

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

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3 **15A NCAC 02B .0402** **SCOPE**

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

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7 *History Note:* Authority *G.S. 143-215; 143-215.1; 143-215.3(a)(1);*

8 *Eff. February 1, ~~1976~~1976;*

9 *Readopted Eff. <date>.*

10

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

1 15A NCAC 02B .0403 is proposed for readoption with substantive changes as follows:

3 **15A NCAC 02B .0403 DEFINITION OF TERMS**

4 The terms used in this Section shall be as defined in G.S. 143-212 and 143-213; the federal Clean Water Act  
 5 (33 U.S.C. 1251 et seq.); 40 CFR Parts 122, 124, and 125; and as follows:

- 6 (1) ~~The term "commission"~~"Commission" means the Environmental Management Commission or its  
 7 successor.
- 8 (2) ~~The term "director"~~"Director" means the Director of the Division of ~~Environmental~~  
 9 ~~Management, Water Resources or Division of Energy, Mineral and Land Resources, or both,~~  
 10 ~~Department of Natural Resources and Community Development.~~Environmental Quality, whichever  
 11 is the permitting authority in a particular instance; or his designee.
- 12 (3) "Division" means the Division of Water Resources or the Division of Energy, Mineral and Land  
 13 Resources, or both, Department of Environmental Quality, whichever is the permitting authority in  
 14 a particular instance.
- 15 (4) ~~The term "staff"~~"Staff" means the division of environmental management, Division, or its successor.
- 16 (4) ~~The term "BPCTCA" shall mean best practicable control technology currently available. Effluent~~  
 17 ~~limitations determined as BPCTCA are immediately applicable and shall be complied with not later~~  
 18 ~~than July 1, 1977.~~
- 19 (5) ~~The term "BPWTT" shall mean best practicable waste treatment technology. Effluent limitations~~  
 20 ~~established by this designation shall be complied with not later than July 1, 1983.~~
- 21 (6) ~~The term "BCT" shall mean best conventional pollutant control technology. Effluent limitations~~  
 22 ~~designated as BCT will control the discharge of pollutants determined to be conventional in nature~~  
 23 ~~and these limitations shall be complied with not later than July 1, 1984.~~
- 24 (7) ~~The term "BAT" shall mean best available technology economically achievable. Effluent~~  
 25 ~~limitations designated as BAT will control the discharge of pollutants determined to be~~  
 26 ~~nonconventional in nature and these limitations will come into effect on July 1, 1984, and shall be~~  
 27 ~~complied with not later than July 1, 1987.~~
- 28 (8) ~~The term "BAT/BMP'S" shall mean best available technology economically achievable/best~~  
 29 ~~management practices. Effluent limitations designated as BAT/BMP's will control the discharge of~~  
 30 ~~pollutants determined to be toxic in nature. Compliance with these designated effluent limitations~~  
 31 ~~must be maintained not later than three years after such limitations are developed, or not later than~~  
 32 ~~July 1, 1984, whichever is later, but in no case later than July 1, 1987.~~
- 33 (5) "Technology-based effluent limitations (or limits)," or "TBELs," means those effluent limits that  
 34 are based on a required level of treatment performance.
- 35 (6) "Water quality-based effluent limitations (or limits)," or "WQBELs," means those effluent limits  
 36 that are established to ensure that a discharge does not cause or contribute to a contravention of state  
 37 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.

(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 <http://www.gpo.gov/fdsys/>.

(40)(8) ~~The term "waste"~~ "Waste stabilization pond" (also called "lagoons" or "oxidation ponds") shall ~~mean~~ means 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:

(i) 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:

(i) 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.

(12)(9) ~~The term "minimum"~~Minimum treatment requirements" means the minimum technology-based effluent limitations that a specific discharge would be required to comply with the designations secondary treatment as defined in 15A NCAC 2B .0406, BPWTT, BPCTCA, BCT, BAT and/or BMP's as required of a specific wastewater discharge meet in order to satisfy applicable treatment standards, including the following:

- (a) "Secondary treatment" is the minimum standard of treatment for POTWs.
- (b) "Best waste stabilization pond technology" is the standard of treatment for waste stabilization ponds treating municipal or similar wastewaters only.
- (c) "Best practicable waste treatment technology," or "BPWTT," is an advanced standard of treatment for POTWs.
- (d) "Best practicable pollutant control technology," or "BPT," is the minimum standard of treatment for existing industrial dischargers.
- (e) "Best conventional pollutant control technology," or "BCT," is a standard of treatment for existing industrial dischargers and typically applies to conventional pollutants.
- (f) "Best available technology economically achievable," or "BAT" is a standard of treatment for industrial dischargers and typically applies to nonconventional and priority pollutants.
- (g) "New source performance standards" is the standard of treatment for industrial dischargers determined to be a new source pursuant to 15A NCAC 2B .0407.

Minimum treatment requirements must be met even if the receiving waters affected can or are expected to be able to accept higher pollutant-load levels and still meet applicable water quality standards.

(13)(10) ~~The term "water"~~Water quality limited segment" means a segment where it is known that water quality does not meet applicable water quality standards or is not expected to meet them even after the application of minimum treatment requirements.

(14)(11) ~~The term "effluent"~~Effluent limited segment" means a segment where it is known that water quality is meeting and will continue to meet applicable water quality standards or where there is adequate demonstration that water quality will meet applicable water quality standards after the application of minimum treatment requirements.

(15)(12) ~~The term "settleable"~~Settleable solids" means the volumetric measurement of solids after a specified settling time. The determination of settleable solids shall be made in the following manner: one liter of the wastewater is placed in a standard Imhoff cone and allowed to settle for 45 minutes. After 45 minutes settling, the liquid layer is gently stirred and allowed to settle for 15 additional minutes. The volume of solids is immediately read in milliliter per liter (ml/l).

(16)(13) ~~The term "oxygen"~~Oxygen consuming wastes" means those wastewater discharge components recognized as being oxygen demanding in the aquatic environment. These are generally limited by BOD(5) and NH(3)-N.

(14) “Conventional pollutants” means biochemical oxygen demand (BOD(5)), Total Suspended Solids (TSS), pH, fecal coliform, oil and grease, and any other pollutants the USEPA designates as conventional in applicable regulations.

(15) “Priority pollutant” means any chemical pollutant listed in 40 CFR Part 423, Appendix A, which is hereby adopted by reference, including any subsequent amendments and editions.

(16) “Nonconventional pollutant” means any pollutant not categorized as a conventional or priority pollutant parameter.

*History Note: Authority G.S. 143–215; 143–215.1; 143–215.3(a)(1);  
Eff. February 1, 1976;  
Amended Eff. <date>; August 12, 1979; November 1, 1978; December 1, 1976.*

1 15A NCAC 02B .0404 is proposed for readoption with subsequent changes as follows:

2  
3 **15A NCAC 02B .0404 WATER QUALITY BASED EFFLUENT LIMITATIONS IN WATER QUALITY**  
4 **LIMITED SEGMENTS**

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

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

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

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

29 (e) The discharge of wastewaters to the Atlantic Ocean shall follow the guidelines and requirements set forth in the  
30 United States Environmental Protection Agency regulation Ocean Discharge Criteria, 40 C.F.R. 125.120 through  
31 125.124, which is hereby adopted by reference, including any subsequent amendments and editions.

32  
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. <date>; August 12, 1979.*  
36

**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.

1 15A NCAC 02B .0406 is proposed for amendment as follows:

2

3 **15A NCAC 02B .0406** **TECHNOLOGY BASED EFFLUENT LIMITS IN EFFLUENT LIMITED**  
4 **SEGMENTS LIMITATIONS**

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

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

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

16

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

31

Effluent Characteristic	SECONDARY		"BPWTT"	
	Monthly Avg.	Weekly Avg. Max.	Avg.	Max.
BOD(5)	30 mg/l	45 mg/l	Reserved	
TSS	30 mg/l	45 mg/l	Reserved	
Fecal Coliform	(Effluent limitations for coliform		Reserved	
pH	bacteria and pH shall be imposed only		Reserved	

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

	<u>if necessary to maintain compliance with applicable water quality standards.)</u>	
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(3) **Effluent limitations** for waste stabilization ponds provided that:

- (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/L~~ mg/L expressed as monthly average and weekly maximum average:

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

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

**Commented [TM4]: Change:** General edits, reformatting of table.

**Effect:** Technical changes.



(b) Industrial Waste Discharges. Effluent limits for industrial waste discharges are set forth in the ~~Environmental Protection Agency~~ guidelines and standards listed in this Rule which promulgated by the Environmental Protection Agency, including those in 40 CFR Chapter I, Subpart N – Effluent Guidelines and Standards. Such guidelines and standards are ~~adopted hereby incorporated by reference as amended through June 1, 1984~~ reference, including any subsequent amendments and editions.

**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.

40 CFR 129 -- EPA Toxic Pollutant Effluent Standards  
 40 CFR 401 -- EPA General Provisions for Effluent Guidelines and Standards  
 40 CFR 405 -- EPA Effluent Guidelines and Standards for Dairy Products  
 40 CFR 406 -- EPA Effluent Guidelines and Standards for Grain Mills  
 40 CFR 407 -- EPA Effluent Guidelines and Standards for Canned and Preserved Fruits and Vegetables  
 40 CFR 408 -- EPA Effluent Guidelines and Standards for Canned and Preserved Seafood  
 40 CFR 409 -- EPA Effluent Guidelines and Standards for Sugar Processing  
 40 CFR 410 -- EPA Effluent Guidelines and Standards for Textiles  
 40 CFR 411 -- EPA Cement Manufacturing Effluent Guidelines and Standards  
 40 CFR 412 -- EPA Effluent Guidelines and Standards for Concentrated Animal Feeding Operations (CAFO)  
 40 CFR 413 -- EPA Effluent Guidelines and Standards for Electroplating  
 40 CFR 414 -- EPA Effluent Guidelines and Standards for Organic Chemicals  
 40 CFR 415 -- EPA Effluent Guidelines and Standards for Inorganic Chemicals  
 40 CFR 416 -- EPA Effluent Guidelines and Standards for Plastics and Synthetics  
 40 CFR 417 -- EPA Effluent Guidelines and Standards for Soaps and Detergents  
 40 CFR 418 -- EPA Effluent Guidelines and Standards for Fertilizer Manufacturing  
 40 CFR 419 -- EPA Effluent Guidelines and Standards for Petroleum Refining  
 40 CFR 420 -- EPA Effluent Guidelines and Standards for Iron and Steel Manufacturing  
 40 CFR 421 -- EPA Effluent Guidelines and Standards for Nonferrous Metals  
 40 CFR 422 -- EPA Phosphate Manufacturing Effluent Guidelines and Standards  
 40 CFR 423 -- EPA Effluent Guidelines and Standards for Steam Electric Power Generating  
 40 CFR 424 -- EPA Effluent Guidelines for Ferroalloy Manufacturing  
 40 CFR 425 -- EPA Effluent Guidelines and Standards for Leather Tanning and Finishing  
 40 CFR 426 -- EPA Effluent Guidelines and Standards for Glass Manufacturing  
 40 CFR 427 -- EPA Effluent Guidelines and Standards for Asbestos Manufacturing  
 40 CFR 428 -- EPA Effluent Guidelines for Rubber Processing  
 40 CFR 429 -- EPA Effluent Guidelines and Standards for Timber Products  
 40 CFR 430 -- EPA Effluent Guidelines and Standards for Pulp, Paper, and Paper Board  
 40 CFR 431 -- EPA Effluent Guidelines and Standards for Builders Paper and Board Mills  
 40 CFR 432 -- EPA Effluent Guidelines and Standards for Meat Products  
 40 CFR 433 -- EPA Effluent Guidelines and Standards for Metal Finishing

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 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 these~~The current version of these Federal Regulations can be accessed free of charge at  
 34 <http://www.gpo.gov/fdsys/> 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.

(2) — Asheville Regional Office  
 Interchange Building, 59 Woodfin Place  
 Asheville, N.C. 28802

(3) — Fayetteville Regional Office  
 Wachovia Building, Suite 714  
 Fayetteville, N.C. 28301

(4) — Mooresville Regional Office  
 919 North Main Street  
 Mooresville, N.C. 28115

(5) — Raleigh Regional Office  
 3800 Barrett Drive  
 Raleigh, N.C. 27609

(6) — Washington Regional Office  
 1502 North Market Street  
 Washington, N.C. 27889

(7) — Wilmington Regional Office  
 7225 Wrightsville Avenue  
 Wilmington, N.C. 28403.

(8) — Winston-Salem Regional Office  
 8003 North Point Boulevard  
 Winston-Salem, N.C. 27106

(d) In cases where effluent limits established by Paragraph (b) of this Rule are not adequate to control settleable solids, the staff shall establish effluent limits for settleable solids. Such effluent limitations for settleable solids will be applicable only when the projected average solids concentration exceeds 5.0 ml/l and the limitations established 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 approved by the Director of the Division of ~~Environmental Management~~ Water Resources or the Division.

(e) For industrial categories or parts of categories for which effluent limits and guidelines have not been published and adopted, effluent limitations for existing industrial waste discharges, or new industrial waste discharges shall be calculated by the staff using the projected limits of the Environmental Protection Agency, the Environmental Protection Agency development document and other available information in order to achieve the purposes of Article 21. Such limits developed by the staff shall be subject to approval by the Director.

*History Note:* Authority G.S. 143–215; 143–215.1; 143–215.3(a)(1), (4);  
 Eff. February 1, 1976;

Amended Eff. <date>; July 1, 1988; December 1, 1984; November 1, 1978; December 1, 1976.

1 15A NCAC 02B .0407 is proposed for readoption without substantive changes as follows:

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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 (1) significant site preparation work, such as major clearing or excavation; or
- 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 plant).

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 *History Note: Authority G.S. 143-215; 143-215.1; 143-215.3(a)(1), (4);*  
26 *Eff. December 1, ~~1976~~ 1976;*  
27 *Readopted Eff. <date>.*  
28

1 15A NCAC 02B .0408 is proposed for adoption as follows:

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3 **15A NCAC 02B .0408 INCORPORATION BY REFERENCE**

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 (1) 40 CFR Parts 122.2, 124.2, and 125.2: Definitions;
- 10 (2) §122.4: Prohibitions;
- 11 (3) §122.5 (a) and (b): Effect of permit;
- 12 (4) §122.7 (b) and (c): Confidential information;
- 13 (5) §122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;
- 14 (6) §122.22: Signatories;
- 15 (7) §122.23: Concentrated animal feeding operations;
- 16 (8) §122.24: Concentrated aquatic animal production facilities;
- 17 (9) §122.25: Aquaculture projects;
- 18 (10) §122.26: Storm water discharges;
- 19 (11) §122.27: Silviculture;
- 20 (12) §122.28: General permits;
- 21 (13) §122.29 (a), (b), and (d): New sources and new dischargers;
- 22 (14) §122.30: NPDES stormwater regulations for small MS4s: objectives;
- 23 (15) §122.31: NPDES stormwater regulations: role of Tribes;
- 24 (16) §122.32: NPDES stormwater regulations for small MS4s: applicability;
- 25 (17) §122.33: NPDES stormwater regulations for small MS4s: application for permit;
- 26 (18) §122.34: NPDES stormwater regulations for small MS4s: permit requirements;
- 27 (19) §122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;
- 28 (20) §122.36: NPDES stormwater regulations for small MS4s: compliance;
- 29 (21) §122.37: NPDES stormwater regulations for small MS4s: evaluation;
- 30 (22) §122.41 (a)(1) and (b) through (n): Applicable permit conditions;
- 31 (23) §122.42: Conditions applicable to specified categories of permits;
- 32 (24) §122.43: Establishing permit conditions;
- 33 (25) §122.44: Establishing NPDES permit conditions;
- 34 (26) §122.45: Calculating permit conditions;
- 35 (27) §122.46: Duration;
- 36 (28) §122.47 (a): Schedules of compliance;
- 37 (29) §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.

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

*History Note:* Authority G.S. 143-211(c); 143-215.1(b)(4); 143B-282(5);  
Eff. <date>.

1 15A NCAC 02B .0501 is proposed for readoption without substantive changes as follows:

2  
3 **15A NCAC 02B .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, ~~1984~~.1984;*

11 *Readopted Eff. <date>.*

1 15A NCAC 02B .0502 is proposed for readoption without substantive changes as follows:

2  
3 **15A NCAC 02B .0502 SCOPE**

4 This Section shall 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, ~~1976~~ 1976;*

8 *Readopted Eff. <date>.*



1 15A NCAC 02B .0503 is proposed for amendment as follows:

2  
3 **15A NCAC 02B .0503 DEFINITIONS**

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

- 6 (1) "Biological monitoring" shall mean the sampling or testing of the biological integrity of surface  
7 waters and measurements of impacts including accumulations of pollutants in tissue, toxicity  
8 monitoring, and characterization of instream biological populations.
- 9 (2) "Classified water pollution control facility" means a treatment works classified by the Water  
10 Pollution Control System Operator Certification Commission pursuant to Chapter 90A of the North  
11 Carolina General Statutes as class I, class II, class III, or class IV facility, or such other  
12 classifications as the Water Pollution Control System Operator Certification Commission may  
13 hereafter adopt.
- 14 (3) "Commercial laboratory" means any laboratory which analyzes water samples for a fee.
- 15 (4) "Composite sample" ~~means~~ means a sample gathered over a 24 hour period by continuous sampling  
16 or combining grab samples in such a manner as to result in a total sample which is representative of  
17 the wastewater discharge during the sample period. This sample may be obtained by methods given  
18 below, however, the Director may designate the most appropriate method, number and size of  
19 aliquots necessary and the time interval between grab samples on a case-by-case basis. Samples  
20 may be collected manually or automatically.
- 21 (a) Continuous - a single, continuous sample collected over a 24 hour period proportional to  
22 the rate of flow.
- 23 (b) Constant time/variable volume - a series of grab samples collected at equal time intervals  
24 over a 24 hour period of discharge and combined proportional to the rate of flow measured  
25 at the time of individual sample collection, or
- 26 (c) Variable time/constant volume - a series of grab samples of equal volume collected over a  
27 24 hour period with the time intervals between samples determined by a preset number of  
28 gallons passing the sampling point. Flow measurement between sample intervals shall be  
29 determined by use of a flow recorder and totalizer, and the preset gallon interval between  
30 sample collection fixed at no greater than 1/24 of the expected total daily flow at the  
31 treatment system, or
- 32 (d) Constant time/constant volume - a series of grab samples of equal volume collected over a  
33 24 hour period at a constant time interval. This method may be used in situations where  
34 effluent flow rates vary less than 15 percent. The grab samples shall be taken at intervals  
35 of no greater than 20 minutes apart during any 24 hour period and must be of equal size  
36 and of no less than 100 milliliters. Use of this method requires prior approval by the  
37 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

- (5) "Daily" means every day on which a wastewater discharge occurs except Saturdays, Sundays and 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 representative of the discharge or the receiving waters.
- (15) "Industrial establishment" means any industrial, business, commercial or governmental enterprise which produces water carried wastes.
- (16) "Influent" means the wastewater entering a water pollution control facility.
- (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.
- (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, rolling stock, or concentrated animal feeding operation from which waste is or may be discharged to the waters of the state.
- (19) "Quarterly" means occurring four times during a 12-month period at a frequency of once per each interval of three consecutive months.
- (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.
- (22) "Standard Industrial Classification" (SIC) code means those four-digit 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 Management~~ Water Resources, 512 North Salisbury Street, Raleigh, North Carolina. ~~Copies~~ The 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](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.

(28) "Water pollution control facilities" or "facility" means "treatment works" as defined in G.S. 143-213.

(29) ~~"North American Industry Classification System"~~ (NAICS) code means those six-digit numeric designations used to classify business establishments according to the processes employed to produce goods or services. For the purposes of this Section, each industry or unit of government shall be classified by NAICS codes 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 NAICS number 221320. The North American Industry Classification System Manual, as used in this Section, is hereby incorporated by reference, including any subsequent amendments and editions. The classifications found in the manual may also be accessed at <https://www.census.gov/eos/www/naics/>.

**Commented [TM4]: Change:** EPA rules now refer to this system in addition to, or in lieu of SIC codes.  
**Effect:** Technical correction/ update.

*History Note:* Authority G.S. 143-213; 143-215.68;  
Eff. February 1, 1976;  
Amended Eff. <date>; April 1, 1993; December 1, 1984.

1 15A NCAC 02B .0504 is proposed for readoption without substantive amendment as follows:

2  
3 **15A NCAC 02B .0504 CLASSIFICATION OF WASTE SOURCES**

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

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

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

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

22  
23 *History Note: Authority G.S. 143-215.64; 143-215.68;*

24 *Eff. February 1, 1976;*

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

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

**Commented [TM2]: Change:** Added reference to the new  
system, for completeness.  
**Effect:** Ensure consistency with federal requirements.

1 15A NCAC 02B .0505 is proposed for amendment as follows:

2  
3 **15A NCAC 02B .0505 MONITORING REQUIREMENTS**

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

7 (b) Wastewater and Stream Flow Measurement.

- 8 (1) A device or method, approved by the Director for determining the rate of flow of all discharges of  
9 wastewater whether treated or untreated shall be provided at those point sources of which monthly  
10 reports of monitoring tests and measurements are required unless specifically excepted by the  
11 Director as not significant. All water pollution control facilities shall install, operate, and maintain  
12 continuous flow measuring with recording devices or totalizing devices, if approved by the Director,  
13 or shall employ other flow measuring or flow control methods approved by the Director and shall  
14 submit monthly reports of such data as required in Rule .0506 of this Section. The permittee shall  
15 install appropriate flow measurement devices consistent with approved engineering and scientific  
16 practices to ensure the accuracy and reliability of measurements of the volume of monitored  
17 discharges. Devices selected shall be capable of measuring flows with a maximum deviation of less  
18 than 10 percent from true discharge volumes. Flow measurement devices shall be accurately  
19 calibrated at a minimum of once per year and maintained to ensure that the accuracy of the  
20 measurements is consistent with the accepted capability of that type of device. The flow  
21 measurement device and location shall be approved by the Director prior to installation. Records of  
22 flow measurement device calibration shall be kept on file by the permittee for a period of at least  
23 three years. At a minimum, data to be included in this documentation shall be:

- 24 (A) Date of flow measurement device calibration  
25 (B) Name of person performing calibration.

- 26 (2) A reading of the U.S. Geological Survey stream flow staff gauge or reference point shall be made  
27 at the time of stream sampling in those instances so determined the Director.

28 (c) Sampling.

- 29 (1) Frequency and Location. Except as otherwise provided herein, all industrial establishments and  
30 units of government shall take influent, effluent and stream samples at such locations and with such  
31 frequency as shall be necessary to conduct the tests and analyses required by Rule .0508 of this  
32 Section.  
33 (2) Establishment of Sampling Points:  
34 (A) Sampling points as required in Rule .0508 of this Section shall be established for collecting  
35 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.

(B) Sampling points shall be established in the receiving waters at one or more upstream locations and at one or more downstream locations. These locations shall be specified by the Director.

(3) Collection of Samples:

(A) Samples collected in receiving waters shall be grab samples.

(B) Samples of the influent and effluent of the water pollution control facility or other point source shall be composite samples, except as provided in Rule .0505 (c)(3)(C) of this Section, or for facilities with design flows of 30,000 gallons per day or less unless required by the Director. The Director may specify the methods of sample collection as to type of sample and type of composite sampling required.

(C) The following influent and effluent tests shall be made on grab samples and shall not be made on composite samples:

- (i) dissolved oxygen,
- (ii) temperature,
- (iii) settleable matter,
- (iv) turbidity,
- (v) pH,
- (vi) residual chlorine,
- (vii) coliform bacteria (fecal or total),
- (viii) cyanide,
- (ix) oil and grease,
- (x) sulfides,
- (xi) phenols,
- (xii) volatile organics.

(4) Stream sampling may be discontinued at such times as flow conditions in the receiving waters or extreme weather conditions will result in a substantial risk of injury or death to persons collecting samples. In such cases, on each day that sampling is discontinued, written justification for the discontinuance shall be specified in the monitoring report for the month in which the event occurred. This provision shall be strictly construed and may not be utilized to avoid the requirements of this Section when performance of these requirements is attainable. When there is a discontinuance pursuant to this provision, stream sampling shall be resumed at the first opportunity after the risk period has ceased.

(d) Biological and Toxicity Monitoring. Biological and Toxicity monitoring may be required when, in the opinion of the Director, such monitoring is necessary to establish whether the designated best use of the waters as determined by the Environmental Management ~~Commission~~, Commission is being or may be impaired or when toxic substances are known or suspected to be present in the facility's discharge.

(e) Tests and Analyses.

- (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 ~~limitations, limitations~~ 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 ~~conditions~~ 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.
- (a) 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.



Wastes is hereby incorporated by reference including any subsequent amendments and editions. These methods (document EPA-600-4-79-020) can be accessed free of charge at <http://nepis.epa.gov>. Copies may be obtained from the NTIS, 5285 Port Royal Road, Springfield, VA 22161 at a cost of fifty dollars (\$50.00) per edition. All material incorporated by reference in this Rule is available for inspection at the Central office of the Division of Environmental Management Water Resources, 512 North Salisbury Street, Raleigh, North Carolina 27626-0535 27604.

(b) Method Sensitivity. All test procedures must produce detection and reporting levels that are below the permit discharge requirements and all data generated must be reported to the approved detection level or lower reporting level of the procedure. Monitoring required for permit application or to determine compliance with effluent limitations or applicable water quality standards shall be performed using sufficiently sensitive methods in accordance with 40 CFR 122.21(e)(3) or 122.44(i), which are hereby incorporated by reference, including any subsequent amendments and editions. If no approved methods are determined capable of achieving detection and reporting levels below permit discharge requirements, then the approved method with the lowest detection and reporting level must be used. Biological testing shall be performed in accordance with 15A NCAC 2B .0103(b).

(5) Approval of Laboratories. Analytical determinations made pursuant to the monitoring and reporting requirements of this Section shall be made in adequately equipped laboratories staffed by person(s) competent to perform tests. Only monitoring programs which provide for the making of analytical determinations by qualified employees of the owner or by a laboratory certified by the Division under 15A NCAC 2H .0800 or 15A NCAC 2H .1100 will be considered adequate.

(f) Process Control Monitoring Testing: The Director may require, on a case-by-case basis, process control monitoring testing suitable for the size and classification of the facility.

*History Note: Authority G.S. 143-215.64; 143-215.66; 143-215.68;*

*Eff. February 1, 1976;*

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

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

1 15A NCAC 02B .0506 is proposed for readoption with substantive amendments as follows:

3 **15A NCAC 02B .0506** **REPORTING REQUIREMENTS**

4 (a) General:

5 (1) Every person subject to this Section shall file certified monitoring reports setting forth the results of  
6 tests and measurements conducted pursuant to NPDES permit monitoring requirements.

7 (A) Monthly monitoring reports shall be filed no later than 30 calendar days after the end of  
8 the reporting period for which the report is made.

9 (B) Reports filed pursuant to the requirements of Subparagraph (a)(1) of this Rule shall be  
10 submitted in a manner consistent with the requirements of 40 CFR Part 3, which is hereby  
11 incorporated by reference including subsequent amendments and additions. Where  
12 submittal of printed documents is allowed, of such submittals shall be made on forms  
13 furnished or in a format provided or approved by the Director and shall be submitted in  
14 duplicate to:

15 ATTN: CENTRAL FILES

16 DIVISION OF ENVIRONMENTAL MANAGEMENT WATER RESOURCES

17 POST OFFICE BOX 29535

18 MAIL SERVICE CENTER 1617

19 RALEIGH, NORTH CAROLINA 27626-0535; 27699-1617

20 (C) A copy of all reports submitted to the Director pursuant to this Section shall be retained by  
21 the owner of each ~~water pollution control~~ permitted facility for a period of at least three  
22 years from the date of submission and be readily available to the Division for inspection.

23 (D) In order to document information contained in reports submitted to the Director pursuant  
24 to this Section, the owner of each pollution control facility is required to retain or have  
25 readily available for inspection by the ~~Division~~ Division the following items for a period  
26 of at least three years from report submission:

27 (i) the original laboratory reports from any certified laboratory utilized for sample  
28 analysis. Such reports must be signed by the laboratory supervisor, and must  
29 indicate the date and time of sample collection and analysis, and the analysts'  
30 name;

31 (ii) bench notes and data logs for sample analyses performed by the pollution control  
32 facility staff or operator in responsible charge, whether or not the facility has a  
33 certified lab; and

34 (iii) copies of all process control testing.

35 (E) In situations where no discharge has occurred from the facility during the report period,  
36 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.

information and indicating "NO FLOW" unless the Director agrees to waive the reporting requirement during extended conditions of no discharge.

- (2) Every person subject to this Section shall report by telephone to either the central office or appropriate regional office of the Division as soon as possible but no later than 24 hours after occurrence or on the next working day ~~(however, if the occurrence is one which may endanger the public health, or fish or wildlife, and contact with the central office or the appropriate regional office cannot be made, such person shall report as soon as possible to the State Highway Patrol Warning Point in state 1-800-662-7956 or out of state 919-733-3861)~~ following the occurrence or first knowledge of the occurrence of any of the following:

- (A) Any failure of a collection system, pumping station or treatment facility resulting in a by-pass without treatment of all or any portion of the ~~wastewater~~ wastewater;
- (B) Any occurrence at the water pollution control facility which results in the discharge of significant amounts of wastes which are abnormal in quantity or characteristic, such as the dumping of the contents of a sludge digester, the known passage of a hazardous substance through the facility, or any other unusual ~~circumstances~~ circumstances; or
- (C) Any process unit failure, due to known or unknown reasons, that renders the facility incapable of adequate wastewater treatment, such as mechanical or electrical failures of pumps, aerators, compressors, etc.;

~~except that if the occurrence is one which may endanger the public health or fish or wildlife, and if contact with the central office or the appropriate regional office cannot be made, such person shall report as soon as possible to the NC Emergency Operations Center 24/7 at 1-800-858-0368 (toll-free) or 919-733-3300.~~

- (3) Persons reporting such occurrences by telephone shall also provide a written report to the Division in letter or electronic form setting out the information required in Subparagraph (a)(4) of this Rule and pertinent information pertaining to the occurrence. This report must be received by the Division within five days following first knowledge of the occurrence.

- (4) All reports required to be filed by this Section shall contain the following information in addition to such other information as is required for the particular report:

- (A) name of facility,
- (B) water pollution control facility location,
- (C) the class assigned to the water pollution control facility,
- (D) the water pollution control facility permit number assigned by the Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality to the permit or other approval document issued by the Environmental Management Commission under which the discharge is made,
- (E) contact ~~name and name~~, telephone ~~number~~ number, email address, and mailing address,
- (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.

- (5) Any person desiring confidentiality for any influent information submitted shall specify the influent information for which confidentiality is sought and shall justify such request to the Department of ~~Environment, Health, and Natural Resources~~, Environmental Quality, and, if such request is approved by the ~~Director~~ Director, shall by an appropriate ~~stamp~~, stamp indicate the location of such information on each report filed thereafter.

(b) Monthly Monitoring Reports:

- (1) Every person operating a monitoring system required by this Section shall file a monitoring report once each month which includes the data for the samples collected during the month. This report shall be filed no later than 30 calendar days after the end of the reporting period for which the report is made.
- (2) Monthly monitoring reports shall be reviewed, compliance status determined, certified by signature, and submitted by the following:
- (A) For a corporation: by a responsible corporate officer. For the purpose of the Section, a responsible corporate officer means:
- (i) a president, secretary, treasurer or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
  - (ii) the manager of one or more manufacturing production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars), if authority to sign documents had been assigned or delegated to the manager in accordance with corporate procedures.
- (B) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
- (C) For a municipality, State, Federal, County, or other public agency: by either a principal executive officer or ranking elected official;
- (D) Duly authorized representative of the person described in Paragraphs (b)(2)(A), (B) and (C). A person is a duly authorized representative only if:
- (i) The authorization is made in writing by a person described in Paragraphs (b)(2)(A), (B) and (C);
  - (ii) The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, a position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

- (iii) The written authorization is submitted to the Permit Issuing Authority. ~~Permittees~~ A permittee authorizing another individual to sign as representative in no way relinquishes any responsibility for the permit or his responsibility to remain familiar with the permit ~~conditions~~ conditions and limits, including any modifications, and for the compliance data reports for the permit.

~~(E)~~(3) Permittee Certification by Signature.

- (A) The permittee signing the report certifies to the following statement: "I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."
- (B) The monthly report shall also be certified by the operator in responsible charge of a classified treatment facility or by the manager of an industrial establishment which has a point source of waste discharge and which does not have a classified water pollution control facility.

~~(3)~~(4) In addition to the information required on all reports [see Subparagraph (a)(4) of this Rule] the following information shall be submitted in monthly monitoring reports:

- (A) ~~name~~ Name of person or group collecting sample or making observation;
- (B) ~~name~~ Name of person or group that analyzed sample;
- (C) ~~name~~ Name of operator in responsible charge of the facility and the grade certificate held;
- (D) ~~sampling~~ Sampling point for each sample;
- (E) ~~date~~ Date and time (on 2400 hour clock basis) at which each grab sample was collected;
- (F) For composite samples:
- (i) date on which collection of composite samples is commenced,
  - (ii) time of starting and ending of composite sample period on 2400 hour clock basis;
- (G) ~~wastewater~~ Wastewater flow in million gallons per day (~~MGD~~); (MGD), or in units specified in the permit;
- (H) Results of analyses (reported to the designated number of figures with a properly placed decimal point as indicated on each report sheet) together with the proper storet number (to be furnished by the Division) for the analytical procedure used and the reporting units shall be those specified by the NPDES permit or current enforcement document, unless modified by the Director;
- (I) Only numeric values will be accepted in reporting results of fecal coliform testing. The reporting of "too numerous to count" (TNTC) as a value will constitute a violation;

- (J) The results of all tests on the characteristics of the effluent, including but not limited to NPDES Permit Monitoring Requirements, shall be reported on monthly report forms;
- (K) The monthly average of analysis for each parameter and the maximum and minimum values for the month shall be reported;
- (L) Certification by the Operator in Responsible Charge (ORC) as to the accuracy and completeness of the report and that he/she has performed and documented the required visitation and process control.

(c) Additional Reporting/Monitoring Requirements:

- (1) When a facility is operated on an independent contract basis, the operator in responsible charge shall notify the owner of the facility in writing of any existing or anticipated conditions at the facility which may interfere with its proper operation and which need corrective action by the owner. The notice shall include recommendations for corrective action.
- (2) Two ~~copies~~ printed copies, or an electronic copy, of the signed notice to the owner shall be sent to the Division ~~as an attachment to~~ no later than the next monthly monitoring report.
- (3) A log demonstrating visitation at the proper frequency for the assigned classification, including dates and times of visits, and documentation of proper process control monitoring shall be maintained and shall be submitted to the Division upon request. Copies of all information must be readily available for inspection for a period of three years.

- (d) All information submitted will be classified as public information unless determined otherwise by the ~~Director~~ Director in accordance with 15A NCAC 02H.0115.

*History Note: Authority G.S. 143-215.1(b); 143-215.64; 143-215.65; 143-215.68;*  
*Eff. February 1, 1976;*  
*Amended Eff. <date>; August 2, 1993; April 1, 1993; December 1, 1984; November 1, 1978.*

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

1 15A NCAC 02B .0508 is proposed for readoption with substantive changes as follows:

2  
3 **15A NCAC 02B .0508 TESTS AND MEASUREMENTS APPLICABLE TO SICs**

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

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

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

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

15 (1) If it is demonstrated to the satisfaction of the Director that any of the tests and measurements,  
16 sampling points, or frequency of sampling requirements, as required in this Rule for a particular SIC  
17 group, are not applicable to the discharge of a particular water pollution control facility, or if it can  
18 be demonstrated that the objectives of this Section can be achieved by other acceptable means, then  
19 such requirements may be waived or modified to the extent that the Director determines to be  
20 appropriate.

21 (2) In addition to the tests and measurements as listed in this Rule applicable to each of the SIC groups,  
22 persons subject to this Section may be required to perform such additional tests and measurements  
23 at such sampling points and with such frequency as are determined by the Director to be necessary  
24 to adequately monitor constituents of the waste discharge and their effect upon the receiving waters.  
25 This monitoring may ~~include~~include but not be limited to weekends and holidays as deemed  
26 necessary by the Director to ensure representative sampling and proper operation and maintenance  
27 of any facility.

28 (c) Unclassified Activities:

29 (1) Any person owning or operating a water pollution control facility who determines that a major SIC  
30 group(s) is not listed in this Rule for an activity subject to this Section shall so notify the Division.

31 (2) The Director shall prescribe the number and location of sampling points and the frequency with  
32 which tests and measurements must be made for such pollutant or pollutant effects as it shall deem  
33 necessary to properly monitor the quantity or quality of waste discharges resulting from any activity  
34 subject to this Section which is not included in the major SIC groups set forth in this Rule and to  
35 properly monitor effects of the discharges upon the waters of this state.

