempt	Potentiall	Potentially	<u>Prohib</u>	
	Deeme	y	Allowable	ited	 Commented [HK92]: No effect – Updated terminology
	<u>d</u>	Allowable	with		
	Allowa	<u>Upon</u>	Mitigation		
	<u>ble</u>	Authoriza	<u>Upon</u>		
		tion	Authorizati		
			<u>on</u>		
grading is conducted in Zone 1, and that that	1				
poles or aerial infrastructure are not installed					
within 10 feet of a water body					
o <u>Disturb greater than 150 linear feet of buffer</u>		<u>X</u>			 Commented [HK174]: No change
<ul> <li>Impacts other than perpendicular crossings:</li> </ul>					
o <u>Impacts in Zone Two</u>		<u>X</u>			 Commented [HK175]: No change
o Impacts in Zone One provided that a minimum			<u>X</u>		
zone of 10 feet wide immediately adjacent to the					
water body is managed such that only					
vegetation that poses a hazard or has the					
potential to grow tall enough to interfere with					
the line is removed, that no land grubbing or					
grading is conducted in Zone 1, and that that					
poles or aerial infrastructure are not installed					
within 10 feet of a water body					 Commented [HK176]: no effect – incorporated wording from
					footnote

Vegetation management:			l	
• Emergency fire control measures provided that topography is	X			Commented [HK177]: No effect – Clarification
restored				
• Periodic mowing and harvesting of plant products in Zone 2	X			
only				
• Placement of mulch ring around restoration plantings for a	X			
period of five years from the date of planting				Commented [HK178]: less stringent - New use
• Planting non-invasive vegetation to enhance the riparian	X			Commented [HK179]: No effect – Clarification
buffer				
• Pruning forest vegetation provided that the health and function	<u>X</u>			
of the forest vegetation is not compromised				
• Removal of individual trees trees, branches or limbs which are	X			Commented [HK180]: less stringent - allows for removal of
in danger of causing damage to dwellings, existing utility				branches or limbs instead of just an entire tree
lines, other structures or human lifelife, or are imminently				Commented [HK181]: No effect – clarification
endangering stability of the streambank provided that the				
stumps are left or ground in place without causing additional				
land disturbance.	X			Commented [HK182]: No effect – Clarification
• Removal of individual trees that are dead, diseased or				
damaged.	X			
• Removal of poison ivyivy, oak or sumac. Removal can				
include application of pesticides within the riparian buffer if				
the pesticides are certified by EPA for use in or near aquatic				
sites and are applied in accordance with the manufacturer's				
instructions. If removal is significant, then the riparian buffer				
shall be replanted with non-invasive species	X			Commented [HK183]: less stringent - Allow for removal of
Removal of understory nuisance vegetation as defined in:				additional nuisance species and allows for use of pesticides
Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of				
Environment and Natural Resources. Division of Parks and				
Recreation. Raleigh, NC. Guideline #302008. Invasive Plants				
of North Carolina. Dept. of Transportation. Raleigh, NC				
(available at				
http://portal.ncdenr.org/c/document_library/get_file?uuid=0ac				
c6377-ea07-42dc-bb27-45a78d1c7ebe&groupId=38364).				
Removal can include application of pesticides within the				
riparian buffer is the pesticides are certified by EPA for use in				
or near aquatic sites and are applied in accordance with the				

Use	Exempt	Potentiall	Potentially	Prohib	
	Deeme	y	Allowable	ited	 Commented [HK92]: No effect – Updated terminology
	<u>d</u>	Allowable	with		
	Allowa	<u>Upon</u>	Mitigation		
	ble	Authoriza	<u>Upon</u>		
		tion	Authorizati		
			<u>on</u>		
manufacturer's instructions. If removal is significant, then the					
riparian buffer shall be replanted with non-invasive species.	ļ	<u> </u>			 Commented [HK184]: No effect – Update citation; allow for
Vehicle access roads and boat ramps (excluding parking areas)					use of pesticides
leading to surface water, docks, fishing piers, and other water					
dependent activities: to water dependent structures					
Vehicular Single vehicular access roads road and boat ramp		X	ı		
leading to water dependent structures as defined in 15A					
NCAC 02B .0202, provided they do not cross the surface					
water but not crossing the surface water that are restricted to					
theand have a minimum practicable width not exceedingto					
exceed ten-15 feet in width					
Vehicular access roads and boat ramps to the surface water but			<u>X</u>		
not crossing the surface water that are restricted to the					
minimum width practicable and exceed 15 feet in width		<u> </u>			 Commented [HK185]: No effect – Moved from above
Water dependent structures (except for boat ramps) as defined in		X			 Commented [HK186]: No effect – Boat ramps addressed above
15A NCAC 02BRule .0202 of this Section		<u> </u>			 Commented [HK187]: No effect – update citation
Water supply reservoirs:					
• New reservoirs provided that a riparian buffer that meets the		X	1		
requirements of Items (7)(8) and (8)(9) of this Rule is					 Commented [HK188]: No effect – update citation
established adjacent to the reservoir			<u> </u>	[	
• New reservoirs where a riparian buffer that meets the			X		
requirements of Items (7)(8) and (8)(9) of this Rule is not					 Commented [HK189]: No effect – update citation
established adjacent to the reservoir					
Water wells					
Single family water wells	X	1	1		
All water wells other than single family water wells		X			 Commented [HK190]: No effect – Simplification

Use	E	Potentiall	Dotontialle.	Dun la ila	
Ose	Exempt		Potentially	<u>Prohib</u>	
	Deeme	<del>y</del>	Allowable	ited	Commented [HK92]: No effect – Updated terminology
	<u>d</u>	Allowable	with		
	Allowa	<u>Upon</u>	Mitigation		
	ble	Authoriza	Upon		
		tion	Authorizati		
			on		
Wetland stream and buffer restoration					
Wetland, stream and buffer restoration that requires DWQ	X				
approval for the use of a 401 Water Quality Certification					
Wetland, stream and buffer restoration that does NOT require		X			
DWQ approval for the use of a 401 Water Quality					
Certification					Commented [HK191]: No effect – Moved above
Wildlife passage structures		X			
Slatted uncovered decks, including steps and support posts,					
which are associated with a dwelling, provided that it meets the					
requirements of Items (8) and (9) of this Rule and:					
Installation does not result in removal of vegetation in Zone		<u>X</u>			
<u>I</u>					
Installation results in removal of vegetation in Zone 1			<u>X</u>		Commented [HK192]: No effect – Moved from above

<sup>1</sup> Provided that:

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- Heavy equipment is not used in Zone 1
- Vegetation is not compromised in the portions of Zone 1 and Zone 2 that are not impacted
- Trees that are cut down are removed by chain
- No permanent felling of trees occurs in the protected buffers or in the streams
- Stump removal is performed only by grinding
- At the completion of the project the disturbed area is stabilized with native vegetation
- Zones 1 & 2 meet the requirements of (7) and (8) of this Rule.

<sup>2</sup> Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the local government, or the Director for the cases involving activities listed in Item (3)of this Rule.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only
  vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where
  trees are cut.

2	<ul> <li>No fertilizer shall be used other than a one-time application to re-establish vegetation.</li> </ul>	
3	<ul> <li>Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and</li> </ul>	
4	the time in which areas remain in a disturbed state.	
5	<ul> <li>Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of</li> </ul>	
6	stormwater through the buffer.	
7	<ul> <li>In wetlands, mats shall be utilized to minimize soil disturbance.</li> </ul>	
8	<sup>3</sup> Provided that poles or towers shall not be installed within 10 feet of a water body unless the local government or the	
9	Director for the cases involving activities listed in Item (3) of this Rule completes a no practical alternative evaluation	
10	as defined in Item (11) of this Rule.	
11	<sup>4</sup> Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are	
12	not used, then the underground utility line shall require a no practical alternative evaluation by the local government	
13	or the Director for the cases involving activities listed in Item (3) of this Rule, as defined in Item (11) of this Rule.	
14	<ul> <li>Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.</li> </ul>	
15	<ul> <li>Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except</li> </ul>	
16	in the trench, where trees are cut.	
17	<ul> <li>Underground cables shall be installed by vibratory plow or trenching.</li> </ul>	
18	• The trench shall be backfilled with the excavated soil material immediately following cable installation.	
19	<ul> <li>No fertilizer shall be used other than a one-time application to re-establish vegetation.</li> </ul>	
20	<ul> <li>Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and</li> </ul>	
21	the time in which areas remain in a disturbed state.	
22	<ul> <li>Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of</li> </ul>	
23	stormwater through the buffer.	
24	<ul> <li>In wetlands, mats shall be utilized to minimize soil disturbance.</li> </ul>	
25	<sup>5</sup> Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105	
26	<del>degrees</del> .	Commented [HK19
27	(10) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, potentially	into table
28	allowable, and potentially allowable with mitigation in Item (9) of this Rule shall have the following	
29	requirements:	
30	(a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses	
31	shall be designed, constructed and maintained to minimize soil disturbance and to provide	
32	the maximum water quality protection practicable, including construction, monitoring, and	
33	maintenance activities. In addition, exempt uses shall meet requirements listed in Item (9)	

• Riprap shall not be used unless it is necessary to stabilize a tower.

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36 37 (b) POTENTIALLY ALLOWABLE. Uses designated as potentially allowable require a

written buffer authorization from the local government, or the Director for the cases

involving activities listed in Item (3) of this Rule for impacts within the riparian buffer

of this Rule for the specific use;

1	provided that there are no practical alternatives to the requested use pursuant to Item (11)
2	of this Rule;
3	(c) POTENTIALLY ALLOWABLE WITH MITIGATION. Uses designated as potentially
4	allowable with mitigation require written authorization from the local government, or the
5	Director for the cases involving activities listed in Item (3) of this Rule for impacts within
6	the riparian buffer provided that there are no practical alternatives to the requested use
7	pursuant to Item (11) of this Rule and an appropriate mitigation strategy has been approved
8	pursuant to Item (15) of this Rule; and
9	(d) PROHIBITED. Uses that are not designated in Item (9) of this Rule are considered
10	prohibited in the riparian buffers.
11	(11) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake
12	uses designated as allowable or allowable with mitigation shall submit a request for a "no practical
13	alternatives" determination to the local government or the Director for the cases involving activities
14	listed in Item (3) of this Rule. The applicant shall certify that the criteria identified in Sub Item (a)
15	of this Item are met. The local government, or the Director for the cases involving activities listed
16	in Item (3) of this Rule, shall grant an Authorization Certificate upon a "no practical alternatives"
17	determination. The procedure for making an Authorization Certificate shall be as follows:
18	(a) For any request for an Authorization Certificate, the local government, or the Director for the
19	cases involving activities listed in Item (3) of this Rule, shall review the entire project and
20	make a finding of fact as to whether the following requirements have been met in support
21	of a "no practical alternatives" determination:
22	(i) The basic project purpose cannot be practically accomplished in a manner that
23	would better minimize disturbance, preserve aquatic life and habitat, and protect
24	water quality;
25	(ii) The use cannot practically be reduced in size or density, reconfigured or
26	redesigned to better minimize disturbance, preserve aquatic life and habitat, and
27	protect water quality; and
28	(iii) Best management practices shall be used if required to minimize disturbance
29	preserve aquatic life and habitat, and protect water quality;
30	(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied
31	within 60 days of receipt of a complete submission based on the criteria in Sub-Item (a) of
32	this Item and the local ordinance or ordinances enforcing this Rule by the local government
33	or the Director for the cases involving activities listed in Item (3) of this Rule. Failure to
34	issue an approval or denial within 60 days shall constitute that the applicant has
35	demonstrated "no practical alternatives." An Authorization Certificate shall be issued to
36	the applicant, unless:
37	(i) The applicant agrees, in writing, to a longer period; and

Commented [HK194]: No effect – Moved to Item (10) above

1	(ii) Applicant fails to furnish requested information necessary to the local
2	government's decision or the Director's decision for the cases involving activities
3	listed in Item (3) of this Rule;
4	(c) The local government, or the Director for the cases involving activities listed in Item (3) of
5	this Rule, may attach conditions to the Authorization Certificate that support the purpose,
6	spirit and intent of the riparian buffer protection program. Complete submissions shall
7	include the following:
8	(i) The name, address and phone number of the applicant;
9	(ii) The nature of the activity to be conducted by the applicant;
10	(iii) The location of the activity, including the jurisdiction;
11	(iv) A map of sufficient detail to accurately delineate the boundaries of the land to be
12	utilized in carrying out the activity, the location and dimensions of any
13	disturbance in riparian buffers associated with the activity, and the extent of
14	riparian buffers on the land;
15	(v) An explanation of why this plan for the activity cannot be practically
16	accomplished, reduced or reconfigured to better minimize disturbance to the
17	riparian buffer, preserve aquatic life and habitat and protect water quality; and
18	(vi) Plans for any best management practices proposed to be used to control the
19	impacts associated with the activity: and
20	(d) Any disputes over determinations regarding Authorization Certificates shall be referred to
21	the local government's appeals process for a decision, or to the Director for determinations
22	involving lands of activities listed in Item (3) of this Rule. The Director's decision is
23	subject to review as provided in G.S. 150B Articles 3 and 4.
24	(12) VARIANCES. Persons who wish to undertake prohibited uses may pursue a variance. The local
25	government may grant only minor variances. For major variances, local governments shall prepare
26	preliminary findings and submit them to the Commission for approval. The variance request
27	procedure shall be as follows:
28	(a) There are practical difficulties or unnecessary hardships that prevent compliance with the
29	riparian buffer protection requirements. Practical difficulties or unnecessary hardships
30	shall be evaluated in accordance with all of the following:
31	(i) If the applicant complies with the provisions of this Rule, he or she can secure no
32	reasonable return from, nor make reasonable use of, his or her property. Merely
33	proving that the variance would permit a greater profit from the property shall not
34	be considered adequate justification for a variance. Moreover, the local
35	government, or the Director for the cases involving activities listed in Item (3) of
36	this Rule, shall consider whether the variance is the minimum possible deviation
37	from the terms of this Rule that shall make reasonable use of the property possible;

