

1 **SECTION .0200 - BASINWIDE RESTORATION PLANS**

2
3 **15A NCAC 02R .0201 PURPOSE**

4 The purpose of ~~the a~~ Basinwide Restoration ~~Plans Plan~~ is ~~to identify wetlands and riparian areas within~~ to analyze
5 data from each of the ~~17~~ major river basins of the state in order to identify and describe watershed improvement
6 practices that have the potential, ~~through restoration, enhancement, creation or preservation, to contribute~~ to advance
7 the functional restoration goals of the ~~Ecosystem Enhancement Program, Division of Mitigation Services.~~

8
9 *History Note: Authority G.S. 143-214.10; 143-215.3;*
10 *Eff. August 1, 1998;*
11 *Amended Eff. July 3, 2008.*

12
13 **15A NCAC 02R .0202 COMPONENTS**

14 ~~(a) The Each~~ Basinwide Restoration ~~Plans Plan~~ ~~for each of the 17 major river basins~~ shall consist of the following
15 components:

- 16 (1) an assessment of the ~~existing wetlands and riparian area~~ baseline aquatic resources resource
17 functions within each ~~basin;~~ sub-basin;
- 18 (2) an assessment of the ~~existing needs of the river~~ potential functional improvement of aquatic
19 resources within each basin sub-basin; ~~as identified by the Department with input from other state~~
20 ~~and federal agencies, local governments, institutions of higher learning, non profit organizations~~
21 ~~and the general public;~~
- 22 (3) identification of aquatic resource areas that have the potential, if restored or enhanced, to contribute
23 to the functional goals of the Basinwide Restoration Plans;
- 24 (4) identification of ~~wetland and riparian~~ aquatic resource areas that have the potential, if preserved, to
25 contribute to the functional goals of the Basinwide Restoration Plans;
- 26 (5) a summary of the sub-basin characteristics, identification of priority ecosystem functions that have
27 been degraded or lost, and opportunities for functional improvement; ~~prioritization of the areas~~
28 ~~identified in Subparagraphs (3) and (4) of this Paragraph based on the area's ability to contribute to~~
29 ~~the specific goals of the Basinwide Restoration Plans and the needs of each 8 digit sub basin river~~
30 ~~basin as identified in Subparagraph (2) of this Paragraph;~~ and
- 31 (6) an outline of the specific ~~goal~~ goals to be accomplished through implementation of the Basinwide
32 Restoration Plan.

33 ~~(b) During the period July 1, 1997 through June 30, 2002, the Department may develop and implement Basinwide~~
34 ~~Restoration Plans that include only the following information:~~

- 35 (1) ~~an assessment of the existing needs of the river basin as identified by the Department with input~~
36 ~~from other state and federal agencies, local governments, institutions of higher learning, non profit~~
37 ~~organizations and the general public;~~

- 1 ~~(2) — identification of areas that have the potential, if restored or enhanced, to contribute to the specific~~
2 ~~goals of the Basinwide Restoration Plans;~~
3 ~~(3) — prioritization of the areas identified in Subparagraph (2) of this Paragraph based on the area's ability~~
4 ~~to contribute to the goals of the Basinwide Restoration Plans and the needs of each river basin as~~
5 ~~identified in Subparagraph (b)(1) of this Rule;~~
6 ~~(4) — identification of wetland and riparian areas that have the potential, if preserved, to contribute to the~~
7 ~~goals of the Basinwide Restoration Plans; and~~
8 ~~(5) — an outline of the specific goals to be accomplished through implementation of the Basinwide~~
9 ~~Restoration Plan.~~

10
11 *History Note:* Authority G.S. 143-214.10; 143-215.3;
12 Eff. August 1, 1998.

13
14
15 **15A NCAC 02R .0203 PUBLIC INVOLVEMENT; AVAILABILITY**

16 (a) The Secretary, or the Secretary's designee, shall provide interested parties an opportunity to review and comment
17 on the proposed Basinwide Restoration Plans.

18 (b) The Basinwide Restoration Plans shall be available for review through the ~~Ecosystem Enhancement Program's~~
19 ~~Division of Mitigation Services'~~ website at ~~www.nceep.net~~ <http://deq.nc.gov/about/divisions/mitigation-services>.

20
21 *History Note:* Authority G.S. 143-214.10; 143-215.3;
22 Eff. August 1, 1998;
23 Amended Eff. July 3, 2008.

24
25 **SECTION .0300 - COMPENSATORY MITIGATION**

26
27 **15A NCAC 02R .0301 GENERAL**

28 All projects implemented for the purpose of satisfying compensatory mitigation requirements of certifications issued
29 by the Department under 33 USC' U.S.C. Section 1341; and permits or authorizations issued by the United States
30 Army Corps of Engineers (Corps) under 33 USC' U.S.C. Section 1344, shall be consistent with the Basinwide
31 Restoration Plan for the appropriate river basin. A project is consistent with the Basinwide Restoration Plan if the
32 project ~~is located within an area that is identified as a priority for restoration in the Basinwide Restoration Plan; or is~~
33 ~~located at a site that is otherwise consistent with the goals outlined in the Basinwide Restoration Plan for the~~
34 ~~appropriate river basin; or is approved by the United States Army Corps of Engineers demonstrates that it advances~~
35 ~~the functional improvement goals identified in the Basinwide Restoration Plan.~~

36
37 *History Note:* Authority G.S. 143-214.11; 143-214.12; 143-215.3;