36 (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 locations and frequencies to be used with SIC monitoring requirements:

- 17
- 18 "I" means influent "E" means effluent "U" means upstream "D" means downstream
- 19 "2/month" means samples 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

### 23 MINING

#### 24 MINIMUM REQUIREMENTS FOR SIC 1400-1499

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



FOOD AND BEVERAGE PROCESSING AND TOBACCO PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2000-2199

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.	Ammonia Nitrogen	E	Monthly	2/month	Weekly	Weekly
6.	Total Nitrogen	E	*	*	*	*
7.	Total Phosphorus	E	*	*	*	*
8.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

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	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+

TEXTILE PROCESSING

MINIMUM REQUIREMENTS FOR SIC 2200-2299

## 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.	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		**	**	**	**

## WATER QUALITY LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			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+

LUMBER AND WOOD PRODUCTS (EXCLUDING WET DECKING)

MINIMUM REQUIREMENTS FOR SIC 2400-2599

## 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.	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		**	**	**	**

## WATER QUALITY LIMITED

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, 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+

PAPER AND ALLIED PRODUCTS

## MINIMUM REQUIREMENTS FOR SIC 2600-2699

## EFFLUENT LIMITED

1

	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.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

2

3

## WATER QUALITY LIMITED

4

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+

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CHEMICAL AND ALLIED PRODUCTS

9

## MINIMUM REQUIREMENTS FOR SIC 2800-2899

10

## EFFLUENT LIMITED

11

	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.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

#### WATER QUALITY LIMITED

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+

#### PETROLEUM REFINING AND RELATED INDUSTRIES

##### MINIMUM REQUIREMENTS FOR SIC 2900-2999

#### 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.	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		**	**	**	**

#### WATER QUALITY LIMITED

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 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+

#### LEATHER AND LEATHER PRODUCTS

#### MINIMUM REQUIREMENTS FOR SIC 3100-3199

#### 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	E	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		**	**	**	**

#### WATER QUALITY LIMITED

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
16.	Conductivity	U,D	Weekly	Weekly	3/week+	3/week+

#### FABRICATED METAL PRODUCTS EXCEPT ORDINANCE:MACHINERY AND TRANSPORTATION

#### EQUIPMENT MACHINERYELECTRICAL MACHINERY, EQUIPMENT AND SUPPLIES

#### MINIMUM REQUIREMENTS FOR SIC 3400-3699

#### 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.	Oil and Grease	E	2/month	Weekly	3/week	Daily

4.	Total Nitrogen	E	*	*	*	*
5.	Total Phosphorus	E	*	*	*	*
6.	Toxics and Toxicity		**	**	**	**
7.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2.	pH	E	Weekly	Weekly	3/week	Daily
3.	Temperature, °C	E	Weekly	Weekly	3/week	Daily
4.	Oil and Grease	E	2/month	Weekly	3/week	Daily
5.	Total Nitrogen	E	*	*	*	*
6.	Total Phosphorus	E	*	*	*	*
7.	Toxics and Toxicity		**	**	**	**

ELECTRICAL AND GAS SERVICES

MINIMUM REQUIREMENTS FOR SIC 4900-4939

EFFLUENT LIMITED

	REQUIRED TEST	LOCATION	FREQUENCY			
			CLASS	CLASS	CLASS	CLASS
			I	II	III	IV
1.	pH	E	Weekly	Weekly	Weekly	Weekly
2.	Temperature, °C	E	Weekly	Weekly	Weekly	Weekly
3.	Total Nitrogen	E	*	*	*	*
4.	Total Phosphorus	E	*	*	*	*
5.	Toxics and Toxicity		**	**	**	**

WATER QUALITY LIMITED

1.	Dissolved Oxygen	E	Weekly	Weekly	Weekly	Weekly
2.	pH	E	Weekly	Weekly	Weekly	Weekly
3.	Temperature, °C	E	Weekly	Weekly	Weekly	Weekly
4.	Total Nitrogen	E	*	*	*	*
5.	Total Phosphorus	E	*	*	*	*



6. Toxics and Toxicity \*\* \*\* \*

Note: The following monitoring for steam electric generating establishments discharging once through cooling water or cooling tower blowdown shall be required whether or not the discharge is from a classified facility.

REQUIRED TEST	LOCATION	FREQUENCY			
		CLASS I	CLASS II	CLASS III	CLASS 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 during discharge	Continuous during discharge	Continuous during discharge	Continuous during discharge

#### WATER SUPPLY PLANTS

##### MINIMUM REQUIREMENTS FOR SIC 4941

##### EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY			
		CLASS I	CLASS II	CLASS III	CLASS IV
1. Settleable Solids	E	Weekly	Weekly	Weekly	Weekly
2. TSS	E	2/month	2/month	2/month	2/month
3. Turbidity	E	Weekly	Weekly	Weekly	Weekly
4. pH	E	Weekly	Weekly	Weekly	Weekly
5. Chloride	E	Weekly	Weekly	Weekly	Weekly

#### DOMESTIC WASTEWATER AND OTHER FACILITIES DISCHARGING PRIMARILY DOMESTIC

##### MINIMUM REQUIREMENTS FOR SIC 4952

##### EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY			
		CLASS	CLASS	CLASS	CLASS

		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	E	Monthly	2/month	Weekly	3/week
6. Fecal Coliform	E	2/month	Weekly	3/week	Daily
7. Total Nitrogen	E	*	*	*	*
8. Total Phosphorus	E	*	*	*	*
9. Toxics and Toxicity		**	**	**	**

#### WATER QUALITY LIMITED

1. Dissolved Oxygen	E	Weekly	Weekly	3/week	Daily
2. Dissolved Oxygen	U,D	Weekly	Weekly	3/week+	3/week+
3. pH	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	<u>E,H,E</u>	2/month	Weekly	3/week	Daily
7. TSS	<u>E,H,E</u>	2/month	Weekly	3/week	Daily
8. Ammonia Nitrogen	E	2/month	Weekly	3/week	Daily
9. Residual Chlorine	E	2/week	2/week	3/week	Daily
10. Fecal Coliform	E	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	*	*	*	*
16. Toxics and Toxicity		**	**	**	**

#### SERVICES

MINIMUM REQUIREMENTS FOR SIC 7000-8999

#### EFFLUENT LIMITED

REQUIRED TEST	LOCATION	FREQUENCY
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			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.	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		**	**	**	**

#### WATER QUALITY LIMITED

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+

+ Upstream and Downstream monitoring in water quality limited waters is to be conducted three times per week during June, July, August, and September, and once per week during the rest of the year.

\* Total Nitrogen and Phosphorus Monitoring

#### (1) Monitoring Requirements

- (A) All facilities equal to or greater than 50,000 gpd, shall monitor for total N and P.
- (B) Facilities less than 50,000 gpd shall monitor for total N and P when discharging into nutrient sensitive waters as designated by the Division.

(2) Monitoring frequency for total N and P is based on river subbasins in two separate areas of the state as follows:

- (A) Western area includes the French Broad, Broad, Savannah, New, Watauga, Little Tennessee, and Hiwassee:

Facility Design Capacity: \_\_\_\_\_

\_\_\_\_\_Frequency

- (i) 50,000 gpd or higher \_\_\_\_\_Semi-annually

- (ii) 1,000,000 gpd or higher \_\_\_\_\_Quarterly.

- (B) Piedmont and Eastern area includes the Catawba, Lumber, Yadkin, Cape Fear, Chowan, Neuse, Pasquotank, Roanoke, Tar-Pamlico, and White Oak:

Facility Design Capacity \_\_\_\_\_

\_\_\_\_\_Frequency

- (i) 50,000 gpd or higher \_\_\_\_\_Quarterly

- (ii) 1,000,000 gpd or higher \_\_\_\_\_Monthly.

(3) Definition for Total Nitrogen and Total Phosphorus:

- (A) Total Nitrogen shall be the sum of total ~~kjeldahl~~Kjeldahl nitrogen, nitrate nitrogen, and nitrite nitrogen expressed as "N" in milligrams per liter ~~(mg/l)~~(mg/L).

- (B) Total Phosphorus shall include all orthophosphates and condensed phosphates, both dissolved and particulate, organic and inorganic, expressed as "P" in milligrams per liter ~~(mg/l)~~(mg/L).

\*\* Specific test type, conditions, and limitations will be defined by permit. Toxicity limits will be applied to all major discharges and all discharges of complex wastewater. Toxicity limitations and monitoring requirements may be applied to permits for other discharges when, in the opinion of the Director, such discharge may impair the best use of the receiving water by the discharge of toxic substances in toxic amounts. Specific frequency will be defined by individual permit conditions. For most facilities with continuous and regularly occurring discharges, frequency will be defined as a minimum of quarterly.

*History Note:* Authority G.S. 143-215.65; 143-215.66; 143-215.68;  
Eff. February 1, 1976;

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

2

1 15A NCAC 02B .0511 is proposed for adoption as follows:

2  
3 **15A NCAC 02B .0511 INCORPORATION BY REFERENCE**

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 (1) 40 CFR Parts 122.2, 124.2, and 125.2: Definitions;  
10 (2) §122.4: Prohibitions;  
11 (3) §122.5 (a) and (b): Effect of permit;  
12 (4) §122.7 (b) and (c): Confidential information;  
13 (5) §122.21 (a)-(b), (c)(2), (e)-(k), (m)-(p), (q), and (r): Application for a permit;  
14 (6) §122.22: Signatories;  
15 (7) §122.23: Concentrated animal feeding operations;  
16 (8) §122.24: Concentrated aquatic animal production facilities;  
17 (9) §122.25: Aquaculture projects;  
18 (10) §122.26: Storm water discharges;  
19 (11) §122.27: Silviculture;  
20 (12) §122.28: General permits;  
21 (13) §122.29 (a), (b), and (d): New sources and new dischargers;  
22 (14) §122.30: NPDES stormwater regulations for small MS4s: objectives;  
23 (15) §122.31: NPDES stormwater regulations: role of Tribes;  
24 (16) §122.32: NPDES stormwater regulations for small MS4s: applicability;  
25 (17) §122.33: NPDES stormwater regulations for small MS4s: application for permit;  
26 (18) §122.34: NPDES stormwater regulations for small MS4s: permit requirements;  
27 (19) §122.35: NPDES stormwater regulations for small MS4s: shared responsibilities;  
28 (20) §122.36: NPDES stormwater regulations for small MS4s: compliance;  
29 (21) §122.37: NPDES stormwater regulations for small MS4s: evaluation;  
30 (22) §122.41 (a)(1) and (b) through (n): Applicable permit conditions;  
31 (23) §122.42: Conditions applicable to specified categories of permits;  
32 (24) §122.43: Establishing permit conditions;  
33 (25) §122.44: Establishing NPDES permit conditions;  
34 (26) §122.45: Calculating permit conditions;  
35 (27) §122.46: Duration;  
36 (28) §122.47 (a): Schedules of compliance;  
37 (29) §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 incorporate 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>.

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:

- (1) ~~control stormwater for projects disturbing one acre or more of land as described in Rule .0602, .0602 of 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.~~

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

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

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



Draft for Rule Readoption (12/6/2017)

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;
- (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 discharges 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 15A NCAC 02B .0604 is proposed for amendment as follows:

2  
3 **15A NCAC 02B .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 (NH<sub>3</sub>-N) inputs to achieve 0.5  
9 milligrams per liter or less of total ammonia based on chronic toxicity defined in ~~15A NCAC 02B .0202~~. Rule .0202 of  
10 this Subchapter. This level of total ammonia is based on ambient water temperature equal to or greater than 25 degrees  
11 Celsius.

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

12  
13 *History Note:* Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A;  
14 Eff. February 1, 2009.  
15

1 15A NCAC 02B .0605 is proposed for amendment as follows:

2  
3 **15A NCAC 02B .0605 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**  
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): RIPARIAN**  
5 **BUFFER WIDTHS**

6 In ~~this the Goose Creek~~ watershed, ~~undisturbed~~ riparian buffers are required within 200 feet of waterbodies within the  
7 100-Year Floodplain and within 100 feet of waterbodies that are not within the 100-Year Floodplain. The 100-Year  
8 Floodplain is the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping  
9 Program in the Division of Emergency Management. ~~The riparian buffer shall consist of a vegetated area that is~~  
10 ~~undisturbed except for uses provided in Rule .0607 of this Section. Within the buffer areas that are regulated by this~~  
11 ~~Rule, redevelopment is allowed for residential structures and redevelopment of non-residential structures is allowed~~  
12 ~~provided that less than an additional half acre is disturbed during the redevelopment activity for non-residential~~  
13 ~~structures. Redevelopment is defined in 15A NCAC 02H .1002(14). Exceptions to undisturbed forested riparian~~  
14 ~~buffer requirements are set forth in Rule .0607 of this Section. Activities shall require stormwater control as required~~  
15 ~~by Rule .0602 of this Section.~~

16  
17 *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 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 BUFFERS~~AUTHORIZATION**  
6 **~~CERTIFICATES~~**

7 (a) ~~PURPOSE. Persons~~ The following requirements shall apply to persons who wish to undertake uses designated as  
8 ~~allowable upon authorization, allowable with mitigation upon authorization, or allowable with exception~~ prohibited  
9 ~~within the protected riparian buffer area may pursue a variance as specified in Rule .0607 of this Section. Persons~~  
10 ~~who wish to undertake forest harvesting beyond the requirements set forth in 15A NCAC 02B .0608 may pursue a~~  
11 ~~variance.~~

12 (b) **AUTHORIZATION CERTIFICATES.** Persons who wish to undertake uses designated in Rule .0607 of this  
13 Section as allowable upon authorization or allowable with mitigation upon authorization shall submit an application  
14 requesting an Authorization Certificate from the Authority.

15 (1) The application 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;

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;

23 (D) The nature of the activity to be conducted by the applicant;

24 (E) The location of the activity, including the jurisdiction;

25 (F) 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 (H) Plans for any best management practices proposed to be used to control the impacts  
32 associated with the activity; and

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.

35 (2) The applicant shall certify that the project meets all the following criteria for finding no practical  
36 alternatives:

**Commented [HK1]:** no effect - update terminology;  
moved authorization certificate language from .0607 into this  
Rule

**Commented [HK2]:** no effect – added header

**Commented [HK3]:** no effect - grammar

**Commented [HK4]:** no effect – update terminology

**Commented [HK5]:** no effect - moved from Rule .0607

**Commented [HK6]:** no effect - clarification – similar to  
requirement for 401 WQC

**Commented [HK7]:** no effect - moved from Rule .0607

**Commented [HK8]:** no effect – clarification

(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;

(C) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality; and

(D) Why alternatives cannot be practically accomplished to avoid or minimize the disturbance.

(3) The Authority must consider the impacts that may affect conditions required to sustain and recover the federally endangered Carolina heelsplitter (*Lasmigona decorata*).

(4) Within 60 calendar days of receipt of a complete application package that addresses Subparagraph (b)(1) and (b)(2) of this Rule, the Authority shall issue an Authorization Certificate if the Authority makes a finding of "no practical alternatives" and the applicant also satisfies other applicable requirements as described in Subparagraph (b)(1) through (b)(3) of this Rule. Failure to act within 60 calendar days of receipt of a complete application shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued by the Authority to the applicant unless one of the following occurs:

(A) The applicant agrees, in writing, to a longer period;

(B) The applicant fails to furnish information necessary for the Authority's decision;

(C) The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or

(D) Information necessary for the Authority's decision is unavailable.

(5) The Authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program.

(6) Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to G.S. 150B. Request for appeals of Authorization Certificates issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.

(c) **AUTHORIZATION CERTIFICATES WITH EXCEPTIONS.** Persons who wish to undertake uses designated in Rule .0607 of this Section as allowable with exception shall submit an application requesting an Authorization Certificate with Exception. The variance Authorization Certificate with Exception review request procedure shall be as follows:

(1) For any variance request, the Division of Water Quality shall make a finding of fact as to whether the following requirements have been met: An Authorization Certificate with Exception shall require that all of the following conditions are met:

(A) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:

**Commented [HK9]:** no effect – moved from Rule .0607

**Commented [HK10]:** no effect – clarification

**Commented [HK11]:** no effect – moved from Rule .0607

**Commented [HK12]:** no effect – clarification – similar to 401 WQC rules

**Commented [HK13]:** no effect – moved from Rule .0607

**Commented [HK14]:** less stringent: for uses not listed in the table, instead of requesting a major variance, applicants will request an authorization certificate with exception.

**Commented [HK15]:** no effect – Clarify that these conditions must be met to receive an authorization certificate with exception.

**Commented [HK16]:** less stringent simplified

- (B) If the applicant complies with the provisions of the buffer requirements, ~~he/she or she~~ can secure no reasonable return from, nor make reasonable use of, ~~his/her/his or her~~ property. Merely proving that the ~~variance~~ Authorization Certificate with Exception would ~~permit allow~~ a greater profit from the property is not adequate justification ~~for a~~ ~~variance~~ for an Authorization Certificate with Exception. Moreover, the ~~Division of Water Quality Authority~~ shall consider whether the ~~variance~~ Authorization Certificate with Exception ~~is~~ the minimum possible deviation from the terms of the buffer requirements that will make reasonable use of the property possible.
- (ii) ~~The hardship results from application of the buffer requirements to the property rather than from other factors such as deed restrictions or other hardship.~~
- (iii)(C) The hardship is due to the physical nature of the applicant's ~~property and is unique to the~~ applicant's property, such as its size, shape, or topography, ~~such that compliance with provision of this Rule would not allow reasonable use of the property topography.~~
- (iv)(D) The applicant did not cause the ~~hardship by knowingly or unknowingly violating the buffer requirements hardship.~~
- (v) ~~The applicant did not purchase the property after the effective date of this Rule, and then request a variance.~~
- (b)(E) The ~~variance~~ requested Authorization Certificate with Exception is in harmony with the general spirit, purpose and intent of the State's riparian buffer protection ~~requirements and preserves its spirit; and~~
- (e) ~~In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done requirements, will protect water quality, will secure public safety and welfare, and will preserve substantial justice.~~
- (2) MINOR EXCEPTIONS. An Authorization Certificate with Minor Exception request pertains to allowable with exception activities that are proposed to impact equal to or less than one-third of an acre of riparian buffer.
- (A) Authorization Certificate with Minor Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.
- (B) Within 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 issue an Authorization Certificate with Minor Exception if the Authority makes a finding that the criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant satisfies other applicable requirements as described in Paragraph (b) and Subparagraph (c)(1) of this Rule. 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 Minor Exception.

Commented [HK17]: no effect – Clarification

Commented [HK18]: less stringent - Removed hardship

Commented [HK19]: less stringent - Simplified

Commented [HK20]: less stringent: Removed language related to violations

Commented [HK21]: less stringent: Removed hardship

Commented [HK22]: less stringent: simplified

Commented [HK23]: less stringent: Added new provision for a minor exception



(3) ~~MAJOR EXCEPTIONS. A variance~~An Authorization Certificate with Major Exception request pertains to any activity that is proposed to impact any portion allowable 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 w~~Within 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.

(D) Preliminary findings on 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 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

(e) ~~Upon the Commission's denial, the Division of Water Quality shall issue a final decision denying the variance.~~

(3) ~~The Authority may attach conditions to the Authorization Certificate with Exception that support the purpose, spirit and intent of the riparian buffer protection program.~~

(4) ~~Requests for appeals of Authorization Certificates with Exception issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S 153A-345 or G.S. 160A-388.~~

**Commented [HK31]:** less stringent Updated process for major exception requests

**Commented [HK32]:** no effect - Clarification

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

1 15A NCAC 02B .0607 is proposed for amendment as follows:

2  
3 **15A NCAC 02B .0607 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE**  
4 **CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): BUFFER TYPES**  
5 **AND MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS**

6 (a) **DEFINITIONS.** For the purpose of this Rule and Rules .0605, .0606 and .0608 of this Section, these terms shall  
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 (2) 'Riparian buffer' means the area as defined in Paragraph (c) of this Rule.

11 (b) **APPLICABILITY.** This Rule applies to all landowners and other persons including local governments, state and  
12 federal entities conducting activities within the riparian buffers as described in Paragraph (c) of this Rule in the Goose  
13 Creek Watershed.

14 (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  
16 feature is shown as described in the applicability paragraph of 15A NCAC 02B .0233 (3) and 02B .0233(3)(a)(i) (iii).  
17 The location of the riparian buffer shall be as follows: The following minimum criteria shall be used for identifying  
18 regulated buffers:

19 (1) A surface water shall be subject if the feature is approximately shown on any of the following  
20 references:

21 (A) The most recent version of the published manuscript of the soil survey map that shows  
22 stream layers prepared by the Natural Resources Conservation Service of the United States  
23 Department of Agriculture;

24 (B) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps  
25 prepared by the United States Geologic Survey (USGS); or

26 (C) Other maps approved by the Geographic Information Coordinating Council and by the  
27 Environmental Management Commission as more accurate than those identified in  
28 Subparagraph (c)(4)(A) and (c)(4)(B) of this Rule. Other maps may be submitted to the  
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  
34 Management Commission for a final decision. Maps approved under this Subparagraph  
35 shall not apply to projects that are existing and ongoing within the meaning of this Rule as  
36 set out in Paragraph (e) of this Rule.

Commented [HK1]: no effect - clarification

Commented [HK2]: no effect - reorganization

Commented [HK3]: no effect – moved from paragraph (a),  
which referenced neuse rule

Commented [HK4]: Less stringent – added flexibility for a 3<sup>rd</sup>  
map to be used – language from SL 2009-484 for Jordan buffer rules

(2) This Rule shall apply to activities conducted within riparian buffers as set forth in Rule .0605 of this Section.

(3) Wetlands adjacent to surface waters or within the buffer width as set forth in Rule .0605 of this Section shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506.

(4) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Paragraph (h) of this Rule.

Commented [HK5]: no effect – reorganization and clarification

(4)(5) For streams, the riparian buffer shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward on all sides of the ~~surface water stream~~, measured horizontally on a line perpendicular to the ~~surface water stream~~ (where a stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).

Commented [HK6]: no effect – codifying policy

(2)(6) For ponds, lakes and reservoirs located within a natural drainage way, the riparian buffer shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward, measured horizontally on a line perpendicular to the surface water.

(7) A riparian buffer may be exempt from this Rule as described in Paragraphs (e), (f) and (g) of this Rule.

(8) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.

Commented [HK7]: no effect - clarification

(d) ON-SITE DETERMINATION. When a landowner or other affected party believes that the maps listed in Sub-paragraph (c)(1) of this Rule have inaccurately depicted surface waters or the specific origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall request the Authority to make an on-site determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the Director in writing within 60 calendar days of written notification from the Authority. The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(e) EXEMPTION BASED ON ON-SITE DETERMINATION. Surface waters that appear on the maps listed in Sub-paragraph (c)(1) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following categories:

(1) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.

(2) Manmade ponds and lakes that are not fed by an intermittent or perennial stream nor have a direct discharge point to an intermittent or perennial stream.

(3) Ephemeral (stormwater) streams.

(4) The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, pond or estuary.

(b)(f) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. The buffer requirements in this Rule do not apply to portions of the riparian buffer where a use is existing and ongoing.

(1) A use that shall be considered existing if:

(A) It was present within the riparian buffer as of the effective date of this Rule January 1, 2009 and has continued to exist since that time.

(B) It was a deemed allowable activity as listed in Paragraph (i) of this Rule.

(C) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.

(D) The project or proposed development are determined by the Authority to meet at least one of the following criteria:

(i) Project requires a 401 Certification/404 Permit and these were issued prior to January 1, 2009 and are still valid.

(ii) Project requires a state permit, such as a landfill, NPDES wastewater discharge, land application residuals and road construction activities, and has begun construction or is under contract to begin construction and has received all required state permits prior to January 1, 2009;

(iii) Project is being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with Department on avoidance and minimization by January 1, 2009; or

(iv) Project is not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US 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 project and the project has the written approval of the Division prior to January 1, 2009.

(2) Existing and ongoing uses shall ~~include~~ include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation management has occurred within the last ten years) utility lines-line corridors and on-site sanitary sewage systems-sewage

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

systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

(3) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is except from the buffer requirements of this Rule.

(4) Change of ownership through purchase or inheritance is not a change of use.

(5) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no impervious surface built upon area is added within the buffer area where it did not exist as of the effective date of this Rule prior to January 1, 2009, and existing diffuse flow is maintained; the site is in compliance with Paragraph (h) of this Rule.

(2) A use that can be documented to the Division of Water Quality that meets at least one of the following criteria:

(A) Project requires a 401 Certification/404 Permit, issued prior to the effective date of this Rule and are still valid;

(B) Project requires a state permit, such as a landfill, NPDES wastewater discharge, land application residuals and road construction activities, and has begun construction or is under contract to begin construction and has received all required state permits prior to the effective date of this Rule;

(C) Project is being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with Department of Environment and Natural Resources on avoidance and minimization by the effective date of this Rule; or

(D) Project is not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US 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 project and the project has the written approval of the Division of Water Quality prior to the effective date of this Rule.

(5)(6) At This Rule shall apply at the time an existing and ongoing use is changed to another use, the buffer requirement of this Rule shall apply. Change of use includes the following: Change of use shall involved the initiation of any activity not defined as existing and ongoing in Sub-paragraphs (f)(1) through (f)(5) of this Rule.

(A) To add impervious surface within the riparian buffer;

(B) An agricultural operation within the riparian buffer is converted to a non-agricultural; or

(C) a lawn within the riparian buffer ceases to be maintained;

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

(g) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES. This Rule shall not apply to a freshwater pond if all of the following conditions are met:

- (1) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.
- (2) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before January 1, 2009.
- (3) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).

Commented [HK10]: no effect - added per SL 2013-413

(e) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation, as follows:

- (1) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the riparian buffer; and
- (2) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.

(h) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Subparagraph (i)(1) of this Rule, provided that they do not erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Part (i)(1)(E) of this Rule

- (1) The following are deemed allowable as defined in Part (i)(1)(A) of this rule:

- (A) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program;
- (B) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

Commented [HK11]: Less stringent – removed diffuse flow requirement; instead provide options for stormwater discharges

Commented [HK12]: no effect - organization

- (2) The following are allowable upon authorization as defined in Part (i)(1)(B) of this Rule:

- (A) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not approved under a state stormwater program or a state-approved local government stormwater program;
- (B) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;
- (C) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

Commented [HK13]: Less stringent – new use – allows for DWR to accept local government review of a SMP without having to review for meeting diffuse flow

Commented [HK14]: no change – moved from table

Commented [HK15]: no effect - organization

Commented [HK16]: no change moved from table

Commented [HK17]: Less stringent – new use

Commented [HK18]: no change – from diffuse flow

(D) ~~Realignment of existing drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the 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;~~

(E) ~~Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;~~

(F) ~~New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;~~

(G) ~~New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical;~~

(H) ~~New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.~~

Commented [HK19]: Less stringent – new uses

Commented [HK20]: Less stringent – New Use

Commented [HK21]: Less stringent – New uses

~~(d)(i) REQUIREMENTS FOR CATEGORIES OF USES AND MITIGATION.USES. Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as exempt,deemed allowable, potentially allowable, allowable upon authorization, allowable with mitigation upon authorization, allowable with exception or prohibited, and prohibited location in the chart of uses in this Rule shall have the following requirements:~~

(1) ~~Potential new uses shall have the following requirements:~~

(1)(A) ~~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.~~

(2)(B) ~~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 impacts may 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 mitigation, as indicated in the chart in this Rule.~~

Commented [HK22]: no effect – clarification

Commented [HK23]: no effect - updated terminology

Commented [HK24]: no effect - clarification

Commented [HK25]: no effect – updated terminology

Commented [HK26]: no effect clarification



(C) ~~ALLOWABLE WITH MITIGATION UPON AUTHORIZATION.~~ Uses designated as allowable with mitigation upon authorization in Subparagraph (i)(3) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0606 of this Section and an appropriate mitigation strategy has received written approval pursuant to Paragraph (j) of this Rule.

Commented [HK27]: no effect – updated terminology

~~(3)(D)~~ PROHIBITED. Uses designated as prohibited ~~or not included in this table in~~ Subparagraph (i)(3) of this Rule may not proceed within the riparian buffer unless a variance is granted pursuant to Rule .0606. ~~Site specific mitigation, 0226 of this Section.~~ Mitigation may be required as ~~one a~~ condition of a variance approval.

Commented [HK28]: no effect - moved from Subparagraph (B) above

Commented [HK29]: no effect - clarification

(E) ~~ALLOWABLE WITH EXCEPTION.~~ Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited in Subparagraph (i)(3) of this Rule require a written Authorization Certificate with Exception from the Authority for impacts within the riparian buffer pursuant to Rule .0606 of this Section and an appropriate mitigation strategy that has received written approval pursuant to Paragraph (j) of this Rule.

Commented [HK30]: 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

~~(4) MITIGATION.~~ Persons who wish to undertake uses designated as allowable with mitigation shall obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0609.

Commented [HK31]: no effect – moved to paragraph (j) below

(2) ~~The United States Environmental Protection Agency Endangered Species Protection Program at [www.epa.gov/esspp](http://www.epa.gov/esspp) and NC Pesticide Board regulates pesticide application (see rules at 02 NCAC 09L .2201 through .2203).~~

Commented [HK32]: no effect – moved from paragraph (I)

(3) ~~The following table sets out potential new uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, and designates them as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or prohibited:~~

Commented [HK33]: no effect – moved from paragraph (I)

Commented [HK34]: no effect – updated terminology

	<del>Deemed Allowable</del>	<del>Allowable Upon Authorization</del>	<del>Allowable with Mitigation Upon Authorization</del>	<del>Prohibited</del>
Airport facilities:				
• <del>Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g. line of sight requirements) provided the disturbed areas are stabilized and revegetated</del>	<del>X</del>			
• <del>Airport facilities that impact equal to or less than one-third of an acre of riparian buffer</del>		<del>X</del>		
• <del>Airport facilities that impact greater than one-third of an acre of riparian buffer</del>			<del>X</del>	

Commented [HK35]: no effect - codifying policy

Commented [HK36]: no effect – moved from paragraph (I)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Archaeological activities	X			
Bridges				
• Impact equal to or less than one-tenth of an acre of riparian buffer	X			
• Impact greater than one-tenth of an acre of riparian buffer		X		
Dam maintenance activities				
• Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam	X			
• Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam		X		
Drainage of a pond subject to Paragraph (c) of this Rule provided that a new riparian buffer is established 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 Paragraph (d) of this Rule.	X			
Fences:				
• Fencing livestock out of surface waters	X			
• Installation does not result in removal of trees	X			
• Installation results in removal of trees		X		
Forest harvesting - see Rule .0608 of this Section				

Commented [HK34]: no effect – updated terminology

Commented [HK37]: no effect – moved from paragraph (l)

Commented [HK38]: Less stringent – added new use to allow bridges with less than 1/10 to be deemed allowable; consistent with road impacts

Commented [HK39]: no effect – moved from paragraph (l)

Commented [HK40]: no effect – moved from paragraph (l)

Commented [HK41]: no effect – authorization already required under 404/401

Commented [HK42]: no effect – moved from paragraph (l)

Commented [HK43]: Less stringent – new use

Commented [HK44]: no effect – moved from paragraph (l)

Commented [HK45]: Less stringent – new use

Commented [HK46]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<b>Fertilizer application:</b>				
<ul style="list-style-type: none"> <li>One-time fertilizer application at agronomic rates to 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.</li> </ul>	X			
<ul style="list-style-type: none"> <li>Ongoing fertilizer application</li> </ul>				X
<b>Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system:</b>				
<ul style="list-style-type: none"> <li>In outer riparian buffer (landward of 50 feet) provided that no built upon area is added within the buffer</li> </ul>	X			
<ul style="list-style-type: none"> <li>When built upon area is added to the buffer, equal to or less than ten (10) feet wide with two (2) foot wide shoulders. Must be located landward of 50 feet unless there is no practical alternative</li> </ul>		X		
<ul style="list-style-type: none"> <li>When built upon area is added to the buffer, greater than ten (10) feet wide with two (2) foot wide shoulders. Must be located landward of 50 feet unless there is no practical alternative</li> </ul>			X	
<b>Historic preservation</b>	X			
<b>New Landfills as defined by G.S. 130A-290</b>				X
<b>Mining activities:</b>				
<ul style="list-style-type: none"> <li>Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section are established adjacent to the relocated channels</li> </ul>		X		
<ul style="list-style-type: none"> <li>Wastewater or mining dewatering wells with approved NPDES permit</li> </ul>			X	
<b>On-site sanitary sewage systems - new ones that use ground absorption</b>				X

Commented [HK34]: no effect – updated terminology

Commented [HK47]: no effect – moved from paragraph (l)

Commented [HK48]: no effect - codifying policy

Commented [HK49]: no effect – moved from paragraph (l)

Commented [HK50]: Less stringent – Allows for landfill expansions to seek an Authorization Certificate with Exception instead of a Variance

Commented [HK51]: no effect – moved from paragraph (l)

Commented [HK52]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Maintenance access on modified natural streams or canals: a 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.		X		
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 style="list-style-type: none"> <li>Pedestrian access trail equal to or less than six (6) feet 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</li> </ul>	X			
<ul style="list-style-type: none"> <li>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</li> </ul>		X		
<ul style="list-style-type: none"> <li>Pedestrian access trail greater than six (6) feet wide</li> </ul>			X	
Playground equipment:				
<ul style="list-style-type: none"> <li>Playground equipment on single family lots provided that installation and use does not result in removal of vegetation</li> </ul>	X			
<ul style="list-style-type: none"> <li>Playground equipment on single family lots where installation or use results in the removal of vegetation</li> </ul>		X		
<ul style="list-style-type: none"> <li>Playground equipment installed on lands other than single-family lots</li> </ul>		X		
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):				
<ul style="list-style-type: none"> <li>New ponds provided that a riparian buffer that meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section is established adjacent to the pond</li> </ul>		X		

Commented [HK34]: no effect – updated terminology

Commented [HK53]: no effect – moved from paragraph (l)

Commented [HK54]: Less stringent – new uses

Commented [HK55]: no effect – moved from paragraph (l)

Commented [HK56]: no effect – moved from paragraph (l)

	<u>Deemed</u> <u>Allowable</u>	<u>Allowable</u> <u>Upon</u> <u>Authorization</u>	<u>Allowable</u> <u>with</u> <u>Mitigation</u> <u>Upon</u> <u>Authorization</u>	<u>Prohibited</u>
Protection of existing structures and facilities when this requires additional disturbance of the riparian buffer		<u>X</u>		
Public Safety - publicly owned spaces where it has been 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>X</u>			
Removal of previous fill or debris provided that Paragraph (h) of this Rule is complied with and any vegetation removed is restored	<u>X</u>			
Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: <a href="http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm">http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm</a> :				
• Wetland or stream restoration that does not require written Division approval that results in impacts to the riparian buffer	<u>X</u>			
• Wetland or stream restoration that requires written Division approval that results in impacts to the riparian buffer		<u>X</u>		
Road, driveway or railroad impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			<u>X</u>	

Commented [HK34]: no effect – updated terminology

Commented [HK57]: no effect – moved from paragraph (l)

Commented [HK58]: no effect – per SL 2017-209

Commented [HK59]: no effect – moved from paragraph (l)

Commented [HK60]: no effect – moved from paragraph (l)

Commented [HK61]: no effect – incorporating road, driveway and railroad into one row as requirements were all the same

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
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	X			
• Impact greater than one-tenth of an acre but equal to or less than one-third of an acre of riparian buffer		X		
• Impact greater than one-third of an acre of riparian buffer			X	
• Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer		X		
• Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer			X	
• 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	X			
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		X		
• Greater than 2,500 square feet of riparian buffer impact			X	
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 vegetation		X		

Commented [HK34]: no effect – updated terminology

Commented [HK62]: 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 [HK65]: no effect – moved from paragraph (l)

Commented [HK66]: Less stringent – new use

	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
Stormwater Control Measure (SCM) as defined in 15A NCAC 02H .1002:		<u>X</u>	<u>X</u>	
<ul style="list-style-type: none"> <li>In the outer riparian buffer (landward of 50 feet) if Paragraph (h) of this Rule is complied with</li> <li>In the outer riparian buffer (landward of 50 feet) if Paragraph (h) of this Rule is not complied with</li> </ul>				
Streambank or shoreline stabilization		<u>X</u>		
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:				
<ul style="list-style-type: none"> <li>Less than or equal to 2,500 square feet of riparian buffer disturbance</li> <li>Greater than 2,500 square feet of riparian buffer disturbance</li> <li>Associated with culvert installation or bridge construction or replacement</li> </ul>	<u>X</u>	<u>X</u> <u>X</u>		

Commented [HK34]: no effect – updated terminology

Commented [HK67]: no effect – moved from paragraph (l)

Commented [HK68]: no effect – moved from paragraph (l)

Commented [HK69]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<p>Temporary sediment and erosion control 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 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:</p> <ul style="list-style-type: none"> <li>• In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone 1 is not compromised, and that discharge is released in accordance with Paragraph (h) of this Rule</li> <li>• In Zones 1 and 2 to control impacts associated with uses approved by the Authority or that have received an authorization certificate with exception provided that sediment and erosion control for upland areas is addressed outside the buffer</li> <li>• In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act</li> <li>• In-stream temporary erosion and sediment control measures for work within a stream channel that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 &amp; 404 of the Federal Water Pollution Control Act</li> </ul>	X	X		
Utility – Sewer lines, provided that both gravity and force main collection systems are made of ductile iron and 50% of the collection system is cleaned annual:				
<ul style="list-style-type: none"> <li>• Sanitary Sewer Overflows: <ul style="list-style-type: none"> <li>o Emergency sanitary sewer overflow response</li> </ul> </li> </ul>	X			

Commented [HK34]: no effect – updated terminology

Commented [HK70]: no effect – moved from paragraph (l)

Commented [HK71]: no effect - Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial



	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<p>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.</p> <ul style="list-style-type: none"> <li>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.</li> </ul>		X		
<ul style="list-style-type: none"> <li>New Sewer Line Construction Activities (including replacement/rehabilitation that does not meet the criteria of existing use in Paragraph (f) 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 style="list-style-type: none"> <li>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 methods are used to minimize the sediment, nutrient and other pollution through the riparian</li> </ul> </li> </ul>				

Commented [HK34]: no effect – updated terminology

Commented [HK72]: Less stringent – Greater flexibility for responding quickly to SSOs

Commented [HK73]: no effect - Clarify this use can include perpendicular entry into the buffer that doesn't cross a stream (e.g. connecting to existing line)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<p>buffer: underground directional boring methods, bore-and-jack techniques or another appropriate microtunnelling method:</p> <ul style="list-style-type: none"> <li>▪ Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>▪ Greater than 40 linear feet and less than or equal to 150 linear feet, with a permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>▪ Greater than 150 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>▪ Permanent maintenance corridor greater than 20 linear feet (mitigation is required only for impacts beyond the 20 linear feet corridor width).</li> </ul> <p>○ Impacts other than perpendicular crossings:</p> <ul style="list-style-type: none"> <li>▪ 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 nearest the stream is not compromised</li> <li>▪ Less than 2,500 square feet of impacts in the inner 50 feet nearest the stream when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet</li> </ul>	<p>X</p>	<p>X</p>	<p>X</p> <p>X</p>	

Commented [HK34]: no effect – updated terminology

Commented [HK74]: Less stringent – increased maintenance corridor from 10 to 20 feet

Commented [HK75]: Less stringent – changed from allowable to deemed allowable

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<p>immediately adjacent to the surface water is avoided</p> <ul style="list-style-type: none"> <li>Impacts in the inner 50 feet nearest the 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</li> <li>Impacts to the inner 50 feet nearest the stream other than noted above</li> </ul>		X		
<ul style="list-style-type: none"> <li>Lift stations require Supervisory Control and Data 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</li> </ul>			X	
<ul style="list-style-type: none"> <li>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 Paragraph (f) of this Rule:               <ul style="list-style-type: none"> <li>Impacts outside of the inner 50 feet nearest the stream</li> <li>Impacts in the inner 50 feet nearest the stream provided no clearing within 10 feet of the stream</li> <li>Impacts in the inner 50 feet nearest the stream, provided the permanent 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.</li> <li>Impacts in the inner 50 feet nearest the stream, provided the permanent maintenance corridor is</li> </ul> </li> </ul>	X			
		X		

Commented [HK34]: no effect – updated terminology

Commented [HK76]: Less stringent – changed all impacts to inner 50 feet triggering mitigation to only some triggering mitigation

Commented [HK77]: no effect – moved from paragraph (l)

	<u>Deemed</u> <u>Allowable</u>	<u>Allowable</u> <u>Upon</u> <u>Authorization</u>	<u>Allowable</u> <u>with</u> <u>Mitigation</u> <u>Upon</u> <u>Authorization</u>	<u>Prohibited</u>
<u>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.</u> <ul style="list-style-type: none"><li><u>Impacts in the inner 50 feet nearest the stream other than those listed above</u></li></ul>			<u>X</u>	

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)
○ Construction activities that disturb less than or 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	X				Commented [HK81]: Less stringent – changed 40 feet to 50 feet
○ Construction activities that disturb greater 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 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		X			Commented [HK82]: no effect – moved from paragraph (l)
○ Construction activities that disturb greater than 150 linear feet of riparian buffer					Commented [HK83]: no effect – moved from paragraph (l)
○ Any activities with a permanent maintenance corridor greater than 30 feet in width			X		Commented [HK84]: Less stringent – new use
• Impacts other than perpendicular crossings:			X		Commented [HK85]: no effect – moved from paragraph (l)
○ 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 nearest the stream is not compromised	X				Commented [HK86]: no effect – moved from paragraph (l)
○ 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 conducted within 10 feet immediately adjacent to the water		X			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

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<ul style="list-style-type: none"> <li>o Impacts in the inner 50 feet nearest the stream other than listed above</li> <li>• Vegetation maintenance activities along an existing 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</li> <li>• 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</li> </ul>		X	X	
Utilities – Non-sewer aerial lines:				
<ul style="list-style-type: none"> <li>• 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: <ul style="list-style-type: none"> <li>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 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</li> <li>o Disturb greater than 150 linear feet of buffer</li> </ul> </li> <li>• Impacts other than perpendicular crossings: <ul style="list-style-type: none"> <li>o Impacts outside of the inner 50 feet nearest the stream</li> <li>o Impacts in the inner 50 feet nearest the stream provided that a minimum zone of 10</li> </ul> </li> </ul>	X	X		

Commented [HK34]: no effect – updated terminology

Commented [HK88]: no effect – moved from paragraph (l)

Commented [HK89]: Less stringent – new uses

Commented [HK90]: no effect - reorganized utilities

Commented [HK91]: no effect – moved from paragraph (l)

Commented [HK92]: no effect – moved from paragraph (l)

	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
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				
Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities:				
• Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet in width		X		
• Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet in width			X	
Vegetation management:				
• Emergency fire control measures provided that topography is restored	X			
• Placement of mulch ring around restoration plantings for a period of five years from the date of planting	X			
• Planting non-invasive vegetation to enhance the riparian buffer	X			
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
• Removal of individual trees, branches or limbs which are in 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	X			

Commented [HK34]: no effect – updated terminology

Commented [HK93]: Less stringent – new uses

Commented [HK94]: Less stringent – new uses

Commented [HK95]: no effect – moved from paragraph (I)

Commented [HK96]: Less stringent – new use

	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
stumps are left or ground in place without causing additional land disturbance.	X			
• Removal of individual trees that are dead, diseased or damaged				
• Removal of poison ivy, oak or sumac. If removal is significant, then the riparian buffer shall be replanted with non-invasive species.	X			
• Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation, Raleigh, NC (available at <a href="http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&amp;groupId=38364">http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&amp;groupId=38364</a> ). If removal is significant then the riparian buffer shall be replanted with non-invasive species.	X			
Water dependent structures (except for boat ramps) as defined in Rule .0202 of this Section		X		
Water wells	X			
Wildlife passage structures		X		

Commented [HK34]: no effect – updated terminology

Commented [HK97]: no effect – moved from paragraph (I)

Commented [HK98]: Less stringent – new use

Commented [HK99]: Less stringent – added poison oak and sumac

Commented [HK100]: no effect – updated citation

Commented [HK101]: no effect – moved from paragraph (I)

Commented [HK102]: no effect – moved from paragraph (I)

Commented [HK103]: Less stringent – new use

(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:

(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.