1		(11) The hardship results from application of this Rule to the property rather than from	
2		other factors such as deed restrictions or other hardship;	
3		(iii) The hardship is due to the physical nature of the applicant's property, such as its	
4		size, shape, or topography, and is unique to the applicant's property rather than	
5		the result of conditions that are widespread. If other properties are equally subject	
6		to the hardship created in the restriction, then granting a variance would be a	
7		special privilege denied to others, and would not promote equal justice; and	
8		(iv) The applicant did not cause the hardship by knowingly or unknowingly violating	
9		this Rule.	
10		(b) The variance is in harmony with the general purpose and intent of the State's riparian	
11		buffer protection requirements and preserves its spirit; and	
12		(c) In granting the variance, the public safety and welfare have been assured, water quality	
13		has been protected, and substantial justice has been done.	
14	(13)	MINOR VARIANCES. A minor variance request pertains to activities that are proposed to impact	
15		only Zone 2 or any portion of Zone 2 of the riparian buffer. Minor variance requests shall be	
16		reviewed and approved based on the criteria in Sub-Item (12)(a) of this Rule by the local government	
17		pursuant to G.S. 153A Article 18, or G.S. 160A Article 19. The local government may attach	
18		conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer	
19		protection program. Request for appeals to decisions made by the local government shall be made	
20		through the local government's appeals process, or to the Director for determinations involving	
21		activities listed in Item (3) of this Rule. The Director's decision is subject to review as provided in	
22		G.S. 150B Articles 3 and 4.	
23	(14)	MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact	
24		any portion of Zone 1 of the riparian buffer. If the local government, or the Director for the cases	
25		involving activities listed in Item (3) of this Rule, has determined that a major variance request	
26		meets the requirements in Sub-Item (12)(a) of this Rule, then itshall prepare a preliminary finding	
27		and submit it to the Commission for approval. Within 90 days after receipt by the local government,	
28		or the Director for the cases involving activities listed in Item (3) of this Rule, the Commission shall	
29		review preliminary findings on major variance requests. The Commission may choose to approve,	
30		approve with conditions, or deny the major variance.	Commented [HK195]: No effect – Moved to Rule .0611
31	<del>(15)</del> (1	1)MITIGATION. Persons who wish to undertake uses designated as allowable upon authorization	
32		with mitigation as defined in Sub-Item (10)(a)(iii) of this Rule or allowable with exception as	
33		defined in Sub-Item (10)(a)(v) of this Rule shall meet the following requirements in order to proceed	Commented [HK196]: No effect – clarification and updated
34		with their proposed use.	citations
35		(a) Obtain a determination of "no practical alternatives" to the proposed use an Authorization	
36		Certificate pursuant to tem (11) of this Rule .0611 of this Section; and	Commented [HK197]: No effect – updated terminology
			Commented [HK198]: No effect – updated citation

1		(b)	Obtain wi	ritten approval for a mitigation proposal pursuant to 15A NCAC 02B .0252.Rule	
2			.0295 of S	Subchapter 02B.	
3	(16)	REQUI	REMENTS	SPECIFIC TO FOREST HARVESTING. The following requirements shall	
4		apply fo	or forest ha	rvesting operations and practices:	
5		<del>(a)</del>	The follow	wing measures shall apply in the entire riparian buffer:	
6			(i) I	ogging decks and sawmill sites shall not be placed in the riparian buffer;	
7			(ii)	Access roads and skid trails shall be prohibited except for temporary and	
8			ŧ	permanent stream crossings established in accordance with 15A NCAC 011.0203.	
9			7	Temporary stream crossings shall be permanently stabilized after any site	
10			é	listurbing activity is completed;	
11			(iii)	Fimber felling shall be directed away from the stream or water body;	
12			(iv) S	Skidding shall be directed away from the stream or water body and shall be done	
13			i	n a manner that minimizes soil disturbance and prevents the creation of channels	
14			$\epsilon$	o <del>r ruts;</del>	
15			(v) I	ndividual trees may be treated to maintain or improve their health, form or vigor;	
16			(vi) I	Harvesting of dead or infected trees or other timber cutting techniques necessary	
17			ŧ	o prevent or control extensive tree pest and disease infestation shall be allowed.	
18			7	These practices must be approved by the Division of Forest Resources for a	
19			S	specific site pursuant to 15A NCAC 011 .0100 .0209. The Division of Forest	
20			Į	Resources must notify the local government of all approvals;	
21			(vii) I	Removal of individual trees that are in danger of causing damage to structures or	
22			ł	numan life shall be allowed;	
23			(viii) N	Natural regeneration of forest vegetation and planting of trees, shrubs, or ground	
24			e	cover plants to enhance the riparian buffer shall be allowed provided that soil	
25			é	listurbance is minimized. Plantings shall consist primarily of native species;	
26			(ix) I	High intensity prescribed burns shall not be allowed;	
27			(x) /	Application of fertilizer shall not be allowed except as a one time use that is	
28			r	necessary for permanent stabilization; and	
29			(xi) I	Broadcast application of fertilizer or herbicides to the adjacent forest stand shall	
30			ŧ	be conducted so that the chemicals are not applied directly to or allowed to drift	
31			i	nto the riparian buffer;	
32		<del>(b)</del>	In Zone	1, forest vegetation shall be protected and maintained. Selective harvest as	
33			provided	for below is allowed on forest lands that have a deferment for use value under	
34			forestry in	a accordance with G.S. 105 277.2 through 277.6 or on forest lands that have a	
35			forest management plan prepared or approved by a registered professional forester. Copies		
36			of either	the approval of the deferment for use value under forestry or the forest	

Commented [HK199]: No effect – clarification

Commented [HK200]: no effect – update citation

1	manag	rement plan shall be produced upon request. For such forest lands, selective harvest	
2	is allo	wed in accordance with the following:	
3	(i)	Tracked or wheeled vehicles are permitted for the purpose of selective timber	
4		harvesting where there is no other practical alternative for removal of individual	
5		trees provided activities comply with forest practices guidelines for water quality	
6		as defined in Rule 15A NCAC 01I .0101 through .0209, and provided no	
7		equipment shall operate within the first 10 feet immediately adjacent to the stream	
8		except at stream crossings designed, constructed and maintained in accordance	
9		with Rule 15A NCAC 011.0203;	
10	<del>(ii)</del> —	Soil disturbing site preparation activities are not allowed; and	
11	<del>(iii)</del> —	Trees shall be removed with the minimum disturbance to the soil and residual	
12		vegetation: and	
13	(c) In add	ition to the requirements of (b) in this Item, the following provisions for selective	
14	harves	ting shall be met:	
15	<del>(i)</del>	The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be	
16		undisturbed except for the removal of individual high value trees as defined	
17		provided that no trees with exposed primary roots visible in the streambank be cut	
18		unless listed as an exempt activity under Vegetation Management in the Table of	
19		Uses_(9) of this Rule.	
20	<del>(ii)</del> —	In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than	
21		five inches DBH may be cut and removed. The reentry time for harvest shall be	
22		no more frequent than every 15 years, except on forest plantations where the	
23		reentry time shall be no more frequent than every five years. In either case, the	
24		trees remaining after harvest shall be as evenly spaced as possible; and	
25	<del>(iii)</del> —	In Zone 2, harvesting and regeneration of the forest stand shall be allowed in	
26		accordance with 15A NCAC 011.0100 through .0209 as enforced by the Division	
27		of Forest Resources.	Commented [HK201]: No effect – Moved to Rule .0612
28	(17)(12) RULE IMPLE	MENTATION. This Rule shall be implemented as follows:	
29	(a) Local	governments with land use authority within the Randleman Lake water supply	
30	waters	hed shall establish riparian buffer protection programs to meet or exceed the	
31	minim	um requirements of this Rule and shall comply with all requirements set forth in	Commented [HK202]: No effect – Moved from Item (1) above
32	G.S. 1	43-214.23A	Commented [HK203]: No effect – added to comply with SL
33	<u>(i)</u>	Local governments shall adopt and enforce this Rule through local ordinances.	2015-246  Commented [HK204]: No effect – moved from Item (3) above
34	<u>(ii)</u>	Local governments shall appoint a Riparian Buffer Protection Administrator who	Commented [TRZO4]. No effect – moved from fiem (3) above
35		shall coordinate the implementation and enforcement of the program. The	
36		Administrator shall attend an initial training session by the Division and be	
37		certified to make on-site determinations pursuant to G.S. 143-214.25A. The	

Administrator shall ensure that local government staff working directly with the 2 program receive training to understand, implement and enforce the program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. At 3 any time that a local government does not have a certified individual retained on staff to make on-site determinations pursuant to G.S. 143-214.25A, they shall 5 6 immediately notify the Division and indicate a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division 8 to provide on-site determinations until a new certified staff member is secured by the local government. Commented [HK205]: No effect – Moved from Item (3) above 10 (b) Local governments shall apply the requirements of this Rule throughout their jurisdictions within the Randleman watershed except where the Division shall exercise jurisdiction. The 11 Division shall implement applicable requirements in lieu of local governments for: 12 13 Activities conducted under authority of the State; 14 (ii) Activities conducted under the authority of the United States; 15 (iii) Activities conducted under the authority of multiple jurisdictions; 16 (iv) Activities conducted under the authority of local units of government; Forest harvesting activities described in Rule .0612 of this Section; and 17 (v) 18 Agricultural activities. Commented [HK206]: No effect – Moved from Item (2) above The Division shall regularly audit local programs to ensure local programs are being 19 (c) implemented and enforced in keeping with the requirements of this Rule and Rule .0611 20 2.1 of this Section. Commented [HK207]: No effect -consistent with other buffer rules; audits have already been conducted Local governments shall maintain on-site records for a minimum of five years, and shall 22 (d) furnish a copy of these records to the Division within 30 calendar days of receipt of a 23 written request for them. Local programs' records shall include the following: 24 25 (i) A copy of all exception requests; (ii) Findings of fact on all exception requests; 26 27 (iii) Results of all exception proceedings; A record of complaints and action taken as a result of complaints; 28 (iv) 29 (v) Records for on-site determinations as described in Item (4) of this Rule; and 30 (vi) Copies of all requests for authorization, records approving authorization and 31 Authorization Certificates. **Commented [HK208]:** No effect –consistent water supply watershed requirements so LGs already doing this per water supply. If a local government fails to adopt or adequately implement its program as specified in 32 (e) 33 this Rule, the Division may take appropriate enforcement action as authorized by statute 34 and may choose to assume responsibility for implementing that program until such time as 35 it determines that the local government is prepared to comply with its responsibilities. Commented [HK209]: No effect - consistent with water supply watershed statute 143-214.5

1	<u>(f)</u>	The Commission may delegate its duties and powers for granting and rescinding local	
2		government delegation of the Neuse River Basin riparian buffer protection requirements,	
3		in whole or in part, to the Director.	Commented [HK210]: less stringent – consistent with other buffer rules
4	<del>(a)</del>	For activities listed in Item (3) of this Rule, the Division shall implement the requirements	bullet fules
5		of this Rule as of its effective date;	
6	<del>(b)</del>	Within six months of the effective revision date of this Rule, local governments shall	
7		review, revise as necessary, and submit a local program including all necessary ordinances	
8		to the Division for review. The local program shall detail local government buffer program	
9		implementation including but not limited to such factors as a method for resolution of	
10		disputes involving Authorization Certificate or variance determinations, a plan for record	
11		keeping, and a plan for enforcement. Local governments shall use the Division's	
12		publication, Identification Methods for the Origins of Intermittent and Perennial Streams,	
13		y 3.1 February 28, 2005 available at	
14		http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminationsto	
15		establish the existence of streams;	
16	(c)	Within six months of the Division approval of the revised local ordinance, the local	
17		government shall implement their revised buffer program;	
18	(d)	Upon implementation, subject local governments shall submit annual reports to the	
19		Division summarizing their activities in implementing each of the requirements in Item (4)	
20		of this Rule;	
21	(e)	The Division shall regularly audit local programs to ensure rule implementation; and	
22	<del>(f)</del>	If a local government fails to adopt or adequately implement its program as called for in	
23		this Rule, the Division may take appropriate enforcement action as authorized by statute,	
24		and may choose to assume responsibility for implementing that program until such time as	
25		it determines that the local government is prepared to comply with its responsibilities.	
26	(18) Where	the standards and management requirements for riparian areas are in conflict with other laws,	
27	regulat	ions, and permits regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest	
28	harves	ting, surface mining, land disturbance activities, or other environmental protection areas, the	
29	more r	estrictive shall apply.	Commented [HK211]: No effect – Reorganized
30	(19)(13) WATE	R SUPPLY REQUIREMENTS. The existing water supply requirement in Rule .0216(3)(b)	Commented [HK212]: No effect – added header
31	of this	Section that stipulates a 100 foot vegetated buffer, adjacent to perennial streams, for all new	
32	develo	pment activities which utilize the high density option, applies to the entire Randleman Lake	
33	waters	ned. The first 50 feet of these riparian areas on either side of these waters must also be	
34	protect	ed in accordance with all the requirements of this Rule. Local governments subject to this	
35	Rule n	nay choose to implement more stringent requirements, including requiring additional buffer	
36	width.		Commented [HK213]: No effect – Moved from Item (1) above

1 (20)(14) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does
2 not preclude the requirement to comply with all other federal, state and local regulations and laws.
3
4 History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);
5 Eff. April 1, 1999;
6 Amended Eff. June 1, 2010.
7
8

15A NCAC 02B .0259 is proposed for amendment as follows: 1 2 15A NCAC 02B -0259.0734 TAR-PAMLICO RIVER BASIN: NUTRIENT SENSITIVE WATERS 3 Commented [HK1]: no effect - update citation MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF 4 EXISTING RIPARIAN BUFFERS 5 6 The following is the management strategy for maintaining and protecting existing riparian buffers in the Tar-Pamlico 7 River Basin. 8 (1) PURPOSE. The purpose of this Rule shall be to maintain and protect and preserve existing riparian buffers, to maintain their nutrient removal functions, buffers in the entire-Tar-Pamlico River Basin, 9 whose surface waters are described in the Schedule of Classifications, 15A NCAC 02B .0316. Basin 10 to maintain their nutrient removal functions. Terms used in this Rule shall be as defined in Rule 11 Commented [HK2]: no effect - grammar .0610 in Subchapter 02B. 12 Commented [HK3]: No effect - moved definitions to .0610 13 DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows: 14 (a) "Channel" means a natural water carrying trough cut vertically into low areas of the land 15 surface by erosive action of concentrated flowing water or a ditch or canal excavated for 16 the flow of water. (current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 011.0102) 17 (b) "DBH" means Diameter at Breast Height of a tree, which is measured at 4.5 feet above 18 ground surface level. 19 "Ditch or canal" means a man-made channel other than a modified natural stream 20 2.1 constructed for drainage purposes that is typically dug through inter-stream divide areas. 22 A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may 23 exhibit hydrological and biological characteristics similar to perennial or intermittent 24 streams 25 (d) "Ephemeral (stormwater) stream" means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large 26 27 precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source 28 29 of water. An ephemeral stream typically lacks the biological, hydrological, and physical 30 characteristics commonly associated with the continuous or intermittent conveyance of 31 water. 32 "Forest plantation" means an area of planted trees that may be conifers (pines) or 33 hardwoods. On a plantation, the intended crop trees are planted rather than naturally 34 regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into 35 the site.