15A NCAC 02R .0302 MITIGATION BANKS

~~(a) All sponsors of mitigation banks that submit a prospectus to the United States Army Corps of Engineers after the effective date of this Rule must provide the Secretary, or the Secretary's designee documentation that the proposed mitigation bank is consistent with the approved Basinwide Restoration Plan for the appropriate river basin and meets the requirements of G.S. 143-214.11(f). A mitigation bank is consistent with the Basinwide Restoration Plans if the mitigation bank is located within an area that is identified as a priority for restoration in the Basinwide Restoration Plan; or is located at a site that is otherwise consistent with the goals outlined in the Basinwide Restoration Plan for the appropriate river basin; or is approved by the United States Army Corps of Engineers. The Secretary, or the Secretary's designee, shall provide comments concerning this documentation through participation on the Mitigation Bank Review Team in accordance with "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks," found in Volume 60, Number 228 of the Federal Register, November 28, 1995. The signature of the Secretary, or the Secretary's designee, on the Mitigation Banking Instrument, described in the above guidance, shall be considered as a finding by the Department that the mitigation bank is consistent with the Basinwide Restoration Plan.~~

~~(b) Each credit in a proposed mitigation bank must include a minimum of one acre of restoration or creation as defined in 15A NCAC 2H .0506(h)(4).~~

(a) In accordance with G.S. §143-214.8(8) and 33 CFR 332.8, the Division of Mitigation Services shall participate in the State's compensatory mitigation bank review and approval process. The Division of Mitigation Services shall provide non-regulatory oversight to compensatory mitigation banks and facilitate the improvement of water quality, flood prevention, fisheries, wildlife habitat and recreational opportunities. The Division of Mitigation Services shall promote the restoration and perpetual maintenance of aquatic resources, the development of appropriate and technically sound mitigation plans and provide an evaluation of site plans, engineering studies, construction, monitoring, and land management practices.

(b) The Division of Mitigation Services shall maintain a list of compensatory mitigation banks with approved mitigation banking instruments, credits types, and contact information and make such information available to the public through its website.

(c) The Division of Mitigation Services shall evaluate compensatory mitigation bank prospectuses submitted to the United States Army Corps of Engineers or the Department of Environmental Quality for determining consistency with the approved Basinwide Restoration Plan for the appropriate river basin.

(d) The Division of Water Resources and the Division of Mitigation Services shall jointly review all prospectuses, mitigation plans, other technical documents, financial assurances and draft mitigation instruments on behalf of the Department. All approvals, rejections, concurrences, comments and denials by the Department with regard to the creation of private compensatory mitigation banks in North Carolina, as defined by N.C.G.S. §143-214.11(4b), shall be based on concurrence between the Directors of the Division of Mitigation Services and the Division of Water

1 Resources. In the event concurrence is not reached between the Divisions, the Secretary shall make a final
2 determination on the matter.

3
4 *History Note: Authority G.S. 143-214.11; 143-214.12; 143-215.3;*
5 *Eff. August 1, 1998.*

6
7 **SECTION .0400 - ECOSYSTEM RESTORATION FUND**

8
9 **15A NCAC 02R .0401 PURPOSE**

10 This Section establishes the Ecosystem Restoration Fund pursuant to G.S. 143-214.12.

11
12 *History Note: Authority G.S. 143-214.11; 143-214.12; 143-215.3;*
13 *Eff. August 1, 1998;*
14 *Amended Eff. July 3, 2008.*

15
16 **15A NCAC 02R .0402 SCHEDULE OF FEES RATE SCHEDULE- STREAM AND WETLAND RATES**
17 **FOR THE NC DIVISION OF MITIGATION SERVICES**

18 (a) The purpose of this Rule is to establish actual cost rates for the payment of stream and wetland fees to the NC
19 Division of Mitigation Services In-Lieu Fee Mitigation Program, subsequently referred to as the Program, where rules
20 adopted by the Commission, certifications issued by the Department under U.S.C. §1341, and permits or
21 authorizations issued by the United States Army Corps of Engineers under 33 U.S.C. Section 1344 allow this option
22 for applicants to fulfill stream and/or wetland compensatory mitigation requirements. Wherever the terms "cost" or
23 "costs" are used in this Rule, it means the Program's costs associated with stream or wetland projects in a given rate
24 area, as described below. For this purpose, the Program shall operate according to the requirements in this Rule. The
25 fee shall be calculated by multiplying the rate to the total number of credits of stream or wetland compensatory
26 mitigation specified in the approved certifications issued by the Department; and permits or authorizations issued by
27 the United States Army Corps of Engineers under 33 U.S.C. Section 1344 and requested by the applicant.

28 (b) The Program shall calculate and publish general statewide stream and wetland payment rates and special stream
29 and wetland rates for watersheds as identified in Paragraph (d) of this Rule.

30 (c) Payment rates shall be developed for stream, freshwater wetland, and coastal wetland credits. Streams consist of
31 classified surface waters other than wetlands as defined in 15A NCAC 02B .0202; freshwater wetlands consist of
32 Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8) which include riparian and non-riparian wetlands;
33 Coastal wetlands consist of Class SWL wetlands as defined in 15A NCAC 02B .0101(d)(4) and 15A NCAC 07H
34 .0205.

35 (d) Special Watershed Rate. The Program shall apply Special Watershed Rates for the following areas:

1 (1) Any 8-digit cataloging unit, mitigation service area, or smaller watershed where costs are 33 percent
2 greater than costs than the general statewide rate shall have a surcharge equal to the difference
3 between the general statewide rate and the actual cost of mitigation in that mitigation service area.

4 (2) The initial coastal wetland rate is \$825,000 per credit.

5 (e) Rate Adjustment Frequency. Initial rates shall be effective as of the effective date of this Rule. They shall be
6 calculated and adjusted on July 1 of each year and shall become effective on those dates. Rate adjustments shall be
7 published on the Program's Web site two weeks prior to the effective date.