(C) Plans for practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.

(D) The Division of Water Quality must consider the impacts that may affect conditions required to sustain and recover the federally endangered Carolin heelsplitter (*Lasmigona decorata*).

(2) Requests for an Authorization Certificate shall be either approved or denied within 60 days of receipt of a complete submission based on the criteria in Subparagraph (e)(1) of this Rule by the Division. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division of Water Quality may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:

(A) The name, address and phone number of the applicant;

(B) The nature of the activity to be conducted by the applicant;

(C) The location of the activity, including the jurisdiction;

(D) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized 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;

(E) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and

(F) Plans for any practices proposed to be used to control the impacts associated with the activity.

(3) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.

Commented [HK104]: no effect - moved to Rule .0606

(j) MITIGATION. Persons who wish to undertake uses designated as allowable upon authorization with mitigation as defined in Part (i)(1)(C) of this Rule or allowable with exception as defined in Part (i)(1)(E) of this Rule shall meet the following requirements in order to proceed with their proposed use.

(1) Obtain an Authorization Certificate pursuant to Rule .0606 of this Section; and

(2) Obtain written approval for a mitigation proposal pursuant to Rule .0295 of Subchapter 02B.

Commented [HK105]: no effect - moved from paragraph (d)

(k) DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS. The following set out the requirements for delegation of the responsibility for implementing and enforcing the Goose Creek Watershed riparian buffer protection program, as described in Rules .0605 through .0608 of this Section, to local governments.

Commented [HK106]: no effect - clarification

(1) The Commission shall grant and rescind local government delegation of the Goose Creek Watershed Riparian Buffer Protection requirements as described in Rules .0605 through .0608 of this Section according to the following procedures:

Commented [HK107]: no effect - moved rescission to Subparagraph (7) below

Commented [HK108]: no effect - clarification

- (A) Local governments within the Goose Creek Watershed may submit a written request to the Commission for authority to implement and enforce the ~~State's Goose Creek Watershed~~ riparian buffer protection requirements within their ~~jurisdiction~~ jurisdiction by establishing a riparian buffer program to meet the requirements of Rules .0605 through .0608 of this Section. The written request to establish a riparian buffer program shall be accompanied by information that shows include the following:
- (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 State's 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 State's riparian buffer protection requirements; and a riparian buffer program to meet the requirements of Rules .0605 through .0608 of this Section and G.S. 143-214.23A;
  - (iv) Documentation that the local government's riparian buffer program complies with all requirements set forth in G.S. 143-214.23A; and
  - (D)(iv) 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.
- (2)(B) Within 90 days after the Commission has received the request for delegation, the Commission shall ~~approve the request if the local government has complied with all of Subparagraph (f)(1) of this Rule and~~ notify the local government whether it has been approved, approved with modifications, or denied.
- (3) ~~The Commission, upon determination that a delegated local authority is failing to implement or enforce the riparian buffer protection requirements in keeping with an approved 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 riparian buffer protection requirements.~~
- (g)(2) APPOINTMENT OF A RIPARIAN BUFFER PROTECTION ADMINISTRATOR. Upon receiving delegation, local governments shall appoint a Riparian Buffer Protection Administrator

Commented [HK109]: no effect - clarification

Commented [HK110]: no effect - grammar

Commented [HK111]: no effect - grammar

Commented [HK112]: no effect - grammar

Commented [HK113]: no effect - grammar

Commented [HK114]: no effect - grammar

Commented [HK115]: no effect - clarification

Commented [HK116]: no effect - added to comply with SL 2015-246

Commented [HK117]: no effect - unnecessary language

Commented [HK118]: no effect moved to subparagraph (7) below

who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division of Water Quality 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 staffs staff working directly with the 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 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 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 determinations until a new certified staff member is secured by the local government.

(h)(3) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION, AND—ALLOWABLE WITH MITIGATION. MITIGATION UPON AUTHORIZATION AND ALLOWABLE WITH EXCEPTION. Upon receiving delegation, local governments shall review applications requesting Authorization Certificate pursuant to the requirements set forth in Rule .0606 of this Section.

(1) Upon receiving delegation, local authorities shall review proposed uses within the riparian buffer and issue approvals if the uses meet the riparian buffer protection requirements.

(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.

(3) The Division of Water Quality 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 of Water Quality does not challenge an Authorization Certificate within 30 days of issuance, then the delegated local authority's decision shall stand.

(i) VARIANCES. After receiving delegation, local governments shall review variance requests and make recommendations to the Commission for approval.

(j)(4) LIMITS OF DELEGATED LOCAL AUTHORITY. The Commission Division has jurisdiction to the exclusion of local governments to implement the requirements of this Rule for the following types of activities:

(1)(A) Activities undertaken by the State;

(2)(B) Activities undertaken by the United States;

(3)(C) Activities undertaken by multiple jurisdictions; and

(4)(D) Activities undertaken by local units of government government;

(E) Forest harvest activities described in Rule .0608 of this Section; and

(F) Agricultural activities.

(k)(5) RECORD-KEEPING REQUIREMENTS. Delegated local authorities governments shall maintain on-site records for a minimum of five years. Delegated local authorities governments must furnish a copy of these records to the Director Division within 30 calendar days of receipt of a written

**Commented [HK119]:** no effect – update name

**Commented [HK120]:** Less stringent – the division is unable to provide subsequent annual training

**Commented [HK121]:** no effect - required by statute

**Commented [HK122]:** no effect - grammar

**Commented [HK123]:** Neither more nor less stringent - Ensures on-site determinations continue when local governments don't have anyone on staff certified to make calls. This is codifying current practice.

**Commented [HK124]:** no effect - removed language to just reference Rule .0606

**Commented [HK125]:** no effect – update name

**Commented [HK126]:** no effect - punctuation

**Commented [HK127]:** no effect - updated to comply with SL 2005-447

**Commented [HK128]:** Less stringent – consistent with more recent buffer rules

**Commented [HK129]:** no effect – update name

**Commented [HK130]:** no effect – update name

**Commented [HK131]:** no effect – update name

**Commented [HK132]:** no effect - clarification

request for the records. ~~The Division of the Water Quality shall inspect local riparian buffer protection programs to ensure that the programs are being implemented and enforced. Each delegated local authority's government's records shall include the following:~~

- ~~(1)(A) A copy of variance Authorization Certificate with exception requests;~~
- ~~(2)(B) The variance Authorization Certificate with exception request's finding of fact;~~
- ~~(3)(C) The result of the variance Authorization Certificate with exception proceedings;~~
- ~~(4)(D) A record of complaints and action taken as a result of the complaint;~~
- ~~(5)(E) Records for stream origin calls and stream ratings; and~~
- ~~(6)(F) Copies of request for authorization, records approving authorization and Authorization Certificates.~~

(6) AUDITS OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of Rules .0605 through .0608 of this Section.

(7) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local government is failing to implement or enforce the Goose Creek Watershed riparian buffer protection requirements in keeping with the request approved under Subparagraph (k)(1)(D) of this 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 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Goose Creek Watershed riparian buffer protection requirements within their jurisdiction.

(8) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Goose Creek Watershed riparian buffer protection requirements, in whole or in part, to the Director.

(I) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

~~(I) Riparian buffers along surface waters in this watershed shall be maintained. Some uses within riparian buffers are exempt and some uses are potentially allowable. Any exempt or potentially allowed use shall require stormwater control as outlined in Rule .0602 if the one acre threshold is met. The following chart sets out the uses and their designation under this Rule as exempt, potentially allowable requiring DWQ approval or potentially allowable requiring both DWQ approval and mitigation, or prohibited as described above. The United States Environmental Protection Agency Endangered Species Protection Program at [www.epa.gov/espp](http://www.epa.gov/espp) and NC Pesticide Board regulates pesticide application (see rules at 02 NCAC 09L .2201 through .2203).~~

**Commented [HK133]:** no effect - moved to subparagraph (6) below

**Commented [HK134]:** no effect - update name

**Commented [HK135]:** no effect - update terminology

**Commented [HK136]:** no effect - moved from subparagraph (5); clarification

**Commented [HK137]:** no effect - moved from subparagraph (3) above

**Commented [HK138]:** Less stringent - added language to allow EMC to delegate authority to DWR; consistent with other buffer programs.

**Commented [HK139]:** no effect - clarification

	Exempt	<del>Potentially allowable requiring DWQ approval or Potentially allowable requiring both DWQ approval and mitigation*</del> Note: the asterisk (X*) identifies those uses that require both DWQ approval and mitigation.	Prohibited
Airport facilities that impact equal to or less than 150 linear feet or one third of an acre of riparian buffer		X	
Airport facilities that impact greater than 150 linear feet or one third of an acre of riparian buffer		X*	
Archaeological activities	X		
Bridges		X	
Dam maintenance activities	X		
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers: <ul style="list-style-type: none"> <li>Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients including ammonia and other pollution that convey to waterbodies</li> <li>New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before the conveyance discharges through the riparian buffer</li> <li>New drainage ditches, roadside ditches and stormwater outfalls that do not minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before discharging through the riparian buffer</li> <li>Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch</li> </ul>	X	X	X

			X
Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the new channel	X		
Driveway crossings of streams and other surface waters subject to this Rule:			
• Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet in width and are perpendicular <sup>2</sup>	X		
• Driveway crossings on single family residential lots that disturb greater than 25 linear feet in width and are perpendicular <sup>2</sup>		X	
• In a subdivision that cumulatively disturbs equal to or less than 150 linear feet in width and are perpendicular		X	
• In a subdivision that cumulatively disturbs greater than 150 linear feet in width and are perpendicular		X*	
Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation	X		
Forest harvesting—see Rule .0608			
Fertilizer application:			
• One time fertilizer application at agronomic rates to establish replanted vegetation	X		
• Ongoing fertilizer application			X
Greenway/hiking trails		X	
Historic preservation	X		
Landfills as defined by G.S. 130A-290			X
Mining activities:			
• Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the diffuse flow requirements of this Rule are established adjacent to the relocated channels		X	
• Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the diffuse flow requirements of this Rule are not established adjacent to the relocated channels			X

<ul style="list-style-type: none"> <li>Wastewater or mining dewatering wells with approved NPDES permit</li> </ul>		X <sup>3</sup>	
<p>Non-electric utility lines with impacts other than perpendicular crossings<sup>3</sup></p> <ul style="list-style-type: none"> <li>If activity is within 50 feet of the stream</li> <li>If activity is outside of the inner 50 feet nearest the stream</li> <li>Wastewater collection system utility lines and lift 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 cleaned annually.</li> <li>Lift Stations require Supervisory Control and Data 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.]</li> </ul>		<p>X<sup>3</sup></p> <p>X</p> <p>X<sup>3</sup></p> <p>X<sup>3</sup></p>	
<p>Non-electric utility line perpendicular crossing of streams and other surface waters subject to this Rule that are not collection systems<sup>3</sup>:</p> <ul style="list-style-type: none"> <li>Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width</li> <li>Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width</li> <li>Perpendicular crossings that disturb greater than 40 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</li> <li>Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of</li> </ul>	X	<p>X</p> <p>X</p> <p>X</p> <p>X<sup>3</sup></p>	

<p>riparian buffer with a maintenance corridor greater than 10 feet in width</p> <ul style="list-style-type: none"> <li>Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer</li> </ul> <p>Non electric perpendicular utility line crossings that are collections systems as defined in Rule 15A NCAC 02T .0300 (note: must follow constraints listed under wastewater collection system utility lines and lift stations, above):</p> <ul style="list-style-type: none"> <li>That use any of the following installation methods to minimize the sediment, nutrient and other pollution through the riparian buffer: underground directional boring methods, bore and jack techniques or another appropriate microtunnelling method.</li> <li>That does not minimize the sediment, nutrient and other pollution through the riparian buffer by the most appropriate exempt method.</li> </ul>		X <sup>2</sup>	
On-site sanitary sewage systems — new ones that use ground absorption			X
<p>Overhead electric utility lines<sup>1,2,3</sup>:</p> <ul style="list-style-type: none"> <li>Stream crossings that disturb equal to or less than 150 linear feet of riparian buffer</li> <li>Stream crossings that disturb greater than 150 linear feet of riparian buffer</li> </ul>	X	X <sup>2</sup>	
Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water		X	
<p>Playground equipment:</p> <ul style="list-style-type: none"> <li>Playground equipment on single family lots provided that installation and use does not result in removal of vegetation</li> <li>Playground equipment installed on lands other than single family lots or that requires removal of vegetation</li> </ul>	X	X	
<p>Ponds in natural drainage ways, excluding dry ponds:</p> <ul style="list-style-type: none"> <li>New ponds provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the pond</li> </ul>		X	



<ul style="list-style-type: none"> <li>New ponds where a riparian buffer that meets the diffuse flow requirements of this Rule is NOT established adjacent to the pond</li> </ul>			X
Protection of existing structures, facilities and streambanks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this Rule			X
Railroad crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> <li>Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer</li> <li>Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer</li> <li>Railroad crossings that impact greater than 150 linear feet of riparian buffer</li> </ul>	X	X	X
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	X		
Road impacts other than crossings of streams and other surface waters subject to this Rule		X*	
Road crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> <li>Road crossings that impact equal to or less than 40 linear feet of riparian buffer and is perpendicular</li> <li>Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet and is perpendicular</li> <li>Road crossings that impact greater than 150 linear feet of riparian buffer</li> </ul>	X	X  X*	
Scientific studies and stream gauging	X		
Stormwater management ponds excluding dry ponds: <ul style="list-style-type: none"> <li>New stormwater management ponds provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the pond</li> </ul>		X	X

<ul style="list-style-type: none"> <li>New stormwater management ponds where a riparian buffer that meets the diffuse flow requirements of this Rule is NOT established adjacent to the pond</li> </ul>			
Stream restoration	X		
Streambank stabilization		X	
Temporary roads:			
<ul style="list-style-type: none"> <li>Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance</li> </ul>	X		
<ul style="list-style-type: none"> <li>Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance</li> </ul>		X	
<ul style="list-style-type: none"> <li>Temporary roads used for bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction</li> </ul>		X	
Temporary sediment and erosion control devices:			
<ul style="list-style-type: none"> <li>To control impacts associated with uses approved by 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 buffer</li> </ul>		X	
<ul style="list-style-type: none"> <li>In-stream temporary erosion and sediment control measures for work within a stream channel</li> </ul>	X		
Underground electric utility lines:			
<ul style="list-style-type: none"> <li>Impacts other than perpendicular crossings<sup>3,4</sup></li> </ul>	X		
Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:			
<ul style="list-style-type: none"> <li>Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer<sup>3,4</sup></li> </ul>	X		
<ul style="list-style-type: none"> <li>Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer<sup>3,4</sup></li> </ul>		X	
Vegetation management:			
<ul style="list-style-type: none"> <li>Emergency fire control measures provided that topography is restored</li> </ul>	X		
<ul style="list-style-type: none"> <li>Planting vegetation to enhance the riparian buffer</li> </ul>	X		

<ul style="list-style-type: none"> <li>Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised</li> <li>Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life</li> <li>Removal of poison ivy</li> <li>Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30</li> </ul>	X    X		
Water dependent structures as defined in 15A NCAC 02B .0202		X	
Water wells	X		
Wetland restoration	X		

<sup>1</sup> 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.
- 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.

<sup>2</sup> 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.

<sup>3</sup> Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

<sup>4</sup> Provided that 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 alternatives evaluation by the Division of Water Quality.

- 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, 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 [HK140]: no effect - moved to paragraph (i) above

History Note: Authority G.S. 143-214.1; 143-215.8A; 143-214.7; 143-214.23, 143-214.23A  
Eff. February 1, 2009.

1 15A NCAC 02B .0608 is proposed for amendment as follows:

2  
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~~  
8 ~~riparian areas;~~ subject to riparian buffer requirements under Rules .0601 through .0608 of this Section.

9 (b) **REQUIREMENTS THROUGHOUT THE BUFFER.** The following requirements shall apply:

10 (1) ~~All forest harvest activities within the buffer shall comply with Forest Practice Guidelines Related~~  
11 ~~to Water Quality as defined in Title 02 NCAC 60C.~~

12 (4)(2) Logging decks and sawmill sites shall not be placed in the riparian ~~buffer.~~ ~~buffer.~~

13 (2) ~~Access roads and skid trails are prohibited except for temporary and permanent stream crossings~~  
14 ~~established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be~~  
15 ~~permanently stabilized after any site disturbing activity is completed.~~

16 (3) Timber felling shall be directed away from the stream or water ~~body.~~ ~~body.~~

17 (4) 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.~~ ~~ruts.~~

19 (5) Individual trees may be treated to maintain or improve their health, form or ~~vigor.~~ ~~vigor.~~

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~~  
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.~~

26 (7) Removal of individual trees that are in danger of causing damage to structures or human life is  
27 ~~allowed.~~ ~~allowed.~~

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.~~  
30 ~~Plantings shall consist primarily of native species.~~

31 (9) ~~High intensity prescribed~~ ~~Prescribed~~ burns shall ~~not be allowed.~~ ~~allowed~~ when conducted for forest  
32 ~~management purposes; and~~

33 (10) ~~Application of One-time fertilizer is not allowed except as necessary for permanent stabilization to~~  
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.~~

**Commented [HK1]:** no effect – added header

**Commented [HK2]:** no effect - grammar

**Commented [HK3]:** no effect – clarification

**Commented [HK4]:** no change - added header

**Commented [HK5]:** no effect – split into two paragraphs

**Commented [HK6]:** no effect – clarification

**Commented [HK7]:** no effect – punctuation

**Commented [HK8]:** less stringent - Removed prohibition to allow for access roads and skid trails (in compliance with FPGs)

**Commented [HK9]:** no effect – punctuation

**Commented [HK10]:** no effect – punctuation

**Commented [HK11]:** no effect – punctuation

**Commented [HK12]:** no effect – update name

**Commented [HK13]:** no effect - statute was not related to this topic; requirement consistent with other buffer rules.

**Commented [HK14]:** no effect – punctuation

**Commented [HK15]:** no effect – punctuation

**Commented [HK16]:** no effect - Removed requirement – addressed in Rule .0607

**Commented [HK17]:** no effect - “high intensity prescribed burns” is not a term used by NCFS

~~(11)~~ Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.

**Commented [HK18]:** no effect - Clarified use of fertilizer; consistent with other fertilizer requirements in the buffer rules.

~~(b)(c)~~ **SELECTIVE HARVEST.** ~~In the riparian buffer, forest vegetation shall be protected and maintained. Selective harvest as forest harvesting is allowed provided that for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 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:~~

**Commented [HK19]:** No effect – added header

**Commented [HK20]:** no effect - Removed repetitive language.

**Commented [HK21]:** no effect - grammar

(1) The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2 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 forestry or the forest management plan shall be produced upon request by the North Carolina Forest Service or the Division.

**Commented [HK22]:** no effect – reorganization

~~(4)(2)~~ Tracked or wheeled vehicles are ~~not permitted within the first 50 feet the riparian buffer top of bank landward except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01H .0203 only used for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees.~~

**Commented [HK23]:** less stringent - allow for tracked or wheeled vehicles within 50 feet is no practical alternative

(2) ~~Soil disturbing~~ No tracked or wheeled vehicles shall be used to conduct site preparation activities ~~are not allowed activities.~~

**Commented [HK24]:** less stringent - Clarify soil disturbance can occur but no tracked/wheeled vehicles for site prep

(3) Trees shall be removed with the minimum disturbance to the soil and ~~residual remaining vegetation.~~

**Commented [HK25]:** No effect - grammar

**Commented [HK26]:** no effect – punctuation

(4) The first 10 feet of the riparian buffer directly adjacent to the stream or waterbody shall be ~~undisturbed-undisturbed, except for the removal of individual high value trees. The removal of individual high value trees shall only be allowed provided that no trees with exposed roots visible 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 high value trees within first 10 feet

(5) In the ~~zone area~~ from 10 feet to 50 feet of the riparian buffer, a maximum of 50 percent of the trees greater than five inches diameter breast height (dbh) may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations as defined in ~~15A NCAC 02B .0233(e)~~ 15A NCAC 02B .0702, 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-possible; and~~

**Commented [HK28]:** no effect – clarification of terminology

**Commented [HK29]:** no effect – update citation

**Commented [HK30]:** no effect – punctuation

(6) In the outer riparian buffer (landward of 50 feet), harvesting and regeneration of the forest stand ~~is allowed~~ shall be allowed, provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.

**Commented [HK31]:** no effect - grammar

~~(d)~~ **EXCEPTIONS.** Persons who wish to undertake forest harvesting operations or practices different from the requirements set forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule .0606 of this Section.

**Commented [HK32]:** No effect – clarification

1  
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:

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

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

(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

(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, 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.



- (3) “Authority” means either the Division or a local government that has been delegated pursuant this Section to implement a riparian buffer program.
- (4) “Bridge” means any spanning structure that begins and ends at the outer edge of the approach slabs and includes any support structures such as bents, pilings, footings, etc.
- (5) “Built-upon area” means the same as defined in G.S. 143-214.7(b2).
- (6) “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.
- (7) “Coastal wetlands” means marshland as defined in G.S. 113-229.
- (8) “Dam” means the same as defined in G.S. 143-215.25.
- (9) “DBH” means diameter at breast height of a tree measured at 4.5 feet above ground surface level.
- (10) “Development” means the same as defined in G.S. 143-214.7.
- (11) “Director” means the Director of the Division.
- (12) “Ditch or canal” means a man-made, open drainage way or channel other than a modified natural stream in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either ephemeral, intermittently or perennially. On the coastal plain, ditches are typically dug through inter-stream divide areas.
- (13) “Division” means the Division of Water Resources of the North Carolina Department of Environmental Quality and its successors.
- (14) “Ephemeral stream” means a feature that carries only 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 perched or seasonal high 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.
- (15) “Existing lot” in Randleman Lake watershed means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to the effective date of a local ordinance or ordinances enforcing Rule .0724 of Subchapter 02B. For activities listed in Sub-Item (15)(b) of Rule .0724 of Subchapter 02B, ‘existing lot’ in the Randleman Lake watersheds means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to April 1, 1999. “Existing lot” in the Neuse and Tar-Pamlico river basins means a lot of two acres in size or less that was platted and recorded in the office of the appropriate county Register of Deeds prior to August 1, 2000.
- (16) “Existing utility line maintenance corridor” means the portion of a utility right of way in which the vegetation has been mowed, cut or otherwise maintained within the last 10 years.
- (17) “Fertilizer” means the same as defined in Rule .0202 of this Subchapter.
- (18) “Forest management plan” means the same as defined in Chapter 160A-458.5.

- (19) "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.
- (20) "Forest vegetation" means the same as defined in Rule .0202 of this subchapter.
- (21) "Freshwater" means the same as defined in Rule .0202 of this subchapter.
- (22) "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.
- (23) "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; or for non-pine species, 16-inch DBH or greater or 24-inch or greater stump diameter.
- (24) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the perched or seasonal high water table. 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.
- (25) "Local government" means the same as defined in Rule .0202 of this subchapter.
- (26) "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 at least an intermittent conveyance of water.
- (27) "Natural drainageway" means any water course, channel, ditch or similar physiographic feature draining water from land to down gradient areas.
- (28) "Normal water level" means the water level within a pond, lake or other type of impoundment, natural or man-made (including beaver ponds), at the elevation of the outlet structure or spillway (i.e., the elevation of the permanent pool). The normal water level can often be identified by the lowest edge of the terrestrial vegetation.
- (29) "Perched water table" means a saturated soil horizon or horizon subdivision, with free water surface periodically observed in a bore hole or shallow monitoring well, but generally above the normal water table, or may be identified by drainage mottles or redoximorphic features, and caused by a less permeable lower horizon.
- (30) "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 perched or seasonal high 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.

- (31) “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.
- (32) “Perpendicular” means leading toward the nearest subject surface water at an angle between 75 and 105 degrees.
- (33) “Pruning” means the removal of dead tree or shrub branches or live tree or shrub branches with a diameter of less than 4 inches.
- (i) Pruning for Deciduous Trees: If pruning must be done on deciduous trees, then it should only be performed once a year during the dormant season or immediately following an “act of God” situation, such as a hurricane or ice storm that causes tree damage. Dead branches on trees can be removed any time.
- (ii) Pruning for Coniferous Trees: Conifers may be pruned any time of year. Dead branches on trees can be removed any time.
- (iii) Pruning for Shrubs: Shrubs may be pruned by selectively removing branches while maintaining the natural shape of the plant. Cutting the branches of a shrub down to its main trunk is not a selective removal of branches and could compromise the plant.
- (34) “Seasonal high water table” means the highest level that groundwater, at atmospheric pressure, reaches in the soil in most years. The seasonal high water table is usually detected by the mottling of the soil which results in mineral leaching.
- (35) “Streambank or shoreline stabilization” is the in-place stabilization of an eroding streambank or shoreline.
- (36) “Stormwater Control Measure” or “SCM,” also known as “Best Management Practice” or “BMP,” means the same as defined in 15A NCAC 02H .1002.
- (37) “Stump diameter” means the diameter of a tree measured at six inches above the ground surface level.
- (38) “Temporary road” means a road constructed temporarily for access or to maintain public traffic during construction and is restored upon completion of construction.
- (39) “Transportation facility” means the existing road surface, road shoulders, fill slopes, ferry terminal fill areas, and constructed stormwater conveyances or drainage canals adjacent to and directly associated with the road.
- (40) “Tree” means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.
- (41) “Wetlands” means the same as defined in Rule .0202 of this Subchapter.

**History Note:** Authority G.S. 143-215.3(a)(1).

Eff. DATE

1 15A NCAC 02B .0611 is proposed for adoption as follows:

2  
3 **15A NCAC 02B .0611 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: AUTHORIZATION**

4 **CERTIFICATES**

5 (a) PURPOSE. The following requirements shall apply to persons who wish to undertake uses designated as allowable  
6 upon authorization, allowable with mitigation upon authorization, or allowable with exception within the protected  
7 riparian buffer area as specified in the applicable buffer protection rule of this Section and Section .0700 in SubChapter  
8 02B.

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.

12 (1) The application shall specify:

- 13 (A) The name, address and phone number of the applicant;
- 14 (B) 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  
19 the conduct of the activity for which certification is sought;
- 20 (C) The nature of the activity to be conducted by the applicant;
- 21 (D) The location of the activity, including the jurisdiction;
- 22 (E) 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  
24 buffers associated with the activity, and the extent of riparian buffers on the land;
- 25 (F) An explanation of why this plan for the activity cannot be practically accomplished,  
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 (G) Plans for any best management practices proposed to be used to control the impacts  
29 associated with the activity; and
- 30 (H) 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.

32 (2) The applicant shall certify that the project meets all the following criteria for finding “no practical  
33 alternatives”:

- 34 (A) 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;
- 36 (B) The use cannot practically be reduced in size or density, reconfigured or redesigned to  
37 better minimize disturbance, preserve aquatic life and habitat, and protect water quality;

**Commented [HK1]:** Consolidate approval requirements from Randleman, Neuse and Tar-Pam into one rule for consistency and ease of implementation

**Commented [HK2]:** No effect – updated terminology

**Commented [HK3]:** No effect - clarification

**Commented [HK4]:** Clarification – similar to requirement for 401 WQC

**Commented [HK5]:** No effect - clarification

(C) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality; and

(D) Why alternatives cannot be practically accomplished to avoid or minimize the disturbance.

**Commented [HK6]:** Clarification

(3) Within 60 calendar days of receipt of a complete application package that addresses Subparagraphs (b)(1) and (b)(2) of this Rule, the Authority shall issue an Authorization Certificate if the Authority makes a finding of "no practical alternatives" and the applicant satisfies other applicable requirements as described in Subparagraphs (b)(1) and (b)(2) of this Rule. Failure to act within 60 calendar days of receipt of a complete application shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued by the Authority to the applicant unless one of the following occurs:

(A) The applicant agrees, in writing, to a longer period;

(B) The applicant fails to furnish information necessary for the Authority's decision;

(C) The applicant refuses Authority staff access to its records or premises for the purpose of gathering information necessary for the Authority's decision; or

(D) Information necessary for the Authority's decision is unavailable.

**Commented [HK7]:** Clarification – similar to 401 WQC rules

(4) The Authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program.

(5) Requests for appeals of Authorization Certificates issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.

(c) **AUTHORIZATION CERTIFICATES WITH EXCEPTION.** Persons who wish to undertake uses designated in the applicable buffer protection rule of this Section as allowable with exception shall submit an application requesting an Authorization Certificate with Exception. The Authorization Certificate with Exception review procedure shall be as follows:

(1) An Authorization Certificate with Exception shall require that all of the following conditions are met:

**Commented [HK8]:** For uses not listed in the table, instead of requesting a minor or major variance, applicants will request an authorization certificate with exception.

(A) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements.

**Commented [HK9]:** Clarify that these conditions must be met to receive an authorization certificate with exception. Simplified hardships. Remove requirement that property must be purchased prior to the rule.

(B) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the Authorization Certificate with Exception would allow a greater profit from the property shall not be considered adequate justification for an Authorization Certificate with Exception. Moreover, the Authority shall consider whether the Authorization Certificate with Exception is the minimum possible deviation from the terms of this Rule that shall 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."

(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography.

(D) The applicant did not cause the hardship.

(E) The requested Authorization Certificate with Exception is in harmony with the general spirit, purpose and intent of the State's riparian buffer protection requirements, will protect water quality, will secure public safety and welfare, and will preserve substantial justice.

(2) **MINOR EXCEPTIONS.** An Authorization Certificate with Minor Exception request pertains to allowable with exception activities that are proposed to impact equal to or less than one-third of an acre of riparian buffer.

(A) Authorization Certificate with Minor Exception requests shall be reviewed based on the criteria in Paragraph (b) and Subparagraph (c)(1) of this Rule.

(B) Within 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 issue an Authorization Certificate with Minor Exception if the Authority makes a finding that the criteria in Subparagraph (b)(2) and (c)(1) of this Rule have been met and the applicant satisfies other applicable requirements as described in Paragraph (b) and Subparagraph (c)(1) of this Rule. 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 Minor Exception.

(3) **MAJOR EXCEPTIONS.** An Authorization Certificate with Major Exception request pertains to allowable with exception activities that are proposed to impact greater than one-third of an acre of riparian buffer.

(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) Within 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.

(C) Notice of each pending complete application for an Authorization Certificate with Major 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 NCAC 02H .0503 (g), at least 30 calendar days prior to proposed final action by the Authority on the application.

(D) 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) and (c)(1) of this Rule have been met, the Authority shall issue an Authorization Certificate with Major Exception. If the Authority determines that all of the requirements in

**Commented [HK11]:** Removed hardship: "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;"

**Commented [HK12]:** Removed "which is different from that of neighboring property."

**Commented [HK13]:** Removed "by knowingly or unknowingly violated this Rule"

**Commented [HK14]:** Removed hardship: "The applicant did not purchase the property after the effective date of this Rule, and then requesting an appeal."

**Commented [HK15]:** No effect – combined two similar hardships into one

**Commented [HK16]:** Changed "Minor Variance" to "Minor Exception"

**Commented [HK17]:** Changed requirement for a minor from impacts to Zone 2 only, to impacts to either zone, totally no more than 1/3 of an acre of buffer

**Commented [HK18]:** Establish timelines to process minor exceptions

**Commented [HK19]:** Changed "Major Variance" to "Major Exception"

**Commented [HK20]:** Changed requirement for a major from any impacts to Zone 1 to impacts to either zone more than 1/3 of an acre of buffer

**Commented [HK21]:** Establishes a timeframe to process major exceptions

**Commented [HK22]:** 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 [HK23]:** Establishes a timeframe to process major exceptions

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.

(4) The Authority may attach conditions to the Authorization Certificate with Exception that support the purpose, spirit and intent of the riparian buffer protection program.

(5) Requests for appeals of Authorization Certificates with Exception issued by the Division shall be made pursuant to G.S. 150B. Requests for appeals of Authorization Certificates with Exception issued by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 153A-345 or G.S. 160A-388.

History Note: Authority 143-214.1; 143-214.5; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143 215.8B; 143B-282(c); 143B-282(d) S.L. 1999-329, s. 7.1.; S.L. 2005-190; S.L. 2006-259; S.L. 2009-216; S.L. 2009-484;  
Eff. DATE

15A NCAC 02B .0612 is proposed for adoption as follows:

**15A NCAC 02B .0612 MANAGING ACTIVITIES WITHIN RIPARIAN BUFFERS: FOREST HARVESTING REQUIREMENTS**

(a) PURPOSE. The following requirements shall apply to all forest harvesting operations and practices subject to riparian buffer requirements under rules of this Section and Section .0700 in SubChapter 02B, except for the Goose Creek Water Quality Management Plan [15A NCAC 02B .0605 to .0608]. Those Rules include:

- (1) Catawba River Basin [15A NCAC 02B .0614];
- (2) Neuse River Basin [15A NCAC 02B .0714];
- (3) Randleman Lake Watershed [15A NCAC 02B .0724]; and
- (4) Tar-Pamlico River Basin [15A NCAC 02B .0734].