1		(f) "High Value Tree" means a tree that meets or exceeds the following standards: for pine	
2		species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods	
3		and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter.	
4		(g) "Intermittent stream" means a well-defined channel that contains water for only part of the	
5		year, typically during winter and spring when the aquatic bed is below the water table. The	
6		flow may be heavily supplemented by stormwater runoff. An intermittent stream often	
7		lacks the biological and hydrological characteristics commonly associated with the	
8		conveyance of water.	
9		(h) "Modified natural stream" means an on-site channelization or relocation of a stream	
10		channel and subsequent relocation of the intermittent or perennial flow as evidenced by	
11		topographic alterations in the immediate watershed. A modified natural stream must have	
12		the typical biological, hydrological, and physical characteristics commonly associated with	
13		the continuous conveyance of water.	
14		(i) "Perennial stream" means a well-defined channel that contains water year round during a	
15		year of normal rainfall with the aquatic bed located below the water table for most of the	
16		year. Groundwater is the primary source of water for a perennial stream, but it also carries	
17		stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and	
18		physical characteristics commonly associated with the continuous conveyance of water.	
19		(j) "Perennial waterbody" means a natural or man made basin that stores surface water	
20		permanently at depths sufficient to preclude growth of rooted plants, including lakes,	
21		ponds, sounds, non-stream estuaries and ocean. For the purpose of the State's riparian	
22		buffer protection program, the waterbody must be part of a natural drainageway (i.e.,	
23		connected by surface flow to a stream).	
24		(k) "Stream" means a body of concentrated flowing water in a natural low area or natural	
25		channel on the land surface.	
26		(l) "Surface waters" means all waters of the state as defined in G.S. 143-212 except	
27		underground waters.	
28		(m) "Tree" means a woody plant with a DBH equal to or exceeding five inches.	Commented [HK4]: no effect – moved definitions to .0610
29	<u>(2)(3)</u>	APPLICABILITY. This Rule applies to all landowners and other persons including local	
30		governments, state and federal entities conducting activities within the riparian buffers as described	
31		in Item (3) of this Rule in the Tar-Pamlico River Basin, excluding Ocracoke Island.	Commented [HK5]: no effect - clarification
32	<u>(3)</u>	BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated	Commented [HK6]: less stringent - excluding Ocracoke Island
33		buffers:	from the buffer rules as it's downstream of the impairment.  Commented [HK7]: No effect – reorganization
34		(a) A surface water shall be subject to this Rule if the feature is approximately shown on any	Commented [1107]. No chect - reorganization
35		of the following references:	

1		(i) The most recent version of the published manuscript of the soil survey map that	
2		shows stream layers prepared by the Natural Resources Conservation Service of	
3		the United States Department of Agriculture;	
4		(ii) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle	
5		topographic maps prepared by the United States Geologic Survey (USGS); or	Commented [HK8]: No effect – moved from below
6		(iii) Other maps approved by the Geographic Information Coordinating Council and	
7		by the Environmental Management Commission as more accurate than those	
8		identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps may be	
9		submitted to the Division for review and recommendation to the Environmental	
10		Management Commission. Prior to recommendation to the Environmental	
11		Management Commission, the Division shall issue a 30-calendar day public	
12		notice through the Division's Mailing List in accordance with 15A NCAC 02H	
13		.0503. Division staff shall present recommendations including comments	
14		received during the public notice period to the Environmental Management	
15		Commission for a final decision. Maps approved under this Sub-Item shall not	
16		apply to projects that are existing and ongoing within the meaning of this Rule as	
17		set out in Item (6) of this Rule;	Commented [HK9]: less stringent - Added flexibility for a 3 <sup>rd</sup>
18	<u>(b)</u>	This Rule shall apply to activities conducted within 50-foot wide riparian buffers directly	map to be used – language from SL 2009-484 for Jordan buffer rules
19		adjacent to surface waters in the Tar-Pamlico River Basin (intermittent streams, perennial	Commented [HK10]: No effect - clarification
20		streams, lakes, ponds, reservoirs and estuaries), excluding wetlands;	Commented [HK11]: No effect - clarification
21	(c)	Except as described in Sub Item (4)(a)(iii) of this Rule, wetlands Wetlands adjacent to	Commented [HK12]: No effect - punctuation
22		surface waters or within 50 feet of surface waters shall be considered as part of the riparian	Commented [HK13]: No effect - reorganization
23		buffer but are regulated pursuant to 15A NCAC 02H -0506.0506:	Commented [HK14]: No effect - punctuation
24	(d)	Stormwater runoff from activities conducted outside the riparian buffer shall comply with	
25		Item (9) of this Rule;	Commented [HK15]: No effect - reorganization
26		The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this	
27		Paragraph. For the purpose of this Rule, a surface water shall be present if the feature is	
28		approximately shown on either the most recent version of the soil survey map prepared by	
29		the Natural Resources Conservation Service of the United States Department of	
30		Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle	
31		topographic maps prepared by the United States Geologic Survey (USGS). Riparian	
32		buffers adjacent to surface waters that do not appear on either of the maps shall not be	
33		subject to this Rule. Riparian buffers adjacent to surface waters that appear on the maps	
34		shall be subject to this Rule unless one of the following applies.	Commented [HK16]: No effect – moved to (3)(a) above
35	(e)	Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;	
36	(f)	A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of	
37		this Rule; and	Commented [HK17]: No effect - reorganization

1		No new clearing, grading or development shall take place nor shall any new building	
2		permits be issued in violation of this Rule.	Commented [HK18]: No effect – Clarification
3	(a)(4)	EXEMPTION WHEN AN ON-SITE DETERMINATION SHOWS THAT SURFACE WATERS	
4		ARE NOT PRESENT. DETERMINATION. When a landowner or other affected party believes that	Commented [HK19]: No effect - reoganization
5		the maps listed in Sub-Items (3)(a) have inaccurately depicted surface waters, waters or the specific	Commented [HK20]: no effect - clarification
6		origination point of a stream, or the specific origination point of a stream is in question or unclear,	Commented [HK21]: No effect - clarification
7		he or she shall consult request the Division or the appropriate delegated local authority. Upon	Commented [HK22]: No effect - grammar
8		request, the Division or delegated local authority shall Authority to make an on-site	
9		determinations.determination. On-site determinations shall be made by Authority staff that are	Commented [HK23]: No effect - grammar
10		certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General	
11		Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture	
12		and Consumer Services can make on-site determinations for forest harvesting operations and	
13		practices. On-site determinations shall expire five years from the date of the determination. Any	Commented [HK24]: No effect – incorporating statute
14		disputes over on-site determinations shall be referred to the Director in writing within 60 calendar	Commented [HK25]: No effect – Codifying policy. Consistent
15		days of written notification from the Authority. writing. A determination of the Director as to the	with timeframe of Corps determinations.  Commented [HK26]: No effect – Codifying policy. Consistent
16		accuracy or application of the maps The Director's determination is subject to review as provided in	with timeframes for appeal in G.S. 150B.
17		Articles 3 and 4 of G.S. 150B.	Commented [HK27]: No effect - grammar
18	(5)	EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps	Commented [HK28]: No effect – update citation
19		listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination	Commented [HK29]: No effect – added header
20		shows that they fall into one of the following categories categories:	Commented [HK30]: no effect - clarification  Commented [HK31]: No effect - punctuation
21		(i)(a) Ditches and manmade conveyances other than modified natural streams unless constructed	Commented [11831]. No enect - punctuation
22		for navigation or boat access.	
23		(ii)(b) Manmade ponds and lakes that are located outside natural drainage ways.not fed by an	
24		intermittent or perennial stream nor have a direct discharge point to an intermittent or	
25		perennial stream.	Commented [HK32]: No effect – Codifying policy
26		(iii)(c) Ephemeral (stormwater) streams.	
27		(d) The absence on the ground of a corresponding perennial waterbody, intermittent	
28		waterbody, lake, pond or estuary.	Commented [HK33]: No effect - reorganization
29	<del>(b)</del> (6)	EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not	
30		apply to portions of the riparian buffer where a use is existing and ongoing according to the	
31		following:ongoing.	Commented [HK34]: no effect - clarification
32		(i)(a) A use shall be considered existing ifif:	Commented [HK35]: no effect - punctuation
33		(i) it was present within the riparian buffer as of January 1, 2000.2000 and has	
34		continued to exist since that time;	Commented [HK36]: No effect - clarification
35		(ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or	
36		(iii) It was conducted and maintained pursuant to an Authorization Certificate or	
37		Variance issued by the Authority.	Commented [HK37]: No effect - clarification

1		(b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings,	Commented [HK38]: no effect - clarification
2		industrial facilities, commercial areas, transportation facilities, maintained lawns, lawns	
3		(i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation	Commented [HK39]: no effect - clarification
4		management has occurred within the last ten years) utility lines line corridors and on-site	Commented [HK40]: No effect – clarification and codifying
5		sanitary sewage systems, any of which involve either specific periodic	policy
6		management of vegetation or displacement of vegetation by structures or regular activity.	Commented [HK41]: No effect – clarification
7		(c) Only the portion of the riparian buffer that contains the footprint of the existing and	
8		ongoing use is exempt from this Rule.	Commented [HK42]: no effect - clarification
9		(d) Change of ownership through purchase or inheritance is not a change of use.	Commented [HK43]: No effect – clarification
10		(e) Activities necessary to maintain existing and ongoing uses are allowed provided that the	Commented [HK44]: no effect - clarification
11		site remains similarly vegetated, no built upon area is added within the riparian buffer	
12		where it did not exist prior to January 1, 2000, no additional vegetation is removed from	
13		Zone 1, except that grazed or trampled by livestock, and the site is in compliance with	
14		Item (9) of this Rule.existing diffuse flow is maintained. Grading and revegetating Zone	Commented [HK45]: No effect – clarification
15		2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the	
16		ground is stabilized and existing diffuse flow is maintained.	Commented [HK46]: no effect – language repeated below
17		This Rule shall apply at the time an existing and ongoing use is changed to another use.	
18		Change of use shall involve the initiation of any activity not defined as existing and	
19		ongoing in Sub-Items (6)(a) through (6)(e) of this Rule.	Commented [HK47]: No effect – clarification
20		(ii) At the time an existing use is proposed to be converted to another use, this Rule shall apply.	
21		An existing use shall be considered to be converted to another use if any of the following	
22		applies:	Commented [HK48]: No effect – moved to (6) above
23		(A) Impervious surface is added to the riparian buffer in locations where it did not exist	
24		previously.	
25		(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.	
26		(C) A lawn within the riparian buffer ceases to be maintained.	Commented [HK49]: No effect – removed
27	(7)	EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES.	
28		This Rule shall not apply to a freshwater pond if all of the following conditions are met:	
29		(a) The property on which the pond is located is used for agriculture as that term is defined in	
30		G.S. 106-581.1.	
31		(b) Except for this Rule, the use of the property is in compliance with all other water quality	
32		and water quantity statutes and rules applicable to the property before July 22, 1997.	
33		(c) The pond is not a component of an animal waste management system as defined in G.S.	
34		143-215.10B (3).	Commented [HK50]: No effect – added per SL 2013-413
35	<del>(4)</del> (8)	ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as	
36	. ,——	follows:	
		5 of 26	

1		(a) Zone 1	shall consist of a vegetated area that is undisturbed except for uses provided for in	
2		Item (+	6)(10) of this Rule. The location of Zone 1 shall be as follows:	Commented [HK51]: no effect – update citation
3		(i)	For intermittent and perennial streams, Zone 1 shall begin at the most landward	
4			limit of the top of bank or the rooted herbaceous vegetation and extend landward	
5			a distance of 30 feet on all sides of the surface water, stream measured horizontally	Commented [HK52]: no effect - clarification
6			on a line perpendicular to the surface water.stream (where an intermittent or	
7			perennial stream begins or ends, including when it goes underground, enters or	
8			exits a culvert, or enters or exits a wetland, the required distance shall be measured	
9			as a radius around the beginning or the end).	Commented [HK53]: No effect – codifying policy
10		(ii)	For ponds, lakes and reservoirs located within a natural drainage way, Zone 1	
11			shall begin at the most landward limit of the normal water level or the rooted	Commented [HK54]: No effect – clarification
12			herbaceous vegetation and extend landward a distance of 30 feet, measured	Commented [HK55]: No effect – removed for simplicity
13			horizontally on a line perpendicular to the surface water.	
14		(iii)	For surface waters within the 20 Coastal Counties (defined in 15A NCAC 02B	
15			.0202)Rule .0202 of this Subchapter) and within the jurisdiction of the Division	Commented [HK56]: no effect – updated citation
16			of Coastal Management, Zone 1 shall begin at the most landward limit of:	
17		<del>(A)</del>	the normal high water level;	
18		<del>(B)</del>	the normal water level; or	
19		<del>(C)</del>	the landward limit of coastal wetlands as defined by the Division of	
20		Coasta	<del>d Management;</del>	
21			of the normal high water level or the normal water level and extend landward a	Commented [HK57]: No effect – edited per SL 2015-246
22			distance of 30 feet, measured horizontally on a line perpendicular to the surface	
23			water, whichever is more restrictive.	
24		(b) Zone 2	2 shall consist of a stable, vegetated area that is undisturbed except for activities and	
25		uses p	rovided for in Item (6)(10) of this Rule. Grading and revegetating Zone 2 is allowed	Commented [HK58]: no effect – update citation
26		provid	ed that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin	
27		at the	outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line	
28		perper	dicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet	
29		on all	sides of the surface water.	
30	(5)	DIFFUSE FLC	W REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian	
31		buffer by disper	rsing concentrated flow and reestablishing vegetation.	
32		(a) Conce	ntrated runoff from new ditches or manmade conveyances shall be converted to	
33		diffuse	e flow before the runoff enters Zone 2 of the riparian buffer.	
34		(b) Period	ic corrective action to restore diffuse flow shall be taken if necessary to impede the	
35		format	ion of erosion gullies.	Commented [HK59]: less stringent - removed diffuse flow
36	(9)	STORMWATE	R RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances	requirement; instead provide options for stormwater discharges.
37		include drainag	e ditches, roadside ditches, and stormwater conveyances. The following stormwater	
			· · · · · · · · · · · · · · · · · · ·	
			6 of 36	