8 (f) Payment rates for stream and wetlands shall be determined for a rate area using the following equation and
9 presented in per credit values:

$$ActualCostRate = 1.43 \frac{ActualProjectCosts_{PresentDay}}{ActualCredits_{PresentDay}}$$

11
12
13 Where:

14 (1) Actual Project Costs_{PresentDay} means the sum of all Full Delivery and Mitigation Bank Credit
15 Purchase project costs adjusted for inflation as described in this Sub-Item. Projects in the calculation
16 are limited to Full Delivery and Mitigation Bank Credit Purchase projects that were contracted
17 within the last three years and include completed projects, terminated projects and projects in
18 process. At the time the rate is set, to ensure that collected payments are sufficient to implement
19 new projects, all contracts and expenditures shall be adjusted to present day values using the annual
20 composite USACE Civil Works Construction Cost Index. If the USACE Civil Works Construction
21 Cost Index is not available, it shall be calculated using the average annual percentage change over
22 the last three-year period;

23 (2) As used in this Rule:

24 (A) Project Costs are the total costs associated with development of stream or wetland
25 compensatory mitigation projects including identification, land acquisition, project design,
26 project construction, monitoring, maintenance and long-term stewardship;

27 (B) The cost for projects in process is the sum of expenditures of project contracts to date,
28 contracted cost to complete existing contracts, and the projected cost of future contracts
29 needed to complete those projects required to fulfill Program obligations in the rate area;

30 (3) Actual Credits_{PresentDay} means the total number of stream or wetland credits from Actual Project
31 Costs_{PresentDay} at the time of calculation. If the Actual Credits_{PresentDay} for an existing or completed
32 project is reduced, the Actual Costs_{PresentDay} for that existing or completed project shall be
33 proportionally adjusted; and

34 (4) Watershed planning is a federal requirement under 33 CFR 332.3(c)(1) and 33 CFR 230.93(c)(1)
35 and a state requirement under 15A NCAC 02R .0201-.0203 and 15A NCAC 02R .0301-.0302. Ten

1 percent of the Actual Cost Rate is reserved for Administrative Costs. Administrative Costs are costs
2 associated with administration of the Program including staffing, supplies, rent, and watershed
3 planning.

4 (5) Twenty percent of the Actual Cost Rate is reserved for the operational carrying costs and
5 contingency risk costs.

6 (6) Administrative, watershed planning, operational, and contingency costs are captured by the
7 coefficient of 1.43 and represents 30% of the total fee calculation.

8 ~~(a) The amount of payment into the Fund necessary to achieve compliance with compensatory mitigation~~
9 ~~requirements shall be determined in accordance with Subparagraphs (1) through (7) of this Paragraph. The fee shall~~
10 ~~be based on the acres and types of compensatory mitigation specified in the approved certifications issued by the~~
11 ~~Department under 33 USC 1341; and permits or authorizations issued by the United States Army Corps of Engineers~~
12 ~~under 33 USC 1344. Payments shall be rounded up in increments of linear feet for streams and in 0.25 acre increments~~
13 ~~for wetlands, e.g. for streams, 520.3 linear feet of compensatory mitigation would be considered as 521 feet, and for~~
14 ~~wetlands, 2.35 acres of required compensatory mitigation would be considered as 2.5 acres for the purpose of~~
15 ~~calculating the amount of payment.~~

16 ~~(b) Payments made pursuant to Subparagraphs (3) through (6) of this Paragraph are subject to separate fees determined~~
17 ~~by which 8 digit hydrologic unit (as defined by the United States Geological Survey) the permitted impact is located.~~
18 ~~Fees are assessed according to the location of the permitted impact and mitigation type as follows:~~

19 (1) ~~Fees in Subparagraphs (3) and (4) shall be applied to the following 8 digit hydrologic units organized~~
20 ~~by river basin: Broad: 03050105; Cape Fear: 03030002, 03030004, 03030005, 03030007; Catawba:~~
21 ~~03050101, 03050102, 03050103; French Broad: 06010106, 06010105, 06010108; Hiwassee:~~
22 ~~06020002; Little Tennessee: 06010202, 06010203, 06010204; Lumber 03040207; Neuse:~~
23 ~~03020201; New: 05050001; Roanoke: 03010107; Savannah: 03060101, 03060102; Tar Pamlico:~~
24 ~~03020101; Watauga: 06010103; White Oak: 03030001, 03020106; Yadkin: 03040102, 03040103,~~
25 ~~03040105, 03040202~~

26 (2) ~~Fees in Subparagraphs (5) and (6) shall be applied to all other 8 digit hydrologic units not listed in~~
27 ~~Subparagraph (1).~~

28 (3) ~~Classified surface waters other than wetlands as defined in 15A NCAC 02B .0202. The payment~~
29 ~~shall be three hundred and twenty three dollars (\$323.00) per linear foot of stream.~~

30 (4) ~~Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8). The payment shall be:~~

31 (A) ~~Forty three thousand dollars (\$43,000) per acre for non riparian wetlands.~~

32 (B) ~~Fifty nine thousand and six hundred dollars (\$59,600) per acre for riparian wetlands.~~

33 (5) ~~Classified surface waters other than wetlands as defined in 15A NCAC 02B .0202. The payment~~
34 ~~shall be two hundred and forty four dollars (\$244.00) per linear foot of stream.~~

35 (6) ~~Class WL wetlands as defined in 15A NCAC 02B .0101(c)(8). The payment shall be:~~

36 (A) ~~Twenty two thousand one hundred and thirteen dollars (\$22,113) per acre for non riparian~~
37 ~~wetlands.~~

1 ~~(B) — Thirty three thousand six hundred and ninety six (\$33,696) per acre for riparian wetlands.~~

2 ~~(7) — Class SWL wetlands as defined in 15A NCAC 02B .0101(d)(4). The payment shall be one hundred~~
3 ~~and forty six thousand and six hundred and fifteen dollars (\$146,615.00) per acre.~~

4 ~~(e) The fees outlined in Subparagraphs (b)(1) through (b)(7) and Paragraph (e) of this Rule shall be reviewed annually~~
5 ~~by the Department and compared to the actual cost of restoration activities conducted by the Department, including~~
6 ~~planning, monitoring and maintenance costs. Based upon this annual review, revisions to Paragraph (a) of this Rule~~
7 ~~shall be recommended to the Commission when adjustments to this Schedule of Fees are deemed necessary to ensure~~
8 ~~that the Schedule of Fees reflects the actual costs of restoration activities.~~