(b) REQUIREMENTS THROUGHOUT THE BUFFER. The following requirements shall apply:

- (1) All forest harvest activities within the buffer shall comply with Forest Practice Guidelines Related to Water Quality as defined in Title 02 NCAC 60C;
- (2) Logging decks and sawmill sites shall not be placed in the riparian buffer;
- (3) Timber felling shall be directed away from the stream or waterbody;
- (4) 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;
- (5) Individual trees may be treated to maintain or improve their health, form or vigor;
- (6) 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 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;
- (7) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed;
- (8) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized;
- (9) Prescribed burns shall be allowed when conducted for forest management purposes; and
- (10) One-time fertilizer application to establish replanted vegetation shall be allowed. 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.

(c) REQUIREMENTS IN ZONE 1 OF THE BUFFER. Selective forest harvesting is allowed In Zone 1, as defined by the applicable Rule of this Section, provided that:

- (1) The forest lands have a deferment for use value under forestry in accordance with G.S. 105-277.2 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

**Commented [HK1]:** Consolidate forestry requirements from Randleman, Neuse, Tar-Pam and Catawba into one rule for consistency and ease of implementation

**Commented [HK2]:** No effect – clarification

**Commented [HK3]:** Added timeframe to provide notification to DWR

**Commented [HK4]:** Removed requirement for plantings to consist primarily of native species.



forestry or the forest management plan shall be produced upon request by the North Carolina Forest Service or the Division;

(2) Tracked or wheeled vehicles are only used for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees;

(2) No tracked or wheeled vehicles shall be used to conduct site preparation activities;

(3) Trees removed with the minimum disturbance to the soil and remaining vegetation;

(4) 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. The removal of individual high value trees shall only be allowed provided that no trees with exposed primary roots visible in the streambank are cut, unless they meet Sub-items (b)(6) or (b)(7) of this Rule; and

(5) A maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations as defined in 15A NCAC 02B .0702 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.

(d) REQUIREMENTS IN ZONE 2 OF THE BUFFER. In Zone 2, harvesting and regeneration of the forest stand shall be allowed, provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.

(e) EXCEPTIONS. Persons who wish to undertake forest harvesting operations or practices different from the requirements set forth in this Rule may request an Authorization Certificate with Exception pursuant to Rule .0705 of this Section.

**Commented [HK5]:** Changed language to allow for tracked or wheeled vehicles in Zone 1 provided activities comply with FPGs

**Commented [HK6]:** Changed "residual" to "remaining" – No effect - grammar

**Commented [HK7]:** No effect - clarification

*History Note: Authority 143-214.1; 143-214.5; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d) S.L. 1999-329, s. 7.1.; S.L. 2005-190; S.L. 2006-259; S.L. 2009-216; S.L. 2009-484;*  
*Eff. DATE*

[.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:

**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).

(c) "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

- through, or other 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) "Approved local government" means any government with a riparian buffer ordinance approved by the Division pursuant to Subparagraph (3)(b) of this Rule.
- (e) "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.
- (f) "DBH" means diameter at breast height of a tree measured at 4.5 feet above ground surface level.
- (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 regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.
- (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 River. The landward edge of the lakes at full pond level represents the project boundary for each lake.
- (i) "Greenway / Hiking Trails" means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, signage, etc.
- (j) "High Value Tree" means a tree whose stump diameter is equal to or exceeding 18 inches.
- (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 Norman, Mountain Island Lake and Lake Wylie (North Carolina portion).
- (l) "Riparian buffer enhancement" is defined as the process of converting a non-forested riparian area, where woody vegetation is sparse (greater than or equal to 100 trees per acre

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- but less than 200 trees per acre) to a forested riparian buffer area. The enhanced, forested riparian buffer area shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acres at maturity, and diffuse flow through the riparian buffer shall be maintained.
- (m) "Riparian buffer restoration" is defined as the process of converting a non-forested riparian area, where woody vegetation is absent (less than 100 trees per acre) to a forested riparian buffer area. The restored, forested riparian buffer area shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acres at maturity, and diffuse flow through the riparian buffer shall be maintained.
- (n) "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.
- (o) "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.
- (p) "Stump diameter" means diameter of a tree measured at six inches above ground surface level.
- (q) "Surface water" means all waters of the state as defined in G.S. 143-212 except underground waters.
- (r) "Temporary road" means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures or water dependent structures, or to maintain public traffic during construction.
- (s) "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter equal to or exceeding six inches.
- (3) **APPLICABILITY.** This Rule applies to all landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (4) of this Rule in the Catawba River Basin.
- (4) **BUFFERS PROTECTED.** The following minimum criteria shall be used for identifying regulated buffers:

Commented [HK6]: No effect – moved definitions to .0610

Commented [HK7]: No effect – clarification

Commented [HK8]: No effect – reorganization

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- (a) This Rule shall apply to activities conducted within a 50-foot wide riparian buffer-buffers along the Catawba River mainstem below Lake James and along the mainstem lakes in the Catawba River Basin, excluding wetlands.
- (b) Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506.
- (c) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (8) of this Rule.
- (d) RiparianThe riparian buffers protected by this Rule shall be measured pursuant to Item (4)(7) of this Rule.
- (e) A riparian buffer may be exempt from this Rule as described in Items (5) and (6) of this Rule. Riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes shall be subject to this Rule unless one of the following applies.
- (f) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.
- (a)(5) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing. Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule. The determination of whether a use is existing and ongoing will be made either by the Division or approved local government; whichever is appropriate according to the administration of the buffer program. A use is existing and ongoing when it is a completed and maintained activity, an activity with appropriate valid permits, or an activity with documentation for unexpired vested rights, as described below:
- (i)(a) A use that shall be considered existing if:
- (i) It was present within the riparian buffer as of June 30, 2001 and has continued to exist since that time.time;
- (ii) It was a deemed allowable activity as listed in Item (9) of this Rule;
- (iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority; or
- (iv) The project or proposed development are determined by the Authority to meet at least one of the following criteria:
- (A) Project requires a 401 Certification/404 permit and these were issued prior to June 30, 2001 and are still valid;
- (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 had received all required state permits prior to June 30, 2001;

Commented [HK9]: No effect - grammar

Commented [HK10]: No effect - clarification

Commented [HK11]: No effect - grammar

Commented [HK12]: No effect - clarification

Commented [HK13]: No effect - reorganization

Commented [HK14]: No effect - punctuation

Commented [HK15]: No effect - updated citation

Commented [HK16]: No effect - reorganization

Commented [HK17]: no effect - Clarification – wording in Jordan buffer rules

Commented [HK18]: No effect – reorganized and deleted duplicative language

Commented [HK19]: No effect - grammar

Commented [HK20]: No effect - grammar

Commented [HK21]: No effect - punctuation

Commented [HK22]: No effect - clarification

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- (C) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with the Department on avoidance and minimization by June 30, 2003; or
- (D) 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 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 project and the project has the written approval of the Division prior to June 30, 2001.
- (b) Existing and ongoing uses shall ~~include~~ include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, lawns (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation management has occurred within the last ten years) utility lines-line corridors and on-site sanitary sewage systems-systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.
- (c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.
- (d) Change of ownership through purchase or inheritance is not a change of use.
- (e) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no ~~impervious surface~~ built upon area is added within 50 feet of the surface water the riparian buffer where it did not previously exist as of the effective date of the Rule, prior to June 30, 2001, and existing diffuse flow is maintained the site is in compliance with Item (8) of this Rule. Grading and revegetating 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.
- (ii) A use that can be documented to the Division or the appropriate approved local government that meets at least one of the following criteria:
- (A) Project requires a 401 Certification/404 Permit, these were issued prior to June 30, 2001 and are still valid;
- (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 had received all required state permits prior to June 30, 2001;

Commented [HK23]: No effect – moved from below

Commented [HK24]: No effect - clarification

Commented [HK25]: No effect - clarification

Commented [HK26]: no effect – clarification

Commented [HK27]: no effect – clarification

Commented [HK28]: no effect – Clarification; codifying policy

Commented [HK29]: no effect – Clarification

Commented [HK30]: no effect – Clarification

Commented [HK31]: No effect - clarification

Commented [HK32]: No effect – updated terminology

Commented [HK33]: No effect - clarification

Commented [HK34]: No effect – referencing original adoption date of the Rule

Commented [HK35]: no effect – Referencing stormwater Item instead of “diffuse flow”

Commented [HK36]: No effect – language repeated below

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- (C) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by June 30, 2003; and
- (D) 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 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 project and the project has the written approval of the DWQ prior to June 30, 2001.
- (iii)(f) A project that can be documented to the ~~Division or the appropriate approved local government~~ Authority that has vested rights that were established or recognized for that project under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 prior to July 1, 2001. This Rule does not confer or restrict a vested right established or recognized under common law or G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1.
- (iv)(g) This Rule shall apply at the time an existing ~~and ongoing~~ use is changed to another use. Change of use ~~shall include the following:~~ shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (5)(a) through (5)(f) of this Rule
- (A) Impervious surface is added to the riparian buffer in locations where it did not exist previously either on the ground or in proposed site plans showing the locations of proposed impervious surfaces for uses defined as existing and ongoing in Subitem (3)(a)(ii) or Subitem (3)(a)(iii) of this Rule; or
- (B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.
- (6) **EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES.**  
This Rule shall not apply to a freshwater pond if all of the following conditions are met:
- (a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.
- (b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before July 22, 1997.
- (c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).
- (b) ~~LOCAL GOVERNMENTS THAT HAVE APPROVED RIPARIAN BUFFER ORDINANCES.~~ 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

Commented [HK37]: No effect – moved above

Commented [HK38]: No effect – updated terminology

Commented [HK39]: No effect - clarification

Commented [HK40]: No effect – reorganized and reference language above instead of repeating info

Commented [HK41]: no effect – Added per SL 2013-413

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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.

(e) ~~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.

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

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

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

Commented [HK43]: No effect – updated terminology

Commented [HK44]: No effect – updated citation

(i) 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.~~

Commented [HK45]: No effect - clarification

(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.~~

Commented [HK46]: No effect – grammar

Commented [HK47]: No effect – grammar

(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 [HK48]: No effect – updated citation

Commented [HK49]: No effect - grammar



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- (5) ~~DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.~~
- (a) ~~Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non erosive velocities before the runoff enters Zone 2 of the riparian buffer.~~
- (b) ~~Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~
- (c) ~~No new stormwater conveyances are allowed through the buffers except for stormwater management ponds provided for in Item (6) of this Rule.~~
- (8) ~~STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (9)(a) of this Rule, provided that they do not erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (9)(a)(v) of this Rule:~~
- (a) ~~The following are deemed allowable as defined in Sub-Item (9)(a)(i) of this rule:~~
- (i) ~~New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program;~~
- (ii) ~~New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.~~
- (b) ~~The following are allowable upon authorization as defined in Sub-Item (9)(a)(ii) of this Rule:~~
- (i) ~~New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not approved under a state stormwater program or a state-approved local government stormwater program;~~
- (ii) ~~New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;~~
- (iii) ~~New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;~~
- (iv) ~~Realignment of existing roadside drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the~~

**Commented [HK50]:** less stringent - Removed diffuse flow requirement; instead provide options for stormwater discharges

**Commented [HK51]:** less stringent - Removed diffuse flow requirement; instead provide options for stormwater discharges

**Commented [HK52]:** No effect – Organization

**Commented [HK53]:** less stringent - New use – allows for DWR to accept local government review of a SMP without having to review for meeting diffuse flow

**Commented [HK54]:** No change – moved from table of uses

**Commented [HK55]:** No effect – Organization

**Commented [HK56]:** No change – moved from table

**Commented [HK57]:** less stringent - New use

**Commented [HK58]:** No change – from diffuse flow language above

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- 1 minimum required roadway typical section is used based on traffic and safety  
2 considerations;
- 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;
- 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;
- 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;
- 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;
- 16 (6)(9) TABLE OF USES. Uses within the riparian buffer, or outside the buffer with hydrological impacts  
17 on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization,  
18 allowable with mitigation upon authorization, or prohibited.
- 19 (a) Potential new uses shall have the following requirements:
- 20 (i) **DEEMED ALLOWABLE.** Uses designated as deemed allowable in Sub-Items  
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.
- 27 (ii) **ALLOWABLE UPON AUTHORIZATION.** Uses designated as allowable upon  
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.
- 31 (iii) **ALLOWABLE WITH MITIGATION UPON AUTHORIZATION.** Uses  
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 [HK59]: less stringent - New use

Commented [HK60]: less stringent - New use

Commented [HK61]: less stringent - New Use

Commented [HK62]: less stringent - New use

Commented [HK63]: less stringent - New use

Commented [HK64]: No effect – Moved from (7) below

Commented [HK65]: Updated terminology

Commented [HK66]: No effect – moved from (7) below

Commented [HK67]: No effect – Updated terminology

Commented [HK68]: No effect – moved from (7) below

Commented [HK69]: No effect – Updated terminology

Commented [HK70]: No effect – moved from (7) below

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(iv) 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.

(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 category designation under this Rule designates 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

**Commented [HK78]:** No effect – updated terminology

Use	<u>Exempt Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> <li>• Pedestrian access trails that are restricted to the minimum 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</li> <li>• Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer</li> </ul>	X			

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

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Use	<u>Exempt</u> <u>Deemed</u> <u>Allowable</u>	<u>Allowable</u> <u>Upon</u> <u>Authorization</u>	<u>Allowable</u> <u>with</u> <u>Mitigation</u> <u>Upon</u> <u>Authorization</u>	<u>Prohibited</u>	
those not covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3					<b>Commented [HK78]:</b> No effect – updated terminology
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:					<b>Commented [HK90]:</b> less stringent – allows for impacts beyond those covered under a NW 3
<ul style="list-style-type: none"> <li>Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies</li> </ul>	X				
<ul style="list-style-type: none"> <li>New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control pollutants and attenuate flow before the conveyance discharges through the riparian buffer</li> </ul>		X			
<ul style="list-style-type: none"> <li>New stormwater discharges to existing man-made conveyances (including, but not limited to, drainage ditches, roadside ditches, and stormwater outfalls) provided that the new stormwater discharge does not result in the need to alter the existing man-made conveyances</li> </ul>		X			<b>Commented [HK91]:</b> No effect - Moved to Item (8) above
Driveway crossings of surface waters subject to this Rule:					
<ul style="list-style-type: none"> <li>Driveway crossings on single family residential lots subdivided 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 riparian buffer</li> </ul>	X	X			
<ul style="list-style-type: none"> <li>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</li> </ul>		X			
<ul style="list-style-type: none"> <li>In a subdivision that cumulatively disturbs equal to or less than 150 linear feet or one third of an acre of riparian buffer</li> </ul>			X		<b>Commented [HK92]:</b> No effect - Moved below with road impacts
<ul style="list-style-type: none"> <li>In a subdivision that cumulatively disturbs greater than 150 linear feet or one third of an acre of riparian buffer</li> </ul>					
Fences:					
<ul style="list-style-type: none"> <li>Fencing livestock out of surface waters</li> </ul>	X				<b>Commented [HK93]:</b> less stringent - New deemed allowable use

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Use	<del>Exempt</del> <del>Deemed</del> <del>Allowable</del>	<del>Allowable</del> <del>Upon</del> <del>Authorization</del>	<del>Allowable</del> <del>with</del> <del>Mitigation</del> <del>Upon</del> <del>Authorization</del>	<del>Prohibited</del>	<del>Prohibited</del>
<ul style="list-style-type: none"> <li><del>Fences provided that disturbance is minimized and installation</del>Installation does not result in removal of trees as defined in this Rule</li> <li><del>Fences provided that disturbance is minimized and installation</del>Installation results in removal of trees as defined in this Rule</li> </ul>	X	X			Commented [HK78]: No effect – updated terminology
Forest harvesting - see <del>Item (14) of this Rule .0612 of this Section</del>					Commented [HK94]: No effect - grammar
Fertilizer					Commented [HK95]: No effect - grammar
<ul style="list-style-type: none"> <li><del>One-time fertilizer application to 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.</del></li> <li><del>Ongoing fertilizer application</del></li> </ul>	X				Commented [HK96]: No effect – updated citation
Grading <del>and revegetation</del> in Zone 2 only provided that <del>diffuse flow and the health of existing vegetation in Zone 1 is not compromised</del> Item (8) of this Rule is complied with, and disturbed areas are stabilized and revegetated	X				Commented [HK97]: less stringent - New use
<del>Greenway / hiking trails</del> Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system:					Commented [HK98]: No effect - clarification
<ul style="list-style-type: none"> <li><del>On publicly owned property</del></li> <li><del>In Zone 2 provided that no built upon area is added within the buffer</del></li> <li><del>When built upon area is added to the buffer, equal to or less than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</del></li> <li><del>When built upon area is added to the buffer, greater than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</del></li> </ul>	X	X	X		Commented [HK99]: No effect – clarification and updated citation
	X				Commented [HK100]: no effect - Added per SL 2017-209
	X				Commented [HK101]: no effect - Codifying policy
		X			
			X		

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

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Use	<del>Exempt</del> <del>Deemed</del> <del>Allowable</del>	<del>Allowable</del> <del>Upon</del> <del>Authorization</del>	<del>Allowable</del> <del>with</del> <del>Mitigation</del> <del>Upon</del> <del>Authorization</del>	<del>Prohibited</del>	<del>Commented [HK78]: No effect – updated terminology</del>
<ul style="list-style-type: none"> <li>Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer regardless of the width of the maintenance corridor</li> </ul>					<del>Commented [HK108]: no effect - Moved to below</del>
Overhead electric utility lines: <ul style="list-style-type: none"> <li>Impacts other than perpendicular crossings in Zone 2 only<sup>†</sup></li> <li>Impacts other than perpendicular crossings in Zone 1<sup>†,2,3</sup></li> </ul>	X X				<del>Commented [HK109]: no effect - Moved to below</del>
Overhead electric utility line perpendicular crossings of surface waters subject to this Rule <sup>†</sup> : <ul style="list-style-type: none"> <li>Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer<sup>3</sup></li> <li>Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer<sup>2,3</sup></li> </ul>	X	X			<del>Commented [HK110]: no effect - Moved to below</del>

<sup>†</sup> 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.
- 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 Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Prohibited	Commented [HK112]: No effect – updated terminology
On-site sanitary sewage systems – new ones that use ground absorption				X	Commented [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: <ul style="list-style-type: none"> <li>Pedestrian access trail equal to or less than six (6) feet 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</li> <li>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</li> <li>Pedestrian access trail greater than six (6) feet wide</li> </ul>	X	X	X		Commented [HK114]: no effect - Combined uses from above
Playground equipment: <ul style="list-style-type: none"> <li>Playground equipment on single family lots provided that installation and use does not result in removal of trees as defined in this Rulevegetation</li> <li>Playground equipment on single family lots where installation and/or use requires results in the removal of trees as defined in this Rulevegetation</li> <li>Playground equipment installed on lands other than single family lots</li> </ul>	X	X	X		Commented [HK115]: No effect – clarifications and separated bullets for clarification
Properties that have been subdivided by a preliminary subdivision 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 shall 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					

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Use	Exempt Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Prohibited	Commented [HK112]: No effect – updated terminology
<p>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 both to or adjacent to the land to be subdivided.</p> <ul style="list-style-type: none"> <li>• Uses in Zone 2 provided that the ground is stabilized and <del>Item (8) of this Rule is complied with</del>diffuse flow is maintained</li> <li>• Uses in Zone 1 provided that the ground is stabilized and <del>Item (8) of this Rule is complied with</del>diffuse flow is maintained. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1</li> </ul>	X	X			
<p>Properties that are included on a recorded subdivision plan prior to June 30, 2001:</p> <ul style="list-style-type: none"> <li>• Uses in Zone 2 provided that the ground is stabilized and <del>Item (8) of this Rule is complied with</del>diffuse flow is maintained</li> <li>• Uses in Zone 1 provided that the ground is stabilized and <del>Item (8) of this Rule is complied with</del>diffuse flow is maintained. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1</li> </ul>	X	X			<p>Commented [HK116]: No effect – updated citation</p> <p>Commented [HK117]: No effect – incorporated footnote into main text</p>
<p>Protection of existing <del>structures, structures and facilities and shoreline</del> when this requires additional disturbance of the riparian buffer <del>or the channel</del></p>		X			<p>Commented [HK118]: No effect – updated citations</p> <p>Commented [HK119]: No effect – shorelines addressed below, clarify this includes existing utility lines</p> <p>Commented [HK120]: less stringent - Removed to only reference disturbance of the buffer</p>
<p>Public Safety - publicly owned spaces where it has been 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.</p>	X				<p>Commented [HK121]: no effect - per SL 2017-209</p>
<p>Pumps for agricultural irrigation in Zone 1 provided that installation and use does not result in removal of trees as defined in this Rule</p>	X				

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

- ~~Total acreage of land proposed for platting.~~
- ~~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 Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Prohibited
Railroad impacts other than crossings of surface waters subject to this Rule			X	
Recreational and accessory structures: <ul style="list-style-type: none"> <li>Recreational and accessory structures such as decks, gazebos and sheds provided the total cumulative footprint of all structures within 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</li> <li>Recreational and accessory structures such as decks, gazebos, and sheds with a cumulative footprint of more than 150 square feet 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</li> </ul>	X	X		
Removal of previous fill or debris provided that <u>Item (8) of this Rule is complied with</u> <del>diffuse flow is maintained</del> and any vegetation removed is restored	X			

Commented [HK123]: No effect – updated terminology

Commented [HK124]: no effect - Moved to below

Commented [HK125]: no effect - Removed this use; these structures will fall under “allowable with exception” except for decks, which are addressed below

Commented [HK126]: No effect – updated citation

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Use	Exempt Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Prohibited	Commented [HK123]: No effect – updated terminology
<u>Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: <a href="http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation/index.cfm">http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation/index.cfm</a>:</u> <ul style="list-style-type: none"> <li>Wetland or stream restoration that does not require written Division approval that results in impacts to the riparian buffer</li> <li>Wetland or stream restoration that requires written Division approval that results in impacts to the riparian buffer</li> </ul>	X	X			Commented [HK127]: no effect - Clarification
<del>Road</del> Road, driveway or railroad impacts other than perpendicular crossings of surface waters subject to this Rule			X		Commented [HK128]: no effect - Incorporating road, driveway and railroad into one row of requirements for ease and consistency
<del>Road</del> Road, driveway or railroads: perpendicular crossings of 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 [HK129]: no effect - Incorporating road, driveway and railroad into one row of requirements for ease and consistency
<ul style="list-style-type: none"> <li>Road crossings that impactImpact equal to or less than 40 linear feetone-tenth of an acre of riparian buffer</li> <li>Road crossings that impactImpact greater than 40 linear feetone-tenth of an acre but equal to or less than 150 linear feet or one-third of an acre of riparian buffer</li> <li>Road crossings that impactImpact greater than 150 linear feet or one-third of an acre of riparian buffer</li> <li>Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer</li> <li>Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer</li> <li>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</li> </ul>	X	X			Commented [HK130]: no effect - Clarification Commented [HK131]: No effect - grammar Commented [HK132]: No effect – will just reference square feet for ease of implementation Commented [HK133]: No effect - grammar
			X		Commented [HK134]: No effect – will just reference square feet for ease of implementation
		X			Commented [HK135]: No effect - grammar
			X		Commented [HK136]: No effect – will just reference square feet for ease of implementation
	X				Commented [HK137]: No effect – moved from above
<u>Road relocation of existing private access roads associated with public road projects where necessary for public safety:</u> <ul style="list-style-type: none"> <li>Less than or equal to 2,500 square feet of riparian buffer impact</li> <li>Greater than 2,500 square feet of riparian buffer impact</li> </ul>		X	X		Commented [HK138]: Less stringent – new use to allow for ag rules to have the same exemption under the buffer rules they have under 404 Commented [HK139]: less stringent - New use
Scientific studies and gauging station	X				

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Use	Exempt Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Prohibited	Commented [HK123]: No effect – updated terminology
<del>Stormwater management ponds excluding dry ponds: Control Measure (SCM) as defined in 15A NCAC 02H .1002:</del> <ul style="list-style-type: none"> <li><del>In Zone 2 if Item (8) of this Rule is complied with New stormwater 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</del></li> <li><del>In Zone 1 New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond</del></li> <li><del>Stormwater constructed wetland and bio-retention area</del></li> </ul>		X	X		Commented [HK140]: less stringent - Changes use to allow any SCM in the buffer instead of just wet ponds
Shoreline stabilization		X			
<del>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:</del> <ul style="list-style-type: none"> <li><del>Temporary 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 buffer disturbance</del></li> <li><del>Temporary roads that disturb greater Greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance of riparian buffer disturbance</del></li> <li><del>Temporary roads used for Associated with culvert installation, bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction</del></li> </ul>	X				Commented [HK141]: no effect - Clarification Commented [HK142]: No effect - grammar
		X			Commented [HK143]: no effect - Moved to wording above
		X			Commented [HK144]: No effect - grammar
		X			Commented [HK145]: no effect - Moved to wording above
					Commented [HK146]: No effect – grammar
					Commented [HK147]: no effect - Moved to wording above
Temporary sediment and erosion control <del>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</del>					

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Use	Exempt Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Prohibited	Commented [HK123]: No effect – updated terminology
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:					
<ul style="list-style-type: none"> <li>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</li> </ul>	X				Commented [HK148]: no effect - Added language for restoring temporarily disturbed area; consistent with requirement for temporary roads
<ul style="list-style-type: none"> <li>In Zones 1 and 2 to control impacts associated with uses approved by the Division Authority or that have received a variance authorization with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer</li> </ul>		X			Commented [HK149]: no effect - Incorporate compliance with the E&SC plan Commented [HK150]: No effect – updated citation
<ul style="list-style-type: none"> <li>In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act</li> </ul>	X				Commented [HK151]: No effect – updated terminology Commented [HK152]: No effect – updated terminology Commented [HK153]: no effect - Removed unnecessary language; this will be reviewed as part of the no practical alternatives analysis
Underground electric utility lines:					Commented [HK154]: no effect - clarification
<ul style="list-style-type: none"> <li>Impacts other than perpendicular crossings in Zone 2 only.<sup>4</sup></li> <li>Impacts other than perpendicular crossings in Zone 1.<sup>4,5</sup></li> </ul>	X X				Commented [HK155]: no effect - Moved to below
Underground electric utility line perpendicular crossings of surface waters subject to this Rule: <sup>4</sup>					
<ul style="list-style-type: none"> <li>Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer.<sup>5</sup></li> <li>Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer.<sup>5</sup></li> </ul>	X	X			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 underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial
<ul style="list-style-type: none"> <li>Sanitary Sewer Overflows: <ul style="list-style-type: none"> <li>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</li> </ul> </li> </ul>	X				

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Use	Exempt Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Prohibited	Commented [HK123]: No effect – updated terminology
<p>conditions, and is replanted with comparable vegetation within two (2) months of when disturbance is complete.</p> <ul style="list-style-type: none"> <li>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.</li> </ul>		X			
<ul style="list-style-type: none"> <li>New Sewer Line Construction Activities (including 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 style="list-style-type: none"> <li>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:               <ul style="list-style-type: none"> <li>Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>Greater than 40 linear feet and less than or equal to 150 linear feet, with a permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>Greater than 150 linear feet with a</li> </ul> </li> </ul> </li> </ul>	X	X			<p>Commented [HK158]: less stringent - Greater flexibility for responding quickly to SSOs</p> <p>Commented [HK159]: no effect - Clarify this use can include perpendicular entry into the buffer that doesn't cross a stream (e.g. connecting to existing line)</p>
			X		

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Use	Exempt Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Prohibited	Comments
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>Permanent maintenance corridor greater than 20 linear feet (mitigation is required only for impacts beyond the 20 linear feet corridor width).</li> </ul> </li> <li>Impacts other than perpendicular crossings:           <ul style="list-style-type: none"> <li>Zone 2 only.</li> <li>Zone 1 impacts to less than 2,500 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.</li> <li>Zone 1 impacts for replacement/rehabilitation within an existing Right of Way when land grubbing or grading within 10 feet immediately adjacent to the surface water is avoided.</li> <li>Zone 1 impacts other than those listed above.</li> </ul> </li> <li>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:           <ul style="list-style-type: none"> <li>Zone 2 impacts</li> <li>Zone 1 impacts provided no clearing within 10 feet of the stream</li> <li>Zone 1 impacts, provided the permanent 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.</li> </ul> </li> </ul>			X		<p>Commented [HK123]: No effect – updated terminology</p> <p>Commented [HK160]: less stringent - increased maintenance corridor from 10 to 20 feet</p> <p>Commented [HK161]: less stringent - changed from allowable to deemed allowable</p> <p>Commented [HK162]: less stringent - changed all impacts to Zone 1 triggering mitigation to only some triggering mitigation.</p>



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Use	Exempt Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Prohibited	Commented [HK123]: No effect – updated terminology
<ul style="list-style-type: none"> <li>Zone 1 impacts, provided the permanent 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.</li> <li>Zone 1 impacts other than those listed above</li> </ul>		X			
<ul style="list-style-type: none"> <li>Zone 1 impacts other than those listed above</li> </ul>			X		Commented [HK163]: less stringent - new uses to allow for vegetation maintenance beyond the maintenance corridor
<b>Utilities – Non-sewer underground lines:</b> <ul style="list-style-type: none"> <li>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:</li> </ul>	X				Commented [HK164]: no effect - Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial
<ul style="list-style-type: none"> <li>Construction activities that disturb less than or 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</li> </ul>		X			Commented [HK165]: no effect - Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)
<ul style="list-style-type: none"> <li>Construction activities that disturb greater 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 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</li> </ul>			X		Commented [HK166]: less stringent - Changed 40 feet to 50 feet. Added language re maintenance corridor
<ul style="list-style-type: none"> <li>Construction activities that disturb greater than 150 linear feet of riparian buffer</li> </ul>			X		
<ul style="list-style-type: none"> <li>Any activities with a permanent maintenance corridor greater than 30 feet in width</li> </ul>	X				Commented [HK167]: less stringent - Changed 40 feet to 50 feet. Added language re maintenance corridor
					Commented [HK168]: less stringent - New use

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Use	Exempt Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Prohibited	Commented [HK123]: No effect – updated terminology
<ul style="list-style-type: none"> <li>Impacts other than perpendicular crossings:               <ul style="list-style-type: none"> <li>Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised</li> <li>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</li> <li>Impacts in Zone One other than listed above</li> </ul> </li> <li>Vegetation maintenance activities along an existing 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</li> <li>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</li> </ul>		X			Commented [HK169]: No change
		X	X		Commented [HK170]: no effect - changed impacts to zone 1 to less than 2500 square feet when not tying into an existing line before triggering mitigation
			X		Commented [HK171]: less stringent: New uses to allow for vegetation maintenance beyond the maintenance corridor
Utilities – Non-sewer aerial lines:					Commented [HK172]: no effect - Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial
<ul style="list-style-type: none"> <li>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:               <ul style="list-style-type: none"> <li>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 grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body</li> <li>Disturb greater than 150 linear feet of buffer</li> </ul> </li> </ul>	X				Commented [HK173]: no effect - Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)
		X			
		X			

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Use	Exempt Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation	Prohibited	Commented [HK123]: No effect – updated terminology
<ul style="list-style-type: none"> <li>Impacts other than perpendicular crossings:               <ul style="list-style-type: none"> <li>Impacts in Zone Two</li> <li>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</li> </ul> </li> </ul>			X		Commented [HK174]: No change
Vehicle access roads and boat ramps (excluding parking areas) leading to the surface water, docks, fishing piers, and other water dependent activities:					Commented [HK175]: no change – incorporated wording from footnotes Commented [HK176]: no effect - clarification
<ul style="list-style-type: none"> <li>Vehicle access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 10-15 feet in width</li> </ul>		X			Commented [HK177]: no effect - clarification Commented [HK178]: no effect - grammar
<ul style="list-style-type: none"> <li>Vehicle access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 10-15 feet in width</li> </ul>			X		Commented [HK179]: less stringent - increased width from 10 to 15 feet Commented [HK180]: less stringent - increased width from 10 to 15 feet
View corridors:					
<ul style="list-style-type: none"> <li>Thinning of underbrush, shrubs, and limbs up to 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 no stems of woody vegetation larger than 3" DBH are removed</li> </ul>	X				
<ul style="list-style-type: none"> <li>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 no stems of woody vegetation larger than 3" DBH are removed</li> </ul>		X			Commented [HK181]: no effect – updated citations

5 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.

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

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- 1 • ~~Except as specified within this footnote, vegetative root systems shall be left intact to maintain the integrity~~
- 2 ~~of the soil. Stumps shall remain, except in the trench, where trees are cut.~~
- 3 • ~~Underground cables shall be installed by vibratory plow or trenching.~~
- 4 • ~~The trench shall be backfilled with the excavated soil material immediately following cable installation.~~
- 5 • ~~No fertilizer shall be used other than a one time application to re-establish vegetation.~~
- 6 • ~~Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area,~~
- 7 ~~and the time in which areas remain in a disturbed state.~~
- 8 • ~~Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of~~
- 9 ~~stormwater through the buffer.~~
- 10 • ~~In wetlands, mats shall be utilized to minimize soil disturbance.~~
- 11

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

Use	Exempt Deemed Allowable	Potentially Allowable	Potentially Allowable with Mitigation
Vegetation management:			
• Emergency fire control measures provided that topography is restored	X		
• Periodic mowing and harvesting of plant products in Zone 2 only	X		
• <del>Placement of mulch ring around restoration plantings for a period of five years from the date of planting</del>	X		
• <del>Planting non-invasive vegetation to improve water quality protection function of enhance the riparian buffer</del>	X		
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised			
• Removal of individual <del>trees-trees, branches or limbs</del> which are in danger of causing damage to dwellings, <del>existing utility lines, other structures or human life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance.life</del>	X		
	X		
• Removal of individual trees which are dead, diseased or damaged			
• Removal of poison <del>ivy, 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.</del>	X		
	X		

Commented [HK183]: less stringent - new use

Commented [HK184]: no effect - clarification

Commented [HK185]: less stringent - allows for removal of branches or limbs instead of just an entire tree

Commented [HK186]: no effect - clarification

Commented [HK187]: less stringent - allows for removal of additional nuisance species and allows for use of pesticides

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<ul style="list-style-type: none"> <li>Removal of understory nuisance vegetation listed in Appendix III of: Smith, Cherri L. 2008. <u>Invasive Plants of North Carolina</u>. Dept. of Transportation. Raleigh, NC (available at <a href="http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&amp;groupId=38364">http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&amp;groupId=38364</a>). 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. <u>Exotic Plant Guidelines</u>. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30</li> </ul>			
<p>Water dependent structures:</p> <ul style="list-style-type: none"> <li>Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use do not result in disturbance to riparian buffers</li> </ul> <p>Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers structures (except for boat ramps) as defined in Rule .0202 of this Section</p>	X		X
<p>Water wells:</p> <ul style="list-style-type: none"> <li>Single family residential water wells</li> </ul> <p>All other water wells</p>	X		X
<p>Wetland, stream and buffer restoration that results in impacts to the riparian buffers:</p> <ul style="list-style-type: none"> <li>Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification</li> <li>Wetland, stream and buffer restoration that does not require DWQ approval for the use of a 401 Water Quality Certification</li> </ul>	X		X
Wildlife passage structures		X	
Slatted uncovered decks (and associated steps and support posts) 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.		X	

Commented [HK188]: no effect - updated citation; allow for use of pesticides

Commented [HK189]: no effect - consistent with other buffer rules; boat ramps addressed above

Commented [HK190]: less stringent - changed all wells to be deemed allowable

Commented [HK191]: no effect - moved to above

Commented [HK192]: less stringent - new use

Commented [HK193]: no effect - moved from recreational structures use above

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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

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

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- (9) ~~VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. 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:~~
- ~~(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:~~
- ~~(i) There are practical difficulties or hardships that prevent compliance with the riparian buffer protection requirements. Practical difficulties or unnecessary 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 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 be considered adequate justification for a variance. Moreover, the Division or the approved local government 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 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 Catawba River Basin'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 justice has been done.~~
- ~~(b) Variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by either the Division or the approved local government pursuant to G.S. 153A, Article 18, or G.S. 160A, Article 19. The Division or the approved local 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 made by the Division shall be made to the Office of Administrative Hearings. Request for appeals of decisions made by the approved local government shall be made to the~~



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- 1 appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345 for  
2 determinations made by the approved local government.
- 3 (10) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation upon  
4 authorization as defined in Sub-Item (9)(a)(iii) of this Rule or allowable with exception as defined in  
5 Sub-Item (9)(a)(v) of this Rule shall meet the following requirements in order to proceed with their  
6 proposed use-use:   
7 (a) 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  
9 (b) Obtain written approval for a mitigation proposal pursuant to 15A NCAC 02B .0244.Rule  
10 .0295 of Subchapter 02B.   
11 (11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall  
12 apply for forest harvesting operations and practices.  
13 (a) 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  
17 manner that minimizes soil disturbance and prevents the creation of channels or  
18 ruts in accordance with 15A NCAC 011 .0203 as enforced by the Division of  
19 Forest Resources.  
20 (iv) Individual trees may be treated to maintain or improve their health, form or vigor.  
21 (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  
23 practices must be approved by the Division of Forest Resources for a specific site  
24 pursuant to this Rule. The Division of Forest Resources must notify the Division  
25 of all approvals.  
26 (vi) Removal of individual trees that are in danger of causing damage to structures or  
27 human life shall be allowed.  
28 (vii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground  
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 (ix) Application of fertilizer shall not be allowed except as necessary for permanent  
33 stabilization. Broadcast application of fertilizer or herbicides to the adjacent  
34 forest stand shall be conducted so that the chemicals are not applied directly to or  
35 allowed to drift into the riparian buffer.  
36 (b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as  
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 01H .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.