1	conveyances through the riparian buffer are either deemed allowable or allowable upon	
2	authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through	
3	the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through	
4	the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item	
5	(10)(a)(v) of this Rule.	Commented [HK60]: less stringent - Removed diffuse flow
6	(a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this rule:	requirement; instead provide options for stormwater discharges  Commented [HK61]: No effect – Organization
7	(i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H	Commenced [Title 1]. Twenteet Organization
8	.1002, when the Primary SCM is designed to treat the drainage area to the	
9	conveyance and that comply with a stormwater management plan reviewed and	
10	approved under a state stormwater program or a state-approved local government	
11	stormwater program;	Commented [HK62]: less stringent - New use – allows for
12	(ii) New stormwater flow to existing drainage conveyances provided that the addition	DWR to accept local government review of a SMP without having to review for meeting diffuse flow
13	of new flow does not result in the need to alter the conveyance.	Commented [HK63]: No change – moved from table
14	(b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this	
15	Rule:	Commented [HK64]: No effect – Organization
16	(i) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H	
17	.1002 when the Primary SCM is provided to treat the drainage area to the	
18	conveyance but are not approved under a state stormwater program or a state-	
19	approved local government stormwater program;	Commented [HK65]: No change – moved from table
20	New drainage conveyances when the drainage area to the conveyance is	
21	demonstrated via approved nutrient calculation methodologies to meet the	
22	nutrient loading goals as outlined in 15A NAC 02B .0258(c)(1)(A) and (B);	Commented [HK66]: less stringent - New use
23	(iii) New drainage conveyances when the flow rate of the conveyance is less than 0.5	
24	cubic feet per second during the peak flow from the 0.75 inch per hour storm;	Commented [HK67]: less stringent - New use
25	(iv) New stormwater runoff that has been treated through a level spreader-filter strip	
26	that complies with 15A NCAC 02H .1059;	Commented [HK68]: No change – from diffuse flow language
27	(v) Realignment of existing roadside drainage conveyances applicable to publicly	above
28	funded and maintained linear transportation facilities when retaining or improving	
29	the design dimensions provided that no additional travel lanes are added and the	
30	minimum required roadway typical section is used based on traffic and safety	
31	considerations:	Commented [HK69]: less stringent - New use
32	(vi) Realignment of existing drainage conveyances retaining or improving the design	
33	dimensions provided that the size of the drainage area and the percent built-upon	
34	area within the drainage area remain the same;	Commented [HK70]: less stringent - New use
35	(vii) New or altered drainage conveyances applicable to publicly funded and	
36	maintained linear transportation facilities provided that SCMs, or BMPs from the	
37	NCDOT Stormwater Best Management Practices Toolbox, are employed:	Commented [HK71]: less stringent - New Use

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1	(viii)	New drainage conveyances applicable to publicly funded and maintained linear	
2	<u>(·)</u>	transportation facilities that do not provide a stormwater management facility due	
3		to topography constraints provided other measures are employed to protect	
4		downstream water quality to the maximum extent practical:	Commented [HK72]: less stringent - New use
5	(ix)	New drainage conveyances where the drainage area to the conveyance has no new	Commence [11(72], less sunigent - New use
6	()	built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is	
7		necessary for bypass of existing drainage only.	Commented [HK73]: less stringent - New use
8	(6)(10) TABLE OF USI	S. Uses within the riparian buffer, or outside the buffer with hydrological impacts	Commence [ IN 7 3]. Icss sunigent - New use
9	· /	buffer, shall be designated as deemed allowable, allowable upon authorization,	
10	•	nitigation upon authorization, or prohibited.	
11		al new uses shall have the following requirements:	Commented [HK74]: No effect – Moved from (7) below
12	(i)	DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items	Commented [HK75]: No effect – Update terminology
13	· · · · · ·	(9)(a) and (10)(b) of this Rule may occur within the riparian buffer. Deemed	
14		allowable uses shall be designed, constructed and maintained to minimize	
15		vegetation and soil disturbance and to provide the maximum water quality	
16		protection practicable, including construction, monitoring, and maintenance	
17		activities. In addition, deemed allowable uses shall meet the requirements listed	
18		in Sub-Item (10)(b) of this Rule for the specific use.	Commented [HK76]: No effect – moved from (7) below
19	<u>(ii)</u>	ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon	Commented [HK77]: No effect – Update terminology
20		authorization in Sub-Items (9)(b) and (10)(b) of this Rule require a written	
21		Authorization Certificate from the Authority for impacts within the riparian buffer	
22		provided that there are no practical alternatives to the requested use pursuant to	
23		Rule .0611 of this Section.	Commented [HK78]: No effect – moved from (7) below
24	(iii)	ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses	Commented [HK79]: No effect – Update terminology
25		designated as allowable with mitigation allowable upon authorization in Sub-Item	
26		(10)(b) of this Rule require a written Authorization Certificate from the Authority	
27		for impacts within the riparian buffer provided that there are no practical	
28		alternatives to the requested use pursuant to Rule .0611 of this Section and an	
29		appropriate mitigation strategy has received written approval pursuant to Item	
30		(11) of this Rule.	Commented [HK80]: No effect – moved from (7) below
31	(iv)	PROHIBITED. Uses designated as prohibited in Sub-Item (10)(b) of this Rule	
32		may not proceed within the riparian buffer unless a Variance is granted pursuant	
33		to Rule .0226 of this Section. Mitigation may be required as a condition of	
34		variance approval.	Commented [HK81]: No effect – Changed to variance process set out in Rule .0226
35	(v)	ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable,	set out in Rule .0226
36		allowable upon authorization, allowable with mitigation upon authorization or	
37		prohibited in Sub-Item (10)(b) of this Rule require a written Authorization	

9

Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Item (11) of this Rule.

The following chart table sets out the potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and designates them their designation under this Rule as exempt deemed allowable allowable upon authorization, or allowable with mitigation, or prohibited mitigation upon authorization.:

The requirements for each category are given in Item (7) of this Rule.

Exempt

Allowable Allowable Prohi

Commented [HK82]: less stringent - New category - instead of deeming all activities not listed in the table as "prohibited" they will go through buffer authorization process but still have to meet hardships.

Commented [HK83]: No effect – update terminology

 $\textbf{Commented [HK84]:} \ \operatorname{No \ effect} - \operatorname{grammar}$ 

Commented [HK85]: No effect - clarification

Commented [HK86]: No effect - grammar

Commented [HK87]: No effect - update terminology

Commented [HK88]: No effect – update terminology

Commented [HK89]: No effect – update terminology

Commented [HK90]: No effect – Moved to (a) above

Commented [HK91]: No effect – update terminology

Commented [HK92]: No effect – update terminology

Commented [HK93]: No effect – update terminology

					- 1
	Deemed	<u>Upon</u>	with	bited	
	Allowable	Authorizat	Mitigation		
		ion	Upon		
			Authorizat		
			ion		
Airport facilities:					
Vegetation removal activities necessary to comply with	<u>X</u>				
Federal Aviation Administration requirements (e.g. line					
of sight requirements) provided the disturbed areas are					
stabilized and revegetated					
Airport facilities that impact equal to or less than 150		X			
linear feet or one-third of an acre of riparian buffer					
Airport facilities that impact greater than 150 linear feet			X		
or one-third of an acre of riparian buffer					
Archaeological activities	X				
Bridges					1
• Impact equal to or less than one-tenth of an acre of	<u>X</u>				
<u>riparian buffer</u>					
• Impact greater than one-tenth of an acre of riparian		X			
<u>buffer</u>					
Dam maintenance activities					
Dam maintenance activities that do not cause additional	X				
riparian buffer disturbance beyond the footprint					
Dam maintenance activities that do cause additional					
riparian buffer disturbance beyond the footprint of the					
existing dam		<u>X</u>			
	1	1	1	1	

Commented [HK94]: No effect – Codifying policy

 $\textbf{Commented [HK95]:} \ \ No \ effect-Removed \ linear \ feet; \ will \ just \ reference \ square \ feet \ for \ east \ of \ implementation$ 

**Commented [HK96]:** No effect – Removed linear feet; will just reference square feet for east of implementation

Commented [HK97]: less stringent - Added new use to allow bridges with less than 1/10 to be deemed allowable; consistent with road impacts

Commented [HK98]: no effect -authorization already required

	Exempt	Allowable	Allowable	Prohi	l	
	Deemed	Upon	with	bited		
				oned		
	Allowable	Authorizat	Mitigation			Commented [HK91]: No effect – update terminology
		ion	<u>Upon</u>			Commented [HK92]: No effect – update terminology
			Authorizat			
			ion			Commented [HK93]: No effect – update terminology
Drainage ditches, roadside ditches and stormwater outfalls						
through riparian buffers:						
<ul> <li>Existing drainage ditches, roadside ditches, and</li> </ul>	X					
stormwater outfalls provided that they are managed to						
minimize the sediment, nutrients and other pollution						
that convey to waterbodies						
New drainage ditches, roadside ditches and stormwater		X				
outfalls provided that a stormwater management facility						
is installed to control nitrogen and attenuate flow before						
the conveyance discharges through the riparian buffer						
New drainage ditches, roadside ditches and stormwater						
outfalls that do not provide control for nitrogen before				X		
discharging through the riparian buffer						
Excavation of the streambed in order to bring it to the						
same elevation as the invert of a ditch					_	Commented [HK99]: No effect – Moved to Item (9) above
same elevation as the invert of a diten				X		Commented [HK99]: No effect – Moved to frem (9) above
Drainage of a pond in a natural drainage way subject to Item	X					
(4) of this Rule provided that a new riparian buffer that						Commented [HK100]: No effect - clarification
meets the requirements of Items (9)(4) and (5)(10) of this						Commenced [Increo]. To enece charmeanon
Rule-is established adjacent to the new channel by natural						
regeneration or planting, within 50 feet of any stream which						
naturally forms or is constructed within the drained pond						
area. Drained ponds shall be allowed to naturalize for a						
minimum of six months from completion of the draining						
activity before a stream determination is conducted pursuant						
to Item (4) of this Rule.						Commented [HK101]: No effect – Clarification of regeneration process after pond is drained
Driveway crossings of streams and other surface waters						
subject to this Rule:						
Driveway crossings on single family residential lots that	X					
disturb equal to or less than 25 linear feet or 2,500						
square feet of riparian buffer						
	I	I	I	1	ı	

					1	
	Exempt	Allowable	Allowable	Prohi		
'	Deemed	<u>Upon</u>	with	bited		
1	Allowable	Authorizat	Mitigation	<del>                                     </del>		Commented [HK91]: No effect – update terminology
		ion	<u>Upon</u>	<b></b>		Commented [HK92]: No effect – update terminology
			Authorizat			
'			ion			Commented [HK93]: No effect – update terminology
Driveway crossings on single family residential lots that		X				
disturb greater than 25 linear feet or 2,500 square feet of						
<del>riparian buffer</del>						
In a subdivision that cumulatively disturb equal to or less		X				
than 150 linear feet or one third of an acre of riparian						
<del>buffer</del>						
In a subdivision that cumulatively disturb greater than			X			
150 linear feet or one third of an acre of riparian buffer						Commented [HK102]: No effect – Moved below with road
Fences:						impacts
Fencing livestock out of surface waters	<u>X</u>					Commented [HK103]: less stringent - New deemed allowable
Installation does not result in removal of trees	X					use
Installation results in removal of trees <del>Fences provided</del>		<u>X</u>				Commented [HK104]: No effect - grammar
that disturbance is minimized and installation does not						
result in removal of forest vegetation						Commented [HK105]: less stringent - New allowable use
Forest harvesting - see tem (11)(15) of this Rule .0612 of	<del>                                     </del>	-	<del> </del>	<b></b>		Collinetted [HV100]. 1000 Stangent 1100 Caloridae
Subchapter 02B						Owner and FIVANCI. No officer undetection
Fertilizer application:	<u> </u>	<u> </u>	<del>                                     </del>	<b>_</b>		Commented [HK106]: No effect – update citation
**	X					
One-time fertilizer application to establish replanted  vegetation vegetation. This only applies to the one-time.	Λ					
vegetation vegetation. This only applies to the one-time						
application of fertilizer in the riparian buffer. No runoff						
from this one-time application in the riparian buffer is						
allowed in the applicable surface water.	<del>                                     </del>			X		Commented [HK107]: No effect – Clarification
Ongoing fertilizer application	<u> </u>		<u> </u>	Λ		
Grading and revegetation in Zone 2 only provided that	X					
diffuse flow and the health of existing vegetation in Zone 1						
is not <del>compromised</del> <u>compromised</u> , <u>Item</u> (9) of this <u>Rule</u> is						
complied with, and disturbed areas are stabilized and						
revegetated	<u> </u>	<u> </u>	<u></u>	<u> </u>		Commented [HK108]: No effect – clarification and updated citation
Greenway / hiking trailsGreenways, trails, sidewalks or						citation
linear pedestrian/bicycle transportation system:						
!	i	Ţ.	Į.	ı.		

Allowable Upon Authorizat ion  X	Allowable with Mitigation Upon Authorization	Prohi		Commented [HK91]: No effect – update terminology  Commented [HK92]: No effect – update terminology  Commented [HK93]: No effect – update terminology
Authorizat ion	Mitigation Upon Authorizat ion	bited		Commented [HK92]: No effect – update terminology
ion	Upon Authorizat ion			Commented [HK92]: No effect – update terminology
	Authorizat			
X	ion			Commented [HK93]: No effect – update terminology
X				Commented [HK93]: No effect – update terminology
X	X			
X	<u>X</u>			
X	X			
X	<u>X</u>			
	X			
		ļ		Commented [HK109]: No effect – Codifying policy
ı				
		X		Commented [HK110]: less stringent - Allows for landfill
	+			expansions to seek an Authorization Certificate with Exception instead of a Variance
X				
				Commented [HK111]: No effect – update citation
	X			
				Commented [HK112]: No effect – update citation
	<u> </u>			Commented [HK113]: less stringent - Allows mining activities
	Ţ			that do not relocate channels to pursue an authorization certificate
	+			
X				
	X			
				Commented [HK114]: No effect – Moved to below
	†			
		X	x	X