9 ~~(d) The fees outlined in Subparagraphs (b)(1) through (b)(7) and Paragraph (e) of this Rule shall be adjusted for~~
10 ~~inflation on an annual basis using the Civil Works Construction Cost Index System published by the US Army Corps~~
11 ~~of Engineers. This adjustment shall occur at the end of each calendar year as follows: the fees in Subparagraphs (b)(1)~~
12 ~~through (b)(7) and Paragraph (e) of this Rule for each year shall be multiplied by the annual composite Civil Works~~
13 ~~Construction Cost Index yearly percentage change issued in September of each year and the result shall be the increase~~
14 ~~to that fee for the next fiscal year. The revised fees shall be made available via the NC Ecosystem Enhancement~~
15 ~~Program's web site (www.nceep.net) and become effective on the following July 1st.~~

16 ~~(e) For properties and easements donated to the NC Department of Environment and Natural Resources, a fee of one~~
17 ~~thousand dollars (\$1,000) per acre shall be charged at the time the land or easement is transferred to the Department's~~
18 ~~Conservation Grant Fund Endowment to cover costs of long term management of the property. For properties that~~
19 ~~are less than one acre in size, the minimum payment shall be one thousand dollars (\$1,000). This charge applies only~~
20 ~~to properties and easements donated to the Department for the sole purpose of property or easement maintenance.~~
21 ~~This does not apply to properties or easements donated to the Department in association with restoration projects~~
22 ~~conducted by the Department.~~

23
24 *History Note: Authority G.S. 143-214.11; 143-214.12; 143-215.3;*
25 *Eff. August 1, 1998;*
26 *Amended Eff. July 18, 2008; April 1, 2003.*
27

28 **15A NCAC 02R .0403 DONATION OF PROPERTY**

29 (a) If approved by the Council of State, donations or dedications of interests in real property, for the purposes of
30 restoration, enhancement, or preservation, may be accepted by the Secretary, or the Secretary's designee, if the
31 property is consistent with the Basinwide Restoration Plan for the appropriate river basin subject to the factors listed
32 in Paragraphs (b) and (c) of this Rule, or if the property interest is being donated to satisfy a condition of a certification
33 issued by the Department under 33 USC 33 U.S.C. Section 1341. ~~The property is consistent with the Basinwide~~
34 ~~Restoration Plan if the property is located within an area that is identified as a priority for restoration in the Basinwide~~
35 ~~Restoration Plan or is located at a site that is otherwise consistent with the goals outlined in the Basinwide Restoration~~
36 ~~Plan for the appropriate river basin.~~

1 (b) The factors that shall be considered by the Secretary, or the Secretary's designee, in determining whether to accept
2 donations or dedications of interests in real property for the purposes of wetland or riparian area restoration or
3 enhancement include the following:

- 4 (1) whether the property is adjacent to, or will become a part of, a Department ~~approved restoration or~~
5 ~~preservation~~ compensatory mitigation project; or is adjacent to or includes a sensitive natural
6 resource, as identified in the Basinwide Restoration Plan; or is adjacent to or includes property with
7 known occurrences of rare aquatic species as identified by the North Carolina Natural Heritage
8 Program in the "Natural Heritage Program List of Rare Animal Species of North Carolina" or the
9 "Natural Heritage Program List of the Rare Plant Species of North Carolina"; or is adjacent to or
10 includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage
11 Program in the "North Carolina Natural Heritage Program Biennial Protection Plan, List of
12 Significant Natural Heritage Areas." Copies of these documents may be obtained from the
13 Department of ~~Environment and Natural Resources~~Natural and Cultural Resources Division of
14 ~~Parks and Recreation~~Land and Water Stewardship, Natural Heritage Program, PO Box 27687,
15 Raleigh, North Carolina 27611 1651 Mail Service Center
16 Raleigh, NC 27603;
- 17 (2) whether the size of the property is at least five contiguous acres;
- 18 (3) the likelihood that the site can be successfully restored or enhanced, based on hydrology, soils, and
19 vegetation;
- 20 (4) the ~~extent~~ intensity of activities required to successfully restore or enhance the site. Sites requiring
21 extreme measures for successful restoration, such as removal of structures or infrastructure, ~~will~~
22 shall not be accepted;
- 23 (5) absence of cultural and historic resources;
- 24 (6) prior, current, and future land use of the donated property and adjacent properties;
- 25 (7) existence of federally or state-listed sensitive, endangered, or threatened species, or their critical
26 habitat;
- 27 (8) the potential for enhancement of natural resource values of public lands;
- 28 (9) absence of hazardous substance and solid waste;
- 29 (10) whether the property is adjacent to non-supporting, partially supporting, or support-threatened
30 waters as designated by the Division of Water ~~Quality Resources~~ pursuant to 40 CFR 131.10(a)
31 through (g). This material is available for inspection at the Department of ~~Environment and Natural~~
32 ~~Resources~~ Environmental Quality, Division of Water ~~Quality Resources~~, Water ~~Quality Planning~~
33 Section, 512 North Salisbury Street, Raleigh, North Carolina;
- 34 (11) absence of encumbrances and conditions on the transfer of the property interests; and
- 35 (12) provisions have been made for the long term maintenance and management of the property.