(e) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01H .0100 .0200 as enforced by the Division of Forest Resources.

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

(11) 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

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- 1 government has not corrected the deficiencies within 90 days of receipt of written  
 2 notification, then the Division shall implement and enforce the provisions of this Rule.
- 3 (b) The Division shall be responsible for the implementation of this rule for all riparian areas  
 4 and activities not regulated under a Division-approved local government ordinance.
- 5 (12) DELEGATION OF AUTHORITY FOR THE PROTECTION AND MAINTENANCE OF  
 6 EXISTING RIPARIAN BUFFER. The following set out the requirements for delegation of the  
 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:
- 9 (a) The Commission shall grant local government delegation of the Catawba River Riparian  
 10 Buffer Protection requirements as described in this Rule according to the following  
 11 procedures:
- 12 (i) Local governments within the Catawba River may submit a written request to the  
 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 (A) Documentation that the local government has land use jurisdiction along  
 18 the Catawba River mainstem below Lake James and along mainstem  
 19 lakes in the Catawba River Basin. This can be demonstrated by  
 20 delineating the local land use jurisdictional boundary on the USGS  
 21 1:24,000 topographical map(s) or other finer scale map(s);
- 22 (B) Documentation that the local government has the administrative  
 23 organization, staff, legal authority, financial resources and other  
 24 resources necessary to implement and enforce the State's riparian buffer  
 25 protection requirements based on its size and projected amount of  
 26 development;
- 27 (C) The local government ordinances, resolutions, or regulations necessary  
 28 to establish a riparian buffer program to meet the requirements of this  
 29 Rule and G.S. 143-214.23A;
- 30 (D) Documentation that the local government's riparian buffer program  
 31 complies with all requirements set forth in G.S. 143-214.23A;
- 32 (E) 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  
 34 and provide a deterrent against the occurrence of future violations.
- 35 (ii) Within 90 days after the Commission has received the request for delegation, the  
 36 Commission shall notify the local government whether it has been approved,  
 37 approved with modifications, or denied.

Commented [HK203]: No effect - moved from (5) above

Commented [HK204]: no effect - Moved from (3) above

Commented [HK205]: No substantive effect - Changed approval from Division to Commission; Clarifications – requirements for delegation consistent with all other buffer rules

Commented [HK206]: no effect - Added to comply with SL 2015-246

Commented [HK207]: no effect - Added to comply with SL 2015-246

Commented [HK208]: no effect - Clarification – requirements for delegation consistent with all other buffer rules

Commented [HK209]: no effect - Added to comply with SL 2015-246

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(b) The Division has jurisdiction to the exclusion of local governments to implement the requirements of this Rule for the following types of activities:

Commented [HK210]: no effect - Moved from (3) above

(i) Activities undertaken by the State;

(ii) Activities undertaken by the United States;

(iii) Activities undertaken by multiple jurisdictions;

(iv) Activities undertaken by local units of government;

Commented [HK211]: no effect - Clarification

(v) Forest harvest activities described in Rule .0612 of this Section; and

Commented [HK212]: no effect - Added to comply with SL 2005-447

(vi) Agricultural activities;

Commented [HK213]: no effect - Clarification; consistent with more recent buffer rules

(c) Delegated local governments shall maintain on-site records for a minimum of five years.

Delegated local governments must furnish a copy of these records to the Division within 30 calendar days of receipt of a written request for the records. Each delegated local government's records shall include the following:

(i) A copy of Authorization Certificate with Exception requests;

(ii) The Authorization Certificate with Exception request's finding of fact;

(iii) The result of the Authorization Certificate with Exception proceedings;

(iv) A record of complaints and action taken as a result of the complaint;

(v) Records for stream origin calls and stream ratings; and

(vi) Copies of request for authorization, records approving authorization and Authorization Certificates.

(d) The Division shall regularly audit delegated local governments to ensure the local programs are being implemented and enforced in keeping with the requirements of this Rule.

Commented [HK214]: no effect - Clarification – requirements for delegation consistent with all other buffer rules

(e) Upon determination by the Division that a delegated local government is failing to implement or enforce the Catawba River riparian buffer protection requirements in keeping with the request approved under Sub-Item (14)(a)(iv) of this 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 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Catawba River riparian buffer protection requirements within their jurisdiction.

(f) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Catawba River riparian buffer protection requirements, in whole or in part, to the Director.

Commented [HK215]: no effect - Moved from (3) above

(13) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws. ~~Whichever regulation is more restrictive shall apply.~~

Commented [HK216]: no effect - Removed – unnecessary language

*[.0243 is proposed for amendment and transfer to 15A NCAC 02B .0614]*

*Last Revised December 14, 2017*

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.*

5  
6  
7

1 15A NCAC 02B .0233 is proposed for amendment as follows:

2  
3 **15A NCAC 02B .0233.0714 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS**  
4 **MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF**  
5 **EXISTING RIPARIAN BUFFERS**

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  
9 buffers in the Neuse River ~~Basin~~ Basin, including the Falls of the Neuse Reservoir watershed, to  
10 maintain their nutrient removal functions. ~~Terms used in this Rule shall be as defined in Rule .0610~~  
11 ~~in Subchapter 02B.~~

12 (2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:

- 13 (a) ~~'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 01H.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 (c) ~~'Ditch or canal' means a man-made channel other than a modified natural stream~~  
20 ~~constructed for drainage purposes that is typically dug through inter stream divide areas.~~  
21 ~~A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may~~  
22 ~~exhibit hydrological and biological characteristics similar to perennial or intermittent~~  
23 ~~streams.~~  
24 (d) ~~'Ephemeral (stormwater) stream' means a feature that carries only stormwater in direct~~  
25 ~~response to precipitation with water flowing only during and shortly after large~~  
26 ~~precipitation events. An ephemeral stream may or may not have a well-defined channel,~~  
27 ~~the aquatic bed is always above the water table, and stormwater runoff is the primary source~~  
28 ~~of water. An ephemeral stream typically lacks the biological, hydrological, and physical~~  
29 ~~characteristics commonly associated with the continuous or intermittent conveyance of~~  
30 ~~water.~~  
31 (e) ~~'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.~~  
34 (f) ~~'High Value Tree' means a tree that meets or exceeds the following standards: for pine~~  
35 ~~species, 14 inch DBH or greater or 18 inch or greater stump diameter; and, for hardwoods~~  
36 ~~and wetland species, 16 inch DBH or greater or 24 inch or greater stump diameter.~~

Commented [HK1]: No effect – update citation

Commented [HK2]: No effect - grammar

Commented [HK3]: no effect - clarification

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

(g) 'Intermittent stream' means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.

(h) '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.

(i) '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.

(j) 'Perennial waterbody' means a natural or man-made basin 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 drainageway (i.e., connected by surface flow to a stream).

(k) 'Stream' means a body of concentrated flowing water in a natural low area or natural channel on the land surface.

(l) 'Surface water' means all waters of the state as defined in G.S. 143-212 except underground waters.

(m) 'Tree' means a woody plant with a DBH equal to or exceeding five inches.

Commented [HK5]: No effect – moved definitions to .0610

(3)(2) **APPLICABILITY.** This Rule applies to all landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (3) of this Rule in the Neuse River Basin, including the Falls of the Neuse Reservoir watershed.

Commented [HK6]: No effect – clarification

(3) **BUFFERS PROTECTED.** The following minimum criteria shall be used for identifying regulated buffers:

Commented [HK7]: No effect - clarification

(a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references:

Commented [HK8]: No effect – reorganization

(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 the United States Department of Agriculture;

- (ii) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS); or
- (iii) Other maps approved by the Geographic Information Coordinating Council and by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps may be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final 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 Rule;
- (b) This Rule shall apply to activities conducted within 50-foot wide riparian buffers directly adjacent to surface waters in the Neuse River Basin (intermittent streams, perennial streams, lakes, ponds, reservoirs and estuaries), excluding wetlands; wetlands. Except as described in Sub-Item (4)(a)(iii) of this Rule, wetlands
- (c) Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506;.0506;
- (d) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (9) of this Rule;
- The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Rule. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS).
- Riparian buffers adjacent to surface waters that do not appear on either of the maps shall not be subject to this Rule. Riparian buffers adjacent to surface waters that appear on the maps shall be subject to this Rule unless one of the following applies:
- (e) Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;
- (f) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of this Rule; and
- (g) No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.

Commented [HK9]: No effect – moved from below

Commented [HK10]: less stringent - Added flexibility for a 3<sup>rd</sup> map to be used – language from SL 2009-484 for Jordan buffer rules

Commented [HK11]: No effect - clarification

Commented [HK12]: No effect - clarification

Commented [HK13]: No effect – reorganization

Commented [HK14]: No effect - punctuation

Commented [HK15]: No effect – reorganization

Commented [HK16]: No effect – moved to (3)(a) above

Commented [HK17]: No effect - reorganization

Commented [HK18]: No effect – Clarification – wording in Jordan buffer rule



- (a)(4) ~~EXEMPTION WHEN AN ON-SITE DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT.DETERMINATION.~~ When a landowner or other affected party believes that the maps listed in Sub-Item (3)(a) of this Rule have inaccurately depicted surface ~~waters,waters or~~ the specific origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall ~~consult-request~~ the Division or the appropriate delegated local authority. Upon request, the Division or delegated local authority shall Authority to make an on-site determinations.determination. On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the Director in ~~writing-writing~~ within 60 calendar days of written notification from the Authority. ~~A determination of the Director as to the accuracy or application of the maps~~The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.
- (5) ~~EXEMPTION BASED ON ON-SITE DETERMINATION.~~ Surface waters that appear on the maps listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following ~~categories.categories:~~
- (i)(a) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.
  - (ii)(b) Manmade ponds and lakes that are ~~located outside natural drainage ways~~not fed by an intermittent or perennial stream or do not have a direct discharge point to an intermittent or perennial stream.
  - (iii)(c) Ephemeral (stormwater) streams.
  - (d) ~~The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, pond or estuary.~~
- (b)(6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to portions of the riparian buffer where a use is existing and ~~ongoing according to the following: ongoing.~~
- (i)(a) A use shall be considered existing ~~if:~~
    - (i) ~~it~~It was present within the riparian buffer as of July 22, 1997:1997 and has continued to exist since that time;
    - (ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or
    - (iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.
  - (b) Existing ~~and ongoing~~ uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained ~~lawns,lawns~~

Commented [HK19]: No effect - reorganization

Commented [HK20]: No effect - clarification

Commented [HK21]: No effect - clarification

Commented [HK22]: No effect - grammar

Commented [HK23]: No effect - grammar

Commented [HK24]: No effect - incorporating statute

Commented [HK25]: No effect - Codifying policy. Consistent with timeframe of Corps determinations.

Commented [HK26]: No effect - Codifying policy. Consistent with timeframes for appeal in G.S. 150B.

Commented [HK27]: No effect - grammar

Commented [HK28]: No Effect - update citation

Commented [HK29]: No effect - added header

Commented [HK30]: No effect - clarification

Commented [HK31]: No effect - punctuation

Commented [HK32]: No effect - Codifying policy

Commented [HK33]: No effect - reorganization

Commented [HK34]: No effect - clarification

Commented [HK35]: No effect - punctuation

Commented [HK36]: No effect - punctuation

Commented [HK37]: No effect - clarification

Commented [HK38]: No effect - clarification

Commented [HK39]: No effect - clarification

- (i.e. can be mowed without a chainsaw or bush-hog), maintained (i.e. vegetation management has occurred within the last ten years) utility lines-line corridors and on-site sanitary sewage systems-systems, any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.
- (c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.
- (d) Change of ownership through purchase or inheritance is not a change of use.
- (e) Activities necessary to maintain existing and ongoing uses are allowed provided that no additional vegetation is removed from Zone 1 except that grazed or trampled by livestock the site remains similarly vegetated, no built upon area is added within the riparian buffer where it did not exist prior to July 22, 1997, and the site is in compliance with Item (9) of this Rule. existing diffuse flow is maintained. Grading and revegetating 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.
- (f) This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (6)(a) through (6)(e) of this Rule.
- (ii) At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:
- (A) Impervious surface is added to the riparian buffer in locations where it did not exist previously.
- (B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.
- (C) A lawn within the riparian buffer ceases to be maintained.
- (7) **EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES.** This Rule shall not apply to a freshwater pond if all of the following conditions are met:
- (a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.
- (b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before July 22, 1997.
- (c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).
- (4)(8) **ZONES OF THE RIPARIAN BUFFER.** The protected riparian buffer shall have two zones as follows:
- (a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item (6)(10) of this Rule. The location of Zone 1 shall be as follows:

Commented [HK40]: no effect – clarification

Commented [HK41]: No effect – Clarification; codifying policy

Commented [HK42]: No effect – Clarification

Commented [HK43]: No effect – clarification

Commented [HK44]: No effect – Clarification

Commented [HK45]: No effect - clarification

Commented [HK46]: No effect – Clarification

Commented [HK47]: No effect - language repeated below

Commented [HK48]: No effect – moved from (ii) below

Commented [HK49]: No effect – Moved to (f) above

Commented [HK50]: No effect – Removed

Commented [HK51]: No effect – Added per SL 2013-413

Commented [HK52]: No effect – update citation

- (i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the ~~surface water stream~~, measured horizontally on a line perpendicular to the ~~surface water stream (where an intermittent or perennial stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).~~
- Commented [HK53]:** No effect - clarification
- (ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the ~~most landward limit of the normal water level or the rooted herbaceous vegetation~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.
- Commented [HK54]:** No effect – Codifying policy
- Commented [HK55]:** No effect – clarification
- Commented [HK56]:** No effect – removed for simplicity
- (iii) For surface waters within the 20 Coastal Counties (defined in ~~15A NCAC 02B .0202~~.0202 of this Subchapter) and within the jurisdiction of the Division of Coastal Management, Zone 1 shall begin at the most landward limit of:
- ~~(A) the normal high water level;~~
- ~~(B) the normal water level; or~~
- ~~the landward limit of coastal wetlands as defined by the Division of Coastal Management;~~
- ~~of the normal high water level or the normal water level~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water, whichever is more restrictive.
- Commented [HK57]:** No effect – updated citation
- Commented [HK58]:** No effect – Edited per SL 2015-246
- (b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Item ~~(6)~~(10) 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 the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.
- Commented [HK59]:** No effect – update citation
- ~~(5) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.~~
- ~~(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the Zone 2 of the riparian buffer.~~
- ~~(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~
- Commented [HK60]:** less stringent - Removed diffuse flow requirement; instead provide options for stormwater discharges.
- (9) **STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER.** Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through

the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule.

(a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this rule:

(i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program;

(ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this Rule:

(i) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not approved under a state stormwater program or a state-approved local government stormwater program;

(ii) New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 3.6 pounds per acre per year of Nitrogen (N) outside of the Falls of the Neuse Reservoir Watershed. Within the Falls of the Neuse Reservoir Watershed, new drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 2.2 pounds per acre per year of Nitrogen (N) and 0.33 pounds per acre per year of Phosphorus (P);

(iii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;

(iv) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

(v) Realignment of existing drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the 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;

(vi) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

**Commented [HK61]:** less stringent - Removed diffuse flow requirement; instead provide options for stormwater discharges

**Commented [HK62]:** No effect – Organization

**Commented [HK63]:** less stringent - New use – allows for DWR to accept local government review of a SMP without having to review for meeting diffuse flow

**Commented [HK64]:** No change – moved from table

**Commented [HK65]:** No effect – Organization

**Commented [HK66]:** No change – moved from table

**Commented [HK67]:** less stringent - New use

**Commented [HK68]:** less stringent - New use

**Commented [HK69]:** No change – from diffuse flow language above

**Commented [HK70]:** less stringent - New use

**Commented [HK71]:** less stringent - New use

- (vii) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed. **Commented [HK72]:** less stringent - New Use
- (viii) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical. **Commented [HK73]:** less stringent - New use
- (ix) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only. **Commented [HK74]:** less stringent - New use
- (6)(10) **TABLE OF USES.** Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, allowable with exception or prohibited.
- (a) Potential new uses shall have the following requirements:
- (i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items (9)(a) and (10)(b) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet the requirements listed in Sub-Item (10)(b) of this Rule for the specific use. **Commented [HK75]:** No effect – Moved from (7) below  
**Commented [HK76]:** No effect – Update terminology
- (ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Items (9)(b) and (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer pursuant to Rule .0611 of this Section. **Commented [HK77]:** No effect – moved from (7) below  
**Commented [HK78]:** No effect – Update terminology
- (iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon authorization in Sub-Item (10)(b) of this Rule require a written Authorization Certificate 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. **Commented [HK79]:** No effect – moved from (7) below  
**Commented [HK80]:** No effect – Update terminology
- (iv) PROHIBITED. Uses designated as prohibited in Sub-Item (10)(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. **Commented [HK81]:** No effect – moved from (7) below
- (v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or **Commented [HK82]:** No effect – Changed to variance process set out in Rule .0226

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 ~~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 Rule designates them as ~~exempt~~deemed allowable, allowable,allowable upon authorization, allowable with mitigation, or prohibited.mitigation upon authorization, or prohibited. The requirements for each category are given 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 - punctuation

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

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

**Commented [HK93]:** No effect – updated terminology

**Commented [HK94]:** No effect – updated terminology

**Commented [HK95]:** No effect – updated terminology

**Commented [HK96]:** No effect – Codifying policy

**Commented [HK97]:** No effect – Removed linear feet; will just reference square feet for ease of implementation

**Commented [HK98]:** No effect – Removed linear feet; will just reference square feet for ease of implementation

**Commented [HK99]:** less stringent - Added new use to allow bridges with less than 1/10 to be deemed allowable; consistent with road impacts

**Commented [HK100]:** no effect -authorization already required under 404/401

	Exempt Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:				
• Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies	X			
• New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer		X		
• New drainage ditches, roadside ditches and stormwater outfalls that do not provide control for nitrogen before discharging through the riparian buffer				X
• Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch				X
Drainage of a pond in a natural drainage way subject to Item (3) of this Rule provided that a new riparian buffer that meets the requirements of Items (4) and (5) 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.	X			

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK101]: No effect – Moved to Item (9) above

Commented [HK102]: No effect - clarification

Commented [HK103]: No effect - Clarification of regeneration process after pond is drained



	<u>Exempt</u> <u>Deemed</u> <u>Allowable</u>	<u>Allowable</u> <u>Upon</u> <u>Authorization</u>	<u>Allowable</u> <u>with</u> <u>Mitigation</u> <u>Upon</u> <u>Authorization</u>	Prohibited
Driveway crossings of streams and other surface waters subject to this Rule:				
• Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer	X			
• Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer		X		
• In a subdivision that cumulatively disturb equal to or less 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			X	
Fences:				
• Fencing livestock out of surface waters	X			
• Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation trees	X		X	
• Installation results in removal of trees				
Forest harvesting - see Item (11) of this Rule .0612 of this Section				
Fertilizer application:				
• One-time fertilizer application to establish replanted <del>vegetation</del> 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.	X			
• Ongoing fertilizer application				X

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK104]: No effect - Moved below with road impacts

Commented [HK105]: less stringent - New deemed allowable use

Commented [HK106]: No effect - grammar

Commented [HK107]: less stringent - New allowable use

Commented [HK108]: No effect – update citation

Commented [HK109]: No effect - Clarification

	<del>Exempt</del> <del>Deemed</del> <del>Allowable</del>	Allowable <del>Upon</del> Authorization	Allowable with Mitigation <del>Upon</del> Authorization	Prohibited
Grading and revegetation in Zone 2 only provided that diffuse flow 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 stabilized and revegetated	X			
Greenway/hiking trails Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system: <ul style="list-style-type: none"> <li>In Zone 2 provided that no built upon area is added within the buffer</li> <li>When built upon area is added to the buffer, equal to or less than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</li> <li>When built upon area is added to the buffer, greater than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</li> </ul>	X	X	X	
Historic preservation	X			
New Landfills as defined by G.S. 130A-290				X
Mining activities: <ul style="list-style-type: none"> <li>Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (4)(8) and (5)(9) of this Rule are established adjacent to the relocated channels</li> <li>Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items (4)(8) and (5)(9) of this Rule are not established adjacent to the relocated channels</li> <li>Wastewater or mining dewatering wells with approved NPDES permit</li> </ul>		X	X	

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK110]: No effect – clarification and updated citation

Commented [HK111]: No effect - Codifying policy

Commented [HK112]: less stringent - Allows for landfill expansions to seek an Authorization Certificate with Exception instead of a Variance

Commented [HK113]: No effect – update citation

Commented [HK114]: No effect – update citation

Commented [HK115]: less stringent - Allows mining activities that do not relocate channels to pursue an authorization certificate

	<u>Exempt</u> <u>Deemed</u> <u>Allowable</u>	<u>Allowable</u> <u>Upon</u> <u>Authorization</u>	<u>Allowable</u> <u>with</u> <u>Mitigation</u> <u>Upon</u> <u>Authorization</u>	Prohibited
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>			X	
Non-electric utility line perpendicular crossing of streams and other surface waters subject to this Rule <sup>3</sup> :				
• Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width	X			
• Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width		X		
• Perpendicular crossings that disturb greater than 40 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		X		
• Perpendicular crossings that disturb greater than 40 linear feet 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 feet of riparian buffer			X	
On-site sanitary sewage systems - new ones that use ground absorption				X
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 <sup>1,2,3</sup>	X			

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK116]: No effect - Moved to below

Commented [HK117]: No effect - Moved to below

Commented [HK118]: No effect - Moved to below

	<del>Exempt</del> <del>Deemed</del> <del>Allowable</del>	Allowable <del>Upon</del> Authorization	Allowable with Mitigation <del>Upon</del> Authorization	Prohibited
Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule <sup>3</sup>				
<ul style="list-style-type: none"> <li>Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer<sup>1</sup></li> <li>Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer<sup>1,2</sup></li> </ul>	X	X		
Periodic maintenance of natural streams such as or 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.		X		
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 style="list-style-type: none"> <li>Pedestrian access trail equal to or less than six (6) feet 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</li> <li>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</li> <li>Pedestrian access trail greater than six (6) feet wide</li> </ul>	X	X		
			X	

Commented [HK93]: No effect – updated terminology

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Commented [HK95]: No effect – updated terminology

Commented [HK119]: No effect - Moved to below

Commented [HK120]: No effect - Clarifications

Commented [HK121]: less stringent - New use to allow for impacts to buffer for access trails to surface waters and associated docking facilities

	<del>Exempt Deemed Allowable</del>	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Playground equipment:				
• Playground equipment on single family lots provided that installation and use does not result in removal of vegetation	X			
• <del>Playground equipment on single family lots where installation or use results in the removal of vegetation</del>		X		
• <del>Playground equipment installed on lands other than single-family lots or that requires removal of vegetation</del>		X		
<del>Ponds in natural drainage ways, excluding dry ponds: Ponds created or modified by impounding streams subject to buffers pursuant to Item (3) of this Rule and not used as stormwater control measures (SCMs):</del>		X		
• New ponds provided that a riparian buffer that meets the requirements of Items <del>(4)(8)</del> and <del>(5)(9)</del> of this Rule is established adjacent to the pond				
• New ponds where a riparian buffer that meets the requirements of Items <del>(4)(8)</del> and <del>(5)(9)</del> of this Rule is NOT established adjacent to the pond			X	
Protection of existing <del>structures, facilities and streambanks</del> structures and facilities, when this requires additional disturbance of the riparian buffer <del>or the stream channel</del>		X		
<del>Public Safety - publicly owned spaces where it has been 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.</del>	X			
<del>Railroad impacts other than crossings of streams and other surface waters subject to this Rule</del>			X	

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK122]: No effect – split out into two bullets for clarification

Commented [HK123]: No effect - clarification

Commented [HK124]: No effect – update citation

Commented [HK125]: No effect – update citation

Commented [HK126]: No effect – streambanks in table below; clarify “structures and facilities” includes existing utility lines

Commented [HK127]: No effect – per SL 2017-209

Commented [HK128]: No effect - Moved to below

	Exempt Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Railroad crossings of streams and other surface waters subject to this Rule:				
• Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer	X			
• Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer		X		
• Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer			X	
Removal of previous fill or debris provided that diffuse flow is maintained Item (9) of this Rule is complied with and any vegetation removed is restored	X			
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 riparian buffer.				
• The residence or necessary infrastructure impact Zone 2 only		X		
• The residence or necessary infrastructure impact Zone 1			X	
• Impacts other than the residence or necessary infrastructure			X	

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK129]: No effect - Moved to below

Commented [HK130]: No effect – update citation

Commented [HK131]: No effect - Incorporating SL 2011-394 and SL 2012-200

Commented [HK132]: less stringent - New use to allow impacts to Zone 1 for single-family residences without having to go through the variance process

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

	<del>Exempt</del> <del>Deemed</del> <del>Allowable</del>	Allowable <del>Upon</del> Authorization	Allowable with Mitigation <del>Upon</del> Authorization	Prohibited
Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: <a href="http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm">http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm</a> :				
• Wetland or stream restoration that does not require written Division approval that results in impacts to the riparian buffer	X			
• Wetland or stream restoration that requires written Division approval that results in impacts to the riparian buffer		X		
Road-Road, driveway or railroad impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	
Road-Road, driveway or railroads: perpendicular crossings of streams and other surface waters subject to this Rule: Rule or perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:	X			
• Road crossings that impact Impact equal to or less than 40 linear feet one-tenth of an acre of riparian buffer		X		
• Road crossings that impact Impact greater than 40 linear feet one-tenth of an acre but equal to or less than 150 linear feet or one-third of an acre of riparian buffer			X	
• Road crossings that impact Impact greater than 150 linear feet or one-third of an acre of riparian buffer		X		
• Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer			X	
• 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	X			

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK134]: No effect - Moved from below

Commented [HK135]: No effect, incorporating road, driveway and railroad into one row as requirements were all the same

Commented [HK136]: No effect, incorporating road, driveway and railroad into one row as requirements were all the same

Commented [HK137]: No effect - Clarification

Commented [HK138]: No effect - grammar

Commented [HK139]: No effect - Removed linear feet; will just reference square feet for ease of implementation

Commented [HK140]: No effect - grammar

Commented [HK141]: No effect - Removed linear feet; will just reference square feet for ease of implementation

Commented [HK142]: No effect - grammar

Commented [HK143]: No effect - Removed linear feet; will just reference square feet for ease of implementation

Commented [HK144]: No effect – moved from above

Commented [HK145]: Less stringent – new use to allow for ag rules to have the same exemption under the buffer rules they have under 404

	<del>Exempt</del> <del>Deemed</del> <del>Allowable</del>	Allowable <del>Upon</del> Authorization	Allowable with Mitigation <del>Upon</del> Authorization	Prohibited
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		X		
• Greater than 2,500 square feet of riparian buffer impact			X	
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:				
• Installation does not result in removal of vegetation in Zone 1		X		
• Installation results in removal of vegetation in Zone 1			X	
Stormwater Control Measure (SCM) as defined in 15A NCAC 02H .1002:management ponds excluding dry ponds:				
• New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pondIn Zone 2 if Item (9) of this Rule is complied with		X		
• New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pondIn Zone 1			X	
Stream restoration	X			
Streambank or shoreline stabilization		X		

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK146]: less stringent - New use

Commented [HK147]: less stringent - New use

Commented [HK148]: less stringent - Changes use to allow any SCM in the buffer instead of just wet ponds.

Commented [HK149]: No effect - Moved above

Commented [HK150]: No effect - clarification



	Exempt Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
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:				
• Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance of riparian buffer disturbance	X			
• Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance of riparian buffer disturbance		X		
• Temporary roads used for Associated with culvert installation or bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction		X		

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK151]: No effect - Clarification

Commented [HK152]: No effect - grammar

Commented [HK153]: No effect - Moved to wording above

Commented [HK154]: No effect - grammar

Commented [HK155]: No effect - Moved to wording above

Commented [HK156]: less stringent - Allow for culvert installation in addition to bridges

Commented [HK157]: No effect - Moved to wording above

	Exempt Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
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 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:				
<ul style="list-style-type: none"> <li>In Zone 2 only provided that the vegetation in Zone 1 is not compromised ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone 1 is not compromised, and that discharge is released as diffuse flow in accordance with Item (5)(9) of this Rule</li> </ul>	X			
<ul style="list-style-type: none"> <li>In Zones 1 and 2 to control impacts associated with uses approved by the Division Authority or that have received a variance authorization certificate with exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer</li> </ul>		X		
<ul style="list-style-type: none"> <li>In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act</li> </ul>	X			
<ul style="list-style-type: none"> <li>In-stream temporary erosion and sediment control measures for work within a stream channel that has written approval from the Division and the U.S. Army Corps of Engineers under Sections 401 &amp; 404 of the Federal Water Pollution Control Act</li> </ul>		X		

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK158]: No effect - Added language for restoring temporarily disturbed area; consistent with requirement for temporary roads

Commented [HK159]: No effect - Incorporate compliance with E&SC plan

Commented [HK160]: no effect – update citation

Commented [HK161]: no effect – update name

Commented [HK162]: no effect – update terminology

Commented [HK163]: No effect - removed unnecessary language; this will be reviewed as part of the no practical alternatives analysis

Commented [HK164]: No effect - Clarification

Commented [HK165]: No effect - Clarification

	<del>Exempt</del> <del>Deemed</del> <del>Allowable</del>	Allowable <del>Upon</del> Authorization	Allowable with Mitigation <del>Upon</del> Authorization	Prohibited
Underground 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>3,4</sup>	X			
Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule: <sup>3</sup>	X			
• Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer <sup>2,4</sup>	X			
• Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer <sup>3,4</sup>		X		
Utility – Sewer lines:				
• <u>Sanitary Sewer Overflows:</u>	X			
o 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.				
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.		X		
• <u>New Sewer Line Construction Activities (including</u>				

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK166]: No effect - Moved to below

Commented [HK167]: No effect - Moved to below

Commented [HK168]: No effect - Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK169]: less stringent - Greater flexibility for responding quickly to SSOs

	<del>Exempt Deemed Allowable</del>	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<p>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:</p> <ul style="list-style-type: none"> <li>○ 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: <ul style="list-style-type: none"> <li>▪ Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>▪ Greater than 40 linear feet and less than or equal to 150 linear feet, with a permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>▪ Greater than 150 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>▪ Permanent maintenance corridor greater than 20 linear feet (mitigation is required only for impacts beyond the 20 linear feet corridor width).</li> </ul> </li> <li>○ Impacts other than perpendicular crossings: <ul style="list-style-type: none"> <li>▪ Zone 2 only.</li> </ul> </li> </ul>				
	X			
		X		
			X	
			X	
	X			

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK170]: No effect - Clarify this use can include perpendicular entry into the buffer that doesn't cross a stream (e.g. connecting to existing line)

Commented [HK171]: less stringent- increased maintenance corridor from 10 to 20 feet

Commented [HK172]: less stringent - changed from allowable to deemed allowable

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

**Commented [HK173]:** less stringent - changed all impacts to Zone 1 triggering mitigation to only some triggering mitigation.

	<del>Exempt</del> <del>Deemed</del> <del>Allowable</del>	Allowable <del>Upon</del> Authorization	Allowable with Mitigation <del>Upon</del> Authorization	Prohibited
<u>within 10 feet of the stream provided the grading and grubbing within 10 feet is less than 2,500 square feet.</u>				
o <u>Zone 1 impacts other than those listed above</u>			<u>X</u>	

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

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

Utilities – Non-sewer underground lines:					Commented [HK175]: no effect - Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial
• 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 [HK176]: no effect - Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)
○ Construction activities that disturb less than or 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	X				
○ Construction activities that disturb greater 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 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		X			Commented [HK177]: less stringent - Change 40 feet to 50 feet. Added language re maintenance corridor.
○ Construction activities that disturb greater than 150 linear feet of riparian buffer			X		Commented [HK178]: less stringent - Change 40 feet to 50 feet. Added language re maintenance corridor
○ Any activities with a permanent maintenance corridor greater than 30 feet in width			X		Commented [HK179]: no change
• Impacts other than perpendicular crossings:					Commented [HK180]: less stringent - new use
○ Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised	X				Commented [HK181]: No change
○ Impacts in Zone One 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 conducted within 10 feet immediately adjacent to the water		X			Commented [HK182]: No change

	Exempt Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<ul style="list-style-type: none"> <li>Impacts in Zone One other than listed above</li> <li>Vegetation maintenance activities along an existing 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</li> <li>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</li> </ul>		X	X	
Utilities – Non-sewer aerial lines:				
<ul style="list-style-type: none"> <li>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: <ul style="list-style-type: none"> <li>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 grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body</li> <li>Disturb greater than 150 linear feet of buffer</li> </ul> </li> <li>Impacts other than perpendicular crossings: <ul style="list-style-type: none"> <li>Impacts in Zone Two</li> <li>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</li> </ul> </li> </ul>	X	X		
	X	X		

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK183]: less stringent – changing from all impact in Zone 1 triggering mitigation to some

Commented [HK184]: less stringent - New uses to allow for vegetation maintenance beyond the maintenance corridor

Commented [HK185]: no effect - Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK186]: no effect - Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

Commented [HK187]: No change

Commented [HK188]: No change

Commented [HK189]: No change

Commented [HK190]: No change



	<del>Exempt</del> <del>Deemed</del> <del>Allowable</del>	Allowable <del>Upon</del> Authorization	Allowable with Mitigation <del>Upon</del> Authorization	Prohibited
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				
Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities:				
• Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet in width		X		
• Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet in width			X	
Vegetation management:				
• Emergency fire control measures provided that topography is restored	X			
• 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	X			
• Planting <del>non-invasive</del> vegetation to enhance the riparian buffer	X			
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
• Removal of individual <del>trees-trees, branches or limbs</del> which are in danger of causing damage to dwellings, <del>existing</del> utility lines, other structures or human <del>life</del> life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance.	X			

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK191]: no change – incorporated wording from footnotes

Commented [HK192]: less stringent - New use to allow for vehicle access roads and boats ramps to surface waters and associated docking facilities

Commented [HK193]: less stringent - new use

Commented [HK194]: no effect - clarification

Commented [HK195]: less stringent - allows for removal of branches or limbs instead of just an entire tree

Commented [HK196]: no effect – clarification

Commented [HK197]: no effect - clarification

	<del>Exempt</del> <del>Deemed</del> <del>Allowable</del>	Allowable <del>Upon</del> Authorization	Allowable with Mitigation <del>Upon</del> Authorization	Prohibited
<ul style="list-style-type: none"> <li>Removal of individual trees that are dead, diseased or damaged</li> </ul>	X			
<ul style="list-style-type: none"> <li>Removal of poison ivy, 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.</li> </ul>	X			
<ul style="list-style-type: none"> <li>Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department 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 <a href="http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&amp;groupId=38364">http://portal.ncdenr.org/c/document_library/get_file?uuid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&amp;groupId=38364</a>). 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.</li> </ul>			X	
<ul style="list-style-type: none"> <li>Removal of woody vegetation in Zone 1 provided that Item (9) of this Rule is complied with</li> </ul>				
Water dependent structures (except for boat ramps) as defined in Rule .0202 of this Section		X		

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK198]: less stringent - new use

Commented [HK199]: less stringent - allows for removal of additional nuisance species and allows for use of pesticides

Commented [HK200]: no effect - Update citations; allow for use of pesticides

Commented [HK201]: no effect - Per SL 2015-246

Commented [HK202]: No effect – boat ramps addressed above

Commented [HK203]: No effect – update citation

	<del>Exempt Deemed Allowable</del>	<del>Allowable Upon Authorization</del>	<del>Allowable with Mitigation Upon Authorization</del>	Prohibited
Water supply reservoirs:				
• New reservoirs provided that a riparian buffer that meets the requirements of Items <del>(4)(8)</del> and <del>(5)(9)</del> of this Rule is established adjacent to the reservoir		X		
• New reservoirs where a riparian buffer that meets the requirements of Items <del>(4)(8)</del> and <del>(5)(9)</del> of this Rule is NOT established adjacent to the reservoir			X	
Water wells	X			
Wildlife passage structures		<u>X</u>		
Wetland restoration	<u>X</u>			

Commented [HK93]: No effect – updated terminology

Commented [HK94]: No effect – updated terminology

Commented [HK95]: No effect – updated terminology

Commented [HK204]: No effect – update citation

Commented [HK205]: No effect – update citation

Commented [HK206]: less stringent - New use

Commented [HK207]: no effect - Moved above

<sup>1</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.

☐ 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.

<sup>2</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.

<sup>3</sup> Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°.

<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 not used, then the underground utility line shall require a no-practical alternatives evaluation by the Division.

▪ 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, 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 [HK208]: no effect - Necessary language from footnotes incorporated into relevant use within the Table above.

~~(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.~~

Commented [HK209]: no effect - Moved to (10) above

~~(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 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:~~

- 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 (c) 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) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance.  
32 The Division or the appropriate delegated local authority may grant minor variances. The variance  
33 request procedure shall be as follows:  
34 (a) 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

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

authority shall be made to the appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345.

(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 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.

(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 Item (8) of this Rule. Rule .0611 of this Section, and
- (b) Obtain written approval for a mitigation proposal pursuant to 15A NCAC 02B .0242. Rule .0295 of Subchapter 02B.

(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.

Commented [HK210]: no effect - Moved to Rule .0611

Commented [HK211]: No effect – clarification and updated citations

Commented [HK212]: No effect – updated terminology

Commented [HK213]: No effect – update citation

Commented [HK214]: No effect - clarification

Commented [HK215]: No effect – update citation

- (ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01H .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. These practices must be approved by the Division of Forest Resources for a specific site. The Division of Forest Resources must notify the Division of all approvals.
  - (vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.
  - (viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.
  - (ix) High intensity prescribed burns shall not be allowed.
  - (x) Application of fertilizer shall not be allowed except as necessary for permanent 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 allowed to drift into the riparian buffer.
- (b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 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 01H .0203.
  - (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 provided that no trees with exposed primary roots visible in the streambank be cut.

(B) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches dbh may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every 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 provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.

Commented [HK216]: no effect - Moved to Rule .0612

(12) REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER PROGRAMS FOR NITROGEN CONTROL. Local governments that are required to have local stormwater programs pursuant to 15A NCAC 02B Rule .0235 of this Section shall have two options for ensuring protection of riparian buffers on new developments within their jurisdictions as follows.