	Exempt	Allowable	Allowable	Prohi			
<u>'</u>	Deemed	<u>Upon</u>	with	bited			
'	Allowable	Authorizat	Mitigation	<u> </u>		-(	Commented [HK91]: No effect – update terminology
'		ion	<u>Upon</u>	<u> </u>		-(	Commented [HK92]: No effect – update terminology
			Authorizat	•			
'			ion	<u> </u>		-(	Commented [HK93]: No effect – update terminology
Perpendicular crossings that disturb equal to or less	X						
than 40 linear feet of riparian buffer with a maintenance				•			
corridor equal to or less than 10 feet in width	1			•			
Perpendicular crossings that disturb equal to or less than	1	X		•			
40 linear feet of riparian buffer with a maintenance corridor	1			•			
greater than 10 feet in width	1			•			
Perpendicular crossings that disturb greater than 40	i	X					
linear feet but equal to or less than 150 linear feet of riparian	i						
buffer with a maintenance corridor equal to or less than 10	1			•			
feet in width	1		X	•			
Perpendicular crossings that disturb greater than 40	1			•			
linear feet but equal to or less than 150 linear feet of riparian	i						
buffer with a maintenance corridor greater than 10 feet in	1		X	•			
width	i						
Perpendicular crossings that disturb greater than	1			•			
150 linear feet of riparian buffer	i					_	Commented [HK115]: No effect – Moved to below
On-site sanitary sewage systems - new ones that use ground		+	+	X			Odilinomod (inc. 194). No one.
absorption	1			1-			
Overhead electric utility lines:		<del></del>	+	<del></del>			
Impacts other than perpendicular crossings in Zone	X			•			
2 only <sup>3</sup>	*			•			
Impacts other than perpendicular crossings in Zone	X						
1+2.3	*					7	THE ACT IN CO. A New York halow
-	<b></b>	<del> </del>	<del> </del>	#==	_	—(	Commented [HK116]: No effect – Moved to below
Overhead electric utility line perpendicular crossings of	1			•			
streams and other surface waters subject to this Rule <sup>3</sup> :	*7						
Perpendicular crossings that disturb equal to or less	X			•			
than 150 linear feet of riparian buffer <sup>+</sup>	1						
Perpendicular crossings that disturb greater than	1	X				(	
150 linear feet of riparian buffer 13	<u> </u>	<del></del>	<u> </u>	<del> </del>		-(	Commented [HK117]: No effect – Moved to below
Periodic maintenance of Maintenance access on modified	1	X					
natural streams or canals: a grassed travel way on one side	<u> </u>			<u> </u>			
	-		•	1			

		Exempt	Allowable	Allowable	Prohi	
		Deemed	Upon	with	bited	
		Allowable	Authorizat	Mitigation		Commented [HK91]: No effect – update terminology
			ion	<u>Upon</u>		Commented [HK92]: No effect – update terminology
				Authorizat		
				ion		Commented [HK93]: No effect – update terminology
	of the water body when less impacting alternatives are not					
	practical. The width and specifications of the travel way					
	shall be only that needed for equipment access and					
	operation. The travel way shall be located to maximize					
	stream shadingsuch as canals and a grassed travelway on					
	one side of the surface water when alternative forms of					
	maintenance access are not practical					Commented [HK118]: No effect – clarification
5 6 7 3 9	vegetation that poses a hazard or has the potential to grow tall en  Woody vegetation shall be cleared by hand. No land gro  Vegetative root systems shall be left intact to maintain the trees are cut.  Rip rap shall not be used unless it is necessary to stability.  No fertilizer shall be used other than a one time application.	ubbing or gradine integrity of the	ng is allowed. ne soil. Stump	s shall remain	where	
	Construction activities shall minimize the removal of w				rea	
l.		- J - Securior	,			
l 2						
	and the time in which areas remain in a disturbed state.	ring routine m	nintenance to e	nsure diffuse f	<del>low of</del>	
3	and the time in which areas remain in a disturbed state.  Active measures shall be taken after construction and definition and definition are designed.	uring routine ma	nintenance to e	nsure diffuse f	low of	
3 4	and the time in which areas remain in a disturbed state.  Active measures shall be taken after construction and dustormwater through the buffer.	- C	nintenance to c	nsure diffuse f	low of	
3 4 5	and the time in which areas remain in a disturbed state.  Active measures shall be taken after construction and definition and definition are designed.	rbance.				
3 4 5 6	and the time in which areas remain in a disturbed state.  Active measures shall be taken after construction and destormwater through the buffer.  In wetlands, mats shall be utilized to minimize soil disturbed.	rbance.				
5 6 7	and the time in which areas remain in a disturbed state.  Active measures shall be taken after construction and destormwater through the buffer.  In wetlands, mats shall be utilized to minimize soil disturbed that poles or towers shall not be installed within 10 fear	rbance. et of a water bo	dy unless the l	Division compl		Commented [HK119]: No effect – Incorporated relev

	Exempt	Allowable	Allowable	Prohi	
'	Deemed	<u>Upon</u>	with	bited	
·	Allowable	Authorizat	Mitigation	'	
 		ion	<u>Upon</u>	'	
			Authorizat	'	
			ion	<u> </u>	Commented [HK120]: No effect – updated terminology
Pedestrian access trail and associated steps leading to a				<u> </u>	
surface water, dock, canoe or kayak access, fishing pier,			1	'	
boat ramp or other water dependent structure:			1	'	
Pedestrian access trail equal to or less than six (6)	<u>X</u>		1	'	
feet wide that does not result in the removal of any			1	'	
tree(s) within the riparian buffer and does not result			1	'	
in any built upon area being added to the riparian			1	'	
<u>buffer</u>			1	'	
<ul> <li>Pedestrian access trail equal to or less than six (6)</li> </ul>		<u>X</u>	1	'	
feet wide where the installation or use results in the			1	'	
removal of tree(s) or addition of built upon area to			1	'	
the riparian buffer			1	'	
Pedestrian access trail greater than six (6) feet wide			<u>X</u>	<u> </u>	Commented [HK121]: less stringent - New use to allow for
Playground equipment:			<u> </u>	<del>                                     </del>	impacts to buffer for access trails to surface waters and associated docking facilities
Playground equipment on single family lots	X		1	'	
provided that installation and use does not result in			1	'	
removal of vegetation			1	'	
Playground equipment on single family lots where		<u>X</u>	1	'	
installation or use results in the removal of			1	'	
vegetation			1	'	
Playground equipment installed on lands other than		X	1	'	
single-family lots or that requires removal of			1	'	
vegetation			ĺ'	'	Commented [HK122]: No effect – split into two bullets for
Ponds created or modified by impounding streams subject to			<del></del>	<del></del>	clarification
the buffers pursuant to Item (3) of this Rule and not used as		X	1	'	
stormwater control measures (SCMs): Ponds in natural			1	'	
drainage ways, excluding dry ponds:			ĺ'	'	Commented [HK123]: No effect - clarification
New ponds provided that a riparian buffer that			X	<u> </u>	
meets the requirements of Items (4)(8) and (5)(9)			·		Commented [HK124]: No effect – update citation
of this Rule is established adjacent to the pond					(33,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
	1	1	1		

	Exempt	Allowable	Allowable	Prohi		
ı	Deemed	<u>Upon</u>	with	bited		
ı	Allowable	Authorizat	Mitigation			
ı		ion	<u>Upon</u>	'		
ı			Authorizat			
			ion	<u> </u>	Commented [HK120]: No effect – updated terminology	
New ponds where a riparian buffer that meets the				<u> </u>		
requirements of Items (4)(8) and (5)(9) of this Rule			<del></del>	<u> </u> '	Commented [HK125]: No effect – update citation	
is NOT established adjacent to the pond						
Protection of existing structures and facilities, structures,		X		†		
facilities and streambanks-when this requires additional				'		
disturbance of the riparian buffer or the stream channel				'	Commented [HK126]: No effect – streambanks in table b	
Public Safety - publicly owned spaces where it has been	<u>X</u>			† • • • • • • • • • • • • • • • • • • •	clarified "structures and facilities" includes existing utility line	es
determined by the head of the local law enforcement agency						
with jurisdiction over that area that the buffers pose a risk to				'		
public safety. The head of the local law enforcement agency						
shall notify the local government with land use jurisdiction				'		
over the publicly owned space and the Division of Water						
Resources of any such determination in writing.				<u> </u> '	Commented [HK127]: No effect – New use per SL 2017-	1-209
Railroad impacts other than crossings of streams and other			X	† † †		
surface waters subject to this Rule.		<b></b>		<u></u> '	Commented [HK128]: No effect – Moved to below	
Railroad crossings of streams and other surface waters				†		
subject to this Rule:						
<ul> <li>Railroad crossings that impact equal to or less than</li> </ul>	X			'		
40 linear feet of riparian buffer				'		
Railroad crossings that impact greater than 40		X		'		
linear feet but equal to or less than 150 linear feet				'		
or one third of an acre of riparian buffer						
Railroad crossings that impact greater than 150			X	'		
linear feet or one third of an acre of riparian buffer				<u> </u>	Commented [HK129]: No effect – Moved to below	
Removal of previous fill or debris provided that diffuse flow	X			<del></del>		
is maintained Item (9) of this Rule is complied with and any				<u>'</u>	Commented [HK130]: No effect - update citation	
vegetation removed is restored						
Residential Properties: Where application of this Rule would				+-		
preclude construction of a single-family residence and				'		
necessary infrastructure, the single-family residence may						
				,		

					7
	Exempt	Allowable	Allowable	Prohi	
	Deemed	<u>Upon</u>	with	bited	
	Allowable	Authorizat	Mitigation		
		ion	<u>Upon</u>		
			Authorizat	'	
			ion		Commented [HK120]: No effect – updated terminology
met: (1) the residence is set back the maximum feasible					
distance from the top of the bank, rooted herbaceous					
vegetation, normal high-water level, or normal water level,					
whichever is applicable, on the existing lot and designed to					
minimize encroachment into the riparian buffer; (2) the					
residence is set back a minimum of 30 feet landward of the					
top of the bank, rooted herbaceous vegetation, normal high-					
water level, or normal water level, whichever is applicable;					
(3) the residence complies with Item (9) of this Rule; and					
(4) if the residence will be served by an on-site wastewater					
system, no part of the septic tank or drainfield may encroach					
into the riparian buffer				1	
• The residence and necessary infrastructure impact Zone 2					
only		<u>X</u>		ļ '	Commented [HK131]: No effect – Incorporating SL 2011-394
The residence or necessary infrastructure impact Zone 1				<u> </u>	and SL 2012-200  Commented [HK132]: less stringent - New use to allow
Impacts other than the residence or necessary			<u>X</u>		impacts to Zone 1 for single-family residences without having to go
infrastructure			<u>X</u>		through the variance process  Commented [HK133]: less stringent - New use to allow
Restoration or enhancement (wetland, stream) as defined in					impacts other than those for a residence or necessary infrastructure without having to go through the variance process
33 CFR Part 332 available free of charge on the internet at:					without naving to go unough the variance process
http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmi					
tigation_index.cfm:					
Wetland or stream restoration that does not require	<u>X</u>				
written Division approval that results in impacts to the					
riparian buffer				'	
Wetland or stream restoration that requires written		<u>X</u>			
Division approval that results in impacts to the riparian					
buffer					Commented [HK134]: No effect – Moved from below
Road Road, driveway or railroad impacts other than			X	<del>-</del>	
perpendicular crossings of streams and other surface waters					Commented [HK135]: No effect – incorporating road, driveway
subject to this Rule					and railroad into one row as requirements were all the same
		ı		1 (	

	Exempt	Allowable	Allowable	Prohi	
	Deemed	<u>Upon</u>	with	bited	
	Allowable	Authorizat	Mitigation		
		<u>ion</u>	<u>Upon</u>		
			Authorizat		
			ion		 Commented [HK120]: No effect – updated terminology
Road-Road, driveway or railroads: perpendicular crossings					 Commented [HK136]: No effect – incorporating road, driveway
of streams and other surface waters subject to this Rule Rule					and railroad into one row as requirements were all the same
or perpendicular entry into the buffer that does not cross a	X				
stream or other surface water subject to this Rule:					 Commented [HK137]: No effect – Clarification
Road crossings that impactImpact equal to or less than					 Commented [HK138]: No effect - grammar
one-tenth of an acre 40 linear feet of riparian buffer		X			 Commented [HK139]: No effect – Removed linear feet; will
Road crossings that impactImpact greater than one-tenth					just reference square feet for ease of implementation
of an acre 40 linear feet but equal to or less than 150					Commented [HK140]: No effect - grammar
linear feet or one-third of an acre of riparian buffer			X		 Commented [HK141]: No effect – Removed linear feet; will
Road crossings that impact Impact greater than 150 linear					just reference square feet for ease of implementation
feet or one-third of an acre of riparian buffer		X			Commented [HK142]: No effect - grammar
Driveway crossings in a subdivision that cumulatively					Commented [HK143]: No effect – Removed linear feet; will just reference square feet for ease of implementation
disturb equal to or less than one-third of an acre of					
riparian buffer			<u>X</u>		
Driveway crossings in a subdivision that cumulatively					
disturb greater than one-third of an acre of riparian buffer					
					 Commented [HK144]: No effect – Moved from above
Agriculture roads that are exempt from permitting from					
the U.S. Army Corps of Engineers per Section 404(f) of					
the federal Clean Water Act					 Commented [HK145]: Less stringent – new use to allow for ag rules to have the same exemption under the buffer rules they have
	X				under 404
h 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	Δ				
Road relocation of existing private access roads associated					
with public road projects where necessary for public safety:					
Less than or equal to 2,500 square feet of riparian buffer		X			
impact					
Greater than 2,500 square feet of riparian buffer impact			X		 Commented [HK146]: less stringent - New use
Scientific studies and stream gauging	X				
Slatted uncovered decks, including steps and support posts,					
which are associated with a dwelling, provided that it meets					
the requirements of Items (8) and (9) of this Rule and:					
!	<u>I</u>	Į.		1	

	Exempt	Allowable	Allowable	Prohi	
	Deemed	Upon	with	bited	
	Allowable	Authorizat	Mitigation	'	
	'	ion	<u>Upon</u>	'	
	'	1	Authorizat	'	
		1	ion	<u>  '</u>	 Commented [HK120]: No effect – updated terminology
Installation does not result in removal of vegetation in		X			
Zone 1	'	1		'	
Installation results in removal of vegetation in Zone 1	<u> </u>	<b></b> '	<u>X</u>	<u>                                     </u>	 Commented [HK147]: less stringent - New use
Stormwater management ponds excluding dry ponds:					
Control Measure (SCM) as defined in 15A NCAC 02H	'	1		'	
<u>.1002:</u>	'	X		'	
New stormwater management ponds provided that a	'	1		'	
riparian buffer that meets the requirements of Items (4)	'	1		'	
and (5) of this Rule is established adjacent to the	'	1		'	
pondIn Zone 2 if Item (9) of this Rule is complied with	'	1		'	
New stormwater management ponds where a riparian	'	1	X	'	
buffer that meets the requirements of Items (4) and (5)	'	1		'	
of this Rule is NOT established adjacent to the pondIn	'	1		'	
Zone 1		l'		'	 Commented [HK148]: less stringent - Changes uses to allow
Stream restoration	X				any SCM in the buffer instead of just wet ponds.
Streambank or shoreline stabilization		X			Commented [HK149]: No effect – Moved to above  Commented [HK150]: No effect - clarification
Temporary roads, provided that the disturbed area is restored				$\sqcap$	Commented [HK 130]: No effect - Charmeation
to pre-construction topographic and hydrologic conditions			1	'	
and replanted with comparable vegetation within two (2)	'	1		'	
months of when construction is complete. Tree planting	'	1		'	
may occur during the dormant season. At the end of five	'	1		'	
years, the restored wooded buffer shall comply with the	'	1	1	'	
	1	1	1	1 '	
restoration criteria in Paragraph (i) of Rule .0295 of this	Ι,	١ .			
restoration criteria in Paragraph (i) of Rule .0295 of this Section:roads:					 Commented [HK151]: No effect – clarification
	X				 Commented [HK151]: No effect – clarification  Commented [HK152]: no effect - grammar
Section:roads:	X				
Section:roads:  • Temporary roads that disturb lessLess than or equal to	X				
Section:roads:  • Temporary roads that disturb lessLess than or equal to 2,500 square feet provided that vegetation is restored	X				
Femporary roads that disturb less Less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance of riparian	X	X			Commented [HK152]: no effect - grammar
Femporary roads that disturb lessLess than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance of riparian buffer disturbance	X	X			 Commented [HK152]: no effect - grammar  Commented [HK153]: No effect - moved to wording above
Femporary roads that disturb lessLess than or equal to     2,500 square feet provided that vegetation is restored within six months of initial disturbance of riparian buffer disturbance      Temporary roads that disturb greaterGreater than 2,500	X	X			 Commented [HK152]: no effect - grammar  Commented [HK153]: No effect - moved to wording above