1 (c) The factors that shall be considered by the Secretary, or the Secretary's designee, in determining whether to accept
2 donations or dedications of interests in real property for the purpose of preservation of existing wetland and riparian
3 areas include the following:

- 4 (1) whether the property has clearly identifiable unique wetland or riparian area functions or values,
5 such as federally or state-listed sensitive, endangered or threatened species, or their critical habitat;
- 6 (2) the potential for enhancement of natural resource values of public lands;
- 7 (3) whether the property is adjacent to, or will become a part of a Department approved restoration or
8 preservation project; or is adjacent to or includes a sensitive natural resource, as identified in the
9 Basinwide Restoration Plan; or is adjacent to or includes property with known occurrences of rare
10 species as identified by the North Carolina Natural Heritage Program in the "Natural Heritage
11 Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of
12 the Rare Plant Species of North Carolina"; or is adjacent to or includes a Significant Natural Heritage
13 Area as identified by the North Carolina Natural Heritage Program in the "North Carolina Natural
14 Heritage Program Biennial Protection Plan, List of Significant Natural Heritage Areas." Copies of
15 these documents may be obtained from the Department of ~~Environment and Natural Resources,~~
16 ~~Natural and Cultural Resources~~ Division of ~~Parks and Recreation~~ Land and Water Stewardship,
17 Natural Heritage Program, ~~PO Box 27687, Raleigh, North Carolina 27614~~ 1651 Mail Service Center
18 Raleigh, NC 27603;
- 19 (4) whether the size of the property is at least five contiguous acres;
- 20 (5) whether the property is under imminent threat of degradation;
- 21 (6) prior, current, and future land use of the donated property and adjacent properties;
- 22 (7) absence of extensive structures and infrastructure;
- 23 (8) absence of hazardous substance and solid waste;
- 24 (9) absence of cultural and historic resources;
- 25 (10) whether the property is adjacent to non-supporting, partially supporting, or support-threatened
26 waters as designated by the Division of Water ~~Quality Resources~~ pursuant to 40 CFR 131.10(a)
27 through (g). This material is available for inspection at the Department of ~~Environment and Natural~~
28 ~~Resources~~ Environmental Quality, Division of Water ~~Quality Resources~~, Water ~~Quality Planning~~
29 Section, 512 North Salisbury Street, Raleigh, North Carolina;
- 30 (11) absence of encumbrances and conditions on the transfer of the property interests; and
- 31 (12) provisions have been made for the long term maintenance and management of the property.

32 (d) At the expense of the applicant or donor, the following information must be submitted with any proposal for
33 donations or dedications of interest in real property:

- 34 (1) documentation that the property meets the criteria outlined in Paragraph (b) and (c) of this Rule;
- 35 (2) US Geologic Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural
36 Resource Conservation Service County Soil Survey Map, and county road map showing the location

1 of the property to be donated along with information on existing site conditions, vegetation types,
2 presence of existing structures and easements;

3 (3) a current property survey performed in accordance with the procedures of the North Carolina
4 Department of Administration, State Property Office as identified by the ~~State Board of Registration~~
5 ~~for Professional Engineers and Land Surveyors~~ North Carolina Board of Examiners for Engineers
6 and Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be
7 obtained from the North Carolina State Board of ~~Registration for Professional Engineers and Land~~
8 ~~Examiners for Engineers and~~ Surveyors, ~~3620 Six Forks Road, Suite 300, Raleigh, North Carolina~~
9 ~~27609; www.ncbels.org;~~

10 (4) a current appraisal of the value of the property performed in accordance with the procedures of the
11 North Carolina Department of Administration, State Property Office as identified by the Appraisal
12 Board in the "Uniform Standards of Professional ~~North Carolina~~ Appraisal Practice." Copies may
13 be obtained from the Appraisal Foundation, ~~Publications Department, PO Box 96734, Washington,~~
14 ~~D.C. 20090-6734; http://www.appraisalfoundation.org/;~~

15 (5) a title certificate; and

16 (6) documentation that the property does not contain structures that present health or safety problems
17 to the general public. If wells, septic, water or sewer connections exist, they shall be filled,
18 remediated or closed at owner's expense, and in accordance with state and local health and safety
19 regulations.

20 (e) In addition to the factors outlined in Paragraphs (b) through (d) of this Rule, the Secretary, or the Secretary's
21 designee, shall consider the following factors when determining whether to accept a donation of interest in real
22 property to satisfy compensatory mitigation requirements:

23 (1) whether restoration of the property will offset the adverse impacts of the permitted project; and

24 (2) whether the adverse impacts of the permitted project are within the same ~~subbasin~~ sub-basin as the
25 property proposed for donation.

26 (f) Donations of interests in real property for the purpose of satisfying compensatory mitigation requirements ~~will~~
27 shall only be considered for acceptance when the proposed donation ~~will offset~~ offsets an impact for which an
28 application has already been made to the United States Army Corps of Engineers under 33 ~~USC U.S.C. Section~~ 1344
29 or to the Department under 33 ~~USC U.S.C. Section~~ 1341.

30 (g) For the purposes of satisfying compensatory mitigation requirements through the donation of interests in real
31 property, for property requiring restoration, enhancement, or preservation, the size of property to be donated must
32 equal or exceed the acreage of wetland required to be mitigated under the approved permit and every parcel must be
33 a minimum of five contiguous acres in size.

34 (h) Donation of real property interests to satisfy compensatory mitigation requirements ~~will shall~~ shall only be accepted if
35 such property meets the requirements of Paragraphs (a) through (i) of this Rule and 15A NCAC 2H .0506(h) and
36 satisfies the compensatory mitigation requirements of the approved permit.

1 (i) The donation of conservation easements to satisfy compensatory mitigation requirements ~~will~~ shall only be
2 accepted if the conservation easement is granted in perpetuity and the property to be encumbered meets the
3 requirements of Paragraphs (a) through (j) of this Rule, or if the property interest is being donated to satisfy a condition
4 of a certification issued by the Department under 33 ~~USC~~ U.S.C. Section 1341.

5 (j) Donation of interests in real property may contribute to or fulfill compensatory mitigation requirements that may
6 be satisfied through payment of a fee as outlined in the Schedule of Fees in Rule .0402(a) of this Section. The value
7 of the property interest shall be determined by an appraisal performed in accordance with Subparagraph (d)(4) of this
8 Rule. The required fee as calculated in accordance with Rule .0402(a) of this Section shall be satisfied if the appraised
9 value of the donated property interest is equal to or greater than the fee. If the appraised value of the donated property
10 interest is less than the designated fee requirement as calculated in accordance with Rule .0402(a) of this Section, the
11 applicant shall pay the remaining balance due.