Commented [HK217]: No effect – update citation

(a) Obtain authority to implement a local riparian buffer protection program pursuant to 15A NCAC 02B .0241 Rule .0715 of this Section.

Commented [HK218]: No effect – update citation

(b) Refrain from issuing local approvals for new development projects unless either:

(i) The person requesting the approval does not propose to impact the riparian buffer of a surface water that appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geologic Survey (USGS) as described in Item (3) of this Rule.

Commented [HK219]: No effect – removed repetitive language to just reference language above

(ii) The person requesting the approval proposes to impact the riparian buffer of a surface water that appears on the maps as described in Sub-Item (12)(b)(i) Item (3) of this Rule and either:

Commented [HK220]: No effect - grammar

Commented [HK221]: No effect – update citation

(A) Has received an on-site determination from the Division Authority pursuant to Sub-Item (3)(a) Item (4) of this Rule that surface waters are not present;

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Commented [HK223]: No effect – update citation

(B) Has received an Authorization Certificate from the Division Authority pursuant to Item (8) of this Rule .0611 of this Section for uses designated as Allowable allowable upon authorization under this Rule;

Commented [HK224]: No effect – update name

Commented [HK225]: No effect – update citation

Commented [HK226]: No effect – update terminology

(C) Has received an Authorization Certificate from the Division Authority pursuant to Item (8) of this Rule .0611 of this Section and obtained the Division's Authority's approval on a mitigation plan pursuant to Item

Commented [HK227]: No effect – update name

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Commented [HK229]: No effect – update name

(10)(11) of this Rule for uses designated as Allowable with Mitigation allowable with mitigation upon authorization under this Rule;  
 or  
 (D) Has received a variance from the Commissionan Authorization Certificate with Exception from the Authority pursuant to Item (9) of this Rule; Rule .0611 of this Section.

Commented [HK230]: No effect – update citation

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- (13) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

*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. 2012, c. 200; S.L. 2013, c. 413; S.L. 2015 c. 246;*  
*Temporary Adoption Eff. July 22, 1997;*  
*Temporary Adoption Eff. June 22, 1999; April 22, 1998; January 22, 1998;*  
*Eff. August 1, 2000.*

1 15A NCAC 02B .0241 is proposed for amendment as follows:

2

3 **15A NCAC 02B .0241.0715 NEUSE RIVER BASIN: NUTRIENT SENSITIVE WATERS**  
 4 **MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE**  
 5 **PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS**

6 (a) PURPOSE. This Rule sets out the requirements for delegation of the responsibility for implementing and  
 7 enforcing the Neuse Basin ~~existing~~ riparian buffer protection program, as described in Rule ~~15A NCAC 2B~~  
 8 ~~.0233, .0714~~ of this Section, to local governments.

9 (b) PROCEDURES FOR GRANTING ~~AND RESCINDING~~ DELEGATION. The Commission shall grant ~~and~~  
 10 ~~rescind~~ local government delegation of the Neuse River Basin Riparian Buffer Protection ~~requirements~~ requirements,  
 11 as described in Rule .0714 of this Section, according to the following ~~procedures~~ procedures:

12 (1) Local governments within the Neuse River Basin may submit a written request to the Commission  
 13 for authority to implement and enforce the ~~State's Neuse River Basin~~ riparian buffer protection  
 14 requirements within their ~~jurisdiction~~ jurisdiction by establishing a riparian buffer program to meet  
 15 the requirements of Rule .0714 of this Section. The written request to establish a riparian buffer  
 16 program shall be accompanied by information that shows include the following:

17 (A) ~~The Documentation that the~~ local government has land use jurisdiction for the riparian  
 18 ~~buffer~~ buffer. This can be demonstrated by delineating the local land use jurisdictional  
 19 boundary on ~~the~~ USGS 1:24,000 topographical map(s) or other finer scale map(s);

20 (B) ~~The Documentation that the~~ local government has the administrative organization, staff,  
 21 legal authority, financial ~~resources~~ and other resources necessary to implement and enforce  
 22 the ~~State's Neuse River Basin~~ riparian buffer protection requirements based on its size and  
 23 projected amount of development;

24 (C) The local government ~~has adopted~~ ordinances, resolutions, or regulations necessary to  
 25 establish ~~and maintain the State's riparian buffer protection requirements; and a riparian~~  
 26 ~~buffer program to meet the requirements of Rule .0714 of this Section and G.S. 143-~~  
 27 ~~214.23A;~~

28 (D) Documentation that the local government's riparian buffer program complies with all  
 29 requirements set forth in G.S. 143-214.23A; and

30 (D)(E) ~~The local government has provided a~~ plan to address violations with appropriate remedies  
 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.

36 (3) ~~The Commission, upon determination that a delegated local authority is failing to implement or~~  
 37 ~~enforce the Neuse Basin riparian buffer protection requirements in keeping with a request approved~~

Commented [HK1]: No effect – update citation

Commented [HK2]: No effect - grammar

Commented [HK3]: No effect – update citation

Commented [HK4]: No effect – Moved to paragraph (i) below

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Commented [HK10]: No effect - clarification

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Commented [HK17]: No effect - grammar

Commented [HK18]: No effect - clarification

Commented [HK19]: No effect - grammar

Commented [HK20]: No effect - clarification

Commented [HK21]: No effect – Added to comply with SL 2015-246

Commented [HK22]: No effect - grammar

under Sub item (b)(2) 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 State's riparian buffer protection requirements.

(4) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the State's riparian buffer protection requirements, in whole or in part, to the Director.

(c) 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 staffs staff 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. At 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 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.

(d) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH MITIGATION-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 State's riparian buffer protection requirements. Delegated local authorities shall issue an Authorization Certificate for uses if the proposed use meets the State's riparian buffer protection requirements, or provides for appropriate mitigated provisions to the State's 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 authority's decision shall stand-applications requesting an Authorization Certificate pursuant to the requirements set forth in Rule .0705 of this Section.

(e) VARIANCES-EXCEPTIONS. After-Upon receiving delegation, local governments shall review variance requests, provide approvals for minor variance requests and make recommendations to the Commission for major variance requests pursuant to the State's riparian buffer protection program-applications requesting an Authorization Certificate with Exception pursuant to the requirements set forth in Rule .0705 of this Section.

(f) LIMITS OF DELEGATED LOCAL AUTHORITY. The Commission-Division shall have jurisdiction to the exclusion of local governments to implement the State's riparian buffer protection requirements for the following types of activities:

- (1) Activities conducted under the authority of the State;
- (2) Activities conducted under the authority of the United States;
- (3) Activities conducted under the authority of multiple jurisdictions; and

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

**Commented [HK24]:** No effect – Moved to (j) below

**Commented [HK25]:** less stringent - The division is unable to provide subsequent annual training

**Commented [HK26]:** No effect – Required by statute

**Commented [HK27]:** No effect - grammar

**Commented [HK28]:** 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 [HK29]:** No effect – updated terminology

**Commented [HK30]:** No effect – updated terminology

**Commented [HK31]:** No effect – updated terminology

**Commented [HK32]:** less stringent - Remove ability for DWR to over-rule local government decisions; instead just reference process set out in Rule .0705

**Commented [HK33]:** No effect – update terminology

**Commented [HK34]:** No effect - grammar

**Commented [HK35]:** No effect – Removed language to just reference process set out in Rule .0705

**Commented [HK36]:** No effect – updated name

**Commented [HK37]:** No effect - punctuation

- 1 (4) Activities conducted under the authority of local units of ~~government-government;~~
- 2 (5) ~~Forest harvesting activities described in Rule .0706 of this Section; and~~
- 3 (6) ~~Agricultural activities.~~
- 4 (g) RECORD-KEEPING REQUIREMENTS. Delegated local ~~authorities-governments~~ shall maintain on-site records
- 5 for a minimum of five years. Delegated local ~~authorities-governments~~ must furnish a copy of these records to the
- 6 ~~Director-Division~~ within 30 ~~calendar~~ days of receipt of a written request for the records. ~~The Division shall inspect~~
- 7 ~~local riparian buffer protection programs to ensure that the programs are being implemented and enforced in keeping~~
- 8 ~~with a request approved under Sub-item (b)(2) of this Rule. Each delegated local authority's-governments~~ records
- 9 shall include the following:
- 10 (1) A copy of ~~variance-Authorization Certificate with exception~~ requests;
- 11 (2) The ~~variance-Authorization Certificate with exception~~ request's finding of fact;
- 12 (3) The result of the ~~variance-Authorization Certificate with exception~~ proceedings;
- 13 (4) A record of complaints and action taken as a result of the complaint;
- 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 OF LOCAL AUTHORITIES. The Division shall regularly audit delegated local governments to ensure
- 17 the local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0714
- 18 of this Section.
- 19 (i) PROCEDURES FOR RESCINDING DELEGATION. Upon determination by the Division that a delegated local
- 20 government is failing to implement or enforce the Neuse Basin riparian buffer protection requirements in keeping with
- 21 the request approved 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 within 90 calendar days of receipt of the written notification, then the Commission shall rescind the
- 24 delegation of authority to the local government and the Division shall implement and enforce the Neuse River Basin
- 25 riparian buffer protection requirements within their jurisdiction.
- 26 (j) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding local
- 27 government delegation of the Neuse River Basin riparian buffer protection requirements, in whole or in part, to the
- 28 Director.

**Commented [HK38]:** No effect - punctuation

**Commented [HK39]:** No effect – Updated to comply with SL 2005-447

**Commented [HK40]:** less stringent - Consistent with more recent buffer rules

**Commented [HK41]:** No effect – update name

**Commented [HK42]:** No effect – update name

**Commented [HK43]:** No effect – update name

**Commented [HK44]:** No effect - clarification

**Commented [HK45]:** No effect – Moved to (h) below

**Commented [HK46]:** No effect – update name

**Commented [HK47]:** No effect – update terminology

**Commented [HK48]:** No effect – update terminology

**Commented [HK49]:** No effect – update terminology

**Commented [HK50]:** No effect – moved from (g) above

**Commented [HK51]:** No effect – moved from (b) above

**Commented [HK52]:** No effect – moved from (b) above

History Note: Authority 143-214.1; 143-214.7; 143-214.23, 143-214.23A, 143-215.3(a)(1); S.L. 1998 c. 221; S.L. 2015 c. 246

Eff. August 1, 2000.

Amended Eff. INSERT DATE

[.0248 is proposed for amendment and transfer to 15A NCAC 02B .0720]

Last Revised August 18, 2017

15A NCAC 02B .0248 is proposed for amendment as follows:

**15A NCAC 02B .0248 .0720 RANDLEMAN LAKE WATER SUPPLY WATERSHED; NUTRIENT  
MANAGEMENT STRATEGY STRATEGY: PURPOSE AND SCOPE**

- (a) **PURPOSE.** The purpose of the Randleman nutrient strategy is to attain the designated uses of Randleman Lake. All waters of the Randleman Lake (Deep River) water supply watershed are classified for water supply uses and designated by the Environmental Management Commission as a Critical Water Supply Watershed pursuant to G.S. 143-214.5(b).
- (b) **SCOPE AND LIMITATION.** The Randleman nutrient strategy rules require controls to reduce significant nutrient sources throughout the Randleman Lake watershed. These Rules do not address sources for which there is insufficient scientific knowledge to base regulation. The Commission may undertake additional rulemaking in the future or make recommendations to other rulemaking bodies as deemed appropriate to more fully address nutrient sources to Randleman Lake.
- (c) **RULES ENUMERATED.** The following rules, which together shall constitute the Randleman nutrient strategy, shall be implemented for the entire drainage area upstream of the Randleman Lake Dam:
- ~~(1) Rule .0249 of this Section for Wastewater Discharges,~~
- ~~(2) Rule .0250 of this Section for Protection and Maintenance of Riparian Areas, and~~
- ~~(3) Rule .0251 of this Section for Urban Stormwater Management.~~
- ~~(1) Rule .0721 of this Section for Urban Stormwater Management.~~
- ~~(2) Rule .0722 of this Section for Wastewater Discharges, and~~
- ~~(3) Rule .0723 of this Section for Protection and Maintenance of Riparian Areas~~
- ~~(b)(d) PENALTIES.~~ Failure to meet the requirements of the Rules in this Section may result in the imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;

Eff. April 1, 1999;

Amended Eff. May 1, 2010;

Amended Eff. [New Date]

**Commented [HJ1]: Change:** Added purpose statement to provide clarity to purpose of the nutrient management strategy

**Effect:** No Impact

**Commented [HJ2]: Change:** Added Scope & Limitation Language explaining what sources are addressed under the rules and the Commissions ability to undertake additional rulemaking.

**Effect:** No impact on implementation. Consistency across watersheds and improved clarity.

**Commented [HJ3]: Change:** Provides updated Rule References to point to new .0700 Rule numbers

**Effect:** No Impact

**Commented [HJ4]: Change:** Added title to paragraph

**Effect:** No Impact

[.0251 is proposed for amendment and transfer to 15A NCAC 02B .0721]

Last Revised August 18, 2017

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

### **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 All local governments that have land use authority within the Randleman Lake watershedwatershed. 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:
    - (i) 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

**Commented [A2]: Change:** Statement added to clarify how state agencies comply with the Rule.  
**Effect:** No Impact

**Commented [A3]: Change:** Moved to Item (5) and updated rule references  
**Effect:** No Impact

**Commented [A4]: Change:** Language moved to Item (6) and updated rule references  
**Effect:** No Impact

[.0251 is proposed for amendment and transfer to 15A NCAC 02B .0721]

Last Revised August 18, 2017

(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)

**Effect:** No Impact



[.0251 is proposed for amendment and transfer to 15A NCAC 02B .0721]

Last Revised August 18, 2017

(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

**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

**Effect:** No Impact

[.0251 is proposed for amendment and transfer to 15A NCAC 02B .0721]

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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;

(1) 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.

**Effect:** No Impact

[.0251 is proposed for amendment and transfer to 15A NCAC 02B .0721]

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- rainfall. New residential and non residential development shall not exceed 30 percent built-upon area;
- (C) — No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed;
- (D) — No new landfills shall be allowed; and
- (E) — Sub-Items (3)(b)(i)(C)–(H) of this Rule also apply to the critical area.
- (2) SUBWATERSHEDS. For the purpose of this Rule, the Randleman Lake Watershed is divided into subwatersheds as follows:
- (a) 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;
- (b) 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;
- (c) Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake;
- (d) High Point Lake subwatershed is defined as all land areas draining to High Point Lake, East Fork Deep River and West Fork Deep River from Oak Hollow Lake Dam; and
- (e) Deep River 1 subwatershed is defined as all land areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam.
- (4)(3) COMPREHENSIVE STORMWATER MANAGEMENT PLANS. Within 12 months of the effective date of adoption of this Rule, all All local governments with jurisdictions jurisdiction in the Randleman Lake watershed shall develop implement and maintain comprehensive stormwater management plans and submit those plans to the Commission for review and approval. Comprehensive stormwater management plans meeting that meet or exceed the criteria set forth in Subparts (4)(a) through (4)(f) Sub-Items (3)(a) through (3)(f) of this Rule shall be approved. Rule. 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 be limited to, the following:
- (a) Evaluation evaluation of existing land use within Oak Hollow Lake subwatershed, High Point Lake subwatershed and Deep River 1 subwatershed in the Randleman Lake watershed with 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 targeted away from surface waters and sensitive areas. Oak Hollow Lake subwatershed is defined as all land areas draining to Oak Hollow Lake. High Point Lake subwatershed is 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 areas draining to the Deep River from High Point Lake Dam to Freeman Mill Dam. This

**Commented [A10]:** Change: Moved to table in Sub-Item (6)(b)

**Effect:** No Impact

**Commented [A11]:** Change: Language moved from previous Sub-Item (4)(a).

**Effect:** No Impact

**Commented [A12]:** Change: Updated text to make current

**Effect:** No Impact

[.0251 is proposed for amendment and transfer to 15A NCAC 02B .0721]

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- evaluation shall be done by the local governments having jurisdiction in those watersheds, working in cooperation with the ~~PTRWA~~; Piedmont Triad Regional Water Authority;
- (b) ~~Coordination~~ coordination between all affected jurisdictions to encourage their development in the existing urban areas. The planning effort shall include provisions for areas of contiguous open space to be protected through conservation easements or other long-term protection measures and provisions to direct infrastructure growth towards existing urban development corridors rather than to rural lands;
- (c) ~~Evaluation~~ evaluation of existing ordinances, municipal programs (maintenance, street cleaning, etc.) and other local policies to identify opportunities for stormwater quality 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 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 be modified to allow for stormwater pollution prevention opportunities;
- (d) ~~Implementation~~ implementation of watershed protection public education programs;
- (e) ~~Identification~~ identification and removal of illegal discharges; and
- (f) ~~Identification~~ identification of suitable locations for potential stormwater retrofits (such as riparian areas) that could be funded by various sources.

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

**Effect:** No Impact

(5) ~~Local governments may submit a more stringent local stormwater management program plan. Local stormwater management programs and modifications to these programs shall be kept on file by the Division of Water Quality.~~

**Commented [A14]: Change:** Editorial

**Effect:** No Impact

(6) ~~If a local government fails to submit an acceptable local stormwater management program plan within the time frames established in this Rule or fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126 which shall include at a minimum:~~

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

**Effect:** No Impact

- (a) ~~Subject local governments shall be required to develop and implement comprehensive stormwater management programs for both existing and new development. development;~~
- (b) ~~These stormwater management programs shall provide all components that are required of 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 least one permitting cycle (five years) before they are eligible to submit a revised local stormwater management component of their water supply watershed protection program for consideration and approval by the EMC.~~

**Commented [A16]: Change:** Language moved to Item (7) and Item (8)

**Effect:** No Impact

(4) RANDLEMAN LAKE WATERSHED ORDINANCES. Local governments with jurisdiction in the Randleman Lake watershed shall implement local ordinances that meet or exceed the provisions of

[.0251 is proposed for amendment and transfer to 15A NCAC 02B .0721]  
 Last Revised August 18, 2017

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 in 15A NCAC 02B .0723. Local ordinances shall also meet or exceed the state's minimum requirements for a Class WS-IV watershed set forth in 15A 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):

Location in the Watershed	Maximum Allowable Project Density or Minimum Lot Size		
	Low Density Development		High Density Development
	Single-family detached residential	Non-residential and all other residential	All types
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)

**Effect:** No Impact

[.0251 is proposed for amendment and transfer to 15A NCAC 02B .0721]

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

**Commented [A24]: Change:** Language moved from Sub-Item (3)(b)

**Impact:** No change

[.0251 is proposed for amendment and transfer to 15A NCAC 02B .0721]

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(e) no new landfills shall be allowed in the critical areas.

(7) Local governments shall have the option to develop more stringent local stormwater management plans and watershed ordinances. Local stormwater management programs and ordinances, and modifications to these programs and ordinances, shall be submitted to the Commission for review and approval and kept on file by the Division.

(8) If a local government fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 2H .0126 which shall include at a minimum:

(a) subject local governments shall be required to develop and implement comprehensive stormwater management programs for both existing and new development;

(b) these stormwater management programs shall provide all components that are required of local government stormwater programs in this Rule; and

(c) local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a revised local stormwater management component of their water supply watershed protection program for consideration and approval by the Commission.

*History Note:* Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.1; 143-215.3(a)(1);  
Eff. April 1, 1999.  
Amended Eff. [New Date].

**Commented [A25]:** Change: Language moved from Sub-Item (5)(b)

Effect: No Impact

15A NCAC 02B .0249 is proposed for amendment and recodification as follows:

**15A NCAC 02B .0249.0722 RANDLEMAN LAKE WATER SUPPLY WATERSHED: WASTEWATER  
DISCHARGE REQUIREMENTS**

The following is the National Pollutant Discharge Elimination System (NPDES) wastewater discharge management strategy for the Randleman Lake watershed. For purposes of this Rule, permitted wastewater discharges means those facilities permitted to discharge domestic wastewater or wastewaters containing phosphorus:

- (1) The City of High Point ~~=s Eastside facility~~ ~~Point East Side~~ Eastside Wastewater Treatment Plant (WWTP) shall meet a total phosphorus concentration predicted to provide a level of water quality 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 exception that the City of High Point Eastside ~~wastewater treatment plant~~ WWTP may be allowed to expand provided that any new permit contains concentration and mass limits predicted to provide a level of water quality in the Randleman Lake which meets all designated uses of those waters.

*History Note: Authority G. S. 143-214.1; 143-214.5; 143-215.3(a)(1);  
Eff. April 1, ~~1999~~ 1999;  
Amended Eff. <date>.*

**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.



1 15A NCAC 02B .0250 is proposed for amendment as follows:

2  
3 **15A NCAC 02B .0250.0724 RANDLEMAN LAKE WATER SUPPLY WATERSHED: PROTECTION**  
4 **AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS**

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

- 8 (1) PURPOSE. The purposes of this Rule shall be for the local governments listed in this Rule, and in  
9 certain cases stated in this Rule the Division, to ~~maintain and protect and preserve~~ existing riparian  
10 buffers throughout the Randleman Lake watershed as generally described in this Rule, in order to  
11 maintain their nutrient removal and stream protection functions. Additionally this Rule will help  
12 protect the water supply uses of Randleman Lake and of designated water supplies throughout the  
13 Randleman Lake water supply watershed. ~~Terms used in this Rule shall be as defined in Rule .0610~~  
14 ~~in Subchapter 02B. Local governments with jurisdictions in Randleman Lake watershed shall~~  
15 ~~establish programs to meet or exceed the minimum requirements of this Rule. However, the~~  
16 ~~Division shall assume responsibility for applying the requirements of this Rule to activities listed in~~  
17 ~~item (3) of this Rule. The requirements of this Rule shall supersede all buffer requirements stated~~  
18 ~~in Rules 15A NCAC 02B .0214 through .0216 as applied to WS II, WS III, and WS IV waters in~~  
19 ~~the Randleman Lake watershed. Parties subject to this Rule may choose to implement more~~  
20 ~~stringent rules, including the one hundred foot buffer requirement set out in Sub item (3)(b)(i) of~~  
21 ~~Rules 15A NCAC 02B .0214 through .0216 for high density developments.~~

22 (2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:

- 23 (a) 'Access Trails' means pedestrian trails constructed of pervious or impervious surfaces, and related  
24 structures to access a surface water including (but not limited to) boardwalks, steps, rails, signage;  
25 (b) 'Archaeological Activities' means activities conducted by a Registered Professional Archaeologist  
26 (RPA);  
27 (c) 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that satisfy or  
28 otherwise fall within the scope of one or more of the definition or uses of the words or phrases 'air  
29 navigation facility', 'airport', or 'airport protection privileges' under G.S. 63-1; the definition of  
30 'aeronautical facilities' in G.S. 63-79(1); the phrase 'airport facilities' as used in G.S. 159-48(b)(1);  
31 the phrase 'aeronautical facilities' as defined in G.S. 159-81 and G.S. 159-97; and the phrase 'airport  
32 facilities and improvements' as used in Article V, Section 13, of the North Carolina Constitution.  
33 Airport facilities shall include without limitation, any and all of the following: airports, airport  
34 maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and  
35 airport related offices, parking facilities, related navigational and signal systems, runways,  
36 stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport  
37 buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any

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

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.

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;

(l) '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

(t) ~~'Tree' means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.~~

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(3)(2) ~~APPLICABILITY. This Rule shall apply to all local governments with jurisdictions landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (3) of this Rule in the Randleman Lake watershed. Local governments shall develop riparian buffer protection programs for approval by the Division incorporating the minimum standards set out throughout this Rule and shall apply the requirements of this Rule throughout their jurisdictions within the Randleman watershed except where the Division shall exercise jurisdiction. For the following types of buffer activities in the Randleman watershed, wherever local governments are referenced in this Rule, the Division shall implement applicable requirements to the exclusion of local governments:~~

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- ~~(a) Activities conducted under authority of the State;~~
- ~~(b) Activities conducted under the authority of the United States;~~
- ~~(c) Activities conducted under the authority of multiple jurisdictions;~~
- ~~(d) Activities conducted under the authority of local units of government;~~
- ~~(e) Forest harvesting activities described in Item 16 of this Rule; and~~
- ~~(f) Agricultural activities.~~

Commented [HK7]: No effect – moved to item (12) below

(4)(3) ~~REQUIREMENTS, BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated buffers; buffers. All local governments subject to this Rule shall develop riparian buffer protection programs and ordinances for approval by the Commission, incorporating the minimum standards contained in Rule.~~

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~~(a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references, or if there is other site specific evidence that indicates to the Authority the presence of waters not shown on any of these references:~~

- ~~(i) The most recent version of the United States Geological Survey (USGS) 1:24,000 scale (7.5 minute quadrangle) topographic maps;~~
- ~~(ii) The most recent version of the published manuscript of the soil survey map that shows stream layers prepared by the Natural Resource Conservation Service of the United States Department of Agriculture; or~~
- ~~(iii) Other maps approved by the Geographic Information Coordinating Council and by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps may be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the~~

- public notice period to the Environmental Management Commission for a final 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 Rule;
- (b) This Rule shall apply to activities conducted within 50 foot wide riparian buffers directly adjacent to surface waters in the Randleman watershed (intermittent and perennial streams, lakes, reservoirs, and ponds) excluding ~~wetlands, wetlands;~~
- (c) Wetlands adjacent to surface waters or within 50 feet of surface ~~waters, waters~~ shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC ~~02H, 0506.02H .0506;~~
- (d) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (9) of this Rule;
- (a) Surface waters shall be subject to this Rule if the feature is approximately shown on any of the following references, or if there is other site specific evidence that indicates to the Division or local government the presence of waters not shown on any of these maps:
- (i) The most recent version of the United States Geological Survey 1:24,000 scale (7.5 minute quadrangle) topographic maps;
  - (ii) The most recent version of the hardcopy soil survey maps developed by USDA-Natural Resource Conservation Service; or
  - (iii) A map approved by the Geographic Information Coordinating Council and by the Commission. Prior to approving a map under this sub-division the Commission shall provide a 30-day public notice and opportunity for comment;
- (e) Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;
- (f) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of this Rule; and
- (g) No new clearing, grading, or development shall take place nor shall any new building permits be issued in violation of this Rule.
- (b) Where the specific origination point of an intermittent or perennial stream is in question, parties subject to this Rule shall use the Division publication, *Identification Methods for the Origins of Intermittent and Perennial Streams*, v 3.1 February 28, 2005 available at: <http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations> to establish that point;
- (e) 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 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 of riparian area protection. The local map must be at least as accurate as the map identified

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

~~to the Director in writing~~ within 60 calendar days of written notification from the Authority.  
~~A determination of the Director as to the accuracy or application of the maps~~The Director's  
~~determination~~ is subject to review as provided in Articles 3 and 4 of G.S. 150B.

- (5) **EXEMPTION BASED ON ON-SITE DETERMINATION.** Surface waters that appear on the maps  
 listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination  
 shows that they fall into one of the following categories:

- (a) Ditches and manmade conveyances, to include manmade stormwater conveyances, other  
 than modified natural streams, unless the ditch or manmade conveyance delivers untreated  
 stormwater runoff from an adjacent source directly to an intermittent or perennial stream;
- (b) ~~Areas mapped as intermittent streams, perennial streams, lakes, ponds, or estuaries on the  
 most recent versions of United States Geological Survey 1:24,000 scale (7.5 minute  
 quadrangle) topographic maps, hard copy soil survey maps or other EMC approved stream  
 maps where no~~The absence on the ground of a corresponding perennial waterbody,  
 intermittent waterbody, lake, ~~reservoir or pond; pond or estuary actually exists on the  
 ground;~~
- (c) Ephemeral streams; and
- (d) ~~Ponds~~Manmade ponds and lakes created for animal watering, irrigation, or other  
 agricultural uses that are not part of a natural drainage way that is classified in accordance  
 with 15A NCAC 02B .0100. ~~Ponds are part of a natural drainage way when they are  
 hydrologically connected (i.e. the pond is fed by an intermittent or perennial stream)~~stream  
 nor or when they have a direct discharge point to an intermittent or perennial stream.

- (6) **EXEMPTION ~~TO REQUIREMENTS~~ WHEN EXISTING USES ARE PRESENT AND**  
**ONGOING.** This Rule shall not apply to portions of the riparian buffer where a use is existing ~~and~~  
~~ongoing according to the following:~~ongoing.

- (a) A use shall be considered existing and ongoing ~~iff:~~
  - (i) ~~It~~It was present within the riparian buffer as of the effective date of the local  
 ordinance or ~~local~~ordinances enforcing this Rule and has continued to exist since  
 that time. For ~~state and federal entities,~~activities listed in Sub-Item (12)(b), a use  
 shall be considered existing and ongoing if it was present within the riparian  
 buffer as of ~~the effective date of this Rule~~April 1, 1999 and has continued to exist  
 since that ~~time:~~time;
  - (ii) ~~It was a deemed allowable activity as listed in Item (10) of this Rule; or~~
  - (iii) It was conducted and maintained pursuant to an Authorization Certificate or  
 Variance issued by the Authority; or
  - (iv) The project or proposed development are determined by the Authority to meet at  
 least one of the following criteria:

**Commented [HK29]:** No effect – consistent with other buffer programs.

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**Commented [HK34]:** No effect - grammar

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**Commented [HK36]:** no effect - grammar

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**Commented [HK38]:** No effect - clarification

**Commented [HK39]:** No effect – Clarification to reflect original adoption of the rule

**Commented [HK40]:** No effect – clarification

**Commented [HK41]:** No effect – update terminology

- (A) Project requires a 401 Certification/404 permit and these were issued prior to the effective date of the local ordinance or ordinances enforcing this Rule, or for activities listed in Sub-Item (12)(b), prior to April 1, 1999, and are still valid;
- (B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, and have begun construction or are under contract to begin construction, and have received all required state permits and certifications prior to the effective date of the local ordinance or ordinances implementing this Rule, or for activities listed in Sub-Item (12)(b), prior to April 1, 1999;
- (C) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with the Department on avoidance and minimization prior to April 1, 1999; or
- (D) 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 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 project and the project has the written approval of the Division prior to April 1, 1999.
- (b) Existing and ongoing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, lawns (i.e. can be mowed without a chainsaw or bush-hog), maintained ((i.e. vegetation management has occurred within the last ten years) utility lines-line corridors and on-site sanitary sewage systems-systems, any of which involve either specific, periodic management of vegetation or displacement of vegetation by structures or regular activity.
- (c) Only the portion of the riparian buffer that contains the footprint of the existing and ongoing use is exempt from this Rule.
- (d) Change of ownership through purchase or inheritance is not a change of use.
- (e) Activities necessary to maintain existing and ongoing uses are allowed provided that the site remains similarly vegetated, no impervious surface built upon area is added within 50 feet of the surface water the riparian buffer where it did not previously exist as of prior to the effective date of the local ordinance or local ordinances enforcing this Rule, or for activities listed in Sub-Item (12)(b) prior to April 1, 1999, and the site is in compliance with Item (9) of this Rule, existing diffuse flow is maintained. Grading and revegetating

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Commented [HK44]: No effect – grammar

Commented [HK45]: no effect – clarification

Commented [HK46]: No effect – clarification; codifying policy

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Commented [HK49]: No effect – clarification

Commented [HK50]: No effect – clarification



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;

Commented [HK51]: No effect – language repeated below

(b) A use shall be considered existing if projects or proposed development are determined by the local government, or the Director for the cases involving state or federal entities, to meet at least one of the following criteria:

(i) Project requires a 401 Certification/404 permit and these were issued prior to the effective date of the local program enforcing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) of this Rule;

(ii) 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 had received all required state permits and certifications prior to the effective date of the local program implementing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) of this Rule;

(iii) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by the effective date of the local program enforcing this Rule, and prior to the effective date of this Rule for state and federal entities; or

(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 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 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 of the Division prior to the effective date of this Rule for state and federal entities; and

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(f) This Rule shall apply at the time an existing use is changed to another use. Change of use shall include, but not limited to involve the initiation of any activity not defined as existing and ongoing in either Sub-Item (6)(a) or (6)(b) Sub-Items (6)(a) through (6)(e) of this Rule.

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#### (7) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES.

This Rule shall not apply to a freshwater pond if all of the following conditions are met:

(a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before April 1, 1999.

- (c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).
- (7)(8) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:
- (a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item (9)(10) of this Rule. The location of Zone 1 shall be as follows:
- (i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of the bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the surface water stream, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank; the stream (where an intermittent or perennial stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end); and
- (ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the surface water or rooted herbaceous vegetation; and the surface water.
- (b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Item (9)(10) 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 the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.
- (8) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.
- (a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer;
- (b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies; and
- (c) No new stormwater conveyances are allowed through the buffers except for those specified in Item (9) of this Rule addressing stormwater management ponds drainage ditches, roadside ditches, and stormwater conveyances.
- (9) STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon

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Commented [HK58]: No effect – Clarification and codifying policy

Commented [HK59]: No effect – Clarification

Commented [HK60]: No effect – Removed for simplicity

Commented [HK61]: No effect – Clarification

Commented [HK62]: No effect – update citation

Commented [HK63]: less stringent - Removed diffuse flow requirement; instead provide options for stormwater discharges

authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule.

(a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this rule:

(i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program;

(ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this Rule:

(i) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not approved under a state stormwater program or a state-approved local government stormwater program;

(ii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;

(iii) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

(iv) Realignment of existing roadside drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the 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;

(v) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

(vi) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;

(vii) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical.

**Commented [HK64]:** less stringent - Removed diffuse flow requirement; instead provide options for stormwater discharges

**Commented [HK65]:** No effect – Organization

**Commented [HK66]:** less stringent - New use – allows for DWR to accept local government review of a SMP without having to review for meeting diffuse flow

**Commented [HK67]:** No change – moved from table

**Commented [HK68]:** No effect – Organization

**Commented [HK69]:** No change – moved from table

**Commented [HK70]:** less stringent - New use

**Commented [HK71]:** No change – from diffuse flow language above

**Commented [HK72]:** less stringent - New use

**Commented [HK73]:** less stringent - New use

**Commented [HK74]:** less stringent - New Use

**Commented [HK75]:** less stringent - New use

(viii) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.

Commented [HK76]: less stringent - New use

(9)(10) TABLE OF USES. Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited.

(a) Potential new uses shall have the following requirements:

Commented [HK77]: No effect – Moved from below

(i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items (9)(a) and (10)(b) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet requirements listed in Sub-Item (10)(b) of this Rule for the specific use.

Commented [HK78]: No effect – New terminology

(ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Items (9)(b) and (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule .0611 of this Section.

Commented [HK79]: No effect – Moved from below

Commented [HK80]: No effect – New terminology

(iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation upon authorization in Sub-Item (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule.0611 of this Section, and an appropriate mitigation strategy has received written approval pursuant to Item (11) of this Rule.

Commented [HK81]: No effect – Moved from below

Commented [HK82]: No effect – New terminology

(iv) PROHIBITED. Uses designated as prohibited in Sub-Item (10)(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.

Commented [HK83]: No effect – Moved from below

(v) ALLOWABLE WITH EXCEPTION. Uses not designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization or 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.

Commented [HK84]: No effect – Changed to variance process set out in Rule .0226.

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.

(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 Rule designates 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

Use	Exempt Deemed Allowable	Potentiall y Allowable Upon Authoriza tion	Potentially Allowable with Mitigation Upon Authorizati on	Prohib ited
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> <li>• Pedestrian access trails that are restricted to the minimum 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</li> <li>• Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer</li> </ul>	X	X		
<p>Airport facilities:</p> <ul style="list-style-type: none"> <li>• Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer</li> <li>• Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer</li> <li>• Activities: Vegetation removal activities necessary to comply with FAA Federal Aviation Administration requirements (e.g. radar uses or landing strips) line of sight requirements provided the disturbed areas are stabilized and revegetated</li> </ul>	X	X	X	

Commented [HK92]: No effect – Updated terminology

Commented [HK93]: No effect – Moved to below

Commented [HK94]: No effect – Removed linear feet; will just reference square feet for east of implementation

Commented [HK95]: No effect – Removed linear feet; will just reference square feet for east of implementation

Commented [HK96]: No effect – Codifying policy

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
Archaeological <del>activities</del> activities: 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 practical.	X			
Bridges <ul style="list-style-type: none"> <li>Impact equal to or less than one-tenth of an acre of riparian buffer</li> <li>Impact greater than one-tenth of an acre of riparian buffer</li> </ul>	X	X		
Canoe access provided that installation and use does not result in removal of trees as defined in the Rule and no impervious surface is added to the buffer.	X			
Dam maintenance activities: <ul style="list-style-type: none"> <li>Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam <del>or those covered under a U.S. Army Corps of Engineers Nationwide Permit</del></li> <li>Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam <del>or those not covered under a U.S. Army Corps of Engineers Nationwide Permit</del></li> </ul>	X	X		

Commented [HK92]: No effect – Updated terminology

Commented [HK97]: No effect – Removed for simplicity

Commented [HK98]: less stringent - Added new use to allow bridges with less than 1/10 to be deemed allowable, consistent with road impacts

Commented [HK99]: No effect – Moved to below

Commented [HK100]: less stringent - Allows for any Corps permit, including Regional General Permits or Individual Permits

Commented [HK101]: less stringent - Allows for any Corps permit, including Regional General Permits or Individual Permits

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
<p>Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:</p> <ul style="list-style-type: none"> <li>• New stormwater flows to existing drainage ditches, roadside 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</li> <li>• Realignment of existing roadside drainage ditches retaining the 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</li> <li>• New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer</li> <li>• New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed</li> </ul>	X	X	X	
Drainage of a pond subject to Item (4) of this Rule in a natural drainage way provided that a new riparian buffer that meets the 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.	X			

Commented [HK92]: No effect – Updated terminology

Commented [HK102]: No effect – Moved to Item (9) below

Commented [HK103]: No effect - clarification

Commented [HK104]: No effect – Clarification of regeneration process after pond is drained

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
Driveway crossings of streams and other surface waters subject to this Rule:				
• Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer	X			
• Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer		X		
• In a subdivision that cumulatively disturb equal to or less 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			X	
Driveway impacts other than crossing of a stream or other surface waters subject to this Rule			X	
Fences:				
• Fencing livestock out of surface waters	X			
• Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Rule	X			
• Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Rule		X		
Forest harvesting - see Item (16) of this Rule .0612 of this Section.				