					_ /		
	Exempt	Allowable	Allowable	Prohi			
'	Deemed	<u>Upon</u>	with	bited			
'	Allowable	Authorizat	Mitigation	'			
		ion	<u>Upon</u>	'			
'	1		Authorizat	'			
'	1		ion	<u> </u> '	1-	-	Commented [HK120]: No effect – updated terminology
vegetation is restored within six months of initial						1	
disturbance	<u> </u>	X		<u> </u>	1-	-	Commented [HK155]: No effect – moved to wording above
Temporary roads used for Associated with culvert				'			
installation or bridge construction or replacement				<u>'</u>		-	Commented [HK156]: no effect - grammar
provided that restoration activities such as soil				'			
stabilization and revegetation, occur immediately after				'			
construction				'		-	Commented [HK157]: No effect – moved to wording above
Temporary sediment and erosion control devices provided		+	+	<del>                                     </del>		4	
that the disturbed area is restored to preconstruction	1			'			
topographic and hydrologic conditions and replanted with	1			'			
comparable vegetation within two (2) months of when				'			
construction is complete. Tree planting may occur during				'			
the dormant season. At the end of five years, the restored				'			
buffer shall comply with the restoration criteria in Paragraph				'			
(i) of Rule .0295 of this Section: devices:	<u></u>			'			Commented [HK158]: No effect – added language for restoring
In Zone 2 only provided ground cover is established	X			<u>'</u>		1	temporarily disturbed area; consistent with requirement for temporary roads
within the timeframes required by the Sedimentation				'			
and Erosion Control Act, vegetation in Zone 1 is not				'			
compromised, that the vegetation in Zone 1 is not				'			
compromised and that discharge is released as diffuse				'			Commented [HK159]: No effect – incorporate compliance with
flow in accordance with Item (5)(9) of this Rule				<u> </u>			E&SC plan
In Zones 1 and 2 to control impacts associated with uses		X		'		7	Commented [HK160]: no effect – update citation
approved by the Authority Division or that have				'		-	Commented [HK161]: no effect – update name
received a variance an exception provided that sediment				<u>'</u>		$\succeq$	Commented [HK162]: no effect – update terminology
and erosion control for upland areas is addressed to the				'			5011
maximum extent practical outside the buffer				'			Commented [HK163]: No effect – removed unnecessary
In-stream temporary erosion and sediment control	X			'		]	language; this will be reviewed as part of the no practical alternatives analysis
measures for work within a stream channel that is				'			alternatives unaryear
authorized under Sections 401 and 404 of the Federal				'			
Water Pollution Control Act				'			
,		<u>X</u>		'			
1	4	I		l i			

	Exempt	Allowable	Allowable	Prohi		
	Deemed	Upon	with	bited		
	Allowable	Authorizat	Mitigation			
		ion	<u>Upon</u>			
			Authorizat			
			ion			Commented [HK120]: No effect – updated terminology
In-stream temporary erosion and sediment control						
measures for work within a stream that has written						
approval from the Division and the U.S. Army Corps of						
Engineers under Sections 401 & 404 of the Federal						
Water Pollution Control Act						Commented [HK164]: No effect – clarification
Underground electric utility lines:						
☐ Impacts other than perpendicular crossings in Zone	X					
2 only <sup>3</sup>	X					
☐ Impacts other than perpendicular crossings in Zone						
1-4						Commented [HK165]: No effect – moved to below
Underground electric utility line perpendicular crossings of						
streams and other surface waters subject to this Rule:						
Perpendicular crossings that disturb less than or	X					
equal to 40 linear feet of riparian buffer 4						
Perpendicular crossings that disturb greater than 40		X				
linear feet of riparian buffer						Commented [HK166]: No effect – moved to below
Utility – Sewer lines:						Commented [HK167]: No effect – Changed 3 categories of
<ul> <li>Sanitary Sewer Overflows:</li> </ul>						utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3)
<ul> <li>Emergency sanitary sewer overflow</li> </ul>	<u>X</u>					non-sewer aerial
response activities, provided that the						
disturbed area within the buffer: is the						
minimum necessary to respond to the						
emergency overflow, is restored to pre-						
construction topographic and hydrologic						
conditions, and is replanted with						
comparable vegetation within two (2)						
months of when disturbance is complete.						
o Emergency sanitary sewer overflow		<u>X</u>				
response activities, provided the disturbed						
area within the buffer: is the minimum						
necessary to respond to the emergency						
		<u> </u>	<u> </u>	1	J	

Deemed Allowable   Upon Authorizat   Deemed Allowable   Deemed Allowable   Deemed Allowable   Deemed Allowable   Deemed Allowable   Deemed Allowable   Deemed Allowable   Deemed Authorizat   Deemed Authorizat   Deemed Authorizat   Deemed Authorizat   Deemed Deem		Exempt	Allowable	Allowable	Prohi		
Allowable  Authorizat  ion  Mitigation Upon Authorizat  ion  Commented [HK120]: No effect—updated terminology  Commented [HK120]: No effect updated							
ion  Upon Authorizat ion  Commented [HK120]: No effect - updated terminology  Commented [HK120]: No effect eleminology  Commented [HK120]: No effect e		Allowable	Authorizat	Mitigation			
overflow and is not fully restored to pre- construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  • New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the critical of existing use in Item (6) of this Rule) provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2) vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor:  • Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  • Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.							
overflow and is not fully restored to pre- construction topographic and hydrologic conditions. For any impacts proposed to remain permanently an application for an Authorization Certificate must be submitted to the authority within 30 calendar days of conclusion of the emergency response activities.  New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria of existing use in Item (6) of this Rule) provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2) vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor:  • Perpendicular crossings of streams and other surface waters subject to this Rule of perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  • Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.							
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criteria of existing use in Item (6) of this Rule) provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2) vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor:  o Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  • Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.	New Sewer Line Construction Activities (including					resp	onding quickly to SSOs
provided that (1) vegetative root systems and stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and (2) vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor:  o Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  • Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.	replacement/rehabilitation that does not meet the						
stumps are left intact to maintain the integrity of the soil except in the trench where trees are cut, and  (2) vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor:  o Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  • Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.	criteria of existing use in Item (6) of this Rule)						
the soil except in the trench where trees are cut, and  (2) vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor:  • Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  • Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.	provided that (1) vegetative root systems and						
(2) vegetation is allowed to regenerate in disturbed areas, except within the permanent maintenance corridor:  O Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.  (2) vegetation is allowed to regenerate in disturbed areas.  Commented [HK169]: less stringent - Clarify this use can include perpendicular entry into the buffer that doesn't cross a stream (e.g. connecting to existing line)	stumps are left intact to maintain the integrity of						
areas, except within the permanent maintenance corridor:  o Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  • Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.	the soil except in the trench where trees are cut, and						
corridor:  O Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  • Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.  Commented [HK169]: less stringent - Clarify this use can include perpendicular entry into the buffer that doesn't cross a stream (e.g. connecting to existing line)	(2) vegetation is allowed to regenerate in disturbed						
o Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.	areas, except within the permanent maintenance						
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perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:  Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.	o Perpendicular crossings of streams and						
does not cross a stream or other surface  water subject to this Rule:  Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.  Commented [HK169]: less stringent - Clarify this use can include perpendicular entry into the buffer that doesn't cross a stream (e.g. connecting to existing line)	other surface waters subject to this Rule or						
water subject to this Rule:  Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.	perpendicular entry into the buffer that						
Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.							
feet with a permanent maintenance corridor equal to or less than 20 feet in width.					-		
maintenance corridor equal to or less than 20 feet in width.	^	<u>X</u>					
less than 20 feet in width.	•						
• Greater than 40 linear feet and X							
			<u>X</u>				
less than or equal to 150 linear	•						
feet, with a permanent	•						
maintenance corridor equal to or							
less than 20 feet in width.	less than 20 feet in width.						

					-	
	Exempt	Allowable	Allowable	Prohi		
	Deemed	<u>Upon</u>	with	bited		
	Allowable	Authorizat	Mitigation			
		<u>ion</u>	<u>Upon</u>			
			Authorizat			
			ion		(	Commented [HK120]: No effect – updated terminology
Greater than 150 linear feet with			<u>X</u>			
a permanent maintenance						
corridor equal to or less than 20						
<u>feet in width.</u>						
<ul> <li>Permanent maintenance corridor</li> </ul>			<u>X</u>			
greater than 20 linear feet						
(mitigation is required only for						
impacts beyond the 20 linear feet						
corridor width).						Commented [HK170]: less stringent - increased maintenance
<ul> <li>Impacts other than perpendicular</li> </ul>					l	corridor from 10 to 20 feet
crossings:						
■ Zone 2 only.	<u>X</u>					Commented [HK171]: less stringent - changed from allowable
■ Zone 1 impacts to less than 2,500		<u>X</u>			l	to deemed allowable
square feet when impacts are						
solely the result of tying into an						
existing utility line and when						
grubbing or grading within 10						
feet immediately adjacent to the						
surface water is avoided;						
<ul> <li>Zone 1 impacts for</li> </ul>		<u>X</u>				
replacement/rehabilitation within						
an existing Right of Way when						
land grubbing or grading within						
10 feet immediately adjacent to						
the surface water is avoided;						
<ul> <li>Zone 1 impacts other than those</li> </ul>			X			
listed above.						Commented [HK172]: less stringent - changed all impacts to
Vegetation Maintenance Activities that remove					[ l	Zone 1 triggering mitigation to only some triggering mitigation.
forest vegetation for existing sewer utility right of						
ways/corridors that do not meet the criteria of						
existing use in Item (6) of this Rule:						
				<u> </u>	j	

	Exempt	Allowable	Allowable	Prohi	1	
	Deemed	Upon	with	bited		
	Allowable	Authorizat	Mitigation	bitcu		
	Allowable	ion	Upon Upon			
		1011	Authorizat			
			ion			Commented [HK120]: No effect – updated terminology
o Zone 2 impacts	<u>X</u>					
o Zone 1 impacts provided no clearing	<u>X</u>					
within 10 feet of the stream						
o Zone 1 impacts, provided the permanent	<u>X</u>					
maintenance corridor is kept to 10 feet on						
either side of the existing sewer line.						
Clearing within 10 feet of the stream may						
occur provided no grading or grubbing						
occurs within this area.						
o Zone 1 impacts, provided the permanent		<u>X</u>				
maintenance corridor is kept to 10 feet on						
either side of the existing sewer line.						
Clearing, grading and grubbing can occur						
within 10 feet of the stream provided the						
grading and grubbing within 10 feet is less						
than 2,500 square feet.						
Zone 1 impacts other than those listed above			<u>X</u>			Commented [HK173]: less stringent - new uses to allow for
Utilities – Non-sewer underground lines:						vegetation maintenance beyond the maintenance corridor
Perpendicular crossings of streams and other surface						<b>Commented [HK174]:</b> no effect - Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric
waters subject to this Rule or perpendicular entry						underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial
into the buffer that does not cross a stream or other						
surface water subject to this Rule:						Commented [HK175]: No effect – Clarify this use can include
Construction activities that disturb less	X					perpendicular entry into the buffer that doesn't cross stream (e.g.,
than or equal to 50 linear feet of riparian	<u> </u>					connecting to an existing line)
buffer provided that vegetative root						
· •						
systems and stumps shall be left intact to						
maintain the integrity of the soil except in						
the trench where trees are cut and that						
vegetation is allowed to regenerate in						
disturbed areas with the exception of a						

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	,	Exempt	Allowable	Allowable	Prohi		
	,	<u>Deemed</u>	<u>Upon</u>	with	bited		
	,	Allowable	<u>Authorizat</u>	Mitigation			
	,	'	ion	<u>Upon</u>			
	,	'		Authorizat			
		<u> </u>		ion			Commented [HK120]: No effect – updated terminology
	maintenance corridor equal to or less than	<u> </u>					
	30 feet in width		X	-	<u> </u>		Commented [HK176]: less stringent - Changed 40 feet to 50 feet. Added language re maintenance corridor.
0	Construction activities that disturb greater						Itee. Added idilguage to maintenance corridor.
	than 50 linear feet and less than or equal to	'					
	150 linear feet of riparian buffer provided						
	that vegetative root systems and stumps	'					
	shall be left intact to maintain the integrity	1					
	of the soil except in the trench where trees						
	are cut and that vegetation is allowed to	1					
	regenerate in disturbed areas with the						
	exception of a maintenance corridor equal						
	to or less than 30 feet in width	ĺ		<u>X</u>			Commented [HK177]: no effect - changed allowable use to
0	Construction activities that disturb greater						impacts less than 150
	than 150 linear feet of riparian buffer	<u> </u>		X			Commented [HK178]: no effect – changed allowable use to
0	Any activities with a permanent						impacts less than 150 feet
	maintenance corridor greater than 30 feet						
	in width	<u> </u>	<u> </u>		<u> </u>		Commented [HK179]: less stringent - New use
• Impacts	s other than perpendicular crossings:	<u>X</u>			<u> </u>		Commented [HK180]: No change
0	Impacts in Zone Two provided vegetation						
	is re-established after disturbance and the						
	function of Zone 1 is not compromised	<u>                                     </u>	<u>X</u>				Commented [HK181]: No change
0	Impacts in Zone One less than 2,500 square						
	feet when impacts are a result of tying to an	1					
	existing utility line and provided that land						
	grubbing or grading is not conducted						
	within 10 feet immediately adjacent to the	1					
	water			<u>X</u>			
0	Impacts in Zone One other than listed						
	above		<u>X</u>				Commented [HK182]: no effect - changed impacts to zone 1 to
Vegetat	tion maintenance activities along an existing						less than 2,500 square feet when not tying into an existing line before triggering mitigation
	ine beyond the footprint of an existing utility						before inggering mugauon
unit, ii	ne beyond the rootprint of an existing daily	<u> </u>		<u> </u>			