12
13 *History Note:* Authority G.S. 143-214.11; 143-214.12; 143-215.3;
14 Eff. August 1, 1998.

15
16 **SECTION .0500 - WETLANDS RESTORATION FUND**

- 17
18 **15A NCAC 02R .0501 PURPOSE**
19 **15A NCAC 02R .0502 DEFINITIONS**
20 **15A NCAC 02R .0503 SCHEDULE OF FEES**
21 **15A NCAC 02R .0504 PAYMENT**

22
23 *History Note:* Authority G.S. 143-214.11; 143-214.12;
24 Temporary Adoption Eff. May 6, 1997;
25 Repealed Eff. August 1, 1998.

26
27 **SECTION .0600 – RIPARIAN BUFFER RESTORATION FUND**

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29 **15A NCAC 02R .0601 RIPARIAN BUFFER MITIGATION FEES TO THE NC ~~ECOSYSTEM~~**
30 **ENHANCEMENT PROGRAM DIVISION OF MITIGATION SERVICES**

31 (a) The purpose of this Rule is to establish actual cost rates for the payment of riparian buffer mitigation fees to the
32 NC Division of Mitigation Services In-Lieu Fee Program, subsequently referred to as the Program, where rules
33 adopted by the Commission allow this option toward fulfillment of riparian buffer mitigation requirements. Wherever
34 the term "cost" or "costs" is used in this Rule, it means the Program's costs associated with riparian buffer mitigation
35 in a given rate area, as described below. For this purpose, the Program shall operate according to the requirements in
36 this Rule.

1 (b) The Program shall calculate and publish one general riparian buffer mitigation payment rate applicable to all river
2 basins where Commission rules allow riparian buffer mitigation payments and Special rates for specific watersheds
3 as identified in Paragraph (d) of this Rule. All rates shall be based on the actual and complete costs incurred by
4 implementing mitigation in those watersheds.

5 (c) Special Watershed Rates. The Program shall apply Special watershed rates to:

6 (1) The Randleman Lake Watershed;

7 (2) The Jordan Lower New Hope Watershed; and

8 (3) Any 8-digit cataloging unit, mitigation service area, or smaller watershed where costs are 33 percent
9 greater than costs than the general statewide rate, shall have a surcharge equal to the difference between the
10 general statewide rate and the actual cost of mitigation in that mitigation service area.

11 The initial rate for a special watershed with fewer than two riparian buffer mitigation projects that have reached the
12 design stage shall be the highest riparian buffer rate in effect under the Program. The initial rate shall be revised for a
13 special watershed the quarter following a quarter in which at least two riparian buffer mitigation projects in that
14 watershed have reached design stage.

15 (d) Rate Adjustment Frequency. Initial rates shall be effective as of the effective date of this Rule. They shall be
16 adjusted quarterly whenever the rate increases ten percent above the existing rate. The rates shall also be adjusted
17 annually. Annual calculations and adjusted rates shall be published by June 15 on the Program's website,
18 <http://deq.nc.gov/about/divisions/mitigation-services>, and shall become effective July 1. Any quarterly rate
19 adjustments shall become effective on the first day of October, January, or April as applicable, and shall be published
20 on the same website two weeks prior to that date.

21 (e) Payment rates shall be determined for a rate area using the following equation and presented in per credit values:

$$22 \quad \text{ActualCostRate} = \frac{\text{ActualCosts}_{\text{PresentDay}}}{\text{TotalRiparianBufferCredits}_{\text{PresentDay}}} + \text{AdjustmentFactor}$$

23
24
25 Where:

26 (1) Actual Costs_{PresentDay} means the sum of all costs adjusted for inflation as described in this Sub-Item.
27 Costs are project costs and administrative costs. Projects in the calculation are completed projects,
28 terminated projects and projects in process. At the time the rate is set, to ensure that collected
29 payments are sufficient to implement new projects, all completed land acquisition contracts and
30 expenditures shall be adjusted to present day values using the current North Carolina Department
31 of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values. All other
32 completed contracts and expenditures shall be adjusted to present day values using the annual
33 composite USACE Civil Works Construction Cost Index. Future land acquisition contract costs for
34 projects in process are calculated using the Program's per credit contract costs of the same type
35 adjusted to the inflated future value when the contracts will be encumbered using the North Carolina
36 Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values.

1 All other future contracts shall be calculated using the Program's per credit contract costs of the
2 same type adjusted to the inflated future value when the contracts will be encumbered using the
3 current composite USACE Civil Works Construction Cost Index. For projects in process where the
4 contract type has not been determined, the cost of the project shall be calculated using the Program's
5 average per credit cost adjusted to the future inflated value when the project will be initiated. Future
6 year annual inflation rates shall be drawn from either the North Carolina Department of Agriculture
7 and Consumer Services' Agricultural Statistics Farm Real Estate Values or the USACE Civil Works
8 Construction Cost Index. If not available from either source, they shall be calculated using the
9 average annual percentage change over the last three-year period;

10 (2) As used in this Rule:

11 (A) Project Costs are the total costs associated with development of riparian buffer mitigation
12 projects including identification, land acquisition, project design, project construction,
13 monitoring, maintenance and long-term stewardship;

14 (B) Administrative Costs are costs associated with administration of the Program including
15 staffing, supplies and rent; and

16 (C) The cost for projects in process is the sum of expenditures of project contracts to date,
17 contracted cost to complete existing contracts, and the projected cost of future contracts
18 needed to complete those projects required to fulfill Program riparian buffer mitigation
19 obligations in the rate area.