Commented [HK92]: No effect – Updated terminology

Commented [HK105]: No effect – Moved below with road impacts

Commented [HK106]: No effect – Moved below with road impacts

Commented [HK107]: less stringent - New deemed allowable use

Commented [HK108]: No effect - grammar

Commented [HK109]: No effect –grammar

Commented [HK110]: No effect – update citation



Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
Fertilizer Application:				
<ul style="list-style-type: none"> <li>One-time fertilizer application to establish <del>vegetation</del>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.</li> <li>Ongoing fertilizer application</li> </ul>	X			X
Grading and <del>revegetation</del> in Zone 2 provided that <del>diffuse flow</del> and the health of existing vegetation in Zone 1 is not <del>compromised</del> compromised. Item (9) of this Rule is complied with, and disturbed areas are <del>revegetated with native vegetation</del> stabilized and revegetated	X			
<b>Greenway / hiking trails:</b> 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: <ul style="list-style-type: none"> <li>In Zone 2 provided that no built upon area is added within the buffer</li> <li>When built upon area is added to the buffer, equal to or less than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</li> <li>When built upon area is added to the buffer, greater than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</li> </ul>	X	X	X	

Commented [HK92]: No effect – Updated terminology

Commented [HK111]: No effect – Clarification

Commented [HK112]: No effect – clarification and updated citation

Commented [HK113]: No effect – Clarify, consolidate and codify policy

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
Historic preservation: 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	X			
New Landfills as defined by G.S. 130A-290				X
Maintenance access of modified natural streams: a grassed travel way on one side 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 shading.		X		
Mining activities:		X		
• Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (7)(8) and (8)(9) of this Rule are established adjacent to the relocated channels				
• Mining activities that are not covered by the Mining Act or where new riparian buffers that meet the requirements or Items (7)(8) and (8)(9) of this Rule are not established adjacent to the relocated channels			X	
• Wastewater or mining dewatering wells with approved NPDES permit	X			

Commented [HK92]: No effect – Updated terminology

Commented [HK114]: No effect – Removed for simplicity

Commented [HK115]: less stringent - Allows for landfill expansions to seek an Authorization Certificate with Exception instead of a Variance; New Landfills will need a variance; consistent with other buffer rules

Commented [HK116]: No effect – update citation

Commented [HK117]: No effect – update citation

Commented [HK118]: less stringent - Allows mining activities that do not relocate channels to pursue an authorization certificate

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
<u>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:</u> <ul style="list-style-type: none"> <li>• <u>Pedestrian access trail equal to or less than six (6) feet 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</u></li> <li>• <u>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></li> <li>• <u>Pedestrian access trail greater than six (6) feet wide</u></li> </ul>	X	X	X	
Playground equipment: <ul style="list-style-type: none"> <li>• Playground equipment on single family lots provided that installation and use does not result in removal of vegetation</li> <li>• <u>Playground equipment on single family lots where installation or use results in the removal of vegetation</u></li> <li>• <u>Playground equipment installed on lands other than single-family lots or that requires removal of vegetation</u></li> </ul>	X	X  X		
<u>Ponds in natural drainage ways, excluding dry ponds created or modified by impounding streams subject to buffer pursuant to Item (3) of this Rule and not used at stormwater control measures (SCMs):</u>				
<ul style="list-style-type: none"> <li>• New ponds provided that a riparian buffer that meets the requirements of Items <del>(7)(8)</del> &amp; <del>(8)(9)</del> of this Rule is established adjacent to the pond</li> </ul>		X		
<ul style="list-style-type: none"> <li>• New ponds where a riparian buffer that meets the requirements of Items <del>(7)(8)</del> &amp; <del>(8)(9)</del> of this Rule is NOT established adjacent to the pond</li> </ul>			X	

Commented [HK92]: No effect – Updated terminology

Commented [HK119]: No effect – Moved and consolidated from other uses above

Commented [HK120]: No effect – split into two bullets for clarification

Commented [HK121]: No effect – clarification

Commented [HK122]: No effect – update citation

Commented [HK123]: No effect – update citation

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
Protection of existing structures, facilities and stream banks structures and facilities, when this requires additional disturbance of the riparian buffer or the stream channel		X		
Public Safety - publicly owned spaces where it has been 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.	X			
Railroad impacts other than crossings of streams and other surface waters subject to this Rule.			X	
Railroad crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> <li>Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer</li> <li>Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer</li> <li>Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer</li> </ul>	X	X	X	

Commented [HK92]: No effect – Updated terminology

Commented [HK124]: No effect – streambanks in table below; clarified this includes existing utility lines

Commented [HK125]: No effect – per SL 2017-209

Commented [HK126]: No effect – Moved to below

Commented [HK127]: No effect – Moved to below

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
<p>Recreational and accessory structures:</p> <ul style="list-style-type: none"> <li>• Total footprint of gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance less than or equal to 150 square feet per lot</li> <li>• Total footprint gazebos and sheds in Zone 2, provided they are not prohibited under local water supply ordinance of more than 150 square feet per lot</li> <li>• Wooden slatted decks (and associated steps) that 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</li> <li>• Wooden slatted decks (and associated steps) that are not at 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</li> </ul>		<p>X</p> <p>X</p>	<p>X</p> <p>X</p>	
Removal of previous fill or debris provided that <u>Item (9) of this Rule is complied with</u> <u>diffuse flow is maintained</u> and <u>any vegetation removed is restored</u>	X			

Commented [HK92]: No effect – Updated terminology

Commented [HK128]: No effect – Moved to below

Commented [HK129]: No effect – update citation and grammar

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
<p>Residential Properties: Where application of this Rule would 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.</p> <ul style="list-style-type: none"> <li>The residence and necessary infrastructure impact Zone 2 only</li> <li>The residence or necessary infrastructure impact Zone 1</li> <li>Impacts other than the residence or necessary infrastructure</li> </ul>		X	X	
<p>Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: <a href="http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm">http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm</a></p> <ul style="list-style-type: none"> <li>Wetland or stream restoration that does not require written Division approval results in impacts to the riparian buffer</li> <li>Wetland or stream restoration that does require written Division approval that results in impacts to the riparian buffer</li> </ul>	X	X		

Commented [HK92]: No effect – Updated terminology

Commented [HK130]: No effect – Incorporating SL 2011-394 and SL2012-200

Commented [HK131]: less stringent - New use to allow impacts to Zone 1 for single-family residences

Commented [HK132]: less stringent - New use to allow impacts other than those for a residence or necessary infrastructure without having to go through the variance process

Commented [HK133]: No effect – Moved from below

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
Road, driveway or railroad: perpendicular crossings of streams and other surface waters subject to this Rule <u>or</u> perpendicular entry into the buffer that does not cross a stream or other surface water subject to this Rule:				
• Road crossings that impact equal to or less than 40 linear feet one-tenth of an acre of riparian buffer	X			
• Road crossings that impact greater than one-tenth of an acre 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer		X		
• Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer			X	
• Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer		X		
• Driveway crossings in a subdivision that cumulatively disturb greater than one-third of an acre of riparian buffer			X	
• 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	X			
Road, driveway or railroad impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	
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	

**Commented [HK92]:** No effect – Updated terminology

**Commented [HK134]:** No effect – incorporating road, driveway and railroad into one row as requirements were all the same

**Commented [HK135]:** No effect – Clarification

**Commented [HK136]:** No effect - grammar

**Commented [HK137]:** No effect – Removed linear feet; will just reference square feet for ease of implementation

**Commented [HK138]:** No effect - grammar

**Commented [HK139]:** No effect – Removed linear feet; will just reference square feet for ease of implementation

**Commented [HK140]:** No effect - grammar

**Commented [HK141]:** No effect – Removed linear feet; will just reference square feet for ease of implementation

**Commented [HK142]:** No effect – moved from above

**Commented [HK143]:** Less stringent – new use to allow for ag rules to have the same exemption under the buffer rules they have under 404

**Commented [HK144]:** No effect – incorporating road, driveway and railroad into one row as requirements were all the same

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
<p>Stormwater BMPs: Control Measure (SCM) as defined in 15A NCAC 02H .1002:</p> <ul style="list-style-type: none"> <li>In Zone 2 if Item (9) of this Rule is complied with Wet detention, bioretention, and constructed wetlands in Zone 2 if diffuse flow of discharge is provided into Zone 1</li> <li>Wet detention, bioretention, and constructed wetlands in Zone 1</li> </ul>		X	X	
<p>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</p>	X			
Streambank or shoreline stabilization		X		
<p>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:</p> <ul style="list-style-type: none"> <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 replacement</li> </ul>	X	X X		

Commented [HK92]: No effect – Updated terminology

Commented [HK145]: less stringent - Changes uses to allow any SCM in the buffer instead of just wet ponds

Commented [HK146]: No effect – Removed wording for simplicity

Commented [HK147]: No effect – Clarification



<p>Temporary sediment and erosion control devices 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 tree vegetation within two (2) months of when construction is complete. Tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years, the restored buffer shall comply with the restoration criteria in Item (9) of Rule 15A NCAC 02B .0252; Paragraph (i) of Rule .0295 of this Section:</p> <ul style="list-style-type: none"> <li>In Zone 2 only provided ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act and that Act, the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (8)(9) of this Rule</li> <li>In Zones 1 and 2 to control impacts associated with uses approved by the local government Authority or that have received a variancean exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer</li> <li>In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Section 401 and 404 of the Federal Water Pollution Control Act</li> <li>In-stream temporary erosion and sediment control measures for authorized work within a stream channelIn-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 &amp; 404 of the Federal Water Pollution Control Act</li> </ul>	X			
<p>Utility Non-electric utility lines:</p> <ul style="list-style-type: none"> <li>Impacts other than perpendicular crossings in Zone 2 only<sup>4-5</sup></li> <li>Impacts other than perpendicular crossings in Zone 1 only<sup>4-5</sup></li> </ul>		X		X
<p>Utility Non-electric utility line perpendicular crossings of streams and other surface waters subject to this Rule<sup>4-5</sup>:</p>				

Commented [HK148]: No effect – Clarification

Commented [HK149]: No effect – Moved to below

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
<ul style="list-style-type: none"> <li>Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width</li> <li>Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width</li> <li>Perpendicular crossings that disturb greater than 40 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</li> <li>Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width</li> <li>Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer</li> </ul>	X	X  X	X  X	
Utility-Overhead electric utility lines: <ul style="list-style-type: none"> <li>Impacts other than perpendicular crossings in Zone 2 only<sup>4,5</sup></li> <li>Impacts other than perpendicular crossings in Zone 1<sup>2,3,4,5</sup></li> </ul>		X	X	
Utility-Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule. <sup>2,3,4,5</sup> <ul style="list-style-type: none"> <li>Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer</li> <li>Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer</li> </ul>	X	X		
Utility-Underground electric utility lines: <ul style="list-style-type: none"> <li>Impacts other than perpendicular crossings in Zone 2 only<sup>3</sup></li> <li>Impacts other than perpendicular crossings in Zone 1<sup>1,4</sup></li> </ul>	X X			

Commented [HK92]: No effect – Updated terminology

Commented [HK150]: No effect – Moved to below

Commented [HK151]: No effect – Moved to below

Commented [HK152]: No effect – Moved to below

Commented [HK153]: No effect – Moved to below

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
<p>Utility - Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Rule:</p> <ul style="list-style-type: none"> <li>Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer<sup>3,4,5</sup></li> <li>Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer<sup>3,4,5</sup></li> </ul>	X	X		
Utility – Sewer lines:				
<ul style="list-style-type: none"> <li>Sanitary Sewer Overflows: <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul> </li> <li>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)</li> </ul>	X	X		

Commented [HK92]: No effect – Updated terminology

Commented [HK154]: No effect – Moved to below

Commented [HK155]: No effect – Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK156]: less stringent - Greater flexibility for responding quickly to SSOs

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
<p>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:</p> <ul style="list-style-type: none"> <li>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: <ul style="list-style-type: none"> <li>Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>Greater than 40 linear feet and less than or equal to 150 linear feet, with a permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>Greater than 150 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>Permanent maintenance corridor greater than 20 linear feet (mitigation is required only for impacts beyond the 20 linear feet corridor width).</li> </ul> </li> <li>Impacts other than perpendicular crossings: <ul style="list-style-type: none"> <li>Zone 2 only.</li> <li>Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing</li> </ul> </li> </ul>	<p>X</p>	<p>X</p>	<p>X</p> <p>X</p>	

**Commented [HK92]:** No effect – Updated terminology

**Commented [HK157]:** No effect – Clarify this use can include perpendicular entry into the buffer that doesn't cross a stream (e.g. connecting to existing line)

**Commented [HK158]:** less stringent - increased maintenance corridor from 10 to 20 feet

**Commented [HK159]:** less stringent - changed from allowable to deemed allowable

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
<p>utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided;</p> <ul style="list-style-type: none"> <li>Zone 1 impacts for replacement/rehabilitation within an existing Right of Way when land grubbing or grading within 10 feet immediately adjacent to the surface water is avoided;</li> <li>Zone 1 impacts other than those listed above.</li> </ul>		X		
<ul style="list-style-type: none"> <li>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 (6) of this Rule: <ul style="list-style-type: none"> <li>Zone 2 impacts</li> <li>Zone 1 impacts provided no clearing within 10 feet of the stream</li> <li>Zone 1 impacts, provided the permanent 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.</li> <li>Zone 1 impacts, provided the permanent 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</li> </ul> </li> </ul>	X X X	X	X	

Commented [HK92]: No effect – Updated terminology

Commented [HK160]: less stringent - changed all impacts to Zone 1 triggering mitigation to only some triggering mitigation.

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
grubbing within 10 feet is less than 2,500 square feet.			X	
o Zone 1 impacts other than those listed above				
Utilities – Non-sewer underground lines:				
• 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:				
o Construction activities that disturb less than or 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	X			
o Construction activities that disturb greater 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 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		X		
o Construction activities that disturb greater than 150 linear feet of riparian buffer			X	
o Any activities with a permanent maintenance corridor greater than 30 feet in width			X	

**Commented [HK92]:** No effect – Updated terminology

**Commented [HK161]:** less stringent - new uses to allow for vegetation maintenance beyond the maintenance corridor

**Commented [HK162]:** No effect – Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

**Commented [HK163]:** No effect – Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

**Commented [HK164]:** less stringent - Changed 40 feet to 50 feet. Added language re maintenance corridor.

**Commented [HK165]:** less stringent - Changed 40 feet to 50 feet. Added language re maintenance corridor

**Commented [HK166]:** no change

**Commented [HK167]:** less stringent - New use

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
<ul style="list-style-type: none"> <li>Impacts other than perpendicular crossings: <ul style="list-style-type: none"> <li>Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised</li> <li>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</li> <li>Impacts in Zone One other than listed above</li> </ul> </li> <li>Vegetation maintenance activities along an existing 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</li> <li>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</li> </ul>	<p>X</p>	<p>X</p>	<p>X</p> <p>X</p>	
Utilities – Non-sewer aerial lines:				
<ul style="list-style-type: none"> <li>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: <ul style="list-style-type: none"> <li>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</li> </ul> </li> </ul>	<p>X</p>			

**Commented [HK92]:** No effect – Updated terminology

**Commented [HK168]:** No change

**Commented [HK169]:** No change

**Commented [HK170]:** less stringent – changing from all impact in Zone 1 triggering mitigation to some

**Commented [HK171]:** less stringent - New uses to allow for vegetation maintenance beyond the maintenance corridor

**Commented [HK172]:** No effect – Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

**Commented [HK173]:** No effect – Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body				
<ul style="list-style-type: none"> <li>Disturb greater than 150 linear feet of buffer</li> </ul>		X		
<ul style="list-style-type: none"> <li>Impacts other than perpendicular crossings:</li> </ul>		X		
<ul style="list-style-type: none"> <li>Impacts in Zone Two</li> </ul>		X		
<ul style="list-style-type: none"> <li>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</li> </ul>			X	

Commented [HK92]: No effect – Updated terminology

Commented [HK174]: No change

Commented [HK175]: No change

Commented [HK176]: no effect – incorporated wording from footnote



Vegetation management:					
• Emergency fire control measures provided that topography is restored	X				Commented [HK177]: No effect – Clarification
• 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	X				Commented [HK178]: less stringent - New use
• Planting non-invasive vegetation to enhance the riparian buffer	X				Commented [HK179]: No effect – Clarification
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X				
• Removal of individual trees, branches or limbs which are in 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 stumps are left or ground in place without causing additional land disturbance.	X				Commented [HK180]: less stringent - allows for removal of branches or limbs instead of just an entire tree
					Commented [HK181]: No effect – clarification
• Removal of individual trees that are dead, diseased or damaged.	X				
• Removal of poison ivy, 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				
• Removal of understory nuisance vegetation as defined in: 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 <a href="http://portal.ncdenr.org/c/document_library/get_file?uuid=0ac6377-ea07-42dc-bb27-45a78d1c7ebe&amp;groupId=38364">http://portal.ncdenr.org/c/document_library/get_file?uuid=0ac6377-ea07-42dc-bb27-45a78d1c7ebe&amp;groupId=38364</a> ). 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					Commented [HK183]: less stringent - Allow for removal of additional nuisance species and allows for use of pesticides

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species.				
Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities; to water dependent structures		X		
<ul style="list-style-type: none"> <li>Vehicle access roads and boat ramps 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 the and have a minimum practicable width not exceeding to exceed ten 15 feet in width</li> <li>Vehicle access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet in width</li> </ul>			X	
Water dependent structures (except for boat ramps) as defined in 15A NCAC 02B Rule .0202 of this Section		X		
Water supply reservoirs:				
<ul style="list-style-type: none"> <li>New reservoirs provided that a riparian buffer that meets the requirements of Items (7)(8) and (8)(9) of this Rule is established adjacent to the reservoir</li> </ul>		X		
<ul style="list-style-type: none"> <li>New reservoirs where a riparian buffer that meets the requirements of Items (7)(8) and (8)(9) of this Rule is not established adjacent to the reservoir</li> </ul>			X	
Water wells				
Single family water wells	X			
All water wells other than single family water wells		X		

Commented [HK92]: No effect – Updated terminology

Commented [HK184]: No effect – Update citation; allow for use of pesticides

Commented [HK185]: No effect – Moved from above

Commented [HK186]: No effect – Boat ramps addressed above

Commented [HK187]: No effect – update citation

Commented [HK188]: No effect – update citation

Commented [HK189]: No effect – update citation

Commented [HK190]: No effect – Simplification

Use	Exempt Deemed Allowable	Potentially Allowable Upon Authorization	Potentially Allowable with Mitigation Upon Authorization	Prohibited
<u>Wetland stream and buffer restoration</u> <ul style="list-style-type: none"> <li>Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification</li> <li>Wetland, stream and buffer restoration that does NOT require DWQ approval for the use of a 401 Water Quality Certification</li> </ul>	X	X		
Wildlife passage structures		X		
<u>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> <ul style="list-style-type: none"> <li>Installation does not result in removal of vegetation in Zone 1</li> <li>Installation results in removal of vegetation in Zone 1</li> </ul>		X	X	

Commented [HK92]: No effect – Updated terminology

Commented [HK191]: No effect – Moved above

Commented [HK192]: No effect – Moved from above

<sup>1</sup> Provided that:

- 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.

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

<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 Director for the cases involving activities listed in Item (3) of this Rule completes a no practical alternative evaluation as defined in Item (11) of this Rule.

<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 not used, then the underground utility line 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, as defined in Item (11) of this Rule.

- 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, 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.

<sup>5</sup> Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

(10) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated as exempt, potentially allowable, and potentially allowable with mitigation in Item (9) 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, including construction, monitoring, and maintenance activities. In addition, exempt uses shall meet requirements listed in Item (9) of this Rule for the specific use;
- (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

Commented [HK193]: No effect – Moved relevant language into table

provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule;

(e) ~~POTENTIALLY ALLOWABLE WITH MITIGATION.~~ Uses designated as potentially allowable with mitigation require written 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 provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (15) of this Rule; and

(d) ~~PROHIBITED.~~ Uses that are not designated in Item (9) of this Rule are considered prohibited in the riparian buffers.

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

(11) ~~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 local government or the Director for the cases involving activities listed in Item (3) of this Rule. The applicant shall certify that the criteria identified in Sub-Item (a) of this Item are met. The local government, or the Director for the cases involving activities listed in Item (3) of this Rule, 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 local government, or the Director for the cases involving activities listed in Item (3) of this Rule, 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; and~~

(iii) ~~Best management practices shall be used if required to minimize disturbance, preserve aquatic life and habitat, and protect water quality;~~

(b) ~~Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (a) of this Item and the local ordinance or ordinances enforcing this Rule by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." An Authorization Certificate shall be issued to the applicant, unless:~~

(i) ~~The applicant agrees, in writing, to a longer period; and~~

- (ii) Applicant fails to furnish requested information necessary to the local government's decision or the Director's decision for the cases involving activities listed in Item (3) of this Rule;
- (e) The local government, or the Director for the cases involving activities listed in Item (3) of this Rule, may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:
- (i) The name, address and phone number of the applicant;
  - (ii) The nature of the activity to be conducted by the applicant;
  - (iii) The location of the activity, including the jurisdiction;
  - (iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized 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;
  - (v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and
  - (vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity; and
- (d) Any disputes over determinations regarding Authorization Certificates shall be referred to the local government's appeals process for a decision, or to the Director for determinations involving lands of activities listed in Item (3) of this Rule. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.
- (12) VARIANCES. Persons who wish to undertake prohibited uses may pursue a variance. The local government may grant only minor variances. For major variances, local governments shall prepare preliminary findings and submit them to the Commission for approval. The variance request procedure shall be as follows:
- (a) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with all of the following:
    - (i) If the applicant complies with the provisions of this Rule, he or she can secure no 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 be considered adequate justification for a variance. Moreover, the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, 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;

(ii) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship;

(iii) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, and 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; and

(iv) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.

(b) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and

(c) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

(13) MINOR VARIANCES. A minor variance request pertains to activities that are proposed to impact only Zone 2 or any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Item (12)(a) of this Rule by the local government pursuant to G.S. 153A Article 18, or G.S. 160A Article 19. The local government may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the local government shall be made through the local government's appeals process, or to the Director for determinations involving activities listed in Item (3) of this Rule. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.

(14) MAJOR VARIANCES. A major variance request pertains to activities that are proposed to impact any portion of Zone 1 of the riparian buffer. If the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, has determined that a major variance request meets the requirements in Sub-Item (12)(a) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission for approval. Within 90 days after receipt by the local government, or the Director for the cases involving activities listed in Item (3) of this Rule, the Commission shall review preliminary findings on major variance requests. The Commission may choose to approve, approve with conditions, or deny the major variance.

(15)(11) MITIGATION. Persons who wish to undertake uses designated as allowable upon authorization with mitigation 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 Item (14) of this Rule .0611 of this Section; and

Commented [HK195]: No effect – Moved to Rule .0611

Commented [HK196]: No effect – clarification and updated citations

Commented [HK197]: No effect – updated terminology

Commented [HK198]: No effect – updated citation

- (b) Obtain ~~written~~ approval for a mitigation proposal pursuant to ~~15A NCAC 02B .0252 Rule .0295 of Subchapter 02B.~~

Commented [HK199]: No effect – clarification

Commented [HK200]: no effect – update citation

~~(16) 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 01H .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 other timber cutting techniques necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site pursuant to 15A NCAC 01H .0100 .0209. The Division of Forest Resources must notify the local government of all approvals;~~
- ~~(vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed;~~
- ~~(viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species;~~
- ~~(ix) High intensity prescribed burns shall not be allowed;~~
- ~~(x) Application of fertilizer shall not be allowed except as a one time use that is necessary for permanent stabilization; and~~
- ~~(xi) Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer;~~

~~(b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either 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 permitted for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees provided activities comply with forest practices guidelines for water quality as defined in Rule 15A NCAC 01H .0101 through .0209, and provided no equipment shall operate within the first 10 feet immediately adjacent to the stream except at stream crossings designed, constructed and maintained in accordance with Rule 15A NCAC 01H .0203;

(ii) Soil disturbing site preparation activities are not allowed; and

(iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation; and

(e) In addition to the requirements of (b) in this Item, the following provisions for selective harvesting shall be met:

(i) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut unless listed as an exempt activity under Vegetation Management in the Table of Uses (9) of this Rule.

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

(iii) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01H .0100 through .0209 as enforced by the Division of Forest Resources.

Commented [HK201]: No effect – Moved to Rule .0612

(47)(12) RULE IMPLEMENTATION. This Rule shall be implemented as follows:

(a) Local governments with land use authority within the Randleman Lake water supply watershed shall establish riparian buffer protection programs to meet or exceed the minimum requirements of this Rule and shall comply with all requirements set forth in G.S. 143-214.23A.

Commented [HK202]: No effect – Moved from Item (1) above

Commented [HK203]: No effect – added to comply with SL 2015-246

Commented [HK204]: No effect – moved from Item (3) above

(i) Local governments shall adopt and enforce this Rule through local ordinances.

(ii) 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 be 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 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 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 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.

Commented [HK205]: No effect – Moved from Item (3) above

- (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 Division shall implement applicable requirements in lieu of local governments for:
- (i) Activities conducted under authority of the State;
  - (ii) Activities conducted under the authority of the United States;
  - (iii) Activities conducted under the authority of multiple jurisdictions;
  - (iv) Activities conducted under the authority of local units of government;
  - (v) Forest harvesting activities described in Rule .0612 of this Section; and
  - (vi) Agricultural activities.

Commented [HK206]: No effect – Moved from Item (2) above

- (c) The Division shall regularly audit local programs to ensure local programs are being implemented and enforced in keeping with the requirements of this Rule and Rule .0611 of this Section.

Commented [HK207]: No effect –consistent with other buffer rules; audits have already been conducted

- (d) Local governments shall maintain on-site records for a minimum of five years, and shall furnish a copy of these records to the Division within 30 calendar days of receipt of a written request for them. Local programs' records shall include the following:
- (i) A copy of all exception requests;
  - (ii) Findings of fact on all exception requests;
  - (iii) Results of all exception proceedings;
  - (iv) A record of complaints and action taken as a result of complaints;
  - (v) Records for on-site determinations as described in Item (4) of this Rule; and
  - (vi) Copies of all requests for authorization, records approving authorization and Authorization Certificates.

Commented [HK208]: No effect –consistent water supply watershed requirements so LGs already doing this per water supply.

- (e) If a local government fails to adopt or adequately implement its program as specified in this Rule, the Division may take appropriate enforcement action as authorized by statute and may choose to assume responsibility for implementing that program until such time as 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

- (f) The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Neuse River Basin riparian buffer protection requirements, in whole or in part, to the Director.
- (a) For activities listed in Item (3) of this Rule, the Division shall implement the requirements of this Rule as of its effective date;
- (b) Within six months of the effective revision date of this Rule, local governments shall review, revise as necessary, and submit a local program including all necessary ordinances to the Division for review. The local program shall detail local government buffer program implementation including but not limited to such factors as a method for resolution of disputes involving Authorization Certificate or variance determinations, a plan for record keeping, and a plan for enforcement. Local governments shall use the Division's publication, *Identification Methods for the Origins of Intermittent and Perennial Streams*, v. 3.1 February 28, 2005 available at <http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations> to establish the existence of streams;
- (c) Within six months of the Division approval of the revised local ordinance, the local government shall implement their revised buffer program;
- (d) Upon implementation, subject local governments shall submit annual reports to the Division summarizing their activities in implementing each of the requirements in Item (4) of this Rule;
- (e) The Division shall regularly audit local programs to ensure rule implementation; and
- (f) If a local government fails to adopt or adequately implement its program as called for in this Rule, the Division may take appropriate enforcement action as authorized by statute, and may choose to assume responsibility for implementing that program until such time as it determines that the local government is prepared to comply with its responsibilities.
- (18) Where the standards and management requirements for riparian areas are in conflict with other laws, regulations, and permits regarding streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, or other environmental protection areas, the more restrictive shall apply.
- (49)(13) **WATER SUPPLY REQUIREMENTS.** The existing water supply requirement in Rule .0216(3)(b) of this Section that stipulates a 100 foot vegetated buffer, adjacent to perennial streams, for all new development activities which utilize the high density option, applies to the entire Randleman Lake watershed. The first 50 feet of these riparian areas on either side of these waters must also be protected in accordance with all the requirements of this Rule. Local governments subject to this Rule may choose to implement more stringent requirements, including requiring additional buffer width.

Commented [HK210]: less stringent – consistent with other buffer rules

Commented [HK211]: No effect – Reorganized

Commented [HK212]: No effect – added header

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

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

Last Revised December 14, 2017

15A NCAC 02B .0259 is proposed for amendment as follows:

**15A NCAC 02B .0259.0734 TAR-PAMLICO RIVER BASIN: NUTRIENT SENSITIVE WATERS  
MANAGEMENT STRATEGY: PROTECTION AND MAINTENANCE OF  
EXISTING RIPARIAN BUFFERS**

The following is the management strategy for maintaining and protecting existing riparian buffers in the Tar-Pamlico River Basin.

- (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, whose surface waters are described in the Schedule of Classifications, 15A NCAC 02B .0316 Basin to maintain their nutrient removal functions.~~ Terms used in this Rule shall be as defined in Rule .0610 in Subchapter 02B.

(2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:

- (a) "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. (current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 01I.0102)
- (b) "DBH" means Diameter at Breast Height of a tree, which is measured at 4.5 feet above ground surface level.
- (c) "Ditch or canal" means a man made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter stream divide areas. 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 streams.
- (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 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.
- (e) "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.

Commented [HK1]: no effect - update citation

Commented [HK2]: no effect - grammar

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

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

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(f) "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.

(g) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.

(h) "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.

(i) "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.

(j) "Perennial waterbody" means a natural or man-made basin 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 drainageway (i.e., connected by surface flow to a stream).

(k) "Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land surface.

(l) "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters.

(m) "Tree" means a woody plant with a DBH equal to or exceeding five inches.

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

(2)(3) APPLICABILITY. This Rule applies to all landowners and other persons including local governments, state and federal entities conducting activities within the riparian buffers as described in Item (3) of this Rule in the Tar-Pamlico River Basin, excluding Ocracoke Island.

Commented [HK5]: no effect - clarification

(3) BUFFERS PROTECTED. The following minimum criteria shall be used for identifying regulated buffers:

Commented [HK6]: less stringent - excluding Ocracoke Island from the buffer rules as it's downstream of the impairment.

(a) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references:

Commented [HK7]: No effect – reorganization

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- (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 the United States Department of Agriculture;
- (ii) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS); or
- (iii) Other maps approved by the Geographic Information Coordinating Council and by the Environmental Management Commission as more accurate than those identified in Sub-Item (3)(a)(i) and (3)(a)(ii) of this Rule. Other maps may be submitted to the Division for review and recommendation to the Environmental Management Commission. Prior to recommendation to the Environmental Management Commission, the Division shall issue a 30-calendar day public notice through the Division's Mailing List in accordance with 15A NCAC 02H .0503. Division staff shall present recommendations including comments received during the public notice period to the Environmental Management Commission for a final 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 Rule;
- (b) This Rule shall apply to activities conducted within 50-foot wide riparian buffers directly adjacent to surface waters in the Tar-Pamlico River Basin (intermittent streams, perennial streams, lakes, ponds, reservoirs and estuaries), excluding wetlands, wetlands;
- (c) Except as described in Sub-Item (4)(a)(iii) of this Rule, wetlands, wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506, .0506;
- (d) Stormwater runoff from activities conducted outside the riparian buffer shall comply with Item (9) of this Rule;
- The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Paragraph. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Riparian buffers adjacent to surface waters that do not appear on either of the maps shall not be subject to this Rule. Riparian buffers adjacent to surface waters that appear on the maps shall be subject to this Rule unless one of the following applies;
- (e) Riparian buffers protected by this Rule shall be measured pursuant to Item (8) of this Rule;
- (f) A riparian buffer may be exempt from this Rule as described in Items (5), (6) and (7) of this Rule; and

Commented [HK8]: No effect – moved from below

Commented [HK9]: less stringent - Added flexibility for a 3<sup>rd</sup> map to be used – language from SL 2009-484 for Jordan buffer rules

Commented [HK10]: No effect - clarification

Commented [HK11]: No effect - clarification

Commented [HK12]: No effect - punctuation

Commented [HK13]: No effect - reorganization

Commented [HK14]: No effect - punctuation

Commented [HK15]: No effect - reorganization

Commented [HK16]: No effect – moved to (3)(a) above

Commented [HK17]: No effect - reorganization

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(g) ~~No new clearing, grading or development shall take place nor shall any new building permits be issued in violation of this Rule.~~

Commented [HK18]: No effect – Clarification

(a)(4) ~~EXEMPTION WHEN AN ON-SITE DETERMINATION SHOWS THAT SURFACE WATERS ARE NOT PRESENT DETERMINATION.~~ When a landowner or other affected party believes that the maps listed in Sub-Items (3)(a) have inaccurately depicted surface ~~waters, waters~~ or the specific origination point of a stream, or the specific origination point of a stream is in question or unclear, he or she shall ~~consult request the Division or the appropriate delegated local authority.~~ Upon request, the Division or delegated local authority shall ~~Authority to make an on-site determinations determination.~~ On-site determinations shall be made by Authority staff that are certified pursuant to G.S. 143-214.25A. Registered Foresters under Chapter 89B of the General Statutes who are employees of the North Carolina Forest Service of the Department of Agriculture and Consumer Services can make on-site determinations for forest harvesting operations and practices. On-site determinations shall expire five years from the date of the determination. Any disputes over on-site determinations shall be referred to the Director in writing within 60 calendar days of written notification from the Authority writing. A determination of the Director as to the accuracy or application of the maps ~~The Director's determination~~ is subject to review as provided in Articles 3 and 4 of G.S. 150B.

Commented [HK19]: No effect - reorganization

Commented [HK20]: no effect - clarification

Commented [HK21]: No effect - clarification

Commented [HK22]: No effect - grammar

Commented [HK23]: No effect - grammar

Commented [HK24]: No effect – incorporating statute

Commented [HK25]: No effect – Codifying policy. Consistent with timeframe of Corps determinations.

Commented [HK26]: No effect – Codifying policy. Consistent with timeframes for appeal in G.S. 150B.

Commented [HK27]: No effect - grammar

Commented [HK28]: No effect – update citation

Commented [HK29]: No effect – added header

Commented [HK30]: no effect - clarification

Commented [HK31]: No effect - punctuation

(5) ~~EXEMPTION BASED ON ON-SITE DETERMINATION.~~ Surface waters that appear on the maps listed in Sub-Item (3)(a) of this Rule shall not be subject to this Rule if an on-site determination shows that they fall into one of the following ~~categories-categories~~:

(i)(a) Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access.

(ii)(b) Manmade ponds and lakes that are ~~located outside natural drainage ways-not fed by an~~ intermittent or perennial stream nor have a direct discharge point to an intermittent or perennial stream.

Commented [HK32]: No effect – Codifying policy

(iii)(c) Ephemeral (stormwater) streams.

(d) ~~The absence on the ground of a corresponding perennial waterbody, intermittent waterbody, lake, pond or estuary.~~

Commented [HK33]: No effect - reorganization

(b)(6) ~~EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING.~~ This Rule shall not apply to portions of the riparian buffer where a use is existing and ~~ongoing according to the following-ongoing.~~

Commented [HK34]: no effect - clarification

(i)(a) A use shall be considered existing ~~if:~~

Commented [HK35]: no effect - punctuation

(i) ~~It~~ It was present within the riparian buffer as of January 1, ~~2000-2000~~ and has continued to exist since that time.

Commented [HK36]: No effect - clarification

(ii) It was a deemed allowable activity as listed in Item (10) of this Rule; or

(iii) It was conducted and maintained pursuant to an Authorization Certificate or Variance issued by the Authority.

Commented [HK37]: No effect - clarification



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(b) Existing ~~and ongoing~~ uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained ~~lawns, lawns~~ (i.e. can be mowed without a chainsaw or bush-hog), ~~maintained (i.e. vegetation management has occurred within the last ten years)~~ utility ~~lines~~ ~~line~~ corridors and on-site sanitary sewage ~~systems, systems,~~ any of which involve either specific periodic management of vegetation or displacement of vegetation by structures or regular activity.

Commented [HK38]: no effect - clarification

Commented [HK39]: no effect - clarification

Commented [HK40]: No effect – clarification and codifying policy

Commented [HK41]: No effect – clarification

(c) Only the portion of the riparian buffer that contains the footprint of the existing ~~and ongoing~~ use is exempt from this Rule.

Commented [HK42]: no effect - clarification

(d) ~~Change of ownership through purchase or inheritance is not a change of use.~~

Commented [HK43]: No effect – clarification

(e) Activities necessary to maintain ~~existing and ongoing~~ uses are allowed provided that ~~the site remains similarly vegetated, no built upon area is added within the riparian buffer where it did not exist prior to January 1, 2000, no additional vegetation is removed from Zone 1, except that grazed or trampled by livestock, and the site is in compliance with Item (9) of this Rule, existing diffuse flow is maintained.~~ ~~Grading and revegetating 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.~~

Commented [HK44]: no effect - clarification

Commented [HK45]: No effect – clarification

Commented [HK46]: no effect – language repeated below

(f) ~~This Rule shall apply at the time an existing and ongoing use is changed to another use. Change of use shall involve the initiation of any activity not defined as existing and ongoing in Sub-Items (6)(a) through (6)(e) of this Rule.~~

Commented [HK47]: No effect – clarification

(ii) ~~At the time an existing use is proposed to be converted to another use, this Rule shall apply. An existing use shall be considered to be converted to another use if any of the following applies:~~

Commented [HK48]: No effect – moved to (6) above

(A) ~~Impervious surface is added to the riparian buffer in locations where it did not exist previously.~~

(B) ~~An agricultural operation within the riparian buffer is converted to a non-agricultural use.~~

(C) ~~A lawn within the riparian buffer ceases to be maintained.~~

Commented [HK49]: No effect – removed

#### (7) EXEMPTION FOR PONDS CONSTRUCTED AND USED FOR AGRICULTURAL PURPOSES.

This Rule shall not apply to a freshwater pond if all of the following conditions are met:

(a) The property on which the pond is located is used for agriculture as that term is defined in G.S. 106-581.1.