		-	-	<del></del>	- /	
	Exempt	Allowable	Allowable	Prohi		
	Deemed	<u>Upon</u>	with	bited		
	Allowable	<u>Authorizat</u>	Mitigation			
	1	ion	<u>Upon</u>	'		
	1		Authorizat			
	<u> </u>		ion	<del> </del> '		Commented [HK120]: No effect – updated terminology
line maintenance corridor where the total						
maintenance corridor is equal to or less than 30	1			'		
linear feet in width	1		<u>X</u>	'		
Vegetation maintenance activities along an existing				•		
utility line beyond the footprint of an existing utility	1					
line maintenance corridor where the total				•		
maintenance corridor is greater than 30 linear feet in	1					
width				<u> </u>		Commented [HK183]: less stringent - New uses to allow for
Utilities – Non-sewer aerial lines:						vegetation maintenance beyond the maintenance corridor  Commonted FHK1941: po effect. Changed 3 enterprise of
Perpendicular crossings of streams and other surface	,					Commented [HK184]: no effect - Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric
waters subject to this Rule or perpendicular entry				•		underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial
into the buffer that does not cross a stream or other				•		
surface water subject to this Rule:				'		Commented [HK185]: No effect – Clarify this use can include
o Disturb equal to or less than 150 linear feet	X			'		perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)
of riparian buffer provided that a minimum	1					Connecting to an extransport,
zone of 10 feet wide immediately adjacent				•		
to the water body is managed such that only				•		
vegetation that poses a hazard or has the	1					
potential to grow tall enough to interfere				•		
with the line is removed, that no land	1					
grubbing or grading is conducted in Zone	1					
1, and that that poles or aerial infrastructure	1					
are not installed within 10 feet of a water	1					
body	1					
O Disturb greater than 150 linear feet of	1	<u>X</u>				
buffer				•	_	Commented [HK186]: No change
Impacts other than perpendicular crossings:						Commented [HK187]: No change
Impacts in Zone Two		X			_	Commented [HK188]: No change
o Impacts in Zone One provided that a			X			Commented [nk roo]: No change
minimum zone of 10 feet wide			<u> </u>	•		
immediately adjacent to the water body is				•		
illilliediately adjacent to the water body is				<u> </u>		

		Exempt	Allowa	ble Allov	vable	Prohi						
		Deemed	<u>Upon</u>	with		bited						
		Allowal	<u>Author</u>	izat Mitig	ation							
			ion	Upon								
				Auth	orizat							
				ion			Commented [HK120]: No effect – updated terminology					
	managed such that only vegetation that											
	poses a hazard or has the potential to grow											
	tall enough to interfere with the line is											
	removed, that no land grubbing or grading											
	is conducted in Zone 1, and that that poles											
	or aerial infrastructure are not installed											
	within 10 feet of a water body						Commented [HK189]: no effect - consistent with other utility					
1							line uses					
2	<sup>4</sup> Provided that, in Zone 1, all of the following BMPs for undergrades	ound utilit	y lines are use	d. If all of the	ese BN	APs are						
3	not used, then the underground utility line shall require a no pract	tical altern	ative evaluation	on by the Div	ision.							
4	Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.											
5	☐ Vegetative root systems shall be left intact to maintain the	ne integrity	y of the soil.	Stumps shall	emain,	except						
6	in the trench, where trees are cut.											
7	Underground cables shall be installed by vibratory plow or trenching.											
8	The trench shall be backfilled with the excavated soil m	aterial imr	nediately follo	wing cable i	<del>ıstallat</del> i	ion.						
9	No fertilizer shall be used other than a one-time applicate	ion to re-c	stablish veget	ation.								
0	Construction activities shall minimize the removal of we	ody veget	tation, the exte	ent of the dis	urbed a	<del>irea,</del>						
1	and the time in which areas remain in a disturbed state.											
2	Active measures shall be taken after construction and du	ıring routi	ne maintenanc	e to ensure d	iffuse f	low of						
3	stormwater through the buffer.	U										
4	In wetlands, mats shall be utilized to minimize soil distu	ırbance.					Commented [HK190]: No effect – Moved relevant language					
		Exemp	Allowable	Allowable	Pro	hibited	into table					
		#Deem	Upon	with	110							
		ed	Authorizat	Mitigation								
		Allowa	ion	Upon								
		ble	1011	Authorizat								
		bie			•		(					
	National and the state of the s			on			Commented [HK191]: No effect – update terminology					
	Vehicle access roads and boat ramps (excluding parking											
	areas) leading to surface water, docks, fishing piers, and											
	other water dependent activities:											
	<u>Single vehicular access road and boat ramp to the</u>		<u>X</u>									

	Evenn	Allowable	Allowable	Prohibited	7	
	Exemp Deem	Upon Upon	with	FIOIIIDITEG		
	ed	<u>Opon</u> Authorizat	Mitigation			
	Allowa	ion	<u>Upon</u> Authorizati			
	<u>ble</u>		Authorizati			
	<u> </u> '	<u> </u>	on	<del> </del>	C	Commented [HK191]: No effect – update terminology
surface water but not crossing the surface water that			1			
are restricted to the minimum width practicable not to			1			
exceed 15 feet in width						
Vehicular access roads and boat ramps to the surface			X			
water but not crossing the surface water that are			i			
restricted to the minimum width practicable and						
exceed 15 feet in width	<u> </u>	<u> </u>	1			Commented [HK192]: less stringent - New use to allow for ehicle access roads and boat ramps to surface waters and associated
Vegetation management:	<u> </u>					locking facilities
Emergency fire control measures provided that	X		i			
topography is restored			i			
Periodic mowing and harvesting of plant products in	X		i			
Zone 2 only			i			
Placement of mulch ring around restoration plantings	<u>X</u>					
for a period of five years from the date of planting	<u> </u>		1		C	Commented [HK193]: less stringent - New use
Planting non-invasive vegetation to enhance the riparian	X				C	Commented [HK194]: No effect – Clarification
buffer	X					
Pruning forest vegetation provided that the health and			1			
function of the forest vegetation is not compromised	X		1			
Removal of individual trees trees, branches or limbs.	'					Commented [HK195]: less stringent - allows for removal of
which are in danger of causing damage to dwellings,	<u>X</u>					ranches or limbs instead of just an entire tree
existing utility lines, other structures or human lifelife,	'				C	Commented [HK196]: No effect - clarification
or are imminently endangering stability of the	X					
streambank provided that the stumps are left or ground	X					
in place without causing additional land disturbance.			1		C	Commented [HK197]: No effect – Clarification
Removal of individual trees that are dead, diseased or						Jilliontoa [incl., ]. No chec.
damaged			j		C	Commented [HK198]: less stringent - New use
Removal or poison ivyivy, oak or sumac Removal can	1					Jillionted [Herryo]. 1000 samgent 1-1-1
include application of pesticides within the riparian			i			
buffer if the pesticides are certified by EPA for use in	ŀ		i			
or near aquatic sites and are applied in accordance			i			
with the manufacturer's instructions. If removal is			1			
with the indicated a man a	ļ	1	1	1		

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- (7) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, allowable, allowable with mitigation and prohibited in Item (6) of this Rule shall have the following requirements:
  - (a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.
  - (b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule. These uses require written authorization from the Division or the delegated local authority.
  - (c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the delegated local authority.
  - (d) PROHIBITED. Uses designated as prohibited may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.
- (8) DETERMINATION OF ANO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the delegated local authority. The applicant shall certify that the criteria identified in Sub Item (8)(a) of this Rule are met. The Division or the delegated local authority shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:
  - (a) For any request for an Authorization Certificate, the Division or the delegated local authority shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:
    - (i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
    - (ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.

Commented [HK208]: No effect – Moved to (10) above

1	(iii) Best management practices shall be used if necessary to minimize disturbance
2	preserve aquatic life and habitat, and protect water quality.
3	(b) Requests for an Authorization Certificate shall be reviewed and either approved or denied
4	within 60 days of receipt of a complete submission based on the criteria in Sub Item (8)(a
5	of this Rule by either the Division or the delegated local authority. Failure to issue an
6	approval or denial within 60 days shall constitute that the applicant has demonstrated "no
7	practical alternatives." The Division or the delegated local authority may attach condition
8	to the Authorization Certificate that support the purpose, spirit and intent of the riparian
9	buffer protection program. Complete submissions shall include the following:
10	(i) The name, address and phone number of the applicant;
11	(ii) The nature of the activity to be conducted by the applicant;
12	(iii) The location of the activity, including the jurisdiction;
13	(iv) A map of sufficient detail to accurately delineate the boundaries of the land to be
14	utilized in carrying out the activity, the location and dimensions of any
15	disturbance in riparian buffers associated with the activity, and the extent o
16	riparian buffers on the land;
17	(v) An explanation of why this plan for the activity cannot be practically
18	accomplished, reduced or reconfigured to better minimize disturbance to the
19	riparian buffer, preserve aquatic life and habitat and protect water quality; and
20	(vi) Plans for any best management practices proposed to be used to control the
21	impacts associated with the activity.
22	(c) Any disputes over determinations regarding Authorization Certificates shall be referred to
23	the Director for a decision. The Director's decision is subject to review as provided in
24	Articles 3 and 4 of G.S. 150B.
25	(9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance
26	The Division or the appropriate delegated local authority may grant minor variances. The variance
27	request procedure shall be as follows:
28	(a) For any variance request, the Division or the delegated local authority shall make a finding
29	of fact as to whether the following requirements have been met:
30	(i) There are practical difficulties or unnecessary hardships that prevent compliance
31	with the strict letter of the riparian buffer protection requirements. Practical
32	difficulties or unnecessary hardships shall be evaluated in accordance with the
33	following:
34	(A) If the applicant complies with the provisions of this Rule, he/she can secure no
35	reasonable return from, nor make reasonable use of, his/her property. Merely
36	proving that the variance would permit a greater profit from the property shall no
37	be considered adequate justification for a variance. Moreover, the Division o

1	delegated local authority shall consider who
2	possible deviation from the terms of this Rul
3	the property possible.
4	(B) The hardship results from application of this I
5	other factors such as deed restrictions or other
6	(C) The hardship is due to the physical nature of
7	size, shape, or topography, which is different
8	(D) The applicant did not cause the hardship by k
9	this Rule.
10	(E) The applicant did not purchase the property
11	and then request an appeal.
12	(F) The hardship is unique to the applicant's
13	conditions that are widespread. If other pr
14	hardship created in the restriction, then gran
15	privilege denied to others, and would not pro-
16	(ii) The variance is in harmony with the general
17	riparian buffer protection requirements and p
18	(iii) In granting the variance, the public safety an
19	quality has been protected, and substantial ju-
20	(b) MINOR VARIANCES. A minor variance request per
21	only to impact any portion of Zone 2 of the riparian but
22	be reviewed and approved based on the criteria in Sub-
23	the Division or the delegated local authority pursuan
24	160A Article 19. The Division or the delegated local
25	the variance approval that support the purpose, spir-
26	protection program. Requests for appeals of decisions
27	to the Office of Administrative Hearings. Request for
28	authority shall be made to the appropriate Board of A
29	G.S. 153A 345.
30	(c) MAJOR VARIANCES. A major variance request per
31	to impact any portion of Zone 1 or any portion of both
32	If the Division or the delegated local authority has deter
33	meets the requirements in Sub Item (9)(a) of this Rule
34	finding and submit it to the Commission. Preliminary
35	shall be reviewed by the Commission within 90 days af
36	for appeals of determinations that the requirements o

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- ether the variance is the minimum e that shall make reasonable use of
- Rule to the property rather than from r hardship.
- the applicant's property, such as its from that of neighboring property.
- nowingly or unknowingly violating
- after the effective date of this Rule,
- property, rather than the result of operties are equally subject to the ting a variance would be a special mote equal justice;
- al purpose and intent of the State's reserves its spirit; and
- d welfare have been assured, water stice has been done.
- tains to activities that are proposed iffer. Minor variance requests shall Item (9)(a) of this Rule by the either t to G.S. 153A-Article 18, or G.S. authority may attach conditions to it and intent of the riparian buffer made by the Division shall be made appeals made by the delegated local djustment under G.S. 160A-388 or
- rtains to activities that are proposed Zones 1 and 2 of the riparian buffer. rmined that a major variance request e, then it shall prepare a preliminary findings on major variance requests ter receipt by the Director. Requests f Sub-Item (9)(a) of this Paragraph have not been met shall be made to the Office of Administrative Hearings for

determinations made by the Division or the appropriate Board of Adjustments under G.S. 160A 388 or G.S. 153A 345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees that the requirements in Sub Item (9)(a) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's \_decision on the major variance request:

- (i) Upon the Commission's approval, the Division or the delegated local authority shall issue a final decision granting the major variance.
- (ii) Upon the Commission's approval with conditions or stipulations, the Division or the delegated local authority shall issue a final decision, which includes these conditions or stipulations.
- (iii) Upon the Commission's denial, the Division or the delegated local authority shall issue a final decision denying the major variance.

(10)(11) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation upon authorization as defined in Sub-Item (10)(a)(iii) of this Rule or allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule shall meet the following requirements in order to proceed with their proposed use.

- (a) Obtain a determination of "no practical alternatives" to the proposed use an Authorization

  Certificate pursuant to the proposed use an Authorization of this Rule. Rule .0295 of Subchapter 02B; and
- (b) Obtain written approval for a mitigation proposal pursuant to 15A NCAC 02B .0260.Rule .0295 of this Section.
- (11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices.
  - (a) The following measures shall apply in the entire riparian buffer:
    - (i) Logging decks and sawmill sites shall not be placed in the riparian buffer.
    - (ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 011.0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed.
    - (iii) Timber felling shall be directed away from the stream or water body.
    - (iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts.
    - (v) Individual trees may be treated to maintain or improve their health, form or vigor.
    - (vi) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed.