20 (3) Total Riparian Buffer Credits_{PresentDay} means the total amount of riparian buffer mitigation credits
21 provided by projects in the rate area at the time of calculation. If the Total Riparian Buffer
22 Credits_{PresentDay} for an existing or completed project is reduced, the Actual Costs_{PresentDay} for that
23 existing or completed project shall be proportionally adjusted; and

24

25 (4)
$$\text{Adjustment Factor} = \frac{(\text{Actual Costs} - \text{Actual Receipts})}{\text{Number of Riparian Buffer Credits Paid During Adjustment Period}}$$

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27

28 Where:

29 (A) The Adjustment Factor is a per-credit value used to bring actual costs and actual receipts
30 into balance, ensuring that future payments are sufficient to cover the cost of implementing
31 the Program in the rate area. The Adjustment Factor shall be applied in only those
32 calculation periods where actual costs are calculated to be greater than actual receipts. The
33 Adjustment Factor shall not comprise more than 60% of the overall rate.;

34 (B) Actual Costs are the same as Actual Costs_{PresentDay} as defined in Subparagraph (1) of this
35 Paragraph, except that existing contracts and completed land acquisitions are not adjusted
36 for inflation;

1 (C) Actual Receipts are the sum of all riparian buffer mitigation payments made to the Program
2 to date in the rate area at the time of calculation; and

3 (D) Number of Riparian Buffer Credits Paid During Adjustment Period is the average number
4 of riparian buffer mitigation credits paid to the Program over the last three years in the rate
5 area, multiplied by the adjustment period. If no payments have been made to the Program
6 in a rate area, the number of credits paid shall be set to 435,600 riparian buffer credits until
7 greater than 435,560 riparian buffer credits have been purchased in that rate area.

8 (5) Adjustment Period is one to four years determined as follows for a rate area:

9 (A) One year if Actual Costs exceed Actual Receipts by less than five percent;

10 (B) Two years if Actual Costs exceed Actual Receipts by five percent or more but less than 15
11 percent;

12 (C) Three years if Actual Costs exceed Actual Receipts by 15 percent or more but less than 25
13 percent; and

14 (D) Four years if Actual Costs exceed Actual Receipts by 25 percent or more.

15 The following is the process for payment of fees to the Riparian Buffer Restoration Fund administered by the North
16 Carolina Ecosystem Enhancement Program as one option to mitigate riparian buffer impacts allowed under rules in
17 15A NCAC 02B. Persons who wish to use this option shall first meet the criteria established for doing so in the buffer
18 rules in 15A NCAC 02B that reference this Rule. Such buffer rules include, but may not be limited to 15A NCAC
19 02B .0295. Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to
20 the Riparian Buffer Restoration Fund as allowed here shall use the following procedure:

21 (1) SCHEDULE OF FEES: The amount of payment into the Fund shall be based on the costs of riparian
22 buffer restoration. The payment amount shall be determined by multiplying the acres or square feet
23 of mitigation required under other rules in 15A NCAC 02B by an initial value of ninety six cents
24 per square foot or forty one thousand eight hundred and eighteen dollars per acre (\$41,818/acre).
25 This initial per acre rate shall be adjusted in January of each year by staff of the NC Ecosystem
26 Enhancement Program based upon the construction cost index factor published every December in
27 the Engineering News Record. The Engineering News Record is hereby incorporated by reference
28 including subsequent amendments and editions, and is located at
29 <http://enr.construction.com/economics/> at an annual subscription cost of forty nine dollars and
30 ninety nine cents (\$49.99).

31 (2) The required fee shall be submitted to the N.C. Ecosystem Enhancement Program (NC EEP), 1652
32 Mail Service Center, Raleigh, NC 27699 1652 prior to any activity that results in the removal or
33 degradation of the protected riparian buffer for which a "no practical alternatives" determination has
34 been made pursuant to requirements of other rules in 15A NCAC 02B.

35 (3) The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real
36 property interests pursuant to requirements of other rules in this Subchapter.

37

1 *History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.5(i); 143-214.7; 143-214.12; 143-214.21; 143-*
2 *215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L.*
3 *2005-190; S.L. 2006-259;*
4 *Eff. August 11, 2009;*
5 *Amended Eff. May 1, 2015;*
6 *Transferred from 15A NCAC 02B .0269 Eff. May 1, 2015.*

7 **15A NCAC 02R .0602 NUTRIENT OFFSET PAYMENT RATES FOR THE NC ~~ECOSYSTEM~~**
8 **~~ENHANCEMENT PROGRAM~~DIVISION OF MITIGATION SERVICES**

9 (a) The purpose of this Rule is to establish actual cost rates for the payment of nutrient offset fees to the NC ~~Ecosystem~~
10 ~~Enhancement Program~~ Division of Mitigation Services, subsequently referred to as the Program, where rules adopted
11 by the Commission allow this option toward fulfillment of nutrient load reduction requirements and where the Program
12 implements projects to achieve nutrient reductions. Wherever the term "cost" or "costs" is used in this Rule, it means
13 the Program's costs associated with nutrient offset projects in a given rate area, as described below. For this purpose,
14 the Program shall operate according to the requirements in this Rule.

15 (b) The Program shall calculate and publish general offset payment rates applicable to each river basin where
16 Commission rules allow such nutrient offsets and special watershed rates for specific watersheds as identified in
17 Paragraph (d) of this Rule. All rates shall be based on the actual and complete per-pound nutrient reduction costs
18 incurred by implementing projects in those watersheds.

19 (c) Payment rates shall be developed for nitrogen, phosphorus, or other nutrients as dictated by Commission rule
20 requirements for each river basin.

21 (d) Special Watershed Rates. The Program shall apply special watershed rates to:

- 22 (1) The Neuse 03020201 cataloging unit below the Falls watershed, the Jordan Lake watershed, and the
23 Falls Lake watershed; and
- 24 (2) Any eight digit cataloging unit or smaller watershed subject to nutrient management rules where
25 costs are ~~40~~ 33 percent greater than costs in the larger watershed or river basin in which that
26 cataloging unit is located.

27 The initial rate for a special watershed with fewer than two nutrient reduction projects that have reached the design
28 stage shall be the highest rate in effect under the Program for the applicable nutrient. The initial rate shall be revised
29 for a special watershed the quarter following a quarter in which at least two nutrient reduction projects in that
30 watershed have reached design stage.

31 (e) Once an area has been established as an area with Special Watershed Rates, it shall remain a Special Watershed
32 Rate area.