(b) Except for this Rule, the use of the property is in compliance with all other water quality and water quantity statutes and rules applicable to the property before July 22, 1997.

(c) The pond is not a component of an animal waste management system as defined in G.S. 143-215.10B (3).

Commented [HK50]: No effect – added per SL 2013-413

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

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

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(a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Item ~~(6)~~(10) of this Rule. The location of Zone 1 shall be as follows:

Commented [HK51]: no effect – update citation

(i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the ~~surface water stream~~ measured horizontally on a line perpendicular to the ~~surface water stream~~ (where an intermittent or perennial stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).

Commented [HK52]: no effect - clarification

(ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the ~~most landward limit of the~~ normal water level ~~or the rooted herbaceous vegetation~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.

Commented [HK53]: No effect – codifying policy

Commented [HK54]: No effect – clarification

Commented [HK55]: No effect – removed for simplicity

(iii) For surface waters within the 20 Coastal Counties (defined in ~~15A NCAC 02B .0202~~) Rule .0202 of this Subchapter) and within the jurisdiction of the Division of Coastal Management, Zone 1 shall begin at the most landward limit of:

Commented [HK56]: no effect – updated citation

(A) ~~the normal high water level;~~

(B) ~~the normal water level; or~~

(C) ~~the landward limit of coastal wetlands as defined by the Division of Coastal Management;~~

~~of the normal high water level or the normal water level~~ and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water, whichever is more restrictive.

Commented [HK57]: No effect – edited per SL 2015-246

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Item ~~(6)~~(10) 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 the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

Commented [HK58]: no effect – update citation

~~(5) DIFFUSE FLOW REQUIREMENT. Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.~~

~~(a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters Zone 2 of the riparian buffer.~~

~~(b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.~~

Commented [HK59]: less stringent - removed diffuse flow requirement; instead provide options for stormwater discharges.

(9) ~~STORMWATER RUNOFF THROUGH THE RIPARIAN BUFFER. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances. The following stormwater~~

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conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Sub-Item (10)(a) of this Rule, provided that they do not erode through the buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Sub-Item (10)(a)(v) of this Rule.

(a) The following are deemed allowable as defined in Sub-Item (10)(a)(i) of this rule:

(i) New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program;

(ii) New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

(b) The following are allowable upon authorization as defined in Sub-Item (10)(a)(ii) of this Rule:

(i) New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not approved under a state stormwater program or a state-approved local government stormwater program;

(ii) New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goals as outlined in 15A NAC 02B .0258(c)(1)(A) and (B);

(iii) New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;

(iv) New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;

(v) Realignment of existing roadside drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the 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;

(vi) Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;

(vii) New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;

**Commented [HK60]:** less stringent - Removed diffuse flow requirement; instead provide options for stormwater discharges

**Commented [HK61]:** No effect – Organization

**Commented [HK62]:** less stringent - New use – allows for DWR to accept local government review of a SMP without having to review for meeting diffuse flow

**Commented [HK63]:** No change – moved from table

**Commented [HK64]:** No effect – Organization

**Commented [HK65]:** No change – moved from table

**Commented [HK66]:** less stringent - New use

**Commented [HK67]:** less stringent - New use

**Commented [HK68]:** No change – from diffuse flow language above

**Commented [HK69]:** less stringent - New use

**Commented [HK70]:** less stringent - New use

**Commented [HK71]:** less stringent - New Use

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- (viii) New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical.
- (ix) New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.
- (6)(10) TABLE OF USES. Uses within the riparian buffer, or outside the buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, or prohibited.
- (a) Potential new uses shall have the following requirements:
- (i) DEEMED ALLOWABLE. Uses designated as deemed allowable in Sub-Items (9)(a) and (10)(b) of this Rule may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet the requirements listed in Sub-Item (10)(b) of this Rule for the specific use.
- (ii) ALLOWABLE UPON AUTHORIZATION. Uses designated as allowable upon authorization in Sub-Items (9)(b) and (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule .0611 of this Section.
- (iii) ALLOWABLE WITH MITIGATION UPON AUTHORIZATION. Uses designated as allowable with mitigation allowable upon authorization in Sub-Item (10)(b) of this Rule require a written Authorization Certificate from the Authority for impacts within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Rule .0611 of this Section and an appropriate mitigation strategy has received written approval pursuant to Item (11) of this Rule.
- (iv) PROHIBITED. Uses designated as prohibited in Sub-Item (10)(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 (10)(b) of this Rule require a written Authorization

Commented [HK72]: less stringent - New use

Commented [HK73]: less stringent - New use

Commented [HK74]: No effect – Moved from (7) below

Commented [HK75]: No effect – Update terminology

Commented [HK76]: No effect – moved from (7) below

Commented [HK77]: No effect – Update terminology

Commented [HK78]: No effect – moved from (7) below

Commented [HK79]: No effect – Update terminology

Commented [HK80]: No effect – moved from (7) below

Commented [HK81]: No effect – Changed to variance process set out in Rule .0226

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

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- 1 Certificate with Exception from the Authority for impacts within the riparian  
 2 buffer pursuant to Rule .0611 of this Section and an appropriate mitigation  
 3 strategy that has received written approval pursuant to Item (11) of this Rule.  
 4 (b) The following chart table sets out the potential new uses within the riparian buffer, or  
 5 outside the buffer with hydrological impacts on the riparian buffer, and designates  
 6 them their designation under this Rule as exempt, deemed allowable, allowable upon  
 7 authorization, or allowable with mitigation, or prohibited mitigation upon authorization.;  
 8 The requirements for each category are given in Item (7) of this Rule.

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

**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

**Commented [HK84]:** No effect – 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

**Commented [HK94]:** No effect – Codifying policy

**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 under 404/401

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers:				
<ul style="list-style-type: none"> <li>Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies</li> <li>New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the riparian buffer</li> <li>New drainage ditches, roadside ditches and stormwater outfalls that do not provide control for nitrogen before discharging through the riparian buffer</li> <li>Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch</li> </ul>	X	X		X
Drainage of a pond in a natural drainage way subject to Item (4) of this Rule provided that a new riparian buffer that meets the requirements of Items (9)(4) and (5)(10) 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.	X			
Driveway crossings of streams and other surface waters subject to this Rule:				
<ul style="list-style-type: none"> <li>Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer</li> </ul>	X			

Commented [HK91]: No effect – update terminology

Commented [HK92]: No effect – update terminology

Commented [HK93]: No effect – update terminology

Commented [HK99]: No effect – Moved to Item (9) above

Commented [HK100]: No effect - clarification

Commented [HK101]: No effect – Clarification of regeneration process after pond is drained

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
<ul style="list-style-type: none"> <li>• Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer</li> <li>• In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer</li> <li>• In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer</li> </ul>		X		
		X		
			X	
Fences:				
• Fencing livestock out of surface waters	X			
• Installation does not result in removal of trees	X			
• Installation results in removal of trees Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation		X		
Forest harvesting - see Item (11)(15) of this Rule .0612 of Subchapter 02B				
Fertilizer application:				
• One-time fertilizer application to 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.	X			
• Ongoing fertilizer application				X
Grading and revegetation in Zone 2 only provided that diffuse flow 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 stabilized and revegetated	X			
Greenway / hiking trails Greenways, trails, sidewalks or linear pedestrian/bicycle transportation system:				

Commented [HK91]: No effect – update terminology

Commented [HK92]: No effect – update terminology

Commented [HK93]: No effect – update terminology

Commented [HK102]: No effect – Moved below with road impacts

Commented [HK103]: less stringent - New deemed allowable use

Commented [HK104]: No effect - grammar

Commented [HK105]: less stringent - New allowable use

Commented [HK106]: No effect – update citation

Commented [HK107]: No effect – Clarification

Commented [HK108]: No effect – clarification and updated citation

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

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	<del>Exempt</del> <del>Deemed</del> <del>Allowable</del>	Allowable <del>Upon</del> <del>Authorizat</del> <del>ion</del>	Allowable with Mitigation <del>Upon</del> <del>Authorizat</del> <del>ion</del>	Prohi bited
<ul style="list-style-type: none"> <li>In Zone 2 provided that no built upon area is added within the buffer</li> <li>When built upon area is added to the buffer, equal to or less than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</li> <li>When built upon area is added to the buffer, greater than ten (10) feet wide with two (2) foot wide shoulders. Must be located outside Zone 1 unless there is no practical alternative</li> </ul>	X	X	X	
Historic preservation	X			
New Landfills as defined by G.S. 130A-290.				X
Mining activities:		X		
<ul style="list-style-type: none"> <li>Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items <del>(4)(8)</del> and <del>(5)(9)</del> of this Rule are established adjacent to the relocated channels</li> <li>Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of Items <del>(4)(8)</del> and <del>(5)(9)</del> of this Rule are not established adjacent to the relocated channels</li> <li>Wastewater or mining dewatering wells with approved NPDES permit</li> </ul>	X		X	
Non-electric utility lines:		X		
<input type="checkbox"/> Impacts other than perpendicular crossings in Zone 2 only <sup>3</sup>		X		
<input type="checkbox"/> Impacts other than perpendicular crossings in Zone 1 <sup>3</sup>			X	
Non-electric utility line perpendicular crossings of streams and other surface waters subject to this Rule <sup>3</sup> :				

Commented [HK91]: No effect – update terminology

Commented [HK92]: No effect – update terminology

Commented [HK93]: No effect – update terminology

Commented [HK109]: No effect – Codifying policy

Commented [HK110]: less stringent - Allows for landfill expansions to seek an Authorization Certificate with Exception instead of a Variance

Commented [HK111]: No effect – update citation

Commented [HK112]: No effect – update citation

Commented [HK113]: less stringent - Allows mining activities that do not relocate channels to pursue an authorization certificate

Commented [HK114]: No effect – Moved to below



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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
<input type="checkbox"/> Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width <input type="checkbox"/> Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width <input type="checkbox"/> Perpendicular crossings that disturb greater than 40 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 <input type="checkbox"/> Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width <input type="checkbox"/> Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer	X	X  X	X  X	
On-site sanitary sewage systems - new ones that use ground absorption				X
Overhead electric utility lines: <input type="checkbox"/> Impacts other than perpendicular crossings in Zone 2-only <sup>3</sup> <input type="checkbox"/> Impacts other than perpendicular crossings in Zone 1+2+3 <sup>3</sup>	X  X			
Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Rule <sup>3</sup> : <input type="checkbox"/> Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer <sup>+</sup> <input type="checkbox"/> Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer <sup>+2</sup>	X	X		
Periodic maintenance of Maintenance access on modified natural streams or canals: a grassed travel way on one side		X		

Commented [HK91]: No effect – update terminology

Commented [HK92]: No effect – update terminology

Commented [HK93]: No effect – update terminology

Commented [HK115]: No effect – Moved to below

Commented [HK116]: No effect – Moved to below

Commented [HK117]: No effect – Moved to below

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
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 shading such as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not practical.				

Commented [HK91]: No effect – update terminology

Commented [HK92]: No effect – update terminology

Commented [HK93]: No effect – update terminology

Commented [HK118]: No effect – clarification

<sup>1</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.

☐ 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.

<sup>2</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.

<sup>3</sup> Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°.

Commented [HK119]: No effect – Incorporated relevant footnotes into uses within the table

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
<u>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:</u> <ul style="list-style-type: none"> <li>• <u>Pedestrian access trail equal to or less than six (6) feet 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</u></li> <li>• <u>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></li> <li>• <u>Pedestrian access trail greater than six (6) feet wide</u></li> </ul>	X	X	X	
Playground equipment: <ul style="list-style-type: none"> <li>• Playground equipment on single family lots provided that installation and use does not result in removal of vegetation</li> <li>• <u>Playground equipment on single family lots where installation or use results in the removal of vegetation</u></li> <li>• <u>Playground equipment installed on lands other than single-family lots or that requires removal of vegetation</u></li> </ul>	X	X  X		
<u>Ponds created or modified by impounding streams subject to the buffers pursuant to Item (3) of this Rule and not used as stormwater control measures (SCMs); Ponds in natural drainage ways, excluding dry ponds:</u> <ul style="list-style-type: none"> <li>• New ponds provided that a riparian buffer that meets the requirements of Items <del>(4)(8)</del> and <del>(5)(9)</del> of this Rule is established adjacent to the pond</li> </ul>		X	X	

Commented [HK120]: No effect – updated terminology

Commented [HK121]: less stringent - New use to allow for impacts to buffer for access trails to surface waters and associated docking facilities

Commented [HK122]: No effect – split into two bullets for clarification

Commented [HK123]: No effect - clarification

Commented [HK124]: No effect – update citation

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
<ul style="list-style-type: none"> <li>New ponds where a riparian buffer that meets the requirements of Items (4)(8) and (5)(9) of this Rule is NOT established adjacent to the pond</li> </ul>				
Protection of existing <del>structures and facilities, structures, facilities and streambanks</del> when this requires additional disturbance of the riparian buffer <del>or the stream channel</del>		X		
<del>Public Safety - publicly owned spaces where it has been 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.</del>	X			
<del>Railroad impacts other than crossings of streams and other surface waters subject to this Rule.</del>			X	
<del>Railroad crossings of streams and other surface waters subject to this Rule:</del> <ul style="list-style-type: none"> <li><del>Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer</del></li> <li><del>Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one third of an acre of riparian buffer</del></li> <li><del>Railroad crossings that impact greater than 150 linear feet or one third of an acre of riparian buffer</del></li> </ul>	X	X	X	
Removal of previous fill or debris provided that <del>diffuse flow is maintained</del> Item (9) of this Rule is complied with and any vegetation removed is restored	X			
<del>Residential Properties: Where application of this Rule would preclude construction of a single-family residence and necessary infrastructure, the single-family residence may encroach on the buffer if all of the following conditions are</del>				

Commented [HK120]: No effect – updated terminology

Commented [HK125]: No effect – update citation

Commented [HK126]: No effect – streambanks in table below; clarified "structures and facilities" includes existing utility lines

Commented [HK127]: No effect – New use per SL 2017-209

Commented [HK128]: No effect – Moved to below

Commented [HK129]: No effect – Moved to below

Commented [HK130]: No effect - update citation

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
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				
• The residence and necessary infrastructure impact Zone 2 only		X		
• The residence or necessary infrastructure impact Zone 1				
• Impacts other than the residence or necessary infrastructure			X X	
Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: <a href="http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmiigation_index.cfm">http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmiigation_index.cfm</a> :				
• Wetland or stream restoration that does not require written Division approval that results in impacts to the riparian buffer	X			
• Wetland or stream restoration that requires written Division approval that results in impacts to the riparian buffer		X		
Road, Road, driveway or railroad impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	

Commented [HK120]: No effect – updated terminology

Commented [HK131]: No effect – Incorporating SL 2011-394 and SL 2012-200

Commented [HK132]: less stringent - New use to allow impacts to Zone 1 for single-family residences without having to go through the variance process

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

Commented [HK134]: No effect – Moved from below

Commented [HK135]: No effect – incorporating road, driveway and railroad into one row as requirements were all the same

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
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:	X			
• Road crossings that impact equal to or less than one-tenth of an acre 40 linear feet of riparian buffer		X		
• Road crossings that impact greater than one-tenth of an acre 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer			X	
• Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer		X		
• Driveway crossings in a subdivision that cumulatively disturb equal to or less than one-third of an acre of riparian buffer			X	
• 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				
	X			
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		X		
• Greater than 2,500 square feet of riparian buffer impact			X	
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:				

Commented [HK120]: No effect – updated terminology

Commented [HK136]: No effect – incorporating road, driveway and railroad into one row as requirements were all the same

Commented [HK137]: No effect – Clarification

Commented [HK138]: No effect - grammar

Commented [HK139]: No effect – Removed linear feet; will just reference square feet for ease of implementation

Commented [HK140]: No effect - grammar

Commented [HK141]: No effect – Removed linear feet; will just reference square feet for ease of implementation

Commented [HK142]: No effect - grammar

Commented [HK143]: No effect – Removed linear feet; will just reference square feet for ease of implementation

Commented [HK144]: No effect – Moved from above

Commented [HK145]: Less stringent – new use to allow for ag rules to have the same exemption under the buffer rules they have under 404

Commented [HK146]: less stringent - New use

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
<ul style="list-style-type: none"> <li>Installation does not result in removal of vegetation in Zone 1</li> <li>Installation results in removal of vegetation in Zone 1</li> </ul>		X	X	
Stormwater management ponds excluding dry ponds: Control Measure (SCM) as defined in 15A NCAC 02H .1002: <ul style="list-style-type: none"> <li>New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pondIn Zone 2 if Item (9) of this Rule is complied with</li> <li>New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pondIn Zone 1</li> </ul>		X	X	
Stream restoration	X			
Streambank or shoreline stabilization		X		
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:roads:				
<ul style="list-style-type: none"> <li>Temporary roads that disturb lessLess than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbanceof riparian buffer disturbance</li> <li>Temporary roads that disturb greaterGreater than 2,500 square feet of riparian buffer disturbanceprovided that</li> </ul>	X	X		

Commented [HK120]: No effect – updated terminology

Commented [HK147]: less stringent - New use

Commented [HK148]: less stringent - Changes uses to allow any SCM in the buffer instead of just wet ponds.

Commented [HK149]: No effect – Moved to above

Commented [HK150]: No effect - clarification

Commented [HK151]: No effect – clarification

Commented [HK152]: no effect - grammar

Commented [HK153]: No effect – moved to wording above

Commented [HK154]: no effect - grammar

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
vegetation is restored within six months of initial disturbance		X		
<ul style="list-style-type: none"> <li>Temporary roads used for Associated with culvert installation or bridge construction or replacement provided that restoration activities such as soil stabilization and revegetation, occur immediately after construction</li> </ul>				
Temporary sediment and erosion control 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 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:				
<ul style="list-style-type: none"> <li>In Zone 2 only provided ground cover is established 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 flow in accordance with Item (5)(9) of this Rule</li> </ul>	X			
<ul style="list-style-type: none"> <li>In Zones 1 and 2 to control impacts associated with uses approved by the Authority Division or that have received a variance an exception provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer</li> </ul>		X		
<ul style="list-style-type: none"> <li>In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act</li> </ul>	X			
		X		

Commented [HK120]: No effect – updated terminology

Commented [HK155]: No effect – moved to wording above

Commented [HK156]: no effect - grammar

Commented [HK157]: No effect – moved to wording above

Commented [HK158]: No effect – added language for restoring temporarily disturbed area; consistent with requirement for temporary roads

Commented [HK159]: No effect – incorporate compliance with E&SC plan

Commented [HK160]: no effect – update citation

Commented [HK161]: no effect – update name

Commented [HK162]: no effect – update terminology

Commented [HK163]: No effect – removed unnecessary language; this will be reviewed as part of the no practical alternatives analysis



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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
<ul style="list-style-type: none"> <li>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 &amp; 404 of the Federal Water Pollution Control Act</li> </ul>				
Underground electric utility lines: <input type="checkbox"/> Impacts other than perpendicular crossings in Zone 2-only <sup>2</sup> <input type="checkbox"/> Impacts other than perpendicular crossings in Zone 1-4 <sup>4</sup>	X X			
Underground electric utility line-perpendicular crossings of streams and other surface waters subject to this Rule: <input type="checkbox"/> Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer. <sup>4</sup> <input type="checkbox"/> Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer. <sup>4</sup>	X	X		
Utility – Sewer lines: <ul style="list-style-type: none"> <li>Sanitary Sewer Overflows:               <ul style="list-style-type: none"> <li>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.</li> <li>Emergency sanitary sewer overflow response activities, provided the disturbed area within the buffer: is the minimum necessary to respond to the emergency</li> </ul> </li> </ul>	X	X		

Commented [HK120]: No effect – updated terminology

Commented [HK164]: No effect – clarification

Commented [HK165]: No effect – moved to below

Commented [HK166]: No effect – moved to below

Commented [HK167]: No effect – Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
<p>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.</p> <ul style="list-style-type: none"> <li>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: <ul style="list-style-type: none"> <li>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: <ul style="list-style-type: none"> <li>Less than or equal to 40 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>Greater than 40 linear feet and less than or equal to 150 linear feet, with a permanent maintenance corridor equal to or less than 20 feet in width.</li> </ul> </li> </ul> </li> </ul>				
	X			
		X		

Commented [HK120]: No effect – updated terminology

Commented [HK168]: less stringent - Greater flexibility for responding quickly to SSOs

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)

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
<ul style="list-style-type: none"> <li>▪ Greater than 150 linear feet with a permanent maintenance corridor equal to or less than 20 feet in width.</li> <li>▪ Permanent maintenance corridor greater than 20 linear feet (mitigation is required only for impacts beyond the 20 linear feet corridor width).</li> </ul>			<p>X</p> <p>X</p>	
<ul style="list-style-type: none"> <li>o Impacts other than perpendicular crossings:           <ul style="list-style-type: none"> <li>▪ Zone 2 only.</li> </ul> </li> </ul>	X			
<ul style="list-style-type: none"> <li>▪ Zone 1 impacts to less than 2,500 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;</li> <li>▪ Zone 1 impacts for replacement/rehabilitation within an existing Right of Way when land grubbing or grading within 10 feet immediately adjacent to the surface water is avoided;</li> <li>▪ Zone 1 impacts other than those listed above.</li> </ul>		X	X	
<ul style="list-style-type: none"> <li>• 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 (6) of this Rule:</li> </ul>				

Commented [HK120]: No effect – updated terminology

Commented [HK170]: less stringent - increased maintenance corridor from 10 to 20 feet

Commented [HK171]: less stringent - changed from allowable to deemed allowable

Commented [HK172]: less stringent - changed all impacts to Zone 1 triggering mitigation to only some triggering mitigation.

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
<ul style="list-style-type: none"> <li>○ <u>Zone 2 impacts</u></li> <li>○ <u>Zone 1 impacts provided no clearing within 10 feet of the stream</u></li> <li>○ <u>Zone 1 impacts, provided the permanent 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.</u></li> <li>○ <u>Zone 1 impacts, provided the permanent 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.</u></li> </ul>	<p><u>X</u></p> <p><u>X</u></p> <p><u>X</u></p>			
<ul style="list-style-type: none"> <li>• <u>Zone 1 impacts other than those listed above</u></li> </ul>			<u>X</u>	
<u>Utilities – Non-sewer underground lines:</u>				
<ul style="list-style-type: none"> <li>• <u>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:</u></li> </ul>				
<ul style="list-style-type: none"> <li>○ <u>Construction activities that disturb less than or 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</u></li> </ul>	<u>X</u>			

Commented [HK120]: No effect – updated terminology

Commented [HK173]: less stringent - new uses to allow for vegetation maintenance beyond the maintenance corridor

Commented [HK174]: no effect - Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK175]: No effect – Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
<ul style="list-style-type: none"> <li> <ul style="list-style-type: none"> <li>○ maintenance corridor equal to or less than 30 feet in width</li> <li>○ Construction activities that disturb greater 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 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</li> <li>○ Construction activities that disturb greater than 150 linear feet of riparian buffer</li> <li>○ Any activities with a permanent maintenance corridor greater than 30 feet in width</li> </ul> </li> <li>• Impacts other than perpendicular crossings:           <ul style="list-style-type: none"> <li>○ Impacts in Zone Two provided vegetation is re-established after disturbance and the function of Zone 1 is not compromised</li> <li>○ Impacts in Zone One 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 conducted within 10 feet immediately adjacent to the water</li> <li>○ Impacts in Zone One other than listed above</li> </ul> </li> <li>• Vegetation maintenance activities along an existing utility line beyond the footprint of an existing utility</li> </ul>		X		
			X	
			X	
	X			
		X		
			X	
		X		
			X	

Commented [HK120]: No effect – updated terminology

Commented [HK176]: less stringent - Changed 40 feet to 50 feet. Added language re maintenance corridor.

Commented [HK177]: no effect - changed allowable use to impacts less than 150

Commented [HK178]: no effect – changed allowable use to impacts less than 150 feet

Commented [HK179]: less stringent - New use

Commented [HK180]: No change

Commented [HK181]: No change

Commented [HK182]: no effect - changed impacts to zone 1 to less than 2,500 square feet when not tying into an existing line before triggering mitigation

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
line maintenance corridor where the total maintenance corridor is equal to or less than 30 linear feet in width			X	
<ul style="list-style-type: none"> <li>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</li> </ul>				
Utilities – Non-sewer aerial lines:				
<ul style="list-style-type: none"> <li>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: <ul style="list-style-type: none"> <li>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 grading is conducted in Zone 1, and that that poles or aerial infrastructure are not installed within 10 feet of a water body</li> <li>Disturb greater than 150 linear feet of buffer</li> </ul> </li> </ul>	X			
		X		
<ul style="list-style-type: none"> <li>Impacts other than perpendicular crossings: <ul style="list-style-type: none"> <li>Impacts in Zone Two</li> <li>Impacts in Zone One provided that a minimum zone of 10 feet wide immediately adjacent to the water body is</li> </ul> </li> </ul>		X	X	

Commented [HK120]: No effect – updated terminology

Commented [HK183]: less stringent - New uses to allow for vegetation maintenance beyond the maintenance corridor

Commented [HK184]: no effect - Changed 3 categories of utilities from (1) non-electric, (2) electric aerial and (3) electric underground to (1) sewer lines, (2) non-sewer underground and (3) non-sewer aerial

Commented [HK185]: No effect – Clarify this use can include perpendicular entry into the buffer that doesn't cross stream (e.g., connecting to an existing line)

Commented [HK186]: No change

Commented [HK187]: No change

Commented [HK188]: No change

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	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohi bited
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 [HK120]: No effect – updated terminology

Commented [HK189]: no effect - consistent with other utility line uses

4. 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.

- ☐ 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, 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 [HK190]: No effect – Moved relevant language into table

	Exempt Deemed Allowable	Allowable Upon Authorizat ion	Allowable with Mitigation Upon Authorizat ion	Prohibited
Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities:				
• Single vehicular access road and boat ramp to the		X		

Commented [HK191]: No effect – update terminology

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	Exempt +Deemed Allowed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<p>surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet in width</p> <ul style="list-style-type: none"> <li>Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet in width</li> </ul>			X	
<p>Vegetation management:</p> <ul style="list-style-type: none"> <li>Emergency fire control measures provided that topography is restored</li> <li>Periodic mowing and harvesting of plant products in Zone 2 only</li> <li>Placement of mulch ring around restoration plantings for a period of five years from the date of planting</li> <li>Planting <del>non-invasive</del> vegetation to enhance the riparian buffer</li> <li>Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised</li> <li>Removal of individual <del>trees-trees, branches or limbs,</del> which are in danger of causing damage to dwellings, <del>existing utility lines,</del> other structures or human <del>life-life,</del> or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance.</li> <li>Removal of individual trees that are dead, diseased or damaged</li> <li>Removal or poison <del>ivy-ivy,</del> 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</li> </ul>	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>			

Commented [HK191]: No effect – update terminology

Commented [HK192]: less stringent - New use to allow for vehicle access roads and boat ramps to surface waters and associated docking facilities

Commented [HK193]: less stringent - New use

Commented [HK194]: No effect – Clarification

Commented [HK195]: less stringent - allows for removal of branches or limbs instead of just an entire tree

Commented [HK196]: No effect - clarification

Commented [HK197]: No effect – Clarification

Commented [HK198]: less stringent - New use



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	Exempt +Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
significant, then the riparian buffer shall be replanted with non-invasive species.				
<ul style="list-style-type: none"> <li>Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at <a href="http://portal.ncdenr.org/c/document_library/get_file?uid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&amp;groupId=38364">http://portal.ncdenr.org/c/document_library/get_file?uid=0acc6377-ea07-42dc-bb27-45a78d1c7ebe&amp;groupId=38364</a>) 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30. 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.</li> <li>Removal of woody vegetation in Zone 1 provided that Item (9) of this Rule is complied with</li> </ul>			X	
Water dependent structures (except for boat ramps) as defined in 15A NCAC 2B Rule .0202 of this Section		X		
Water supply reservoirs:		X		
<ul style="list-style-type: none"> <li>New reservoirs provided that a riparian buffer that meets the requirements of Items (4)(8) and (5)(9) of this Rule is established adjacent to the reservoir</li> <li>New reservoirs where a riparian buffer that meets the requirements of Items (4)(8) and (5)(9) of this Rule is NOT established adjacent to the reservoir</li> </ul>			X	
Water wells	X			
Wildlife passage structures		X		
Wetland restoration	X			

Commented [HK191]: No effect – update terminology

Commented [HK199]: less stringent - Allow for removal of additional nuisance species and allows for use of pesticides

Commented [HK200]: No effect – Update citation; allow for use of pesticides

Commented [HK201]: No effect – Per SL 2015-246

Commented [HK202]: No effect – boat ramps addressed above

Commented [HK203]: No effect – update citation

Commented [HK204]: No effect – update citation

Commented [HK205]: No effect – update citation

Commented [HK206]: less stringent - New use

Commented [HK207]: No effect – Moved above

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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

- (iii) — Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
- (b) — Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub Item (8)(a) of this Rule by either the Division or the delegated local authority. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division or the delegated local authority may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:
- (i) — The name, address and phone number of the applicant;
  - (ii) — The nature of the activity to be conducted by the applicant;
  - (iii) — The location of the activity, including the jurisdiction;
  - (iv) — A map of sufficient detail to accurately delineate the boundaries of the land to be utilized 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;
  - (v) — An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and
  - (vi) — Plans for any best management practices proposed to be used to control the impacts associated with the activity.
- (c) — Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.
- (9) — **VARIANCES.** Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate delegated local authority may grant minor variances. The variance request procedure shall be as follows:
- (a) — For any variance request, the Division or the delegated local authority shall make a finding of fact as to whether the following requirements have been met:
    - (i) — There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical 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

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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 request 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 authority shall be made to the appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345.

(c) 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 Paragraph have not been met shall be made to the Office of Administrative Hearings for

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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.

(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 Item (8) 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 01H .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

Commented [HK211]: No effect – updated terminology

Commented [HK212]: No effect – updating citation

Commented [HK213]: No effect - clarification

Commented [HK214]: No effect – update citation

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- These practices must be approved by the Division of Forest Resources for a specific site. The Division of Forest Resources must notify the Division of all approvals.
- (vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.
  - (viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.
  - (ix) High intensity prescribed burns shall not be allowed.
  - (x) Application of fertilizer shall not be allowed except as necessary for permanent stabilization.
  - (xi) Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.
- (b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 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 01H.0203.
  - (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 provided that no trees with exposed primary roots visible in the streambank be cut.
  - (B) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches dbh may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees 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

- (C) In Zone 2, harvesting and regeneration of the forest stand shall be allowed provided that sufficient ground cover is maintained to provide for diffusion and infiltration of surface runoff.
- (12) REQUIREMENTS SPECIFIC TO LOCAL GOVERNMENTS WITH STORMWATER PROGRAMS FOR NITROGEN CONTROL. Local governments in the Tar-Pamlico River Basin that are required to have local stormwater programs to control nitrogen loading pursuant to Rule .0258 of this Section shall have two options for ensuring protection of riparian buffers on new developments within their jurisdictions as follows.
- (a) Obtain authority to implement a local riparian buffer protection program pursuant to 15A NCAC 02B .0261 Rule .0735 of this Section.
- (b) Refrain from issuing local approvals for new development projects unless either:
- (i) The person requesting the approval does not propose to impact the riparian buffer of a surface water that appears on either the most recent versions of the soil survey maps prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent versions of the 1:24,000 scale (7.5 minute quadrangle) topographic maps prepared by the United States Geologic Survey (USGS) as described in Item (3) of this Rule.
- (ii) The person requesting the approval proposes to impact the riparian buffer of a surface water that appears on the maps as described in Sub-Item (12)(b)(i) of this Paragraph Item (3) of this Rule and either:
- (A) Has received an on-site determination from the Division Authority pursuant to Sub-Item (3)(a) Item (4) of this Rule that surface waters are not present;
- (B) Has received an Authorization Certificate from the Authority Division pursuant to Item (8)(12) of this Rule .0611 of this Section for uses designated as Allowable allowable upon authorization under this Rule;
- (C) Has received an Authorization Certificate from the Authority Division pursuant to Item (8) of this Rule .0611 of this Section and obtained the Division's Authority's approval on a mitigation plan pursuant to Item (10)(11) of this Rule for uses designated as Allowable allowable with Mitigation upon authorization under this Rule; or
- (D) Has received a variance from the Commission an exception from the Authority pursuant to Item (9) of this Rule Rule .0611 of this Section.
- (13) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws.

Commented [HK215]: No effect – Moved to Rule .0612

Commented [HK216]: no effect – clarification

Commented [HK217]: no effect – update citation

Commented [HK218]: no effect – removed repetitive language to just reference language above

Commented [HK219]: no effect – grammar

Commented [HK220]: no effect – update citation

Commented [HK221]: no effect – update name

Commented [HK222]: no effect – update citation

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Commented [HK224]: no effect – update citation

Commented [HK225]: no effect – update terminology

Commented [HK226]: no effect – update name

Commented [HK227]: no effect – update citation

Commented [HK228]: no effect – update name

Commented [HK229]: no effect – update citation

Commented [HK230]: no effect – update terminology

Commented [HK231]: no effect – update terminology

Commented [HK232]: no effect – update citation

[.0259 is proposed for amendment and transfer to 15A NCAC 02B .0734]

Last Revised December 14, 2017

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; S.L. 2011, c. 394; S.L. 2012, c. 200; S.L. 2013, c. 413.  
3                            *Temporary Adoption Eff. January 1, 2000;*  
4                            *Eff. August 1, 2000.*  
5  
6



1 15A NCAC 02B .0261 is proposed for amendment as follows:

2  
3 **15A NCAC 02B .0261.0735 TAR-PAMLICO RIVER BASIN - NUTRIENT SENSITIVE WATERS**  
4 **MANAGEMENT STRATEGY: DELEGATION OF AUTHORITY FOR THE**  
5 **PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS**

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

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

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

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

**Commented [HK1]:** no effect - update citation

**Commented [HK2]:** no effect - grammar

**Commented [HK3]:** no effect - update citation

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

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

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

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**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

(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.

(e) ~~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.

(3) PROCEDURES FOR USES WITHIN RIPARIAN BUFFERS THAT ARE ALLOWABLE UPON AUTHORIZATION AND ALLOWABLE WITH ~~MITIGATION~~ 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)

**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.
- 3 (4) ~~VARIANCES/EXCEPTIONS.~~ After Upon receiving delegation, local governments shall review  
 4 applications requesting an Authorization Certificate with Exception pursuant to the requirements set  
 5 forth in Rule .0705 of this Section. variance requests, provide approvals for minor variance requests  
 6 and make recommendations to the Commission for major variance requests pursuant to the Tar-  
 7 Pamlico Basin riparian buffer protection program.
- 8 (5) LIMITS OF DELEGATED LOCAL AUTHORITY. The ~~Commission-Division~~ shall have  
 9 jurisdiction to the exclusion of local governments to implement the Tar-Pamlico Basin riparian  
 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~~;  
 15 (e) ~~Forest harvesting activities described in Rule .0706 of this Section; and~~  
 16 (f) ~~Agricultural activities.~~
- 17 (6) RECORD-KEEPING REQUIREMENTS. Delegated local ~~authorities-governments~~ shall maintain  
 18 on-site records for a minimum of 5 years. Delegated local ~~authorities-governments~~ must furnish a  
 19 copy of these records to the ~~Director-Division~~ within 30 ~~calendar~~ days of receipt of a written request  
 20 for the records. ~~The Division shall inspect local riparian buffer protection programs to ensure that~~  
 21 ~~the programs are being implemented and enforced in keeping with a request approved under Sub-~~  
 22 ~~item (1)(b) of this Rule.~~ Each delegated local ~~authority's-government's~~ records shall include the  
 23 following:
- 24 (a) A copy of ~~variance~~ Authorization Certificate with exception requests;  
 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;  
 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.~~
- 34 (8) ~~PROCEDURES FOR RESCINDING DELEGATION.~~ Upon determination by the Division that a  
 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

**Commented [HK31]:** less stringent - Remove ability for DWR to over-rule local government decisions; instead just reference process set out in Rule .0705

**Commented [HK32]:** No effect – update terminology

**Commented [HK33]:** No effect - grammar

**Commented [HK34]:** No effect – Removed language to just reference process set out in Rule .0705

**Commented [HK35]:** No effect – update name

**Commented [HK36]:** No effect - punctuation

**Commented [HK37]:** No effect – Updated to comply with SL 2005-447

**Commented [HK38]:** less stringent - Consistent with more recent buffer rules

**Commented [HK39]:** No effect – update name

**Commented [HK40]:** No effect – update name

**Commented [HK41]:** No effect – update name

**Commented [HK42]:** No effect - clarification

**Commented [HK43]:** No effect – Moved to item (7) below

**Commented [HK44]:** No effect – update name

**Commented [HK45]:** No effect – update terminology

**Commented [HK46]:** No effect – moved from Item (6) above

inadequacies. If the delegated local government has not corrected the deficiencies within 90 calendar days of receipt of the written notification, then the Commission shall rescind the delegation of authority to the local government and the Division shall implement and enforce the Tar-Pamlico River Basin riparian buffer protection requirements within their jurisdiction

(9) DELEGATION. The Commission may delegate its duties and powers for granting and rescinding local government delegation of the Tar-Pamlico River Basin riparian buffer protection requirements, in whole or in part, to the Director.

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

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

*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; 143B-282(d); S.L. 1999; c. 329, s. 7.1; Temporary Adoption Eff. January 1, 2000; Eff. August 1, 2000.*

Amended Eff. INSERT DATE