Commented [HK209]: No effect - Moved to Rule .0611

**Commented [HK210]:** No effect – clarification and updated citations

 $\textbf{Commented [HK211]:} \ \ No \ effect-updated \ terminology$ 

Commented [HK212]: No effect – updating citation

Commented [HK213]: No effect - clarification

Commented [HK214]: No effect – update citation

1			These practices must be approved by the Division of Forest Resources for a
2			specific site. The Division of Forest Resources must notify the Division of all
3			approvals.
4		(vii)	Removal of individual trees that are in danger of causing damage to structures or
5			human life shall be allowed.
6		(viii)	Natural regeneration of forest vegetation and planting of trees, shrubs, or ground
7			cover plants to enhance the riparian buffer shall be allowed provided that soil
8			disturbance is minimized. Plantings shall consist primarily of native species.
9		(ix)	High intensity prescribed burns shall not be allowed.
10		(x)	Application of fertilizer shall not be allowed except as necessary for permanent
11			stabilization.
12		(xi)	Broadcast application of fertilizer or herbicides to the adjacent forest stand shall
13			be conducted so that the chemicals are not applied directly to or allowed to drift
14			into the riparian buffer.
15	(b)	In Zone	e 1, forest vegetation shall be protected and maintained. Selective harvest as
16		provide	d for below is allowed on forest lands that have a deferment for use value under
17		forestry	in accordance with G.S. 105 277.2 through G.S. 277.6 or on forest lands that have
18		a forest	management plan prepared or approved by a registered professional forester.
19		Copies	of either the approval of the deferment for use value under forestry or the forest
20		manage	ment plan shall be produced upon request. For such forest lands, selective harvest
21		is allow	ed in accordance with the following:
22		(i)	Tracked or wheeled vehicles are not permitted except at stream crossings
23			$\frac{designed, constructed\ and\ maintained\ in\ accordance\ with\ 15A\ NCAC\ 01I\ .0203.}{}$
24		(ii)	Soil disturbing site preparation activities are not allowed.
25		(iii)	Trees shall be removed with the minimum disturbance to the soil and residual
26			vegetation.
27	(iv)	The foll	owing provisions for selective harvesting shall be met:
28		(A)	The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be
29			undisturbed except for the removal of individual high value trees as defined
30			provided that no trees with exposed primary roots visible in the streambank be
31			<del>cut.</del>
32		<del>(B)</del>	In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than
33			five inches dbh may be cut and removed. The reentry time for harvest shall be no
34			more frequent than every 15 years, except on forest plantations where the reentry
35			time shall be no more frequent than every five years. In either case, the trees
36			remaining after harvest shall be as evenly spaced as possible.

 $[.0259 \ is \ proposed \ for \ amendment \ and \ transfer \ to \ 15A \ NCAC \ 02B \ .0734]$ Last Revised December 14, 2017

1		(C) In Tage 2 howesting and recognition of the forest stand shall be allowed	
1		(C) In Zone 2, harvesting and regeneration of the forest stand shall be allowed	
2		provided that sufficient ground cover is maintained to provide for diffusion and	
3	(12)	infiltration of surface runoff.	Commented [HK215]: No effect – Moved to Rule .0612
4	(12)	REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER	
5		PROGRAMS FOR NITROGEN CONTROL. Local governments in the Tar Pamlico River Basin	
6		that are required to have local stormwater programs to control nitrogen loadingpursuant to	
0		Rule.0258 of this Section shall have two options for ensuring protection of riparian buffers on new	Commented [HK216]: no effect – clarification
8		developments within their jurisdictions as follows.	
9		(a) Obtain authority to implement a local riparian buffer protection program pursuant to 15A	<u> </u>
10		NCAC 02B .0261-Rule .0735 of this Section.  (b) Pefrain from isoning local empravale for new development projects unless either	Commented [HK217]: no effect – update citation
11		(b) Refrain from issuing local approvals for new development projects unless either:	
12		(i) The person requesting the approval does not propose to impact the riparian buffer	
13		of a surface water that appears on either the most recent versions of the soil survey	
14		maps prepared by the Natural Resources Conservation Service of the United	
15		States Department of Agriculture or the most recent versions of the 1:24,000 scale	
16		(7.5 minute quadrangle) topographic maps prepared by the United States Geologic	
17		Survey (USGS):as described in Item (3) of this Rule.	Commented [HK218]: no effect – removed repetitive language to just reference language above
18		(ii) The person requesting the approval proposes to impact the riparian buffer of a	
19		surface water that appears on the mapsas described in Sub Item (12)(b)(i) of this	Commented [HK219]: no effect - grammar
20		Paragraph Item (3) of this Rule and either:	Commented [HK220]: no effect – update citation
21		(A) Has received an on-site determination from the Division-Authority	Commented [HK221]: no effect – update name
22		pursuant to Sub-Item (3)(a)Item (4) of this Rule that surface waters are	Commented [HK222]: no effect – update citation
23		not present;	
24		(B) Has received an Authorization Certificate from the Authority Division	Commented [HK223]: no effect – update name
25		pursuant to tem (8)(12) of this Rule .0611 of this Section for uses	Commented [HK224]: no effect – update citation
26		designated as Allowable allowable upon authorization under this Rule;	Commented [HK225]: no effect – update terminology
27		(C) Has received an Authorization Certificate from the Authority Division	Commented [HK226]: no effect – update name
28		pursuant to tem (8) of this Rule .0611 of this Section and obtained the	Commented [HK227]: no effect – update citation
29		Division's Authority's approval on a mitigation plan pursuant to Item	Commented [HK228]: no effect – update name
30		(10)(11) of this Rule for uses designated as Allowable allowable with	Commented [HK229]: no effect – update citation
31		Mitigation upon authorization under this Rule; or	Commented [HK230]: no effect – update terminology
32		(D) Has received a variance from the Commissionan exception from the	
33		Authority pursuant to Item (9) of this Rule. Rule .0611 of this Section.	Commented [HK231]: no effect – update terminology
34	(13)	OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does	Commented [HK232]: no effect – update citation
35		not preclude the requirement to comply with all federal, state and local regulations and laws.	
36			
		35 of 36	

1	History Note:	Authority 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143B
2		282(d); S.L. 1999, c. 329, s. 7.1; <u>S.L 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413.</u>
3		Temporary Adoption Eff. January 1, 2000;
4		Eff. August 1, 2000.
5		
5		

15A NCAC 02B .0261 is proposed for amendment as follows:

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## 15A NCAC 02B 0261.0735 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE

This Rule sets out the following requirements for delegation of the responsibility for implementing and enforcing the Tar-Pamlico Basin riparian buffer protection program, as described in Rule 15A NCAC 2B .0259, 0734 of this Section to local governments:

(1) PROCEDURES FOR GRANTING AND RESCINDING DELEGATION. The Commission shall grant and rescind local government delegation of the Tar-Pamlico River Basin Riparian Buffer Protection requirements, as described in Rule 15A NCAC 2B. 0259,0735 of this Section according to the following procedures:

(a) Local governments within the Tar-Pamlico River Basin may submit a written request to the Commission for authority to implement and enforce the Tar-Pamlico River Basin riparian buffer protection requirements within their jurisdiction jurisdiction by establishing a riparian buffer program to meet the requirements of Rule .0734 of this Section. The written request to establish a riparian buffer program shall be accompanied by information which shows: include the following:

PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

- (i) The Documentation that the local government has land use jurisdiction for the riparian buffer buffer. This can be demonstrated by delineating the local land use jurisdictional boundary on the USGS 1:24,000 topographical map(s) or other finer scale map(s);
- (ii) The Documentation that the local government has the administrative organization, staff, legal authority, financial resources and other resources necessary to implement and enforce the Tar-Pamlico River Basin riparian buffer protection requirements based on its size and projected amount of development;
- (iii) The local government has adopted ordinances, resolutions, or regulations necessary to establish and maintain the Tar Pamlico Basin riparian buffer protection requirements; and a riparian buffer program to meet the requirements of Rule .0734 of this Section and G.S. 143-214.23A;
- (iv) Documentation that he local government's riparian buffer program complies with all requirements set forth in G.S. 143-214.23A; and
- (iv) The local government has provided a A plan to address violations with appropriate remedies and actions including, but not limited to, civil or criminal remedies that shall restore buffer nutrient removal functions on violation sites and provide a deterrent against the occurrence of future violations.

Commented [HK1]: no effect - update citation

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Commented [HK4]: No effect – moved to item (8) below

**Commented [HK5]:** No effect – moved to item (8) below

**Commented [HK6]:** no effect – update citation

Commented [HK7]: no effect - punctuation

Commented [HK8]: no effect – update name

Commented [HK9]: no effect - clarification

Commented [HK10]: no effect – clarification

Commented [HK11]: no effect - grammar

Commented [HK12]: no effect - clarification

Commented [HK13]: no effect - grammar

Commented [HK14]: no effect - grammar

Commented [HK15]: no effect - clarification

Commented [HK16]: no effect - grammar

Commented [HK17]: no effect – update name

Commented [HK18]: no effect - grammar

Commented [HK19]: no effect - clarification

**Commented [HK20]:** No effect – added to comply with SL 2015-246

Commented [HK21]: no effect - grammar

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(3)

- (b) Within 90 days after the Commission has received the request for delegation, the Commission shall notify the local government whether it has been approved, approved with modifications, or denied.
- (c) The Commission, upon determination that a delegated local authority is failing to implement or enforce the Tar Pamlico Basin riparian buffer protection requirements in keeping with a request approved under Sub item (1)(b) of this Rule, shall notify the delegated local authority in writing of the local program's inadequacies. If the delegated local authority has not corrected the deficiencies within 90 days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and shall implement and enforce the Tar Pamlico Basin riparian buffer protection requirements.
- (d) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Tar Pamlico Basin riparian buffer protection requirements, in whole or in part, to the Director.

(2) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division and subsequent annual training sessions be certified to make on-site determinations pursuant to G.S. 143-214.25A. The Administrator shall ensure that local government staff staffs working directly with the program receive training to understand, implement and enforce the program program and are certified to make on-site determinations pursuant to G.S. 143-214.25A. If a local government does not have anyone on staff certified to make on-site determinations pursuant to G.S. 143-214.25A, they shall immediately notify the Division and indicate a proposed schedule to secure a certified staff member. The local government shall coordinate with the Division to provide on-site determinations until a new certified staff member is secured by the local government.

PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH MITIGATION. UPON AUTHORIZATION. Upon receiving delegation, local authorities—governments shall review proposed uses within the riparian buffer and issue approvals if the uses meet the Tar Pamlico Basin riparian buffer protection requirements. Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the Tar-Pamlico Basin riparian buffer protection requirements, or provides for appropriate mitigated provisions to the Tar Pamlico Basin riparian buffer protection requirements. The Division may challenge a decision made by a delegated local authority for a period of 30 days after the Authorization Certificate is issued. If the Division does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local

**Commented [HK22]:** No effect – Moved to item (8) below

**Commented [HK23]:** No effect – Moved to Item (9) below

**Commented [HK24]:** less stringent - The division is unable to provide subsequent annual training.

Commented [HK25]: No effect – Required by statute

Commented [HK26]: No effect - grammar

Commented [HK27]: No effect – Ensures on-site determinations continue when local governments don't have anyone on staff certified to make calls. This is codifying current practice.

Commented [HK28]: No effect - update terminology

Commented [HK29]: No effect – update terminology

Commented [HK30]: No effect – update terminology

1		authority's decision shall stand applications requesting an Authorization Certificate pursuant to the	
2		requirements set forth in Rule .0705 of this Section.	 Commented [HK31]: less stringent - Remove ability for
3	(4)	VARIANCES.EXCEPTIONS. After Upon receiving delegation, local governments shall review	DWR to over-rule local government decisions; instead just reference process set out in Rule .0705
4		applications requesting an Authorization Certificate with Exception pursuant to the requirements set	Commented [HK32]: No effect – update terminology
5		forth in Rule .0705 of this Section.variance requests, provide approvals for minor variance requests	Commented [HK33]: No effect - grammar
6		and make recommendations to the Commission for major variance requests pursuant to the Tar-	Commonded princes princes grammar
7		Pamlico Basin riparian buffer protection program.	 Commented [HK34]: No effect – Removed language to
8	(5)	LIMITS OF DELEGATED LOCAL AUTHORITY. The Commission—Division shall have	just reference process set out in Rule .0705
9		jurisdiction to the exclusion of local governments to implement the Tar-Pamlico Basin riparian	Commented [HK35]: No effect – update name
10		buffer protection requirements for the following types of activities:	
11		(a) Activities conducted under the authority of the State;	
12		(b) Activities conducted under the authority of the United States;	
13		(c) Activities conducted under the authority of multiple jurisdictions;	
14		(d) Activities conducted under the authority of local units of government.government;	 Commented [HK36]: No effect - punctuation
15		(e) Forest harvesting activities described in Rule .0706 of this Section; and	 Commented [HK37]: No effect – Updated to comply wit
16		(f) Agricultural activities.	SL 2005-447
17	(6)	RECORD-KEEPING REQUIREMENTS. Delegated local authorities-governments shall maintain	<b>Commented [HK38]:</b> less stringent - Consistent with morrecent buffer rules
18		on-site records for a minimum of 5 years. Delegated local authorities governments must furnish a	Commented [HK39]: No effect – update name
19		copy of these records to the Director Division within 30 calendar days of receipt of a written request	Commented [HK40]: No effect – update name
20		for the records. The Division shall inspect local riparian buffer protection programs to ensure that	Commented [HK41]: No effect – update name
21		the programs are being implemented and enforced in keeping with a request approved under Sub-	Commented [HK42]: No effect - clarification
22		item (1)(b) of this Rule. Each delegated local authority's government's records shall include the	 Commented [HK43]: No effect – Moved to item (7)
23		following:	below
24		(a) A copy of variance Authorization Certificate with exception requests;	Commented [HK44]: No effect – update name
25		(b) The variance Authorization Certificate with exception request's finding of fact;	
26		(c) The result of the variance Authorization Certificate with exception proceedings;	 Commented [HK45]: No effect – update terminology
27		(d) A record of complaints and action taken as a result of the complaint;	
28		(e) Records for stream origin calls and stream ratings; and	
29		(f) Copies of request for authorization, records approving authorization and Authorization	
30		Certificates.	
31	(7)	AUDITS OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local	
32		governments to ensure the local programs are being implemented and enforced in keeping with the	
33		requirements of this Rule and Rule .0734 of this Section.	 Commented [HK46]: No effect – moved from Item (6)
34	(8)	PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a	above
35		delegated local government is failing to implement or enforce the Tar-Pamlico Basin riparian buffer	
36		protection requirements in keeping with the request approved under Subparagraph (1)(d) of this	
37		Rule, the Commission shall notify the delegated local government in writing of the local program's	

inadequacies. If the delegated local government has not corrected the deficiencies within 90 1 2 calendar days of receipt of the written notification, then the Commission shall rescind the delegation 3 of authority to the local government and the Division shall implement and enforce the Tar-Pamlico 4 River Basin riparian buffer protection requirements within their jurisdiction DELEGATION. The Commission may delegate its duties and powers for granting and rescinding 5 local government delegation of the Tar-Pamlico River Basin riparian buffer protection requirements. 6 7 in whole or in part, to the Director. 8 9 History Note: Authority G S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 10 143B-282(d); S.L. 1999; c. 329, s. 7.1; 11 Temporary Adoption Eff. January 1, 2000; 12 Eff. August 1, 2000. Amended Eff. INSERT DATE 13 14 15

**Commented [HK47]:** No effect – moved from Sub-Item (1)(c) above

**Commented [HK48]:** No effect – moved from Sub-Item (1)(d) above