33 (f) Rate Adjustment Frequency. Initial rates shall be effective as of the effective date of this Rule. They shall be
34 adjusted quarterly whenever the rate increases ten percent above the existing rate. The rates shall also be adjusted
35 annually. Annual calculations and adjusted rates shall be published by June ~~15~~ 15 on the Program's ~~Web site,~~
36 ~~www.nceep.net; website~~ http://deq.nc.gov/about/divisions/mitigation-services, and shall become effective July 1. Any
37 quarterly rate adjustments shall become effective on the first day of October, January, or April as applicable, and shall

1 be published on the same ~~Web site~~ website two weeks prior to that date. The rate shall be adjusted immediately if the
2 Program determines it must suspend acceptance of payments at the current rate per 15A NCAC 02B .0240 (e)(2).

3 (g) Payment rates for each nutrient shall be determined for a rate area using the following equation and presented in
4 per pound values:

$$5 \quad ActualCostRate = \frac{ActualCosts_{PresentDay}}{TotalPoundsOffset_{PresentDay}} + AdjustmentFactor$$

6 Where:

- 7 (1) Actual Costs_{PresentDay} means the sum of all costs adjusted for inflation as described in this ~~Sub Item~~
8 Subparagraph. Costs are project costs and administrative costs. Projects in the calculation are
9 completed projects, terminated projects and projects in process. At the time the rate is set, to ensure
10 that collected payments are sufficient to implement new projects, all completed land acquisition
11 contracts and expenditures shall be adjusted to present day values using the current North Carolina
12 Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values.
13 All other completed contracts and expenditures shall be adjusted to present day values using the
14 annual composite USACE Civil Works Construction Cost Index. Future land acquisition contract
15 costs for projects in process are calculated using the Program's per credit contract costs of the same
16 type adjusted to the inflated future value when the contracts will be encumbered using the North
17 Carolina Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real
18 Estate Values. All other future contracts shall be calculated using the Program's per credit contract
19 costs of the same type adjusted to the inflated future value when the contracts will be encumbered
20 using the current composite USACE Civil Works Construction Cost Index. For projects in process
21 where the contract type has not been determined, the cost of the project shall be calculated using the
22 Program's average per pound cost adjusted to the future inflated value when the project will be
23 initiated. Future year annual inflation rates shall be drawn from either the North Carolina
24 Department of Agriculture and Consumer Services' Agricultural Statistics Farm Real Estate Values
25 or the USACE Civil Works Construction Cost Index. If not available from either source, they shall
26 be calculated using the average annual percentage change over the last three-year period;
- 27 (2) As used in this Rule:
- 28 (A) Project Costs are the total costs associated with development of nutrient reduction projects
29 including identification, land acquisition, project design, project construction, monitoring,
30 maintenance and long-term stewardship;
- 31 (B) Administrative Costs are costs associated with administration of the Program including
32 staffing, supplies and rent; and
- 33 (C) The cost for projects in process is the sum of expenditures of project contracts to date,
34 contracted cost to complete existing contracts, and the projected cost of future contracts
35 needed to complete those projects required to fulfill Program nutrient reduction obligations
36 in the rate area;

- 1 (3) Total Pounds Offset_{PresentDay} means the total number of pounds of a nutrient reduced by projects in
2 the rate area at the time of calculation. If the Total Pounds Offset_{PresentDay} for an existing or
3 completed project is reduced, the Actual Costs_{PresentDay} for that existing or completed project shall
4 be proportionally adjusted; and
5

6 (4)
$$\text{AdjustmentFactor} = \frac{(\text{ActualCosts} - \text{ActualReceipts})}{\text{NumberofPoundsPaidDuringAdjustmentPeriod}}$$

7 Where:

- 8 (A) The Adjustment Factor is a per-pound value used to bring actual costs and actual receipts
9 into balance, ensuring that future payments are sufficient to cover the cost of implementing
10 the Program in the rate area. The Adjustment Factor shall be applied in only those
11 calculation periods where actual costs are calculated to be greater than actual receipts. The
12 Adjustment Factor shall not comprise more than 60% of the overall rate;
13 (B) Actual Costs are the same as Actual ~~CostsPresentDay~~ CostsPresentDay as defined in
14 Subparagraph (1) of this Paragraph, except that existing contracts and completed land
15 acquisitions are not adjusted for inflation;
16 (C) Actual Receipts are the sum of all offset payments made to the Program to date in the rate
17 area at the time of calculation; and
18 (D) Number of Pounds Paid during Adjustment Period is the average number of pounds of a
19 nutrient paid to the Program over the last three years in the rate area, multiplied by the
20 adjustment period. If no payments have been made to the Program in a rate area, the
21 number of pounds paid shall be set to 1,000 pounds until greater than 1,000 pounds have
22 been purchased in that rate area.
23 (5) Adjustment Period is one to four years determined as follows for a rate area:
24 (A) One year if Actual Costs exceed Actual Receipts by less than five percent;
25 (B) Two years if Actual Costs exceed Actual Receipts by five percent or more but less than 15
26 percent;
27 (C) Three years if Actual Costs exceed Actual Receipts by 15 percent or more but less than 25
28 percent; and
29 (D) Four years if Actual Costs exceed Actual Receipts by 25 percent or more.

30 (h) When individual projects produce more than one type of nutrient reduction, the project costs shall be prorated for
31 each nutrient being offset by the project.

32 (i) In cases where an applicant is required to reduce more than one nutrient type and chooses to use the Program to
33 offset nutrients, the applicant shall make a payment for each nutrient.
34

35 *History Note:* Authority G.S. 143-214.1; 143-214.20; 143-214.21; S.L. 1995, c. 572; S.L. 2006, c. 215; S.L. 2007,
36 c. 438; S.L. 2009, c. 337; S.L. 2009, c. 484; S.L. 2009, c. 486;

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Eff. September 1, 2010;

Transferred from 15A NCAC 02B .0274 Eff. May 1, 2015.